Chapter Twelve

> It is becoming clear that the Government is planning its own version of the Reichstag Fire Trial of Nazi Germany as a means of eliminating the most determined opponents of its apartheid policy … *New Age.*[1]

A Charge of Treason

When detectives invaded the Congress of the People on 26 and 27 June 1955, it was clear that the government intended to accuse the leading activists in the congresses of treason. After the COP the charge of treason was bandied about quite regularly, leading *New Age* to say with some cynicism: "With every fresh raid, it has become clearer in the minds of the Special Branch, 'treason' and 'communism' are coming to mean every form of opposition to the Nationalist Government."[2] The statement was justified, given the persistent presence of the special branch at meetings, their surveillance of individuals, and the utterances of senior government officials, including the justice minister, the prime minister and chief of police, who made it clear that something extraordinary was afoot. The opposition to Bantu education simply exacerbated the situation.

The regime's threats were followed up with police raids on 19 September 1955. On that occasion I came home to find two members of the special branch outside our front door, one of them waving a warrant authorizing them to investigate charges of treason, sedition and offences under the Suppression of Communism Act. Instructions to keep cool, think fast on your feet and have a steady hand during these encounters went out of my head as I thought of all the things that I should have taken care of in anticipation of these raids. I let the men in gingerly, trying hard to recall whether any incriminating documents, notes, names and papers were lying about, exposed. There were so many items to remember: banned publications, especially "Marxist-Leninist" books; periodicals and journal articles from China, Eastern Europe and the USSR; lists of subscribers to *Fighting Talk*; names of people in the Congress of Democrats and the African Education Movement; and documents of the SACP. The illegal Party had not yet publicly "emerged" and evidence of its existence was hardly anything I wanted to reveal through careless possession of its documents. In any case, membership of the illegal organization carried with it a severe jail sentence. I simply stood there, said nothing and waited as the security police agents searched every shelf, cupboard and drawer. They removed a shelf-full of papers, periodicals, posters, some old copies of *Fighting Talk*, extracts from *New Age* and,

of course, more books from my Marxist library, but fortunately nothing incriminating was found. Usually my brother, Leon, and I were raided simultaneously as we lived in the same family flat. However, on that occasion two other detectives met him at his trade union office, leaving only after they'd scrutinized every piece of paper they could lay their hands on.

The September raids were countrywide and carried out over two consecutive days, reportedly on the scale of a military operation. The warrants were standard, authorizing the seizure of papers, telegrams, typewriters, minutes and tape recorders. The organizations under investigation were (predictably) the four congresses, the youth and women's movements and the South African Peace Council, but there were also some on the list that did not exist in South Africa, including the "Cominform" and "Comintern" which never had offices in South Africa. The security police were relatively unprofessional at the time and the scope of the searches too wide for them to know precisely what they were looking for. Consequently they seized anything in sight that fitted their understanding of the purpose of the raids. It took almost another decade before the regime secured the cooperation of the British, US, Portuguese and Algerian intelligence structures to train its own "assets" to work more professionally – and even then there was a lack of analysts to make sense of the information collected. Despite the inept intelligence personnel and poor assemblage of information, the effect of the raids was serious.

They were more than "a gigantic fishing expedition" as the media suggested and helped to create the climate for the arrests that followed over a year later. The information acquired during the raids informed the regime of the breadth of the movement's activities, its deficiencies on the ground, its membership and its projected activities. Together with information collected at the Congress of the People, it furnished the bulk of the information that initially informed the amorphous indictment of the accused in the Treason Trial in December 1956, while the names and addresses seized during the raids enabled the special branch to widen its network of surveillance. More generally, it intimidated some Left-leaning intellectuals and helped to create the climate of fear in the minds of the white section of the population that treason was afoot. The general protests against the raids from the COD, the Coloured and Indian Congresses and SACTU, warning that this was the forerunner of more fascist measures, made little impact on the white population and talk of democratic rights for all simply added fuel to the government's fire. Yet the ANC seemed powerless to mount a specific campaign to stop the government from carrying out its threats.

By May 1956, Justice Minister Swart, whose dour personality was singularly unsuited to any sort of drama, told parliament that "as a result of the Union-wide search two hundred people are to be prosecuted for treason, breaches of the Suppression of

Communism Act and other offences"[3]. The charges would be based on the evidence seized during the searches in the previous year. The statement came as no surprise to anyone but belated as it was, it helped sustain the air of uncertainty that had already been fostered and that "justified" the September raids in the eyes of government supporters, although seven months had passed and no charges had yet been made. The minister's inaction, however, turned out to be little more than a brief lull while the government prepared for a sensational show-trial. *New Age* suspected that this was the case and in mid-November 1956 cautioned that it would be dangerous to disregard the possibility of further raids. "Having promised parliament that arrests would be made", it noted, "Swart was more or less under an obligation to redeem his pledge".[4] Later, the same newspaper commented that the government appeared to be planning a "Reichstag Fire Trial" to eliminate the "most determined" anti-apartheid activists and that such plans seemed to be imminent.[5]

At the end of November, in a less measured way, Moses Kotane, sensing a new reality in the regime's move towards "a total police state", expressed concern that there were no plans to stop the government in its tracks:

> Swart has given the clearest notice of his intentions to arrest up to 200 … personalities in a gigantic frame-up for treason and sedition … yet we do not find that all those naked preparations … have called forth the rallying of the people on a scale [which the situation] merits.[6]

He had no doubt that the masses would respond if called upon and believed "that the fault was not with the people [but with the many leaders] who have a completely unimaginative response to events."[7] He believed the country was approaching "a crisis-situation, an emergency", where there was no time for leaders to "mess around ineffectually". These lapses in efficiency were a mark of the isolation of the leaders, "they have lost sight of the people", he felt. They should "wake up … and be doing!" But his appeal was too late.

Six days later, the raids began. It began at the crack of dawn on 5 December 1956 with two thumps on our front door, accompanied by loud cries of "Open up, it's the police!", repeated a second and a third time in case everyone in the block of flats had not heard. This time the warrants were printed on cyclostyled foolscap sheets of paper, copied 156 times (some held back for later) for all those presumably included in the morning's exercise, allowing a clean space for the names of each new person. Leon and I each had a separate warrant which we read while two special branch men and an auxiliary officer, also in plain clothes, waited before stripping the place of whatever they interpreted "as contraband" in line with their search warrants. More explicit than in September 1955, the warrants were a depressing invasion of privacy, affording the police sweeping powers to

search the place for anything from a cheque book to a typewriter and of course, more Marxist literature. All the items ostensibly related to the 48 organizations allegedly under investigation (two had disappeared from the original list of 50 previously mentioned by Minister Swart). Some of these organizations were mythical, like the "Cheesa Cheesa Army", and the "May Day Committee" (an antiquated relic of the disbanded Trades and Labour Council, which I once attended); some non-existent like the Comintern, the Cominform and the CPSA, the outlawed Communist Party. The security police had either not yet adapted to the subtle change in name from the CPSA to the new SACP or (inconceivably) simply did not know of the new Party's independent existence.[8]

It was a tense and critical moment and an abrupt change of pace for me. It was early in the morning and there were few onlookers to watch the "twins" being escorted to the police car in the street outside and unceremoniously driven away. While the staff and students at my school waited for me on that miserable morning I was having my fingerprints taken at the Marshall Square police station.

"There's plenty of room at the Fort"

News of the dawn raids reached the mainstream media almost immediately. For the most part, the English-speaking press initially took the matter less seriously than their Afrikaans (pro-government) counterparts. *The Star*, a Johannesburg English language evening paper, featured an interview with the director of Prisons headed, "Plenty of Room at the Fort". It carried a description of the prison diet and a comment made by the prison superintendent that his prison was "like a well kept boarding house".[9] This was clearly to allay the fears of the families of the detainees that conditions at the Fort left much to be desired. *Die Transvaler*, on the government's side of the media, provided a spurious definition of treason and reminded its readers that in olden times the perpetrators of the crime of treason were punished by having their hands and feet tied to four horses before being torn to pieces. Alternatively, they had their bones broken or were burnt at the stake. As if these statements were insufficient to inform their readers of the dire forms of punishment that we might have received in earlier times, the paper noted that "failing all that", the offenders were likely to be whipped, strangled or banished preparatory to having their property confiscated.[10] Presumably, after that anything milder was generous.

More soberly, an editorial in *The Natal Mercury*, published in the English language, reviewed the rash of recent legislation curtailing civil liberties and noted that these laws

> have fallen so thick in recent years that few are likely to retain any clear idea of what the ordinary citizen may or may not do in matters of speech, affiliation or publication to keep himself on the right side of prison bars.[11]

It is unlikely that the section of the white population that did not support the NP felt much sympathy for the accused, despite the more liberal stance of the English language media. Generally there was no mass outcry or serious alarm anywhere in the media over the government's claims that the state was about to be subverted by force and violence.

While the ANC called upon the African people to stand firmly "behind their valiant leaders" and pledged itself to continue the freedom fight, the Liberal Party called upon the white people of South Africa to resist all encroachments on their civil liberties, adding bravely that no country could enjoy justice and freedom unless it offered the same rights to all its people.[12] There was more sustained support for the detainees at the international level when a National Defence Fund was established to raise money for bail and also legal assistance and the relief of families affected by the arrests. Canon L. John Collins, Dean of St Paul's, in London and Ambrose Reeves, Anglican Bishop of Johannesburg, were the main protagonists behind this, but there was also strong support from prominent South Africans, including Alan Paton, chairman of the Liberal Party; the Archbishop of Cape Town; former Judge F.A.W. Lucas; and a few progressive MPs like Alex Hepple, parliamentary leader of the Labour Party. The main financial contributions came from abroad and the Defence Fund (later re-named the International Defence and Aid Fund for Southern Africa, or as it was more popularly known, the IDAF) became the mainstay of relief for the families of anti-apartheid activists and those in need of legal defence for the next 45 years,[13] At the time of the Treason Trial, *New Age*, provided a comprehensive account of the fund as well as news of the arrests and what are now vintage pictures of all of us filing in and out of the police vans before entering or leaving the precincts of the court. The police net had been cast wide and indiscriminately: communists, trade unionists, activists in the Society for Peace and Friendship with the Soviet Union or persons prominent in the South African Peace Council and the four congresses, many of them banned from gatherings and legally restricted from participation in the movement's activities for a number of years. All were caught in the net.

There were a number of others, more or less learned, who were inexplicably not arrested. These included well-known national leaders such as Yusuf Dadoo, Michael Harmel, Bram Fischer, Hilda Bernstein, Brian Bunting, J.B. Marks, Dan Tloome, David Bopape and Govan Mbeki. Thabo Mbeki (who arrived in Johannesburg from the Eastern Cape during this time was too young to be credibly included among the accused and was not active in the Congress Alliance's major campaigns.

Initially 140 people from all over the country were detained, soon to converge at the Old Fort in Johannesburg from various city centres and small prisons where they were originally held and finger-printed. For some it was a first-time prison experience, for others who were not white, a routine happening. It was my first experience of prison and the naked powerlessness of prisoners. I was initially taken to the police station at Marshall

Square and then transported in a *kwela* (police van) with about 13 others from the Congress of Democrats to the Fort. About 14 additional detainees came from Cape Town in two military planes, one Dakota for whites and the other for blacks. Fred Carneson, one of the accused, remembers it was a bumpy ride. Another batch came from Port Elizabeth and a third from Durban, while a large contingent of African comrades from Johannesburg, rounded up during the dawn arrests, was already there – all excitedly meeting in the reception hall of the Fort, momentarily un-segregated. The initial meeting was chaotic. Many of us were still in our twenties and early thirties although there were exceptions that increased the average age considerably. It could have been an old boys' class reunion, except for the disparity in our ages – and the fact that the venue was a prison reception hall.

Whatever the description, there was not the slightest hint from our demeanour that we were (according to prison parlance) "in" for the most serious crime in the book. Once the greetings were over our possessions were laboriously recorded by the clerks in the respective "reception" rooms – one designated for "Europeans" and the other for "non-Europeans" – and we were dispatched to the racially separated sections for prisoners who were awaiting trial.

When the group from the Congress of Democrats arrived at the section reserved for white prisoners who were to be put on trial, the Reverend Douglas Chadwick Thompson, a Methodist minister from a parish in Springs, aptly described by Joe Slovo as "wonderfully incongruous in a high collar", was already waiting to welcome us. He had been active for years in the Society for Peace and Friendship with the Soviet Union, and later with the South African Peace Movement. With him were Errol Shanley, a trade unionist and Jan Hoogendyck, an accountant at the time, both of them activists in the Congress of Democrats in Durban.[14] Jan was as urbane and upstanding as Errol was lean and unshaven, both of them still feeling the effects of the plane trip, another turbulent flight in an army Dakota. Thompson greeted us graciously, as if we were entering the gates of heaven rather than purgatory, but his attitude was stoical and his manner, as always, dignified despite the inauspicious environment.

It was a relatively self-contained section of the prison with a row of singularly bleak cells with black stone floors and high walls that were unusually lacking in graffiti. Each of the cells had a barred window, too high to see through. On the north-facing side where I lay, the window backed onto a rectangular space that served as an exercise yard. For the first time on that day I had a sick feeling in the pit of my stomach that we could be here for years. Initially I shared a cell with Leon and Jan Hoogendyck; then a second wave of prisoners arrived. It was a strange first night in which we were all too engrossed in each other and too wound up to give the bewildered warders any impression that we were

concerned with the gravity of the crime of high treason for which we would be remanded the following day.

Our appearance before the magistrate at Q Court the next day was a formality, although the event was one of the high moments of the day. We set out singing in the *kwela*, a Black Maria as big as a tank, making a brief stop at the women's section of the prison, where six white women joined the whites in the front of the *kwela* and nine black women were seated with the black male defendants at the back of the truck. Racial segregation was in this instance more important than gender.

The singing came to an abrupt end when we arrived at the magistrate's court and were hustled out of the van and placed in the cells in the basement below the courtroom. The presiding magistrate (Hartogh) was already on the bench when we filed into the courtroom. The spectators stood up as we entered, a roar of "*Mayibuye*" erupting from the spectators' gallery as Chief Luthuli appeared. Their cries were quelled promptly by Hartogh, with threats to clear the court if there were further demonstrations. He explained that all the accused had to do was to answer to their names to indicate that they were present. Initially we answered "yes" as our names were called, but the pattern soon changed to "*ewe*" (meaning "yes" in Xhosa) and *Ndi khona ke Teng* ("present" in Sotho) or "*ja*" in Afrikaans. Luthuli answered gravely, *Ndi lapa* ("I am here" in Zulu). This was our expression of independence after the state's charade of the morning's extravagant police escort to the courtroom. A preparatory hearing would take place and if the evidence was sufficient, a trial would follow. Now formally remanded as prisoners who were awaiting trial, we filed down the stairway to the well of the court and out into the fresh air. Seated once again in the *kwela*, the mood was still buoyant as the unwieldy prison van sped back to the Fort, the accused singing one stirring "struggle" song after the other. *New Age*, reflecting on the events at the court that day, contrasted our racially integrated presence in the dock with the segregated scene in the courtroom. Here was South Africa in miniature, it noted, a courtroom crammed with black spectators in one half of the public gallery and across the barrier, an ample space for whites with seats to spare.

A day or two later more new faces arrived at the Fort. There was no pattern to the arrests. Rusty Bernstein who, unbeknown to the prosecution had drafted the Freedom Charter, Moses Kotane, Walter Sisulu – already icons in the movement – were arrested in a second wave of police raids. Ruth First, Duma Nokwe, Ahmed Kathrada, M.P. Naicker, all of them still young enough to be in the youth leagues, and like so many others, banned from participation in the affairs of Congress, were among those detained in the second wave of arrests. It seemed as if the security police were undecided who to detain, unsure of who made policy and who carried it out; who were the foxes and who were the hedgehogs and in a final, frenzied moment, included everyone they happened to have listed in their files. If the case went beyond the preparatory stage and the prosecution

failed to secure their commitment to a formal trial, at least the accused or a portion of them would be confined to the courtroom for a long time and their movements outside the court easily monitored.

The Preparatory Examination

We had never met in plenary like this before and were soon to take advantage of the presence of local activists and national leaders to share experiences and learn from each other. We were also able to contribute to some of the day to day decisions that had to be taken in the movement's battles beyond the courtroom. At the beginning of the preparatory hearing Congress intervened directly in a major bus boycott in Johannesburg's Alexandra township where the Congress leadership, heads huddled closely together during the lunch recesses in the Drill Hall, met with representatives of the Witwatersrand and Pretoria Joint Action Committee to advise them of the strategies they thought they should follow. This set a pattern for the treatment of other struggles. "*Azikhwela*" (we will not ride – in the buses) became as popular a slogan during these months as "*Asinamali*" (we have no money), the slogan chanted at the mass rallies that were held during the national campaign for a minimum working wage of a "Pound a Day". A third slogan, "We shall not be moved", was taken up in chorus by the residents of Sophiatown even as they were moved in government trucks to the new township of Meadowlands, eighteen miles away.

Meanwhile, in the rural reserves of Pondoland and Sekhukuneland; in Zeerust and the interior of Zululand, rebellions erupted against the Bantu Authorities system – revolts that developed into low intensity wars between popular chiefs, poor subsistence farmers and the state. When Sisulu visited these areas in April 1956, eight months prior to his arrest on charges of treason, he already observed these rising tensions which he said were prompted by poverty and drought and discontent over the application of the Bantu Authorities system.[15] Much of the anger towards this system, he thought at the time, "still flowed beneath the surface".[16] He was correct. Tensions erupted into local rebellions throughout the years of our trial, only to be ruthlessly repressed by the regime, the leaders imprisoned, banished and persecuted. Beginning in Bizana in Eastern Pondoland, where "a vast popular movement arose in March 1960 … known as '*Intaba*' (the mountain)",[17] the "unrest" had spread to rural Zululand by November, where the canefields were set alight in protest against a district chief at Empangeni who supported the Bantu Authorities system. The Minister of Justice told parliament in February 1961 that "4 769 Africans, two whites and two members of other races had been taken into custody [since the troubles began]".[18] Less than half of these had been brought to trial. When it came to the collection of statistics the bureaucrats in the NP government were as obsessive as any other dictatorship, past and present.

The lack of ANC structures in the rural areas and the failure to attend to specific grievances were serious weaknesses that had not been properly addressed for years. Before the armed struggle became ANC policy in 1961, the Pondos were literally begging for guns.[19] But for the immobilization of the ANC's activists in the Treason Trial, greater attention might have been paid to this. Meanwhile we were immobilised in the Fort.

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Inside the Fort

The prison regime was difficult to adjust to. By comparison with other prisons, the "awaiting trial" regimen at the Fort was less sanitary, but more civilized than the brutal underworlds I later experienced in Pretoria. But, irrespective of the institution, I never overcame my revulsion to the terrible stench of shit and urine from the chamber pots, routinely emptied in the lavatories when the cells were unlocked at six o'clock in the mornings. At the Fort there were queues for every occasion. Long lines to the lavatories and to the washing basins in the early morning and then another queue for mealie pap and black coffee for breakfast; a long line for shredded stew and black bread for lunch at eleven or twelve o'clock; and finally rows of ravenous inmates for soup without salt for supper at four o'clock in the afternoon before lock-up. Fortunately there was a welcome food supplement from sympathetic volunteers outside the prison, who never once failed to deliver our meals – sometimes twice daily. Although the prison routine in the non-European section was more or less the same, the physical conditions were different, and the food progressively worse according to one's racial classification. So to the majority of prisoners the additional food from the volunteers outside the prison often made all the difference between eating and going hungry.

There were just over a 100 black male detainees (as opposed to 17 in the white male quarters), which allowed the blacks greater control over their section than we had. In sharp contrast to the whites, they were treated with "extraordinary respect" by the warders.[20] Fear, prejudice and social class separated the white warders from us. Culturally and socially they were closer to the prisoners in for arson or HB&T.[21] At a general level, apartheid provisions prevailed for food, accommodation and treatment, and one's prison experience depended on one's skin colour and gender. The black male prisoners slept on the floor, close to one another, on thin rope mats. According to the measurements of the comrades with the largest feet, the black detainees had two cells, 55 by 20 paces. There were approximately 50 in each cell. Two open latrines, one in a corner of each cell served them all. The walls were also atypically blank, suggesting that the respective "special sections" had been prepared for us shortly before our arrival. The white males slept mostly three to a cell, 9 by 9 paces each. The women's cells were slightly bigger to

accommodate the small cots on which they slept. In all the sections there was much camaraderie.

It took three bail applications before the lawyers could secure our release, the prosecution insisting (on the instructions of the security branch) that "if the arrested people were released the police would lose further sources of information".[22] On a second application to the Transvaal Supreme Court, Justice Bresler handed in a written judgment refusing bail, noting the "gravity of the crime" and finding the prosecution's plea for time to complete its investigations a sufficiently good reason to deny bail. The preparatory examination therefore began while we were still held at the Fort, arriving at the Drill Hall each morning in a convoy of *kwelas*, our singing inviting loud cheers from the massive crowd of supporters outside the court bearing large placards in bold letters reading: "We stand by our leaders!"

Inside the makeshift courtroom, a large, dreary hall with none of the baroque trappings of a conventional court, we sat in a crudely constructed wire-fenced dock, big enough to seat a small brigade. Chairs with narrow seats had been arranged in rows, as for a concert. Outside, scores of armed police ringed the streets trying to contain the crowd of chanting supporters, while in the courtroom, the chief prosecutor haltingly read from a 53-page document outlining the crown's case against us. On the second day his tedious argument was interrupted by the sound of gunfire outside the hall. Supporters trying to gain access to the proceedings were prevented from doing so, while the crowd, in some parts seven-deep and increasing all the time, was pushed back by the police. A baton charge followed in which the police hit everyone within their reach, and in turn, were pelted with stones by the unarmed demonstrators. Events came to a head when a young constable allegedly panicked and fired two shots, later followed up by a volley of gunfire ordered by the general in charge of a police detachment. As many as 30 people were reportedly injured on that day, including two policemen.

The next day 500 police, armed with sten guns, cordoned off the hall, and later wade into the crowd with a brutal baton charge, this time injuring 27 demonstrators. On this occasion, the magistrate (either following instructions from the police or sensing that it was prudent to clear the court as quickly as possible) to our great relief adjourned the proceedings. It was against this background that the prosecution outlined its case against us, alleging that it was our common purpose to subvert the state by force. Ironically, it was also the state's contention that the provocation of incidents similar to the sort we had just witnessed was a deliberate policy of the ANC leadership to rouse the police into responding aggressively to mass action.

What is Treason?

We had no idea what constituted the crime of treason. For those of us who were not trained in the law, the answers to this question seemed highly subjective. Apart from a few specific essentials such as having a hostile intention to endanger the safety of the state (or actively to prepare to endanger it) a great deal seemed to depend on what acts the prosecution believed were likely to impair the state's safety. Where, for instance, did it draw the line between a simple protest against injustice and an intention to subvert the state? Was it treasonable to advocate the substitution of the apartheid order by an egalitarian one, albeit by peaceful means? Did an intemperate speech or an article or an inflammatory act committed by one person, necessarily bind all the others?

Between the farce and the drama of the proceedings there were serious questions involving matters of law, due process and jurisprudence. For instance, if the court accepted the evidence of an expert witness showing that communist philosophy required the violent overthrow of the state, would that make the Freedom Charter (which the prosecution alleged was a "communist document") treasonable? High treason was often associated with war and aid from a proclaimed foreign enemy, punishable by death. Could the internationalism of the Communists and the moral support received by the ANC and its allies from Eastern Europe, be seen as aid from "the Communist enemy"? If these were bewildering questions for those in the dock, the prosecution's concept of "violent retaliation" by the police in response to the latter's deliberate provocation by the masses, bordered on madness. According to this notion the police were deliberately provoked into violent retaliation by leaders who egged on the crowd to confront the police, all the time appearing to preach peace, but in reality purposely inciting violence.

These questions were at the core of the preparatory hearing and later in the trial and were either raised in legal argument or were present in the substance of the documents that were read into the record over the days and weeks and months of the proceedings. The case for the prosecution was presented by one of the least inspiring of chief prosecutors, an inept official by the name of J.C. van Niekerk. Ham-fisted, halting and utterly humourless, he had the misfortune of watching his incompetent witnesses fall like plastic pins in a bowling alley under the pressure of cross examination by V.C. Berrange.

Berrange was our chief defence counsel, known in the profession as "the most surgical demolisher of official witnesses".[23] Van Niekerk was frequently reduced to speechlessness by Berrange's caustic tongue and cutting sarcasm – often directed at him. The magistrate was slightly more professional. He was F.C.A. Wessel, previously the chief magistrate of Bloemfontein, who had probably never been exposed to the country's bracing political opposition. He was just as humourless as Van Niekerk but had better powers of concentration and was seldom distracted by the heated exchanges between Vernon Berrange and the prosecution, or by the tedium of the proceedings. He also learnt

nothing from them. He was a small man with an expressionless face which on occasion turned white with fright when he feared losing control of the proceedings. Despite his stern warnings when he thought the order of the court was threatened, I suspect that in reality he was just as frightened of the defence counsel as he was of the security police. If he felt any emotion while the chief prosecutor outlined the disturbing details of the state's case against us, he did not show it, and listened to the prosecutor as impassively as he might have done were he hearing a case of arson.

The prosecution's case was often garbled and reflected how ill at ease it was with (what it referred to) as Marxism-Leninism. According to Van Niekerk, who drew no distinction between communists and non-communists, the evidence would be that the liberation movement relied on extra-parliamentary action to achieve its aims because it saw no alternative to white rule under the existing constitution. The accused had made speeches inciting revolution, violence and bloodshed as a means of achieving their aims. As stated in the Communist Manifesto (which he regularly cited) communists stood for violent revolution and the destruction of the capitalist oppressors. It would be shown from the documents that some of the accused had taught that the South African state had reached a stage where "capitalist imperialism" was developing into fascism – and the country was already a police state. In addition, parliament, as it existed, served the financial magnates and would have to be abolished.[24]

Sweat poured from his head as he read on, while the accused watched him frantically wipe his forehead with a large prison-sized handkerchief. The prosecution's task was not made any easier by the presence in the courtroom of Gerald Gardiner, the eminent barrister and future British chancellor. He had flown to South Africa from London to attend the hearings on behalf of the (UK) Bar Council, the Association of Liberal Lawyers and the Society of Labour Lawyers, and was shortly to report on the absurdity of the prosecution's case, which was made even more apparent, when after three separate applications, the Supreme Court granted bail according to an arbitrary scale of £50 for Africans, £100 for Indians and Coloured persons, and £250 for whites! This was less than the crown had asked for, much to the surprise of a group of eminent persons, all of them South Africans, who stood as sureties for us. Knowing that high treason was a capital offence punishable by death, they were ready to stand bail to the extent of many thousands of pounds.

The bail conditions were the same for all the accused and bore a striking resemblance to the banning orders with which many of us were already familiar. These conditions were recited by the chief magistrate, Mr F.C. Silk, his loud voice echoing in the cavernous well of the magistrate's court. I remember him asking if there was anyone who wished to explain these prohibitions to the accused, whereupon Chief Luthuli, appropriate to his position as ANC president, came forward. "Are you an educated man?"

Silk asked him, without enquiring who he was. “I think so”, Luthuli responded, and went on to explain in very lucid terms the bail conditions which largely entailed a prohibition on addressing or attending any gatherings other than of a social, sporting, religious or recreational nature; reporting before 10 a.m. each morning at a named police station and for those who were lucky enough to possess them, the surrender of their passports. After all this the prisoners and the sureties were brought before the magistrates on special duty and the accused were issued with a covenant of liberation.[25] This occurred on 20 December after 16 days in jail. At the time it seemed like a life sentence.

The bail proceedings ended the year and we returned to the same court in January 1957 – no longer en masse inside a *kwela* – but on foot or by public transport to hear Vernon Berrange argue in reply to Van Niekerk’s outline of the state’s case against us. The legal strategy Berrange adopted was overtly political. It could hardly have been otherwise in view of the issues he had to address. The primary concern included the questions of force and violence. We were soon to discover that any form of social change (violent or not) was potentially treasonable in the state’s thinking. It believed that protest for equal rights was inherently hostile to the state and by its nature inflammatory. Marxist-Leninist theory, the prosecution avowed, required the revolutionary overthrow of the state by force under all circumstances, and since the Freedom Charter was in its view a communist document, we were all guilty of treason. Furthermore, the solidarity shown by the “socialist world” towards the liberation movement was indeed the external foreign connection the state needed to convict us of high treason. Berrange confronted all this head-on.

He characterized the treason trial as a political plot by the government. It was a conspiracy against political opposition of the type that occurred in the days of the Inquisition and the Reichstag Fire Trial. Its purpose was to silence and outlaw the ideas of the 156 accused and the thousands of others whom they represented. It was a contest between the state and the people for equal opportunities and freedom of expression on the one hand, and a wish on the other hand, to deny to all but a few the means of material and spiritual life.[26]

Assisting Berrange were Joe Slovo (himself a defendant) and John Coaker, both of them young barristers at the time. The three of them valiantly defended the accused against the main allegations of the prosecution, challenging the spurious testimonies of the security police witnesses and disputing the most contentious of the crown documents. There were at least 10 000 of these, printed leaflets and policy statements (not necessarily those of the movement) laboriously read into the court record. In addition to these were the reports of speeches (described by Slovo as unlettered and garbled) also read into the record.

Fortunately, about six months into the preparatory examination, I was saved from the tedium of the trial by having to prepare history lectures for a part-time job I had taken at a "cram" college for students who had performed poorly at school and wanted to re-take their matric exams in the shortest possible time. No sooner would the court adjourn for the day when I would rush for a tram in the direction of Eloff Street, in the centre of the city, and give the lecture I had hastily crafted between the dull moments of the pre-trial hearings and the occasional enlivening spats between members of the defence counsel and the court. There was an irony somewhere in the preparation of these lectures, as the topics were primarily on nineteenth-century Europe and the themes of nationalism, class, insurgency and revolution were never far from the surface of the crown's case. Amusingly, I realized only much later that by lecturing to a class of students, I was contravening my bail conditions and if found out could have been sent back to jail for the duration of the hearing.

Between the prosecution's outline of the case against us and the cross examination of the crown's expert witness on Communism, the proceedings moved at a snail's pace. The alertness of our defence counsel while the accused slept or surreptitiously went about such work as they may have acquired, is in retrospect remarkable. Much of the evidence was irrelevant to the charge of treason and in the view of our defence lawyers, inadmissible. None of the special branch transcripts of the speeches indicated the commission of any offence. Besides this, the detectives' reports were often so incoherent and illiterate that in the view of our lawyers they constituted an abuse of the court. The tedium was beyond belief, broken only by moments of theatre when state witnesses behaved bizarrely in the witness box. A case in point was the matter of the missing spectacles. In this instance the exchange between the court and the police witness said it all:

> Prosecutor: Will you read from your notes?
>
> Detective Maselela: I can't your worship. The man has gone away with his spectacles.
>
> Magistrate: Your spectacles?
>
> Detective Maselela: His spectacles.
>
> Magistrate: Whose spectacles?
>
> Detective Maselela: His spectacles. I use his spectacles.
>
> Magistrate (to prosecutor): Does this man wear spectacles?
>
> Prosecutor: I'm afraid he does.
>
> Clerk of the Court: (Takes his own spectacles from his pocket). Try these.

> Detective Maselela: (Puts on spectacles, finds them satisfactory) and case continues [ineptly].[27].

The evidence was often trivial, but however bland it seemed, its thrust was always to attribute incriminating ideological motives to our actions to disprove our contention that the struggle was a peaceful one. Frequently the prosecution projected the image of communists whose mission (whatever the circumstances) was to overthrow the state by force. Often, the prosecutors accepted the evidence of security police witnesses who were too uneducated and too muddle-headed to comprehend the proceedings of the meetings they spied on. Frequently they misidentified the accused. In one case a witness described as a newspaper reporter, police informer and location superintendent (pathetic in each of his three roles) gave evidence of an election meeting in the Western Cape addressed by Len Lee Warden and Ben Turok. Asked to identify Len Lee Warden, the witness picked out Ike Horvitch. When asked to point out Ben Turok he again walked towards the dock, hovered over my brother Leon, looked briefly at me in the next seat and quickly identified Leon. The laughter that this provoked was only partly due to the witness's incompetence. For the most part the men and women in the dock were mystified at his speedy selection of Leon from the pair of identical twins whom they could scarcely tell apart. Besides, neither Len Lee Warden nor Ben Turok bore the faintest resemblance to the Levy twins.

While these incidents provided some diversion from the boredom of the case, the evidence of Professor A.H. Murray, the crown's expert witness on Communism, was entertaining, though more dangerous. Murray was dapper, seldom ruffled and completely insensitive to the inconsistencies in his evidence. It was in the cross-examination of Murray that Vernon Berrange again demonstrated his incomparable finesse in the demolition of official witnesses, whether they purported to be experts in handwriting, typewriters or Communism. Murray's interest in the "communist classics" (primarily Lenin and Marx and sometimes Stalin) went back to 1935. A professor of philosophy at the University of Cape Town, he was a diminutive intellectual of the apartheid era. He served on the Eiselen Commission on Native Education in 1949–51 where he contributed to the social theory behind Bantu Education and re-appeared at the Drill Hall in 1957 as an expert witness on Communism. He appeared again at the special court in the Old Synagogue at the end of 1959, when the accused had the satisfaction of witnessing the demolition of his evidence for a second time by the defence lawyers, Maisels and Kentridge. In both cases, the crown relied on Murray to provide the cement that linked the liberatory organizations to the international communist movement and to show that the clauses of the Freedom Charter were "essentially communist". His charge seems to have been to discern from the language of the Charter and the statements and speeches made by

the movement's leaders, that the objectives of mass mobilization were "in the light of communist theory", stepping-stones towards the violent overthrow of the state.

Murray was hardly a man of mild opinions. The concepts "oppression", "democracy", "fascism" "peace" and phrases like "the police state" were in his view "typical" words in the communist vernacular and had an Aesopian subtext in which those who used them would say one thing and mean another. This, he said, was apparent in the documents and speeches of the leaders of the ANC and their allies which revealed their predisposition towards Communism, especially in their demands for the equitable re-division of the land and universal suffrage. His evidence provided the prosecution with a framework that would cast every action or statement we made in a hostile light and lend conspiratorial motives to everything we said and did. After defining Communism and the concept of the materialist conception of history in the narrowest way possible, the prosecution led him to the subject of revolution and change. But on this occasion Murray was determined to continue his exposition of the materialist conception of history, even though the prosecutor was trying to lead him on to a different topic concerning the land question. To confuse the court further, the witness had begun to refer to the prosecutor, Van Niekerk, as "Mr Chairman" until the magistrate (conscious that this was irregular and that "chairman" was probably his role) asked him to talk to the court rather than to anyone in particular. The professor appeared to be distracted by the court's constant interruptions and seemed intent on taking the history of the communist project to its cyclical end: "the workers would control the state and the means of production", he volunteered, as if this would come as a surprise to any one, adding gratuitously that "after a period of the Dictatorship of the Proletariat (DOP), the state would disappear …"

Van Niekerk's response revealed a skill he had not yet shown in the course of this trial. He stuck to a single point and pressed it home:

"And how is the change brought about?"

"Only by revolution," Murray obliged.

Satisfied, the prosecutor then asked in a collegial tone almost suggesting that the witness tell the court in confidence: "And what would happen to the land?" The response was immediate.

"The monopoly of the small group of landowners will be broken; expropriated and the workers will take control. Similarly the banks and other financial institutions will be nationalized."

"And then?"

"A dual authority will be established in the state – a body which will have influence outside parliament and people will accept instructions from it."[28]

This was not the answer he was looking for. He needed the witness to establish the link between his evidence on the land question and the policies of the ANC.

"And what does the ANC Constitution say about the land?"

"It says the land will be redivided and industry democratized …"

Murray sensed that the court seemed to be waiting for something more from him. Perhaps he had not made his position clear? Evidently he had not, so to the obvious relief of the prosecution, he added: "These show that communist tendencies run through the whole document".[29]

With this, the prosecution ended its evidence for the crown.

Berrange began his cross-examination lightly, listening intently as Murray described democracy as a belief that the individual is a value in himself.

"Irrespective of colour?" Berrange interrupted.

"Naturally." (Murray was on his guard, but Vernon had already changed tack)

"Have you ever experienced a fascist state?"

"No."

"Have you experienced a communist state?"

"No."

"But you are prepared to say a lot about [them] aren't you"?

"Based on the data of the communist masters," Murray answered, obviously so pleased with his reply that he misjudged Berrange completely and answered his next question facetiously.

"What is a fellow traveller?" Berrange asked.

"If I travel by train and somebody travels with me, he is my fellow traveller."

There were titters throughout the court and we did not know what next to expect from Vernon. "You are not here as an expert on trains. You are a so-called expert on Communism." Berrange appeared to be angry. He put the question again. A more sober reply followed, upon which Berrange proceeded to read out extracts from various political philosophers. Could the witness identify any of these authors? The professor looked puzzled. He was unable to place them, but it was clear to him "that they were the sort of statements communists make". As he said this, he looked across the courtroom towards Berrange who had half turned towards the accused. The expression on Vernon's face was deadpan and we knew that he was about to deliver an ace. The statements, he archly told the court, were made by US President Wilson, Prime Minister Malan and Dr Van Rensburg, leader of the Ossewa Brandwag.

What followed was a further set of readings, a quotation from a work on the industrialized state. In it "the instruments of production" were described as being "in the hands of the dominant group, draining the backward groups of their wealth-making forces … [and] thus excluding workers from a share in the profits …"

"Could the professor give us the author"?

"No."

"You will be surprised to know that you are the author. Do you deny it?"

"Not if you say so …" The mirth that accompanied this theatre – it was nothing less than that – led the magistrate to accuse Vernon of deliberately raising a laugh at the expense of the witness. Butter wouldn't have melted in Berrange's mouth. He denied Wessel's accusation profusely and went on to deliver a second ace by reading lofty extracts from Milton, Shelley, Lincoln and J.S. Mill to show that the concepts that Murray had dubbed as "communist" were part of the liberal democratic tradition.

At this point, the proceedings took a new turn. It was nine months into the hearing and the prosecution announced that the crown had concluded its case. The defence team must have had advance notice of this and possibly drafted Advocate Norman Rosenberg Q.C. into the defence team to request an adjournment until 13 January 1958. (I think it was probably prudent for someone other than Berrange to make this request, although Vernon may have taken a break on that day). Rosenberg came to the case with a fresh mind and with an air of objectivity told the court that it was necessary to study the voluminous court record which had grown to over 8 000 typed pages. The defence team would also need to analyse the 10 000 exhibits and hundreds of records of speeches that had been read into the record, and to take statements from witnesses. The request was granted.

The first anniversary of the arrests, which occurred on 5 December 1957 passed while the hearing was adjourned. Christmas was approaching and the accused were generally in a festive mood, despite the long trial and the hardships that the court proceedings imposed. Most of the accused who were not from Johannesburg had returned to the regions that were home, although the case had caused a number of disruptions and many decided to stay in the city for the duration of the preparatory examination. It was therefore more than a surprise when the treason allegations were withdrawn against "sixty-one" of us, before the defence team had begun its argument! The announcement came on 20 December 1957.[30] I was one of the 61 persons released, part of an incomprehensible selection of former accused, some leaders and others in the ranks. Chief Luthuli, Oliver Tambo and Z.K. Matthews – to name only a few of those released – were part of this number. The joy we felt was mixed with indignation. The attorney general had belatedly considered the evidence on record and found it to be insufficient. As a result of his decision, the magistrate would not even have to decide whether or not the evidence against the "sixty-one" was sufficient for us to stand trial. Not one of us had given a word of evidence to refute the charges against us.

The media interest in the preparatory examination had decreased substantially over the year and it was left to *New Age* to say that, "any Minister of Justice responsible for such a legal fiasco and miscarriage of justice should resign … the possibility is that the remaining ninety-five accused are no more guilty of treason than the sixty-one".[31] The

government took as little notice of this as did the mainstream media. The court reassembled on 13 January in the new year. Outside the Drill Hall, large crowds had gathered with many of the demonstrators chanting the slogan, "Free the Ninety-Five!" Inside the dismal courtroom a large number of overseas journalists as well as Barbara Castle, then chairman of the British Labour Party, took their seats as the magistrate, without looking up from his notes, announced the formal release of the 61 trialists and granted a brief adjournment to enable the proceedings to continue against the remaining 95. The excitement outside the Drill Hall on that day was muted in view of the comrades still charged. But among the photographs that appeared in *New Age* the following week was one of an unusually exuberant Z.K. Matthews, sharing a private joke with Barbara Castle. She had come to attend the hearing on that day and had obviously said something to cause the customary scowl on Z.K.'s face to change to a smile.

Meanwhile the status of each of the 61 just released from the preparatory examination was altered. We were no longer "accused" persons but "co-conspirators". There were three different sets of "co-conspirators" in three different indictments presented by the prosecution during the course of the trial. The legal implications of this shift in status (from a primary conspirator to a secondary and then a tertiary one) were not explained by the prosecution, but we knew that our fate would depend on the outcome of the case against the others.

Six weeks later, in February 1958, many of those released from the hearing (especially those based in Johannesburg) stood in the spectators gallery to hear Berrange's reply to the prosecution's remarks at the closing of the crown's case; others had returned to their regions and to such work as they could find.[32] Berrange's final address to the court at the end of the preparatory examination was as much an indictment of the National Party's record of human rights as it was a response to the allegations of the crown. "This trial," he said:

> concerns the right of the people to express themselves in open criticism of the government and to … work for change in the political, economic and social systems within the limits of our law. [The accused] were engaged in a battle of ideas between those who would limit the free expression of thought and opinion and those who held that it was not unlawful to criticize the government and to work for change.[33]

The state had attempted to stifle all public opinion, "all freedom of expression, all acts which are still legal" in the way it had formulated the charges against the accused, suggesting that a campaign against existing laws was treasonable – "even though it was not alleged and [it] had not been proven that any of the campaigns [were] unlawful or that any persons were incited to commit offences …"

What was envisaged by the movement was not treason, hate or hostility, he said, but economic boycotts, political strikes, demonstrations, processions and political education. "None of this [was] illegal."[34] The COP was not "the mustering of an insurgent army; it was a peaceful gathering of elected delegates to which all recognized political organizations were invited, including the ruling National Party". Nor was the COP a secret cabal that had met for subversive purposes, but an extensively advertised public meeting to adopt a charter of human rights and decide on political, racial and economic policies for the future. Instead the government had ignored the invitation and rather than be represented by delegates and speakers, had sent "hundreds of policemen with firearms and an invading force of security police" to confiscate documents and photograph the proceedings. The Charter was nevertheless adopted and every one of the ten points it proposed was consistent with the political philosophies of civilized governmental systems throughout Europe, the UK and Scandinavia. "If the presentation and adoption of the Freedom Charter were now held to constitute treason, [it would mean] that the most rigid principle of thought-control will have been enshrined in our law."[35]

He ended his address as he began, with a condemnation of the government's assault on civil liberties. The crown, he said, had proved nothing other than a desire to put an end to any form of effective opposition to the government of the country. "If that which the crown has established be evidence of treason, subversion, or communism as defined in our law, then there is an end in this country to all that is implicit in the term democracy."[36] Because he knew that Wessel would in all probability commit the accused for trial, he did not confine his remarks exclusively to esoteric points of the law and wisely left this for the defence counsel to do in the trial that was to follow the preparatory examination. Instead, he concentrated on the political implications of the government's attack on political freedoms, and the prosecution's insistence that a conspiracy existed to overthrow the state by force and violence, despite the fact that the crown's own witnesses "had given the lie to this over and over again … [during the preceding] thirteen or fourteen months of the preparatory examination".[37]

Before he sat down, Berrange pointedly directed his final words to Oswald Pirow, the senior prosecutor belatedly selected by the crown to summarize and sharpen the case against the accused. Pirow's admiration for Hitler was well known, especially his reference to the Führer in 1938 as "the greatest man of his age, perhaps the greatest of the last thousand years".[38] It was hardly surprising then, that half turning to the accused Berrange sarcastically ended his address with the taunt, "it was with loathing and disgust that the civilized people of the world rejected the concept of Herrenvolkism on which the Nazis founded their political structure".[39] With that he sat down and glared at Pirow with an expression he reserved for the most reprehensible of the state's witnesses, conveying in that singular stare all the revulsion he felt for this impenitent Nazi.

Pirow was no longer a practising barrister, but a farmer producing pineapples at Bushbuck Ridge in the Transvaal.[40] In the 1920s and 1930s he was a leading member of the Union government under Hertzog and was later in the coalition government with Hertzog and Smuts when he served first as Minister of Defence and Railways and then as Minister of Justice. In the latter position he was responsible for amending the Riotous Assemblies Act, which enabled him and subsequent ministers to ban meetings and deport political "agitators" without trial. He also helped to devise the legislation that removed Africans from the common voters' roll in 1936. Like many others in the National Party government, he visited Germany twice in the 1930s and met fascist leaders during a number of tours of Europe. As the leader of the New Order Group, a "parliamentary" faction of like-minded fascists emanating from the rump of Hertzog's party in 1939, he was and remained a consummate fascist.[41]

Replying to Berrange, Pirow dismissed Vernon's remarks "as more appropriate for a meeting of the United Nations than to this court" and wasted no time in asking Wessel to commit all of the remaining 95 for trial, arguing that the accused had committed high treason by conspiring "with hostile intent" for the total subversion of the state.[42] These were the magic words – there could be no treason without "hostile intent". As it was evident that the state had hardly been toppled by subversion, he explained in legal jargon that for the purposes of a technical definition of treason, a contemplated result less than total subversion would suffice to constitute the crime. The prosecution took it for granted that the Freedom Charter – Pirow called it the "People's" Charter – was subversive and that all the accused including the organizations they represented had subscribed to it and were pledged to do their utmost to carry out its aims. "If therefore the objects of the People's [sic] Charter and or the methods of carrying it out are illegal," he argued, "all the accused are guilty of a criminal conspiracy, and anything said or done by any one of them in furtherance of the common purpose is admissible against all of them".[43]

According to him, Berrange had falsely presented the movement's support for the Charter as a highly idealistic, perfectly innocent document – a belief held by people whose only ideal was to improve the lot of their fellow Africans. But according to Pirow it was "in truth", part of a conspiracy. The real object of the "united front of Europeans and non-Europeans was not to attain universally understood democratic rights, but to foment trouble". Every one of the Congress's campaigns (in which the participants were "cranks and idealists") was intended as a stepping stone towards the furtherance of the revolution, "a stalking horse" to substitute a people's democracy – "in other words, a Soviet State" – for the existing state. This they wished to achieve "by means other than peaceful" – which amounted to treason. He declared that the "extra-parliamentary struggle" was a misnomer. When the accused said "extra-parliamentary" they meant "illegal". It was fatuous for the defence to suggest, he said amidst laughter in the court,

that the police attacked people who were peacefully going about their business. He claimed it was all part of an orchestrated campaign to cause as much disturbance as possible by illegal means so that the police would be obliged to intervene:

> They [the ANC leaders] will make the most violent, inflammatory speech[es], bring their audience as close to hysteria as they can and then say 'but don't get violent' … [knowing] that the calls not to get violent, would have just the opposite effect.[44]

This was the prosecution's theory of so-called "contingent violence", in which the subtext of the Congress appeal was to conduct a violent struggle by using "peaceful language" that meant precisely the opposite of what we were saying. The word "they" did not refer to all the accused, but specifically to those who made the most inflammatory speeches, namely, Resha, Nokwe, Tshabalala, Ntsangeni and Mandela. Their speeches, Pirow argued, were deliberately intended to create hostility between the black and white sections of the population and if his earlier remarks on the legal concept of "common purpose" was accepted by the court, by implication "all the accused [would be] guilty of a criminal conspiracy, and anything said or done by any one of them in furtherance of the common purpose … admissible against all of them".

Robert Resha's speech (taken out of context by the prosecution) was the subject of endless debate. It was alleged that at a closed meeting of COP volunteers he had said: "If you are called on to be violent you must be absolutely violent. You must murder, murder, murder, that is all." Chief Luthuli later admitted under cross examination at the trial that if this was in fact what Resha had said, this speech " was a very violent one", and was not part of Congress policy. But in hindsight and in fairness to Resha, his speaking style was bombastic and also didactic. His intention (judging from the overall text of his speech) was to emphasize the importance of discipline, not to revise the organization's policy on the issue of non-violence. However, it did not sound like that in the courtroom and the evidence was grist to the prosecution's mill.

Although the alleged remarks made by Nokwe, Ntsangeni and Tshabalala were less violent than Resha's, Mandela's statement was more seriously interpreted. He had said:

> Those who want freedom are those who want to support a violent rebellion and militant action. That is the only way to be prepared in South Africa … I know that as surely as the sun will rise tomorrow a major clash will come and all the forces of reason will collapse against the forces of liberation.[45]

Later in the trial Mandela explained that these remarks were not intended as a prescription for violent rebellion (the moment was not a propitious one anyway) but an insight into the

need to be prepared for what might happen in the future.[46] Meanwhile, Pirow's chilling summary of the crown's case against the 95, together with the mounds of earlier evidence and the (inexpert) testimony of Andrew Murray, were sufficient for the timid magistrate to commit all the remaining accused for trial on a charge of high treason or alternatively infringement of the Suppression of Communism Act.

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The Next Stage: A Formal Charge of High Treason

The preparatory examination was followed by the trial in the High Court in Pretoria, where the accused were formally presented with a charge of high treason. Fourteen months had passed since the arrests at dawn on 5 December 1956 and despite the release of 61 of the 156 individuals initially arrested, it was still not clear what each of the remaining accused had done to warrant this ordeal by continuous trial. There would be more releases, but a rump of the original number would remain before the trial was concluded in April 1961. In order to keep as many activists in the net as possible, the accused were charged with conspiring together with 152 others listed as co-conspirators. Among these were the names of the 61 accused already released during the preparatory examination, including my own.[47] This meant my freedom would depend on the outcome of the case against those who were currently still charged. The list of co-conspirators changed with each new indictment, major amendments being made to the first one.

Like seasoned school-hands in an atmosphere that resembled the beginning of a new term, the remaining 95 accused assembled at the Old Synagogue in Pretoria (revamped as a special criminal court) away from the Congress Alliance's voluble support-base in Johannesburg. Here the "muddle and inefficiency" of the Drill Hall was replaced by the formal trappings of a law court, the fastidious mouldings, lumbering columns, open courtyards (waiting rooms for witnesses), and narrow galleries (for spectators) setting the scene for the accused for the next three years.

The presiding judges were Justices Rumpff, Bekker and Kennedy, the latter replacing Mr Justice Ludorf who recused himself from the trial in August 1958.[48] According to Helen Joseph, Rumpff "hardly seemed to breathe, so rigid was his control".[49] He was already well known to Walter Sisulu and Ahmed Kathrada for his judgment in the trial of the "twenty" in 1952. He had the reputation of being fair; Kennedy was known as a hanging judge (we fasted in protest against the mass hangings he ordered in a trial in 1957 when we were still in the Drill Hall); and Bekker was a pedant "who needed to know everything: facts, background and context" and was less comfortable with ideology, which was the substance of the charge from which guilt or innocence would be inferred. Nelson Mandela believed him to be fair-minded and like

many whites in Natal, a "loyal Natalian" whose loyalty sometimes "transcended colour".[50] The three of them presided over all the mutations of the charges and after a slow start, the trial effectively began on l August 1958, ending abruptly on 29 March 1961.

There were actually two indictments, but impromptu changes within each of these were made as the prosecution encountered legal complexities in their confrontations with the judges and defence lawyers. There was nothing new in the prosecution's allegations. The accused under the first indictment were alleged to have entered into a conspiracy for their participation in Congress campaigns between 1952 and 1956. These included the COP and adoption of the Freedom Charter; the anti-pass campaign; and the campaigns against the Natives' Resettlement Act and the Bantu Education Act. These activities were evidently seen as part of the preparations for a violent revolution to set up a communist state "or some other state", possibly a people's democracy.

Initially the accused were charged with "act[ing] in concert and with common purpose to overthrow the State by violence", or alternatively furthering the aims of Communism by contravening the Suppression of Communism Act on two counts. The court quashed one count under the Suppression of Communism Act and ordered the prosecution to explain what the difference was between "acting in concert" and acting "with common purpose" – and how these respectively affected each of the accused. The prosecution, daunted by an extremely sharp response from Advocate Kentridge tinkered with the indictment but did not withdraw it immediately. Instead they withdrew the remaining charge under the Suppression of Communism Act and avoided the problem of explaining how each of the accused was affected by "acting in concert and with common purpose". This they did by abandoning the irksome phrase "acting in concert" and sticking to the main charge of high treason.[51] However, Pirow insisted that the case be fought on the assumption of a conspiracy, and in so doing provoked an extraordinary exchange between himself and Justice Rumpff:[52]

> Pirow: [T]he case stands or falls on conspiracy. If the Crown fails to prove conspiracy all the accused go free.
>
> Rumpff: Is this the Crown case that there is one count of treason, the conspiracy. So even if the Crown proves in each individual hostile intention and a treasonable overt act but fails to prove conspiracy you will not ask for a conviction?
>
> Pirow: That's been our case all along … we must tie every overt act alleged with conspiracy.
>
> Rumpff: If you prove treason you will not ask for a conviction … That is extraordinary … What sort of a case is this then that if the court finds a man has committed treason but cannot convict because the Crown binds itself like this?

Pirow declined to answer this directly. He died in October 1959 a year after this exchange, but not before he withdrew the first indictment, and with it the charges against 61 of the accused, who together with a long list of others were relegated to the list of co-conspirators. This left a rump of 30 (only three of whom were part of the national leadership of the ANC) who remained on trial until the very end. The second indictment was more manageable for the prosecution (but not easier) as the crown had now to prove that the intention of the accused was to act violently and that violence was indeed the policy of the ANC and the other congresses. As the defence brought in witnesses to support its case in February and March 1960 – Chief Luthuli and then Dr Wilson Conco were giving evidence at the time – events in the country took a tumultuous turn, affecting the ANC's continued commitment to a policy of peaceful struggle and making the ANC's existing policy of non-violence (the central concern of the trial) open to debate. The event in question was the massacre at Sharpeville (21 March 1960) in which 67 people were killed and many wounded.

The Struggle Explodes

The Sharpeville massacre proved to be a watershed in the country's history. The mode of struggle had been challenged (armed struggle became a serious consideration) and the ANC was declared to be unlawful. It was as if Berrange's presentiments of thought-control were relevant – even before any judgment had been made on whether or not the Freedom Charter was treasonable. The issues that the accused faced in the trial itself were as significant for the jurisprudence raised by the defence team as they were for the ruling on the status of the Freedom Charter and the clarification of the policies of the Congress Alliance. The "sedate" politics of the courtroom (Joe Slovo described it as the discipline of legalism) had been thrown completely into disarray by Mangaleso Robert Sobukwe, the founding president of the year-old Pan Africanist Congress (PAC).

Sobukwe was young, extremely articulate (his letters and speeches below attest to this) and a fierce protagonist of African identity. Mda, who was close to him at the University of Fort Hare, thought him a thinker and a scholar and "by far the most brilliant fellow we have at College at the moment".[53] Mandela, who had at one time been his lawyer, also thought him brilliant, but immature in his intolerance of minorities and crude in his brand of black nationalism. He nonetheless "respected his sense of honour" and found him a "dazzling orator and incisive thinker".[54] Despite his standing among his peers, Sobukwe's most influential supporters in the PAC, Jordan Ngubane and A.P. Mda were doubtful about the launch of the anti-pass campaign and there seems to have been little enthusiasm from others and outright opposition from Madzunya, influential in Alexandra township.[55] It is indicative of the spatial separation and demographic isolation

of "the minorities" in the liberation movement that few of us who were white activists knew of Sobukwe or of the depth of Africanist expression at that time.

Sobukwe literally burst into prominence on 18 March 1960 when he told a press conference, with much confidence and very "little systematic preparation",[56] that the PAC would initiate

> a sustained, disciplined non-violent campaign against the pass laws on Monday 21 March 1960. Africans would leave their passes at home and would surrender themselves at chosen police stations … The leaders would tell the police 'we do not have passes. We will not carry passes again … So you had better arrest us all, now'.[57]

The PAC anti-pass offensive was to pre-empt the start of an ANC campaign, which had been decided at the ANC's annual conference in December 1959, and was due to begin on 31 March, a week later than the date announced by Sobukwe. The ANC's strategy was to be more measured; first to send deputations to local authorities and Bantu Affairs commissioners to demand the abolition of the pass laws and then to stage collective mass action, which would not necessarily exclude the burning of passes.

Despite the PAC's contention that the ANC had been "de-radicalised and de-racinated by its co-operation with communists, white democrats and Indian Gandhists",[58] Sobukwe's letter to the commissioner of police[59] five days before the PAC's campaign began, was restrained although unusually assertive in its reference to the police. In it, he announced the PAC's intention to conduct "a disciplined, non-violent campaign against the pass laws" and requested the commissioner "to instruct the police to refrain from actions that may lead to violence". It is unfortunately true, he wrote:

> that many white policemen, brought up in the racist hothouse of South Africa, regard themselves as champions of white supremacy and not as law officers … If the police are interested in maintaining law and order they will have no difficulty at all. We will surrender ourselves to the police for arrest. If told to disperse, we will. But we cannot be expected to run helter-skelter because a trigger-happy, African-hating young white police officer has given thousands or even hundreds of people three minutes within which to remove their bodies from his immediate environment.[60]

The warning was prescient. An early report from *New Age* reporters stated that at Sharpeville 30 police fired into the unarmed crowd of approximately 5 000 people, killing 67 and wounding 200.[61] Other reports suggested the numbers of wounded were less; Gail Gerhart, the historian and author of *Black Powerin South Africa* reports 186 wounded,

including 46 women and eight children. Nelson Mandela, in his autobiography, puts the figure of dead at 69 and wounded at 400. He also suggests that the line of police who fired at the crowd numbered 75. However, according to witnesses who testified at the subsequent trial of the PAC leaders, the estimate of the size of the crowd was between 3 000 and 10 000, although the official number (a police estimate probably self-serving and intended to justify the sense of danger felt by the officers concerned) was inflated to 20 000. Until recently, all agreed that no orders were given to shoot at the crowd and that the first shots "were fired in a moment of panic" by a line of jittery white police who had lost their nerve. But the evidence appears to be to the contrary.[62]

From Sharpeville to Langa

At least two people were killed when the police fired into the crowd at a meeting of 6 000 at Langa, in the Western Cape.[63] There the PAC were relatively strong and the reaction to the killings was angry. Two reporters for *New Age*, Joe Gqabi and Alf Wannenberg were eyewitness to the shootings. Gqabi was present at the police station precinct at Sharpeville and Wannenberg at the demonstration in Cape Town. Gqabi filed a chilling report of the Sharpeville killings:

> At a stage we counted 34 bodies (including those of at least eight women) lying about the ground in front of the Sharpeville Police Station as though on a battle ground. They seemed all dead, many with bullet head-wounds. Some of the injured were shot in the back, some had more than one bullet wound. The police firing was without warning. Saracens were on the scene and some said the firing had been from them … [The shooting] was done from behind a wire fence into the centre of the crowds standing about the police station.[64]

Alf Wannenberg was virtually part of the march on Cape Town. He reported:

> Down every side street come marching columns: from the railway station, from the centre of the city; from District Six. Solemnly they file into the street. By 12.30 a.m. fifteen thousand have assembled. They are silent. Now I am a part of the crowd. On all sides of me men press closely, their eyes on the entrance to the police station. Salutes are exchanged "*Afrika!*", "*Mayibuye!*", "*Izwe Letho*" (our country). Now the voice of the police chief is amplified. He calls on all who are not taking part in the demonstration to leave the area, and orders all businesses in the area to close … The police chief has given the assurance that he will arrange an interview of the leaders with the Minister of Justice. The crowd marches from the city in peace.[65]

There had probably never been a march of 20 000 Africans on the city before. The demonstration was led by Philip Kgosana, a 23-year-old regional secretary of the PAC in the Western Cape "with a flair for leadership", but insufficient experience to be wary of police promises. He had been a student, but left his studies to devote his energies to politics. While the general response to the PAC campaign was low-key, Langa in the Western Cape was different. Despite a government ban on meetings, supporters gathered in the morning at a point in the township, only to be met by a police baton charge and gunfire in which two demonstrators were killed. Elements in the crowd responded by stoning the police, setting buildings alight and rioting. The crowd returned to base, but regrouped rapidly when the PAC leadership (by all accounts considerably depleted) instructed them to assemble at a point in Langa later that day.

The subsequent march on Cape Town, following the savage police response to what began as a peaceful protest, was virtually a spontaneous decision. Kgosana appears to have taken the initiative (possibly with the approval of the local leadership although there is no evidence that it was sufficiently intact as a body to offer much advice) to lead his followers to parliament. It was possibly on the advice of the police that he redirected the marchers to nearby Caledon Square – a wise decision in the view of the presence of troops and Saracen tanks at the approaches to parliament and low-flying air-force helicopters menacing the marchers overhead. He may have been urged by the crowd to demand the release of the PAC leaders who had been arrested. This was refused. But the demands that the police should not use force to undermine the planned stayaway and a request to speak to the Minister of Justice, was "conceded" when the police, anxious to secure the dispersal of the crowd, told him that an interview with the minister would be granted and that the police would not interfere with the planned stayaway.[66] Kgosana communicated these "concessions" to the crowd, using the police microphone to do so, and with some sense of achievement naively led the marchers back to Langa. On returning to the city in the evening with a number of PAC activists (for the promised interview with the minister) they were all promptly arrested. Gail Gerhart later commented with some acuity "[t]he gullible Kgosana, not realizing that his only bargaining power lay in his ability to keep the crowd behind him … directed the people to return home, telling them that that the police had agreed to make concessions."[67]

The carnage at Sharpeville and the march from Langa into the city of Cape Town have somewhat overshadowed reports of the PAC campaign in other centres. In many cases the call went unnoticed or was miserably under-supported because the campaign had been poorly publicized and organized. In Alexandra, Evaton, Orlando and Soweto for example, the response was muted. In Orlando, where Sobukwe and Leballo surrendered themselves to the police for arrest, they were reportedly supported by only 150 volunteers, and in Johannesburg and surrounding townships, the response was "negligible".[68] The

PAC call was also largely ignored in Port Elizabeth and East London in the Eastern Cape and in Durban.

This was not the case in the townships in the Western Cape and at Sharpeville in the Transvaal, where according to Mandela, "the PAC activists had done an excellent job of organizing in the area.[69] Indeed, at Langa, the support was overwhelming. There the PAC was organizationally stronger and its publicity more effective. In some of the other African townships in the Western Cape, where African squatters and migrant workers were police targets under the influx control regulations, the PAC also had a modestly significant following.[70]

In Nyanga about 1 500 men advanced to the police station at Philippi in answer to the PAC's call, but other than their names being taken and the men told to report to court later, there was no violence. Support for the PAC came from teachers, professionals, the youth and students, while the main activists in Poqo, the impromptu militant offshoot of the PAC, were declasse sections of African youth who were angry, jobless and sometimes lumpen. They found the militant rhetoric of the Africanists appealing and more immediate in contrast to the politically temperate language of the ANC. Both organizations sought to mobilize support for their organizations by identifying the pass laws as the central grievance of Africans, and pressuring the government to abolish these hated measures.

Whether Sobukwe saw himself as the nation's saviour is a matter of conjecture; he was not alone among the most prominent in the PAC in envisaging a scenario in which a successful outcome of the campaign would trigger the start of a social revolution. Nor was he the only putative leader of the PAC who believed that a charismatic luminary would deliver Africa back to the Africans. But whatever the leadership of the PAC might have had in mind at the time, the outcome of the campaign was not a social revolution but greater government repression. The ramifications of the Sharpeville shootings and the events elsewhere were profound. The government was momentarily "in limbo" but if there was a conciliatory mood it soon passed, despite the statement by Paul Sauer, a minister in government and stalwart of the National Party, that "Sharpeville had closed the old book on South African history, and that the country must reconsider its race relations 'seriously and honestly'."[71]

If anything repression intensified, especially when the ANC seized the initiative from the PAC and reacted swiftly to the massacre at Sharpeville and killings in Langa by Mandela and Nokwe burning their passes in Orlando. This they did in front of a large crowd of Africans and "dozens of press photographers" on 26 March.[72] In Pretoria, Chief Luthuli and other leaders also publicly burnt their passes, while Luthuli called upon all Africans to do the same two days later (28 March 1960) and to observe that day as a time of mourning for the dead. Political strikes were unlawful, but there were few who did not understand the call to stay at home as a day of protest against the massacre at Sharpeville.

Government Panic: A State of Emergency

The police shootings shook the residents of all the major cities and fear of further confrontation prompted the government to use its powers under the Public Safety Act to prevent more resistance. Wholesale arrests followed between 21 and 28 March[73] and a state of emergency was declared on 30 March. Temporarily shaken, the government suspended arrests under the pass laws and arrested over 2 000 activists. Within days it reversed its decision to relax its operation of the pass laws, thus enabling the police to enforce their powers as intransigently as ever. Within a week, legislation was placed before parliament (8 April 1960) to declare the ANC and the PAC unlawful organizations. (The Congress of Democrats was made "unlawful" two years later on 14 September 1962.) "Aiding and abetting" these organizations was illegal and punishable by five years imprisonment. Furthermore, "intimidating" others to strike or to protest against any law, became subject to a fine ten times heavier than it was after the Defiance Campaign.[74] There were few activists who were unaffected by these events. The emergency threw my family into disarray and temporary exile, as it did quite a number of others. The first wave of arrests occurred with the familiar knock at the door at 2 a.m. (earlier than usual on that occasion) when most of the active political leadership was arrested together with dozens of people named under the Suppression of Communism Act. Many of these individuals had ceased to be "political" since the CPSA was banned, some of them had been inactive for 15 years or more. As *New Age* stated, "there was no warrant, no charge was preferred and no bail or court appearances followed" – except for technical reasons on the first day after the arrests.[75]

Mandela was among those arrested under the state of emergency along with a number of others in the Treason Trial, but the defence team withdrew for most of the state of emergency. It was left to Duma Nokwe (accused Number 16 and himself an advocate) to tell the court the accused had serious misgivings on whether anyone testifying under the current Public Safety regulations could freely express their points of view. For this reason, the accused had taken the decision "to dispense with their counsel". Maisels accordingly told the court: "We have no further mandate and we will consequently not trouble your Lordships any further."[76]

During the hiatus between the start of the state of emergency and the return of the defence team, the accused briefly (and with some bizarre imitations of their counsel) conducted their own defence.[77] The hearing continued (with some adjournments) oblivious of the current turbulence.[78] The lawyers returned a few weeks before the end of the emergency, when the regulations were amended and court assurances given, protecting counsel and witnesses from prosecution under the Public Safety Act. In all, the emergency regulations under this act remained in force for the next five months, ending only in September 1960. "The Emergency has ended", wrote *New Age*, but the real crisis

of white supremacy has just begun." The paper was banned on 6 April soon after the declaration of the state of emergency, and was not to re-appear until 8 September 1960, when it published the editorial items it was earlier prohibited from printing. Meanwhile, the events had significantly altered the context of the trial. The shootings at Sharpeville had clearly changed the mood of the accused and probably the attitude of the bench too.

Hostile Intent

Robert Resha was closely examined in the witness box in September 1960, his violent speech still a source of worry for the defence and a target for attack by the prosecution. Trengrove, the senior prosecutor, was unrelenting: "You exposed the innocent people of the Western Areas to conflicts between the police and subversive elements", he taunted.

"You don't know what you're talking about!" Resha replied angrily. This was Robert's style, but after the events at Sharpeville and experiencing four months in detention under the state of emergency, he was understandably testy. Asked why he had referred to the police as imbeciles, cowards and hooligans, he responded: "because only hooligans would go to a peaceful meeting of the ANC to disturb it, and only cowards go fully armed to a peaceful unarmed meeting."[79]

By contrast, Mandela's evidence was measured and manifestly thoughtful. He traversed issues of the Freedom Charter, violence, Socialism and the franchise, clearly impressing the judges who seemed to hear him and to need reassurance on the ANC's policies on these matters. Equally impressive were M.B. Yengwa, former secretary of the ANC region in Natal, and Z.K. Matthews, who was the last of the defence witnesses. Both were questioned extensively, each of them models of peaceful persuasion.

In the light of the events at Sharpeville and Langa, the crown's closing argument that followed the cross examination of these witnesses was rich in irony. Advocate Trengrove, for the prosecution, asked the court to draw the inference of hostile intent on the evidence against each of the accused. "All of them were engaged in a plot against the state," he argued and their activities "if left unchecked would have led to death, a bloodbath and disaster for the citizens of this country, black and white". He claimed that they were all party to overt acts of treason which included a nation-wide strike, the defiance campaign and violent acts "in pursuance of the conspiracy" – all of which were calculated to overthrow the state. "There is a vast difference between what Luthuli and the ANC present to the world and what they do here," he said. As he saw it, they spoke with two sides of their mouth. They wanted to do more than educate the masses; "they wanted to smash the state".[80]

Denigrating the ANC and making light of its overwhelming support in the country was part of the strategy of government to bolster the prosecution's case. Earlier, in March 1960, the Minister of Justice, Francois Erasmus, had referred to the ANC as "a small

coterie of terrorists" who wanted neither peace nor order. "What they want is our country," he told parliament.[81] In the mind of the prosecution, the Freedom Charter was the instrument to do this. It was a revolutionary document, which went further than any other ANC statement of its direction. Consequently, the prosecutor argued, "[the ANC believed] they could only achieve these things through … the seizure of power." He went on to say that no Europeans would accept what the Freedom Charter wanted. "You can only achieve this over the dead bodies of the Europeans." [82]

The trial then came to an abrupt conclusion. A formidable defence team opened its case in March 1961, four years after the dawn arrests. Advocates Maisels, Kentridge, Nicholas, Fischer, O'Dowd and Berrange (who was called in appropriately later in the trial to "take care of" the inept state witnesses) probed every one of the crown's allegations, especially on the question of conspiracy; on the definition of treason; hostile intent; the absurd notion of "contingent retaliation"; and on the ANC's policy towards violence. When Bram Fischer rose to address the court on the speeches of the accused (as an aside, he advised the judges that his argument would take approximately three weeks) he was cut short by the bench who announced that the court "would consider ways to shorten the proceedings". It was an enigmatic intervention, which left the defence and accused speculating on whether the prosecution would be asked for a more cogent indictment setting out the case more clearly against each of the accused or whether there would be new charges, more co-conspirators and fewer people in the dock. The consensus among the accused and defence was that it was it an indication (couched in the nicest of legalese) that the trial had reached its end. It had become superfluous and the state had sufficient repressive legislation; it no longer needed a favourable verdict as an excuse to ban Congress or silence its members. The ANC and its allies had been outlawed by an act of parliament; the leadership could be confined to prison under numerous administrative measures available to the government (and indeed had been confined recently under the Public Safety regulations). Besides this, it was felt that the incompetence of the prosecution and the insistence of the crown "that the case stood or fell on the grounds of conspiracy" (incriminating every one of the accused) had painted the prosecution into a corner from which neither Justice Rumpff nor the other assessors could retrieve it.

Collapse of the "Conspiracy"

This being the case, it was not surprising that the spectators' seats in the court were packed when the judges returned to give their decision early in April 1961. There was an air of excitement as the court was brought to order and Justice Rumpff, after a few preliminary remarks, announced that he and his assessors had "arrived at a unanimous decision, the full reasons for which would be given in due course."[83] He requested the

accused to remain seated while he summarised the court's findings. "The case for the prosecution," he said:

> was not that the accused had come together and entered into a treasonable agreement, but that from October 1952 to December 1956 a number of organizations including the ANC … had a policy to overthrow the state by violence. To prove the existence of the conspiracy the prosecution had to prove the violent policy of the Congress Alliance. It also had to prove the adherence of each accused to the conspiracy. It was conceded by the prosecution that if it failed to prove the treasonable conspiracy there was no case against the accused.[84]

The evidence, he said, had proved that the Congress Alliance was working together to replace the present form of state with one that was radically different, based on the demands of the Freedom Charter. This last was not a communist document, Rumpff noted. Nor was the ANC a communist organization or the state it envisaged a communist one – although in the thinking of the court, the form of state envisaged by the executive of the ANC in the Transvaal region had the trappings of a communist state, given the ideological statements made by members of the executive about the Dictatorship of the Proletariat.

The court conceded that according to "custom" communists and anti-communists could freely become members of the ANC and SACP. Indeed some former members of the Party, he noted, were members of the ANC, where they were free to spread their ideology as long as they honoured the policy of the organization. There was no evidence to support the prosecution's contention that former communists had infiltrated the ANC; this would have been superfluous in the light of the cross membership of the ANC and the former CPSA. In the view of the judges, Rumpff said, the evidence of Communism was relevant to the issue of violence, but the prosecution had failed to prove that the accused had personal knowledge of the doctrine of violent revolution or had propagated the doctrine.[85] In particular the court was taken aback by the quality of the police reportage of meetings addressed by the accused and the selective choice by the prosecution of the speeches made by the defendants during the four years covered in the indictment. "Some of the accused were guilty of sporadic outbursts in their speeches," he said, (Mandela, Resha, Nokwe for instance – and these varied in degree) but of the total number of speeches, they formed an insignificant part. Finally, after weighing up the evidence, Rumpff finally announced:

> it is impossible for the Court to conclude that the ANC advocated a policy to overthrow the state by violence, in the sense that the masses had to be prepared to

> commit direct acts of violence. The prosecution had shown that the congresses contemplated using illegal methods and used such means as, for example, the Defiance Campaign, but the crown has failed to show that ANC policy was to achieve a new state by these means … The accused are found not guilty and are discharged.[86]

Pandemonium broke loose as counsel and former accused left the courtroom. *Nkosi Sikelel' iAfrika*, was sung – today it is the official anthem of an ANC-led government and the state is neither Communist, under the the dictatorship of the proletariat nor an imitation of the former people's democracies of post-war Europe. Most notably, the Bill of Rights (Chapter 2 of the Constitution of the Republic of South Africa) was adopted in 1996 during the presidency of Nelson Mandela and based on the Freedom Charter.

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On a Personal Note

The years between my acquittal from the preparatory hearing in 1958 and the conclusion of the trial three years later, were politically fraught and personally frustrating. The transition from being an accused in the Treason Trial and then a co-conspirator was made easier by an unexpected shift in my personal status. I fell hopelessly in love at the height of that balmy Johannesburg summer, about the same time as the announcement of my release from the preparatory hearing in December 1957. Philippa Murrell was twenty-seven and I two years older. She worked for a short while in Port Elizabeth, made friends among the Left, including Govan Mbeki (Thabo Mbeki's father), before settling in Cape Town and joining Ray Alexander at the Food and Canning Workers' Union. She came to Johannesburg at the end of 1957 and we soon met in the office of the Congress of Democrats. After that the news of our whirlwind romance spread like a forest fire, along with news of the latest developments in the Treason Trial and rumours of more bannings, arrests and sudden departures into exile.[87] Everything was happening so hurriedly and I seemed to have been caught up in that breathless haste. We became engaged after Christmas and married in February 1958, two months later, in a soulless office in the Johannesburg magistrate's court. The fissures borne of too much happening too fast, were beginning to show. Acquittal from the treason hearings meant that I could be re-instated as a teacher, which though a boon financially, added to the anxiety I began to feel. The burden of new and old responsibilities after 10 years in the movement, the early intimations of further incarceration as the struggle progressed, and the year-long hearings in the Drill Hall began to weigh on me. Together with this, marriage and a year later, a new baby daughter, now required adjustments which were overwhelming.

My pessimism was only at the personal level. Politically there was in fact good reason for optimism. Just married with a new baby it was a difficult time. Philippa was arrested at the start of the emergency and but for an habeas corpus application I quickly made in the Supreme Court on her behalf, she would have remained there for another four months. In their haste to declare a state of emergency, the police had used their powers under the emergency regulations *before* these had been published in the *Government Gazette* as legally required. This left a legal loophole and I was advised by Joel Carlson, a lawyer sympathetic to the movement, to make an urgent application to the court for her release – and succeeded![88] Fortunately there were a number of similar applications before mine, and the judge almost made his ruling before I had finished addressing him. She was released immediately and after leaving Deborah (still a toddler) with good friends for a brief time, we drove to Swaziland. There we joined a number of others who were not arrested when the emergency was declared. It soon became a typical exile community, fraught with tensions, real and imagined, that stretched the tolerance of the more senior exiles who served on the "cheery refugees committee" and eroded the harmony of everyone. Ruth First, Jack Hodgson, Pieter Beyleveld, Julius Baker, Phyllis Altman and Issie Rosenberg, to name only the most influential among them, should have given better leadership to this distraught group.

The community became even larger with the arrivals of Marius Schoon, Harold Strachan and "Jenny" (a pseudonym for Strachan's partner). Two others who came later were Patrick van Rensburg, a member of the Liberal Party I had not met before, and Melville Fletcher, trade unionist and personal friend. Visitors arrived from time to time, including Sam Kahn who had dyed his hair ginger and probably attracted even more attention than he would otherwise have done. Unfortunately he did not stay in Mbabane for more than a few days before moving on. It is unlikely, however, that he would have healed the antagonisms that existed between the earlier group and the subsequent arrivals. These were partly based on economic differences and status in regard to their influence and the length of time they had served in the movement. For the most part, the two groups lived in different quarters, the first enjoying a very different quality of life from those who struggled to subsist on very limited resources. Harold Strachan's irreverent memoir, often apocryphal and cruelly satirical of the relations between the refugees, is the only account of the 1960 escape to Swaziland that I have seen. It is more of a cartoon than a cameo sketch but it captures the moment, as I remember it, with candour.[89]

I commuted to Mbabane in Swaziland from time to time and returned to Johannesburg to help the "underground committee" as best I could. Regrettably I was able to do very little, hampered by my trips back to Swaziland, lack of finances and sense of insecurity at avoiding the attentions of the special branch. I had left my teaching job in January that year and had started studying for a degree at the University of the

Witwatersrand, living on the proceeds of a small bursary and augmenting my income by giving extra lessons in mathematics and an assortment of other school subjects. Fortunately I succeeded in evading the security police for the rest of the state of emergency which ended in September 1960. On Philippa's return from Swaziland the family moved to Frankenwald, a university settlement co-incidentally near the famous estate in Rivonia, north of Johannesburg, where Mandela and members of the Umkhonto High Command were later arrested. The years between the state of emergency in 1960, the Rivonia Trial in 1963 and my arrest on 3 July 1964, were the most intense I could ever have imagined.

Chapter 12

1 *New Age*, 06.12.1956.

2 *New Age*, 13.10.1955.

3 *New Age*, 03.05.1956.

4 *New Age*, 22.11.1956.

5 *New Age*, 06.12.1956. Ironically, the arrests occurred on the very day the paper appeared. The story had not yet broken as the paper went to press.

6 *New Age*, 29.11.1956.

7 *New Age*, 29.11.1956.

8 According to Gerard Ludi, *Operation Q–018* (Nasionale Boekhandel, Cape Town, 1969), p. 16, the Special Branch had no proof of the continued existence of the Communist Party prior to his infiltrating the organization in 1960 or soon after. Ludi is not the most reliable witness and the statement may have been self-serving.

9 Interview with the director of Prisons, published in *The Star*, Johannesburg, cited in *New Age*, 13.12.1956.

10 Cited in *New Age*, 13.12.1956.

11 *The Natal Mercury*, cited in *New Age*, 13.12.1956.

12 *New Age*, 13.12.1956.

13 By that time it had become the International Defence and Aid Fund for Southern Africa (IDAF). Few families would have survived without its aid; legal representation in the courts would have been virtually impossible.

14 Later, Jan Hoogendyk wrote an interesting memoir in which he describes his arrest and detention in the Fort. See J. Hoogendyk, *According to My Beliefs: Counterpoint* (Crowcombe, Banbury, 1995), p. 84ff.

15 In 1980, by which time many more people lived in the Bantustans due to deportations and forced removals, the percentage of Africans living there was 35.7% of the national population, earning 3.4% of the GDP. The Transkei was utterly poverty stricken, the cash income of more than 95% of the people came from remittances from migrants. Some 30% of the population lived on £25 per month. See Govan Mbeki, *South Africa: The Peasants Revolt* (IDAF, London, 1984), p. 7.

16 *New Age*, 12.04.1956.

17 Govan Mbeki, *South Africa: The Peasants Revolt*, pp. 120, 121.

18 *New Age*, 2.02.1961.

19 Conversation with Rolly Arenstein in 1966 at the Pretoria Local Prison, where we were both incarcerated.

20 *New Age*, 20.12.1956.

21 Housebreaking and theft.

22 *New Age*, 13.12.1956.

23 The phrase is Joe Slovo's. See Slovo, *The Unfinished Biography*, p. 93.

24 *New Age*, 27.12.1956.

25 *New Age*, 27.12.1956, refers to 20 magistrates who stood by with the chief magistrate to facilitate the bail arrangements.

26 See the Treason Trial transcript for the full text of Berrange's address and for a summary in *New Age*, 17.01.1957.

27 *New Age*, 2.05.1957.

28 Evidence at preparatory examination, see *New Age*, 30.05.1957.

29 *New Age*, 30.05 1957.

30 There is some confusion about the date. It could have been a few days earlier.

31 *New Age*, 26.12.1957.

32 Another four accused were also released soon afterwards (including Ruth First, Len Lee Warden, Monty Naicker and H. Moonsamy), who were connected with the publishing of *New Age*, the printing of the Freedom Charter and leaflets for the Congress of the People.

33 *New Age*, 6.02.1958. The citations that follow refer to *New Age* of the same date and where specially significant are re-referenced below.

34 *New Age*, 6.02.1958.

35 *New Age*, 6.02.1958.

36 *New Age*, 6.02.1958.

37 *New Age*, 6.02.1998.

38 "*Die Nuwe Orde*", 14 February 1946, cited in Lionel Forman and E.S. Sachs, *The Treason Trial* (Calder, London, October 1957), p. 206.

39 *New Age*, 6.02.1958.

40 Since renamed by the ANC government.

41 See chapter 2 above on fascist groups and Street Fighters and reference to the Nuwe Orde in the text below For a comprehensive profile see also Solly Sachs' account of Pirow in Forman and Sachs, *The Treason Trial*, pp. 204–8.

42 *New Age*, 6.02.1958.

43 *New Age*, 6.02.1958.

44 *New Age*, 6.02.1958.

45 Cited in *New Age*, 6.02.1958.

46 The judges in the trial at Pretoria accepted this.

47 One of the consequences of this was that being in the first and third lists of co-conspirators my freedom would depend on the outcome of the case against those who were currently still charged.

48 He claimed he'd "forgotten" that he had presided over a case where the issues were similar.

49 Helen Joseph, *If this be Treason* (Contra, Johannesburg, 1998), p. 100.

50 Mandela, *Long Walk to Freedom*, p. 204.

51 For an elaboration of the trial record see Tom Karis, A Guide to the Microfilm Record of the Trial, cited in Joseph, *If this be Treason*, pp. 274 –276.

52 *New Age*, 2.10.1958.

53 Gerhart, *Black Power in South Africa*, p. 184.

54 Anthony Sampson: *Mandela the Authorised Biography*, p. 122.

55 See Gerhart, *Black Power in South Africa*, p. 235.

56 Lodge, *Mandela: A Critical Life*, p. 81. See also Gerhart, *Black Power in South Africa*, pp. 228–232, for a careful analysis of the support base and deficiencies in preparation for the campaign and ideological deficiencies of the PAC's appeal.

57 *New Age*, 14.03.1960. See also Gerhart, *Black Power in South Africa*, p. 236, for additional information on the press conference.

58 See Lodge, *Mandela: A Critical Life*, p. 81.

59 This was the same Major General Rademeyer who had earlier referred to Walter Sisulu as the emissary of a foreign embassy.

60 *New Age*, 24.03.1960. See also Karis and Gerhart eds, *From Protest to Challenge*, *Volume 3*, pp. 565–566, Document 48, 16 March 16 1960, which cites the letter and the Press Release (Document 49).

61 The details vary. See *New Age*, 24.03.60; Lodge, M*andela: A Critical Life*, p. 81. Gerhart, *Black Power in South Africa*, traces the PAC's preparedness and ideological disposition pre- and post-Sharpeville and refers to the shootings on pp. 236–238 as well as the commission of inquiry that followed.

62 Gerhart, *Black Power in South Africa*, p. 239; and Mandela, *Long Walk to Freedom*, p. 267. See also David Welsh, *The Rise and Fall of Apartheid* (Jonathan Ball, Johannesburg, 2009), p. 121.

63 *New Age*, 24.03.1960. The edition was banned. The reprinted article stated that five were shot.

64 *New Age*, 24.03.1960.

65 *New Age*, 08.09.1960. The issue in which this should have appeared was banned and the article was printed at the end of the state of emergency, on 8 September 1960.

66 According to *New Age* , 31.03.1960, this proceeded peacefully and lasted for three weeks.

67 The media reported the march quite comprehensively but for this account I have drawn on Gerhart, *Black Power in South Africa*, pp. 238, 239, 244.

68 Gerhart, *Black Power in South Africa*, p. 236.

69 Mandela, *Long Walk to Freedom*, p. 207.

70 See Lodge, *Mandela: A Critical Life*, p. 81.

71 Sampson, *Mandela: The Authorised Biography*, p. 133.

72 Mandela, *Long Walk to Freedom*, p. 207.

73 See Joseph, *If this be Treason*, p. 95.

74 This was under the Criminal Laws Amendment Act passed in 1953 to stop civil disobedience. The Unlawful Organizations Act (1960) was similarly draconian and made incitement to strike subject to ten strokes or a fine of £500.

75 See *New Age*, 8.09.1960.

76 Joseph, *If this be Treason*, p. 99.

77 See Joseph, *If this be Treason*, p. 121.

78 *New Age*, 8.09.1960.

79 *New Age*, 8.09.1960.

80 Cited *New Age*, 17.11.1960.

81 Gerhart, *Black Power in South Africa*, p. 247.

82 *New Age*, 17.11.1960.

83 *New Age*, 06. 04.1961.

84 *New Age*, 06.04.1961.

85 Earlier, the prosecution had argued that because a document was found in the office of the Congress of Democrats, the organization had knowledge of its contents. Judge Rumpff disputed this: "One could not assume that if a Bible was found in the office of the Congress of Democrats that COD knew every chapter in [it]? The most you can say is that some of the members might know." From this exchange it was clear to the Defence team that the judges were becoming increasingly impatient with the prosecution; a factor probably prompting Rumpff to suggest that the Crown "put its arguments into a new shape" at which Maisels audibly winced, horrified at the prospect of a new indictment at this late stage of the trial. Rumpff fortunately let the matter rest there but in his summary of the benches' findings, returned to several aspects of the prosecution's case with which the court was dissatisfied.

86 *New Age*, 6.04.1961.

87 Tambo left South Africa on 27 April 1960 at the request of Chief Luthuli to become the ANC emissary in exile and to seek support for the organization. Hutchinson, who left earlier, and later Resha, completed the trio of treasonal trialists to leave. On this see Lodge, *Mandela: A Critical Life*, p. 81. For the circumstances of his leaving. See also Luli Callinicos, *Oliver Tambo: Beyond the Engeli Mountains* (David Philip, Cape Town, 2004), pp. 253, 254.

88 The swiftness of her release was puzzling. Apparently a similar application was being made to a judge in chambers which would have secured the release of all the detainees. The judge ruled that the regulations could not be lawful until he had seen them published in the *Government Gazette*. The prosecution pleaded that the regulations were at the Government Printers in Cape Town and would be flown to Johannesburg within the hour. The judge however was not satisfied and ordered the detainees' release forthwith. Unfortunately for most of the others (some got away) the regulations arrived before they could be released. The application I and a few others made in the Supreme Court were apparently in addition to the argument in chambers. For further details see Bernstein, *Memory against Forgetting*, pp. 93–194.

89 Strachan, *Maak a Skyf, Man!*, pp. 30–35.