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## SECURITY LAWS AND THEIR APPLICATION

### Summary of the Main Acts

Below is a brief definition of the Acts under which most of the Black people are detained.

#### TERRORISM ACT, SECTION 6

This section provides for the arrest of any person whom a Commissioned Officer or above the rank of Lieutenant-Colonel, has reason to believe that he or she is a terrorist, or is withholding from the South African Police any information relating to terrorists or to offences under this Act. Such a person can be arrested without warrant and detained for interrogation at such places in the Republic and subject to such conditions as the Commissioner may, subject to the directions of the Minister, from time to time determine, until the Commissioner orders his release when he has satisfactorily replied to all questions at the said interrogation, or that no useful purpose will be served by his further detention, or until his release is ordered by the Minister.

This Act empowers the Commissioner to, as soon as possible after arrest of any detainee, advise the Minister of his name, and the place where he is being detained, and to furnish the Minister once a month with reasons why any detainee shall not be released.

The Minister may at any time order the release of any detainee.

Section 6 of this Act further prohibits any person other than the Minister or an officer in the service of the State, acting in the performance of his official duties, to have access to any detainee, or to be entitled to any official information relating to or obtained from the detainee.

If circumstances so permit, a detainee shall be visited in private by a magistrate at least once a month.

### INTERNAL SECURITY ACT

Internal Security Act was introduced "to amend the Suppression of Communism Act of 1950, so as to make provision for declaring organisations promoting activities endangering the security of the state or the maintenance of public order to be unlawful and for prohibiting certain publications accordingly and applying certain restrictions imposed by that Act, to persons engaging in such activities; to regulate the release on bail or otherwise of persons arrested for certain offences and to provide for the detention of certain witnesses; to amend the Public Safety Act of 1953, so as to extend the power to make regulations; to amend the Criminal Procedure Act of 1955, in regard to the release of arrested persons on bail or otherwise, and the detention of witnesses; to apply the Riotous Assembly Act, 1956, to the territory of South West Africa; and to amend the Terrorism Act, 1967, so as to delete the provisions as to the release on bail or otherwise of any person detained in custody on a charge of having committed an offence under that Act; and to provide for matters connected therewith."

The Internal Security Act allows for "preventive detention" or "internment" for twelve month periods. Any member of the South African Police "who has received information that a notice (signed by the Minister) has been issued in respect of any person, may, before the notice has been delivered or tendered to such person, without the required warrant, arrest him and keep him in custody . . . ." but for not more than seven days. It further allows for a review committee who would meet "in camera" to investigate any internment order. The right to inspect committee records is reserved only for state officials; no court has jurisdiction to pronounce upon the functions or recommendations of the committee.

The detainee has no knowledge of the accusations against him nor who has given evidence to the committee and is without any right of legal representation.

The Act further provides for an Attorney-General to prohibit the release on bail "or otherwise" of any person charged with certain listed offences, until sentence has been passed or the person is discharged.

People detained under this legislation are generally granted status similar to that of awaiting trial prisoners. However, this remains at the discretion of the Commissioner of each prison and subsequently treatment differs considerably.

The use of powers under this Act cannot be tested in an open court of law. The courts will therefore never be called upon to define the

crucial and omnipresent phrase "endanger the security of the State and the maintenance of public order."

### PROCLAMATION R400 OF 1960

Emergency regulations for the Transkei were promulgated in November 1960 by Proclamation R400. In their original form these regulations made no provision for detention without trial but by amendment introduced in the following month such detention was authorized (by Proclamation R413 of 1960). They were presumably enacted under the powers conferred upon the Governor-General (as he was then) by the Bantu Administration Act, and so by mere executive proclamation indefinite detention came into being in the Transkei.

The provisions governing detention authorise an African Commissioner, commissioned or non-commissioned officer of the South African Police to arrest and detain any person for interrogation for an unlimited period if the officer concerned suspects that such person has taken part, or intended to take part, in the commission of any offence, or that the person concerned has information about the offence or intended offence. The detainee may then be interrogated at the place of detention and held until "the said person has answered truthfully and fully all questions put to him which have any bearing upon the said offence or intended offence".

A person so arrested or detained may not consult with a legal adviser in connection with any matter relating to the arrest or detention unless the Minister, or a person acting under his authority consents to such consultation. A detainee may at any time be released by order of the Minister upon such conditions as he may determine.

The regulation does not specifically deny persons access to the detainee. It is silent as to conditions of detention, but if the detainee is lodged in a goal he will presumably fall under the appropriate prison regulations.

### **Bannings**

1. PUMZILE MAJEKE was served with a banning order under Suppression of Communism Act on the 17th October 1975 which restricted him to the district of Qumbu. At the time of banning he was working for Zimele Trust Fund as a field worker. He was previously in detention for 164 days.

2. FATIMA MEER of the University of Natal was served with a banning order under the Internal Security Act on the 23rd July 1976. The five year banning order restricts her to Durban and prohibits her from entering any Black area, except the Indian residential area of Sydenham in Durban, where she lives.

Fatima Meer, a sociologist, was recently awarded the Morris Ginsberg Research Fellowship, but was unable to travel to London to receive it because her application for a passport was turned down.

The banning order is believed to have been the first served under the Internal Security Act.

3. MBUYISELO HOUGHTON SOCI of Middledrift; HETESE NTIBIXELWA of Mdantsane and HOLIDAY VINTA of Lady Frere received banning orders prohibiting them from attending gatherings in terms of Internal Security Act for two years, starting on the 23rd July 1976.

## Detentions

During the period under review some fourteen people are believed to be still in detention at John Vorster Square alone, some since October 1975. It is thought that most of these people are being detained in connection with the NAYO trial which is being held in Supreme Court in Pretoria. However, a different spate of detentions seems to indicate that at best some are being held in connection with a different matter. A further three are men who were redetained immediately after having charges against them withdrawn.

Immediately following the student demonstrations, the security police stepped up their activities and many people were detained, largely under General Law Amendment Act of 1966. Some twenty five students of Ngoye University of Zululand, were detained under Section 6 of the Terrorism Act, following the destruction of the administration block and library of the University. Thereafter swoop after swoop was made, and among many others Mr Kenneth Hlaku Rachidi, National President of the Black People's Convention (BPC), was detained.

The first detentions of journalists occurred at the end of July 1976 when four people in Cape Town were detained, three of whom have since appeared in court charged under the new Internal Security Act. The following day a further two journalists from Johannesburg were detained, and later several more journalists were also detained.

On the 10th of August 1976 Mr Kruger, Minister of Justice, announced that he had extended the preventive detention sections of the Internal Security Act, (which since the 16th June had been confined to the trouble-torn Transvaal), to the whole of South Africa.

Within days of this announcement some 50 or more recognised leaders of the Black Community were detained throughout South Africa, some in terms of the Internal Security Act, others under General Law Amendment Act of 1966, with the Terrorism Act almost always being imposed on these individuals after the completion of the 14 days incommunicado detention provided for under the General Law Amendment Act.

Of the people who were initially held under the General Law Amendment Act was Steve Biko, who was banned and restricted to King William's Town in 1973; also a former Black Community Programmes executive of the Eastern Cape Branch. Mr Biko's detention under General Law Amendment Act was later changed to Section 6 of the Terrorism Act.

Prominent national black leaders detained under Internal Security Act, Section 10 (1) included Mrs Winnie Mandela, who is an executive member of the Black Parents' Association (BPA); Mr Nyameko Barney Pityana of Port Elizabeth, an articled clerk who was formerly in the forefront of the Black Consciousness Philosophy; his wife, brother and nephew; Father S'mangaliso Mkhathshwa, a Roman Catholic Priest in Pretoria; Mr L. Mathabatha, a leading educationist and principal of Soweto High School; Mrs Fatima Meer, recently banned Durban sociologist and Indian Community leader; Mrs Jane Oshadi Phakathi, Transvaal Regional Director of the Christian Institute and National President of the YWCA (world affiliated); Dr Mamphela Ramphele, Superintendent of the Zanempilo Health Centre of Black Community Programmes and one of the doctors who represented the Mohapi family at the postmortem of Mr Mapetla Mohapi who died whilst in detention in August 1976. Dr Aaron Mathlare, an executive member of BPA; Mr Mxolisi Mvovo, vice-president of BPC; and Dr Nthato Motlana, also of BPA, were also detained.

Dr Manas Buthelezi, the Chairman of BPA, was detained for a short while and then released. It had all been a 'mistake' he was told.

Miss Thenjiwe Mtintso of the *Daily Dispatch* was held, first under General Law Amendment Act and later under the Terrorism Act; subsequently Peter Magubane, a renowned photographer with the *Rand Daily Mail* who was held incommunicado for a total of 586 days between 1969 and 1971; and Mr Joe Thloloe, President of the Union of Black Journalists. The last two were held under Internal Security Act.

A further police swoop took place in Natal and at least twelve more people were detained, and during the last week of August the net widened to include more black churchmen, a prominent Moravian Minister, Rev. Chris Wessels, and two Nederduitse Gereformede Kerk in Afrika Ministers, Res. Moatshe and Loputu.

The net moved further into the Coloured Community on 26 August, Mr Allan Hendrickse, the National Chairman of the Coloured Labour Party and a former President of the United Congregational church was held. Mr Hendrickse's son, Peter, was also subsequently detained.

Below are organisations and groupings which have had their leadership snapped into prison.

Black People's Convention (BPC)

South African Students' Organisation (SASO)

South African Students' Movement (SASM)

Black Community Programmes (BCP)

Black Women's Federation (BWF)

Black Parents' Association of Soweto (BPA)

Black Church organisations, individual Black Students and intellectual groups.

On the 23rd of August 1976 Mr Kruger threatened once again to use the arbitrary powers which the state has invested in him when he announced that he would introduce legislation to prevent publication of the names of people detained without trial under the security laws. He gave as his reasons for not wanting these names released or published:

—People held under Section 10 of the Internal Security Act were not necessarily guilty “and to go and give his name is to stick a stigma on him, which may be unfair to him.”

—Publication of names of detainees might actually stimulate unrest, whereas the detentions were designed to remove “potential trouble-makers” from the scene.<sup>1</sup>

He said “If you give names you may actually stimulate the very trouble that you are trying to stop . . . . by indiscriminately giving names you make the members annoyed. You may actually even stimulate trouble whereas I am trying to stop trouble.”<sup>2</sup>

### **Transkei Detentions**

From the 11th of June 1976 to the 30th of September of the same year 33 people were believed to be detained in the Transkei, most of them under Proclamation R400.

The most defined grouping hit by the detentions had been Transkei's opposition, the Democratic Party. The eight DP members below were in detention as at 8 September 1976:

Mr P. S. Fadane—National Organiser

Mrs Florence Mangcotywa—DP member

Mr L. L. Mgudlwa

Mr O. O. Mpondo—Deputy Leader

Mr Hector Ncokazi—Leader of the Democratic Party

Mr Jackson Nkosiyanane—National Chairman

Mr W. D. Pupuma—General Secretary

Mr S. A. Xobololo—DP member

The *Star* claims that it is now generally accepted in Umtata that the arrests were ordered by the Transkeian Minister of Justice, Chief George Matanzima, in consultation with his brother, the Chief Minister.

### **Eastern Cape Students' Detentions**

It was reported in September that at least eight students, mostly from

Healdtown Institution, were held under the Terrorism Act in East London. All eight students were members of the South African Students' Movement.

Later most of these boys were charged under the same Act and others turned to be state witnesses. This case is discussed later in full detail.

## POLITICAL TRIALS

### **SASO-BPC Trial**

As the mammoth political trial of nine leaders of the Black People's Convention (BPC) and the South African Students' Organisation (SASO) reached its first anniversary on the 4th of August 1976, the end of the long and trying trial was in sight. The trial had become to be known as the "Trial of Black Consciousness" rather than of the nine accused, and had a particularly novel aspect. There are no physical acts of terrorism or recruitment alleged in the 82-page indictment, apart from charges of writings, allegedly composed or distributed by the nine accused. Instead the charges relate to the September 1974 "Viva Frelimo" rallies, SASO and BPC speeches, and the very concept and theory of Black Consciousness philosophy.<sup>4</sup>

In June this year the trial surpassed the 117 Pietermaritzburg African People's Democratic Union of South Africa (APDUSA) trial as the longest Terrorism Act case.

The court records stand at over 8 000 pages of evidence. Documentary evidence and exhibits run to more than 1 000 pages and by June the estimated costs of the trial for both prosecution and defence were well in excess of R120 000,00.

Mr Justice Boshoff pointed out that in seeking a conviction, Sub-section 2 of the Terrorism Act helps the prosecution to prove the men had intention to endanger the law and order of South Africa.

The sub-section lists a series of "likely results" of the men's actions which, if not disproved by defence, presume the men to be guilty of terrorism.

The accused must prove, among other things that their writings, speeches and philosophy were not likely to

- embarrass the administration of the affairs of the state,
- promote general dislocation, disturbance and disorder,
- cause substantial financial loss to any person or the state,
- hamper or deter any person from assisting in the maintenance of law and order.<sup>5</sup>

For over four months the defence team argued for clarification and

further particulars regarding the indictment and experienced continued appearances and postponements. On the 23rd June, 1975, the State withdrew all charges against Sivalingham Moodley and Solly Ismail. The indictment against the other 11 accused was also withdrawn and a new one issued against nine men with individual indictments being served against Rubin Hare and Sadecque Variava. Finally six months after their first appearance and 11 months after the rally, the accused were asked to plead.

On the 7th October, ten people, some detained since the rally itself, were finally released. It is notable that no charges were brought against them and neither were they called as State witnesses. The State finally closed its case on the 12th December 1975 after calling 61 witnesses to court.

Mr. Justice Boshoff refused the defence application for the discharge of five accused but granted discharge of seven of thirteen counts facing the accused, ruled that the prosecution's allegation of a conspiracy among eight of the men to endanger law and order would not get the benefit of the above list of "likely results". He called the state's indictment alleging unspecified acts in the conspiracy count "clumsy".

The Defence opened their case on 29 May 1976 and Dr Rick Turner, a banned former Natal University Political Science lecturer was called as their first witness. Following him the international theologian, Dr. Manas Buthelezi, Secretary General of the Evangelical Lutheran Church of South Africa and was called and then the first accused, Saths Cooper, explained Black Consciousness and its principles and objectives. He spent six full days giving evidence and was questioned on BPC's views on everything from sport, police and foreign investment to the white political parties in South Africa.

Steve Biko, banned under the Suppression of Communism Act, appeared as a witness for the defence. He is generally acknowledged as the founder of SASO and responsible for its Constitution and the philosophy of Black Consciousness. During the four days of evidence he gave an outstanding reflection of Black Consciousness, its principles and aims.

Another accused, Nchaube Aubrey Mokoape, was called to give evidence. He also alleged that he had been assaulted by a security police captain, Captain du Toit, at the time of his arrest a few weeks after the Viva Frelimo Rally.

Mr M. S. P. Lekota began evidence in his defence. He explained that SASO struggled for psychological and physical liberation and denied charges that the "Viva Frelimo" rally was planned to encourage or further racial hostility; cause change through social and economic means; embarrass the administration of the State; or deter the maintenance of law and order in the country.

Mr Pandelani Nefolovodhwe in his evidence said that "for 300 years Whites could not solve the problems of South Africa. Blacks must now take it upon themselves to facilitate change in the country." He explained that the Bantustans concept was regarded as a 'fraud' by the Black community and that Homeland leaders were regarded as 'atrocious opportunists' who posed as leaders of Black people but only confused and divided them. They had the "audacity and arrogance" to claim that they were true Black leaders. Of Chief Gatsha Buthelezi he said that . . . . "Gatsha was being used to further the policy of his bosses" and that he (the accused) did . . . . "not regard him respectable in so far as representing Black people". Black Consciousness was an end in itself, the self-realisation of the Black man, the way he helps himself and that Whites were forcing the Blacks to try to obtain the vote by violent means.

Mr Gilbert Kaboraane Sedibe giving his evidence said that SASO was a come-together for students to express their aspirations.

Mr Muntu Myeza, a former SASO president and one of the accused, gave evidence for five days and in answer to the state question as to what his attitude was to the build up of South African military capability, he said "any country needs to build up its defence, but the way the South African Government is going on, they are doing nothing to right the wrongs inside the country . . . . they are just building up their defence. Let us in South Africa circumvent conflict by righting these wrongs. We insist there must be change." He said that the passing of repressive legislation and the stepped-up defence budget showed the Government was "frantic, desperate and confused." These actions were designed to give the white electorate a false sense of security.

He told the court that Professor Barend Van Niekerk, of Natal University Law Faculty, had been consulted by the organisers of the "Viva Frelimo" rally on the legality of the meeting. He assured him that if there wouldn't be any SASO or BPC speakers, the meeting would escape the terms of the banning order.

Mr. Gessler Nkondo, a senior lecturer in English at the University of the North at Turfloop, was called to interpret Black poetry, sentiment and aspirations of documents before the court. He felt the poems dealt with the anguish of the Black man in South Africa and were meaningful and made sense to the reader. He felt that indiscriminate arrests and the use of police dogs at the University of the North had agitated students and created a potentially threatening atmosphere. He explained that the main aim of SASO, as he understood it, was to unite Black students and to emancipate the students in particular through the philosophy of Black Consciousness. SASO aimed at an egalitarian society and that most Blacks preferred to call South Africa "Azania".

Mr Ralph Mgijima gave evidence for the defence and was warned by

the Judge that he might face prosecution if he continued with evidence of how he "helped to organise the 1974 'Viva Frelimo Rally' in Durban".

Another accused, Strini Moodley, a banned former publications director of SASO, was also called to give evidence.

Absolom Z. Cindi, in giving evidence, denied the State's allegation that BPC co-operated and maintained communication with foreign based organisations and persons hostile to South Africa. He felt that Blacks could not be held responsible for South Africa's policy of apartheid. It was hoped that such isolation would lead to "soul searching and introspection on the part of the Whites to consider playing with Blacks in sport." Of the South African police he said they were "impudent and inconsiderate" and were agents of an oppressive system. The BPC was aimed at creating an equitable system based on Black Communalism which was an indigenous socio-economic system.

An internationally known expert on terrorism, Professor Ted Gurr, professor of political science at America's North Western University and a consultant to the US State Department, told the court that both SASO and BPC were protest rather than revolutionary movements. A revolutionary group wanted change in some aspects of existing political, social and economic conditions. A revolutionary group would use sabotage, terrorism and violence to achieve its aims and a protest group would use rallies. Part of the programmes of SASO and BPC were similar to the "conscious raising" methods used by women's liberation groups.

He also said that it was not correct to say that all successful guerilla wars were nationalistic wars. He said the meaning of "freedom fighter" was "anyone engaged in any kind of struggle for the purpose of achieving freedom."

A fierce clash erupted in the trial when the defence made application to interpose a former reporter to give evidence on the Viva Frelimo Rally. Finally Mr Vasantrai Soni was permitted to give evidence.

Mr Lybon Mabasa, a high school teacher, was called to give evidence on the rally at the University of the North which the State alleges in the indictment "endangered the maintenance of law and order" and thus constitutes terrorism.

Mr Lybon Mabasa was detained during the recent security swoop.

Mr Mduduzi Guma, an articled clerk and a former University of Zululand student, who was facing charges under the Riotous Assemblies Act, was interposed as a defence witness.

Mr Nkwenkwe Nkomo, one of the accused, told the court that "Blacks must be in a position to decide for themselves what education they want for themselves and their children." BPC's wish was that all children regardless of race, should receive the same education. He

explained that whites who were "helpful and sympathetic" towards Blacks created disunity amongst Blacks and that "it is impossible for us Blacks to sit around and plan our strategy of liberation with whites. When we have closed our ranks, then we can talk to whites, because whites created divisions among us."

Nkwenkwe went on to say that the Republic of South Africa had deprived the Black man of his rightful vote, but the Black men were now coming together to present a united front to demand the vote for all people except the insane and people under a certain prescribed age.

He explained that BPC rejected every form of Black representation established by South Africa "regime" and saw homeland leaders as "traitors" to the Black cause as they were part of a "puppet structure" which was manipulated by the white minority government of South Africa. BPC had the backing of by far the majority of South Africa. He said every Black person was opposed to racism, as was the case with many of the whites.

Rev. Tshenuwani Farisani, past President of the BPC, said BPC's objectives were the articulation of Black needs in order to counter the "psychological oppression" that said Blacks were inferior.

He further said that "whites must be educated to see that sharing is their best form of security" and when asked by the Judge whether a genius gains nothing by his talent, he replied that talent was not for personal gain, but should be used for the good of all—according to the Bible.

The Defence Counsel closed its case at the end of August, 1976, and the trial was remanded to 2 October.

Sadecque Variava, who was originally one of the 11 accused in the SASO-BPC trial was issued with a separate indictment at the end of June 1975. He was finally granted bail of R1 000 after nine months in detention.

Nomsisi Khuzwayo who was detained on the 25th November, 1975, is to appear with Sadecque after being granted a bail of R2 000 and their case will be resumed in November, 1976.

## **The SASM Trial**

In February, 1976, it was reported that a number of Healdtown and Tembalabantu students, all members of SASM, were detained by Security Police in Alice and King William's Town under the Terrorism Act.

Police had visited the detainees' parents and warned them not to talk to the press about the detentions.

Sotomela Ndukwana (19), Vuyo Jack (20), both detained in October, 1975, Goodwin Mda (19) detained on the 20th February, 1976, Phumelele Sizani (22) and Ngcola Hempe (19) were charged under the

Terrorism Act, for allegedly taking part in "terrorist activities" and planning to or trying to leave South Africa to undergo military training. They all pleaded not guilty.

Mr S. A. Engelbrecht, SC, Deputy Attorney-General of the Eastern Cape, appeared for the State with Mr J. Muller, and Mr Kies, assisted by advocate T. L. Skweyiya of Durban, instructed by Tembani and associates of Grahamstown appeared for the defence. Mr Tembani was then detained under the Internal Security Act in mid August. The court then appointed another firm of attorneys in Grahamstown to continue to be the instructing attorneys in the trial.

Vuyo Baleni could not give evidence as a result of a "disturbed state of mind" which led him to be admitted at Fort England Mental Hospital. Andile Ngaki (detained) was called as a witness and was then remanded in custody under Section 6 of the Terrorism Act.

Tembani Pantsi refused to give evidence for the state on the plea that the accused "thirst for righteousness". God said "Blessed are those who thirst after righteousness." He was consequently sentenced to one month's imprisonment and ten days for contempt of court.

Don Qupe, who had originally refused to give evidence because he could not understand why he was "not charged and they were charged", was also jailed for a month. However, Don soon changed his mind after being "shut in a cold cell" and decided to give evidence.

Thamsanqa Nyati (20) who was called as sixth witness gave evidence for the State in connection with the alleged route to be used by the students to Tanzania and Mozambique.

Mr Wilberforce Sinxo (20) told the court that SASM stood for equality and majority rule, and that only white people like Bram Fisher and those banned or imprisoned because of their struggle for Black liberation were respected.

Mr Z. A. Marawu, a former five-year political prisoner of East London, was called as the thirteenth witness. Prior to giving evidence he was warned by the judge that he was being regarded by the State as an accomplice to one of the charges, and that if he gave evidence to the satisfaction of the judge he would be discharged from liability to incriminating statements he had made. He then alleged that a man from the World Council of Churches was suggested as a possible contact for getting out of South Africa without legal documents.

Mrs Myra Jack, Vuyo Jack's mother and Mr Collins Ndukwana, father of Sotomela, were called to give evidence against their sons. The defence counsel, after seeing their statements (Mrs. Jacks' and Mr. Collins Ndukwana's) indicated that they would admit the evidence and the parents would not be required to live through the horrible experience of giving evidence against their own sons.

By the end of June 1976 Vuyo Baleni was alleged to be at Tower Mental Hospital in Fort Beaufort for psychiatric treatment. The court was adjourned to 29 August and further to 7 of September, 1976.

### **Ben Louw Trial**

Ben Louw (24), an active member of SASO who has been in and out of detention, appeared in the Johannesburg Magistrate's court on the 20th August, 1976 on a charge under the Terrorism Act. It is alleged that he incited people to undergo military training. The trial has been remanded to the second week of September, 1976.

Ben Louw was later detained in the wake of country-wide unrest and therefore his case had to await his release.

### **Eric Molobi Trial**

Eric Molobi, having been held incommunicado for 190 days before being charged under the Terrorism and Suppression of Communism Acts, and found guilty on two counts appealed against the judgement. The outcome of the appeal is not known yet.

Frank Molobi, cousin to Eric, also lodged an appeal after being sentenced to imprisonment for four months following his refusal to testify for the State against Eric. He was released on bail of R500.

He was further charged with attempting to defeat the ends of justice, as it was alleged that he attempted to influence other State witnesses not to give evidence. However, he did not appear in court; it is believed that he has fled South Africa.

Vincent Selanto, who had been charged with statutory perjury, was acquitted because two security police gave conflicting evidence on their interrogation of him.

### **The NAYO Trial**

On the 11th November, 1975, Joseph Molokeng, Bheki Langa, Amos Masondo, Benjamin Mfenyana, Andrew Moletsane, Patrick Maisela and Pumza Dyantyi appeared in Johannesburg on charges under the Terrorism Act. Charges alleged that the accused conspired with 46 named accomplices to form underground cells to gather and study information on certain strategic building and installations, and also to study the South African economy and the role that the Black labour force could play to cripple the economy.

After nearly a month, during which five witnesses had refused to give evidence before the court, the State closed its case. Mr J. van Jaarsveldt assisted by Mr S. Swanepoel appeared for the State whilst Mr. R. Allaway assisted by Mr L. Bowman appeared for the accused, instructed by Mr S. Chetty.

The defence applied for the discharge of the accused, claiming that there was no evidence to prove a conspiracy.

On the 3rd May 1976 the State conceded that it had no case against Bheki Langa, and that he must "go altogether free". The charges also against Amos Masondo and David Nhlapo who had been issued with a separate indictment under the Suppression of Communism, were withdrawn; Benjamin Mfenyana's charge under Terrorism was withdrawn as well.

Phumza Dyantyi, who had just been acquitted, was re-detained and whisked away "for questioning in connection with another matter."

During evidence Joseph Molokeng explained his convictions that social change must ultimately come to South Africa, and that Black Consciousness was striving for a better deal for the Blacks "through evolution and not revolution."

Amos Masondo claimed that he had made a number of statements on the afternoon of his arrest and the following morning. These were, however, torn up by the police claiming that they were not satisfactory. He also claimed that he was threatened with being beaten up if he did not "tell the truth".

Amongst the things in his statement allegedly written on Sergeant Smith's instructions were: "Formation of groups to study military objectives, hydro-electric schemes and similar projects to prepare for armed struggle" and "assignments to study targets such as the Hertzog Tower, the Vaal Dam and the Orlando Power Station."

Andrew Moletsane, in his evidence, stated that his ideal government in South Africa was communalism which "has its roots in the African tribal way of life and means a sharing with the community in general."

The Defence Counsel claimed that "there has been an enthusiasm which has been pumped into the State's case which has just about wrecked it." Mr Allaway felt that much of the State's evidence was "vague, variegated, unprecise and unable to stand against the denials of the accused."

Of great significance in the trial was the investigation system allegedly adopted by the Security Police, with a number of witnesses claiming that they never said certain things attributed to them in their official "statements". There was also evidence of interrogations of some witnesses being conducted with the witnesses in groups. "This is an undesirable practice to put it at its lowest" said Mr Allaway.

David Nhlapo and Amos Masondo were convicted and sentenced to the minimum compulsory sentence of five years. Leave to appeal was refused. Andrew Moletsane and Joseph Molokeng were found not guilty and discharged.

After giving 'hostile' evidence Mr Kgokong was immediately

arrested on the 24th March, 1976, charged with perjury under the Official Secrets Act, alternatively theft. Bail was initially refused but after lodging an appeal against the judgement a bail of R500 was granted.

Mr Kgokong has since been detained following the student demonstrations in Soweto which subsequently spread to general unrest throughout the country. Whilst in detention Mr Kgokong appeared in court and the case was struck off the Roll.

### **The Maisela Trial**

Patrick Maisela, a laboratory technician at Baragwanath Hospital was originally detained on the 9th October and held in solitary confinement until 10 November, 1975, when he appeared with the six of the NAYO trial on charges under the Terrorism Act. Charges against him were withdrawn and a separate charge under the Suppression of Communism Act was served on him. The case was remanded and he was held in custody. When he appeared on the 3rd April, 1976 he was granted a bail of R1 000 on condition he reported to John Vorster Square weekly on Wednesdays and he had to hand over his passport to the police.

The court, after remanding the case several times, withdrew all charges against Mr Maisela.

## **THE RIOTOUS ASSEMBLIES TRIALS**

### **Viva Frelimo Rally, Durban Workers' Trial**

Following a strike at the Heinemann Electric Company, five people were arrested under the Riotous Assemblies and Police Acts. Mr Mkhabele, Mrs Mashinini, Mrs Mogokare and Mr Maseko were charged in the Edenvale Magistrates Court before Mr J. Venter, under the Riotous Assemblies Act, the Bantu Regulations Act and the Industrial Conciliation Act. They were all refused bail and the case was remanded to second April when no evidence was led and bail was again refused on the plea that the accused could cause further trouble at the Heinemann factory and attempt to intimidate and communicate with potential state witnesses.

After several remands the State was asked for further particulars relating to:

- charges, whether certain charges were alternative or accumulative;
- names of people who the accused hindered;
- crimes, the exact location of the crimes, and the exact manner in which they were committed.

The case was then remanded several times and is still to continue.

## **Trade Union Officials' Trials**

Mr Gavin Anderson, acting Secretary for the Metal and Allied Workers Union, appeared in court on the 30th March, 1976 charged under the Riotous Assemblies Act and was granted bail of R200.

On the 5th May, 1976, Siphon Kubheka, Secretary of MAWU, was arrested and appeared with Gavin Anderson in the Germiston Regional Court charged under the Riotous Assemblies Act, the Bantu Labour Regulations Act, the Industrial Conciliation Act and the Police Act.

A labour officer, called to give evidence on the 16th June, 1976, told the court that he had called the police on Friday as he feared violence to property. He stated firmly that the Labour Department was against Trade Unions for "Bantu" and that the "correct" channels for workers' grievances was through the Workers and Liaison Committees.

Finally the two men were acquitted on charges under the Riotous Assemblies Act but were found guilty under the Bantu Labour Regulations Act and the Industrial Conciliation Act.

Gavin Anderson was fined R90 or 45 days; Siphon Kubheka R45 or 30 days. They are reported to have lodged a notice of appeal.

## **Western Cape Students' Trial**

Eleven students of the Western Cape University were arrested on the 5th September, 1975, at the opening of the Coloured Representative Council when they staged a demonstration, and were held under the Riotous Assemblies Act. They were alleged to have displayed posters denouncing the CRC. Mr S. J. C. van Vuuren decided that insufficient evidence was lead and all 11 were acquitted.

## **The ANC—Pietermaritzburg Trial**

Of the 50 people who were allegedly detained in Natal by the end of March, 1976, ten appeared in the Pietermaritzburg Supreme Court, charged in an eighteen-page indictment, under the Terrorism Act and Section 11(c) of the Suppression of Communism Act 44 of 1950. The accused who appeared on 14 May, 1976, were Themba Gwala (55), William Khanyile (40), Anton Xaba (42), John Nene (32), Vusimusi Magubane (32), Matthews Meyiwa (51), Azaria Ndebele (40), Zakhele Mdlalose (51), Joseph Nduli (35) and Cleopas Ndlovu (42). All are alleged to be members or active supporters of the ANC and are alleged to have committed, conspired or attempted to commit the following:

- sent and received messages from members of the ANC in Swaziland;
- received "subversive" literature from Swaziland for distribution, discussion, study or taken notes of the material;
- received money from certain people, used and distributed the money;
- obtained information in connection with and planned routes by

which people recruited for training of a political or military nature could be transported up to the border or sent across the South African border into Swaziland, and issuing instructions on routes to be used;—incited, instigated, commanded, aided, advised, encouraged and procured others to undergo training of a military or political nature outside the Republic in order thereafter to return and assist in the overthrow of the Government of the Republic by violent and forcible means;—Mr Nduli is alleged to have undergone training in Dar-es-Salaam, Kongwa, Tanzania and in Odessa, Russia.

They were not asked to plead.

Joseph Nduli and Cleopas Ndhlovu made submissions to the Supreme Court that they had been kidnapped from Swaziland and tortured by the South African Security Police. They further sought a rule whereby the Ministers of Police, Justice, Prisons, Interior and Foreign Affairs would be ordered to return or allow them to return to Swaziland and withdraw the criminal case against them. Two affidavits from Colonel Johannes Gerhardus Dreyer and Major Jacobus Johannes de Swardt denied the alleged kidnap and the allegations of torture.

A surprise order, made by Deputy Attorney-General, Mr D. J. Rossouw, and handed to the Judge, stated that it was considered necessary in the "interest of the safety of the state and the maintenance of public order" that the two men could not be released on bail before sentence was passed, or before they were discharged.

It continued that, discharge under the Terrorism Act or alternately the Internal Security Amendment Act was not dependent on the judgement arising from any charge, and their being set free depended on the decision of the current court hearing.

The defence provided affidavits from a Pietermaritzburg specialist surgeon in which he said that after an examination of the applicants he found a number of scars on various parts of their bodies, some of which "could have been a result of chafing". Furthermore, Mr Nduli had scars on his forehead, back of his head, left side of his neck, ring finger, six scars on left forearm, two indistinct scars on right forearm, eleven on his right leg and nine on his left leg.

Counsel for the State submitted that Swaziland could demand the return of the two allegedly kidnapped men, only if it intended to place them on trial.

Swaziland's Head of Information sent a letter to *Rand Daily Mail* for publication, in which it stated Swaziland's position to be as follows:—  
—that Swaziland had no knowledge or evidence of any alleged use of Swaziland territory by ANC for their activities;  
—that Swaziland accepts genuine political refugees on condition that they do not engage in any political activities;

- in the case of the kidnap, the men who were allegedly kidnapped by the ANC from Durban to Swaziland were voluntarily repatriated to South Africa in response to their appeal for protection and repatriation, they never claimed that they were connected with the South African Security Police;
- concerning Mr Ndlovu and Mr Nduli who were reported to be missing from Swaziland, an intensive investigation into the matter was carried out; there was no evidence that their disappearance was connected with ANC activities, and, if reports were true that they were abducted on Swazi soil, then Swaziland demands immediate return of the two men.

The application for the release of the two men was refused by the Pietermaritzburg Supreme Court, Justice van Heerden stating that the Supreme Court had jurisdiction to try the applicants "even if they had been arrested on Swaziland soil", and that the accused had failed to discharge their onus of proof that they had been kidnapped.

On the 3rd August, 1976, Major H. D. Stadler of the Security Police was called to lead evidence on "subversive" literature allegedly published and distributed by the banned ANC. Major C. J. Dirker, a retired South African Police officer, lead evidence dating back to the early 1960's Rivonia Trial and under cross examination admitted that the 1955 Freedom Charter of the ANC itself was never banned, only the organisation was banned.

Stephen Mtshali, James Ngwenya and a former ANC member, Carl Kleinboy, gave evidence for the State.

A nurse at Edendale Hospital, Catherine Mkize, told the court she had delivered letters for the accused to people in Swaziland.

Mr Hlapane, giving evidence for the State, attacked "white communists" whom he claimed betrayed Nelson Mandela and had used money received from overseas for the care of detainees' families and legal costs, for their own selfish ends.

Mrs Sylvia Gumede claimed that she had taken letters and suitcases to Mr Gwala from a man in Swaziland. The case is still continuing.

### **Donald Woods' Trial**

Donald Woods, editor of the *Daily Dispatch*, East London, had an appeal case pending against a six month sentence for refusing to disclose the name of an informant who allegedly saw a Security Policemen damaging the Black Community Programmes' offices in King Williams Town. The appeal is to be heard in the Supreme Court in Grahamstown on 29, October 1976.

## DEATH IN DETENTION

Below is a list of names of people who have died in detention in South African jails since 1963:

| <i>Name</i>         | <i>Alleged Date of Death</i> | <i>Place of Death</i> | <i>Alleged cause of Death</i>              |
|---------------------|------------------------------|-----------------------|--|
| Lukesmart           |                              |                       |  |
| Solwandle Ngudle    | 5.9.63                       | Pretoria              | Suicide by hanging                         |
| Bellington Merope   | September 1963               | Worcester             | Undisclosed                                |
| James Tyitya        | 21.1.64                      | Port Elizabeth        | Suicide by hanging                         |
| Suliman Saloojee    | 9.8.64                       | Johannesburg          | Fell 7 floors during interrogation         |
| Nejeni Gaga         | 7.5.65                       | Transkei              | Natural causes                             |
| Pongolosa Hoye      | 8.5.65                       | Transkei              | Natural causes                             |
| Hangula Shonyeka    | 9.10.66                      | Pretoria              | Suicide                                    |
| Leong Pin           | 19.11.66                     | Pretoria              | Suicide by hanging                         |
| A. Yan              | 5.1.67                       | Pretoria              | Suicide by hanging                         |
| Alpheus Madiba      | 9.9.67                       | Pretoria              | Suicide by hanging                         |
| J. B. Tubakwe       | 11.9.68                      | Pretoria              | Suicide by hanging                         |
| ?                   | ?                            | ?                     | ? (disclosed in Parliament 28.1.69)        |
| Nicodimus Kgoathe   | 4.2.69                       | Pretoria              | Slipped in shower                          |
| Solomon Modipane    | 28.2.69                      | ?                     | Natural causes                             |
| James Lenkoe        | 10.3.69                      | Pretoria              | Suicide by hanging                         |
| Caleb Mayekiso      | June 1969                    | Port Elizabeth        | Natural causes                             |
| Michael Shivute     | 16.6.69                      | ?                     | Suicide                                    |
| Jacob Monakgotla    | 10.9.69                      | Pretoria              | Thrombosis                                 |
| Iman Abdullah Haron | 27.9.69                      | Cape Town             | Fell down stairs                           |
| Mthayeni Cuthsela   | 21.1.71                      | Pondoland             | Natural causes                             |
| Ahmed Timol         | 27.10.71                     | Johannesburg          | Suicide by leaping from 10th floor window. |
| Joseph Mdluli       | 19.3.76                      | Durban                | ?  |
| Mapetla Mohapi      | 5.8.76                       | Kei Road              | Suicide by hanging                         |
| Luke Mazwembe       | 3.9.76                       | Cape Town             | Suicide by hanging                         |

### Joseph Mdluli's Death

Joseph Mdluli (50), former banned ANC member, died on 19 March, 1976, about 24 hours after being detained under the Terrorism Act in Durban. Photographs of Joseph Mdluli purporting to show signs of torture were released at a Press conference in London by the ANC allegedly taken after the post mortem at the request of Mrs Mdluli.

After repeated demands for an inquest over the death of Mr Mdluli the Minister of Justice, Mr Kruger, disclosed on 11 June, 1976, in Parliament that no inquest would be held as the Attorney-General of Natal had decided that four police officials were to appear shortly on charges of culpable homicide arising from Mr Mdluli's death.

On the 17 June, Captain David Frederick van Zyl, Lt. Andrew Russel Cavill Taylor, Sgt. Mandlakayise Patrick Makhanya and Const. Zebulon Ngobese were charged with culpable homicide but were released on their own recognisances. The case was remanded to the 2nd August, 1976, and had to be remanded further following a car accident involving one of the accused.

## **Mapetla Mohapi's Death**

Mapetla Mohapi (29) died on 5 August 1976 after 22 days incommunicado under the Terrorism Act in Kei Road near King William's Town by allegedly hanging himself with a pair of jeans. Mapetla, a former SASO official and an Administrator for Zimele Trust Fund at the time of detention, was banned for three years under the Suppression of Communism Act.

A post mortem was held on the 6th August, 1977, conducted by Dr R. B. R. Hawkes in the presence of Dr A. M. Ramphela and Dr Msauli (who were detained on 13 and 29 August, 1976, respectively, under the Internal Security Act) and Mr G. Mxenge, a Durban attorney.

Body tissues were also sent to the State laboratories for microscopic examination and an inspection of the "Death Cell" was done.

At the time of going to print the results of the investigation had not been released.

## **Luke Mazwembe's Death**

Luke Mazwembe (32), a SASO member, died in Cape Town on 3 September, 1976, two hours after being detained under the General Law Amendment Act. Police officials allege that he had torn a blanket and hung himself.

## **REFERENCES**

<sup>1</sup>Statute Book of South Africa

<sup>2</sup>*Rand Daily Mail* 24.8.76

<sup>3</sup>*Star* 3.8.76

<sup>4</sup>*Star* 24.6.76

<sup>5</sup>*Rand Daily Mail* 15.7.76