

COURT MONITORING REPORT - TRANSVAAL BRANCH

INTRODUCTION

A South African government determined not to learn the lessons of history spent much of 1988 repeating its errors as both the scope and scale of state-inspired repression continued to erode what little freedom remains in our society.

The lesson of the 1960s was that to ban organisations was to drive them to armed struggle and violence. Blinkered by short-term considerations the state repeated the error and restricted dozens more mainly black political movements in 1988. In the 1960s black leaders were sent to jail where their continued detention is providing one of the focal points for resistance.

Once again the lessons were not learned, and in 1988 the state sent another generation of black leaders to prison, among them some of the most talented and gifted people South Africa has been graced with in a long while. People like Patrick Lekota, Moss Chikane and Popo Molefe, sent to prison at the end of the Delmas Treason trial, spring to mind.

Even the presiding official at the Delmas Treason trial - which was relocated to Pretoria in 1987 - was moved to note that the convicted men could "play a constructive role on the political scene" in the future. It was against this background that the court monitoring group carried out its work in 1988.

BACKGROUND TO THE MONITORING GROUP

The work of the court monitors covered a wide area - both geographically and with the variety of the cases involved.

Physically the court monitors travelled to as far a field as Vereeniging and Delmas.

Many of the trials monitored were held in the magistrates' courts, although there were obviously some exceptions. The monitoring group tended to concentrate on those cases which did not receive prominence in the media.

Although the group is a small one - of eight members - who are all volunteers, it nonetheless managed to tackle a considerable amount of work. Many of the cases followed took months to draw to a conclusion.

Through their work a rapport was often established between the monitors and the people on trial and their families. This is not considered an insignificant element of the work of the committee.

Among the problems encountered during the year by monitors was the difficulty in understanding what was happening in some of the trials because of not being fluent in the language spoken during the proceedings.

Another problem was that often information received, particularly of court dates, was unreliable.

SECURITY TRIALS

As a general introductory comment it could be stated that the political climate in 1988 was one of restlessness and discontent, a season of continued opposition to the state. On the other hand the state seemed determined to continue imposing its will on millions of people who had no say in the formulation of that will

and the favourite tool remained coercion.

Some of the more significant trials included that of Moses Mayekiso, a union official, and four others for attempting to promote alternative structures in the township of Alexandra. The trial is continuing and the accused were released on bail after more than two years in custody.

They have been charged with treason. This trial has been the focus of much international attention, particularly from labour movements.

Another important trial concerned eight youthful activists from the same township, Alexandra, who were charged with treason and subversion. Following a lengthy trial all eight - Ashwell Zwane, Vusi Ngwena, Andrew and David Mafutha, Arthus Vilikazi, Albert Sebola, Piet Mogano, and Philemon Phalongwane - were convicted of sedition. At the time of their conviction the men had been in jail for two years and this was taken into account when they were sent to prison for effective terms ranging from three to four years.

Evidence during the trial had, like the Mayekiso trial, illustrated the turmoil prevailing in Alexandra during the period of unrest known as the "Six Day War". The eight were all convicted of attempting to usurp the authority of the state by conducting "people's courts" and assuming the responsibility of policing the troubled township.

All eight were members of the Alexandra Action Committee and during the trial the state made use of what has become a common tactic of producing secret witnesses. These witnesses are often supposed to be former members of the African National Congress (ANC). Defence teams have been hampered in their cross-examination of these witnesses (including attempting to discover whether or not the witnesses were in fact former ANC members) by state demands that their identities remain a secret. The procedure, by its very nature, undermines one of the basic rights of the accused: to know who their accusers are.

The scale of the unrest in Alexandra, largely hidden from public view by severe media restrictions, may be one of the more salient reasons why the township has suddenly, after years of neglect, been earmarked for substantial upliftment.

The court monitors kept a watching brief on both of the Alexandra trials.

Another "security" cases monitored was that of Daniel Ntsoseng and Moses Mahlangu. The two young men (both in their early 20s) appeared in the Benoni Regional Court on a charge of terrorism. They were accused of being in possession of explosives. Mahlangu was acquitted while Nstoseng was sentenced to 10 years.

Solomon Modisela appeared in the Johannesburg Magistrates' Court on a charge of terrorism. He was accused of acting as a lookout during an incident where a handgrenade was allegedly thrown at the house of a councillor. At the conclusion of the trial he was convicted and sentenced to an effective eight years in jail.

Abraham Pule, who was accused of acting as a courier transporting arms from Botswana, appeared in the Johannesburg Magistrates' Court. He was convicted on the basis that arms/ammunition were found in his car. But the question to be asked is "How did they get there?" He claimed he had no arms/ammunition in his car but the police alleged that is where

they found them.

Pule was sentenced to nine years. However, it should be noted that before the trial Pule had already spent two years in detention.

Another "high profile" treason trial which all but ended in 1988 was the so-called Bethal Treason Trial. Ebrahim Ismail Ebrahim, allegedly one of the most senior Umkhonto we Sizwe insurgents captured to date, and fellow accused Action Maseko and Simon Dladla faced various charges relating to their alleged activities as members of the ANC, including the main charge of treason.

The trial, which started in Bethal before being moved to Pretoria for its conclusion, heard evidence on commission in London from, among others, Ronnie Kasrils, Umkhonto we Sizwe's Chief of Intelligence. The defence requested the move as part of its cross-examination of yet another "secret witness" who claimed to have an intimate knowledge of ANC military activities and particularly, Ebrahim's role in those activities. Almost forgotten during the trial proceedings was the fact that Ebrahim had been kidnapped in Swaziland by "unknown masked men" only to surface at Security Police headquarters in Pretoria.

Even when the trial reached its conclusion in January this year with Ebrahim being sent to jail for 20 years (guilty of treason), Maseko to 23 years and Dladla to 12 years, the drama was not yet over. During the singing of Nkosi Sikelel' iAfrika as the men prepared to leave the dock, one of the prosecutors was heard to remark "Lank lewe die AWB" (Long live the AWB). The prosecutor denied having made the comment but newspapers reporters heard it and the subsequent international coverage did considerable damage to South Africa's already tarnished legal system.

The "Sharpeville Six" - Duma Khumalo, Francis Mokhesi, Mojalefa Sefatsa, Reid Mokena, Oupa Diniso and Theresa Ramashamola - were sentenced to death for being part of the crowd which killed Lekoa councillor Jacob Dlamini during the Vaal uprising in September 1984. Their conviction rested on the doctrine of common purpose.

After an international outcry State President PW Botha commuted the death sentences to prison terms ranging from 18 to 25 years. South African lawyers expressed their concern at the arbitrary nature of ALL reprieves from the death sentence and stated that the only real way to deal with the issue would be to scrap the death penalty completely. Four policemen, also sentenced to death, were reprieved at the same time in a move that was widely regarded as politically motivated to curb right-wing criticism of the reprieve of the "Six". The circumstances prompted the national director of Lawyers for Human Rights, Brian Currin, to call for a review of the entire issue of capital punishment as a matter of urgency. "The subjectivity of this process when it involves the lives of people is totally unacceptable," Currin stated at the time of the reprieves.

The year drew to a close as it had begun, with another trial starting in the small Delmas courtroom which has become internationally known. This time the four men accused of treason and murder refused to plead, stating they were ANC soldiers and could not be tried in a civilian court. It may be a sign of things to come.

These were just some of the security related trials which took place during 1988. All the trials mentioned, except for those of

the "Sharpeville Six" and the Bethal trialists, were monitored by the court group. It must be noted that not all the trials monitored have been mentioned. Furthermore, in some cases trials were monitored on an irregular basis.

HUMAN RIGHTS VIOLATIONS

"There shall be housing for all". So says the Freedom Charter, but the reality of apartheid South Africa proved to be very different during 1988.

Many people came before the courts south of Johannesburg during the first part of 1988. The Urban Removals and Homelessness Group obtained lawyers in each squatter camp. All cases were defended and all the charges were withdrawn. The attitude of the magistrates seemed, at times, to be understanding and on occasion they accepted the defences' argument that squatting was a social problem and should be solved politically and not by the courts.

When people were arrested, particularly during the latter part of 1987 on trespass charges, the combined operation of police and army officials left much to be desired and undue force was used, specifically at Vlakfontein and Furwood. In one instance the measure of undue force used resulted in a Supreme Court interdict being sought, and granted.

The role of the court monitors in liaising between the homeless, service groups and lawyers has been vital. Homeless people have appreciated the presence of monitors in the court and strong bonds have been established. Last year 75 cases were monitored. In January alone the monitors attended court cases on an almost daily basis.

However, the effects of the new legislation concerning "illegal" squatting is being anxiously awaited.

Still on the issue of basic human rights a particularly frightening case came to the attention of the monitoring group during the year. It concerned 62-year-old David Manyathilena who spent two years in detention for the crime of being in the wrong place at the wrong time. He was detained and eventually charged for intimidation. Manyathilena was apparently not politically active in any way and repeated attempts to have him released on bail proved fruitless. The charges were eventually withdrawn.

That is another area the Freedom Charter takes very seriously: "All shall be equal before the law. No one shall be imprisoned, deported or restricted without a fair trial."

In another section the Charter reads: "All shall enjoy human rights." David Manyathilena's life could have been very different.

CONSCRIPTION

The court group monitored one of the two trials involving young men who refused to serve in the SADF. Both trials had the same outcome - a six-year jail sentence for the men. Another trial is about to take place early this year (1989).

In July David Bruce, a 24-year-old University of the Witwatersrand graduate, told a Johannesburg magistrate that he would not serve in the defence force which he believed was upholding apartheid. The six year term handed down was the maximum and clearly stunned his family and supporters. An appeal

against the sentence is pending.

Just six months later another young man, Charles Bester, was also given the maximum sentence for refusing to report to the SADF for the initial two-year training period. Bester cited his opposition to apartheid and his religious beliefs as the main reasons for the refusal. Shortly afterwards 143 men, some of whom had done the initial two-year period, announced their intention to refuse to attend further training or operational camps. The demand for alternative service - despite the effective banning of the End Conscription Campaign - is one which is likely to grow in the future and make severe demands of the legal profession as well as on South Africa's lawmakers.

THE SARHWU TRIALS

Two trials which arose out of the SA Railways and Harbours Workers Union (SARHWU) strike in 1987 were heard during 1988.

The first trial - at which 18 union men were accused of murdering four fellow workers who refused to join the strike - reached a conclusion when seven of the men admitted to and were convicted for the murders. Two of the accused were acquitted and the remaining nine were convicted of charges ranging from kidnapping to intimidation. At the time of writing evidence in mitigation on behalf of the eight men convicted of murder was continuing.

The second SARHWU trial which began during the year was concluded in February this year (1989) when three SA Transport Services (SATS) workers, who were union members during the strike, were acquitted of murdering a ticket inspector by throwing him from a moving train.

STATISTICS

Forty two trials were monitored during 1988 in the Johannesburg and surrounding areas. These figures do not include the monitoring of cases against squatters, which are dealt with in another section of this paper.

It must be clarified at this point that the court monitors have great difficulties in finding cases because there are many that are unknown to lawyers. In addition monitors, although they concentrate on the Johannesburg area, have also to cover a wide geographical area from Vereeniging in the south to Pretoria in the north and Delmas in the east.

A break-down of the cases followed by the court team in 1988 follows. The categories are derived from the charges put to those on trial:

OVERALL PICTURE OF COURT CASES MONITORED

Total number of cases: 42
Number of adults charged: 297
Found guilty: 176
Charges withdrawn: 28
Acquitted: 86
Incompleted: 6
Accused failed to appear: 1

Number of minors charged: 13
Found guilty: 5
Charges withdrawn: 5
Acquitted: 3

BREAKDOWN OF CASES IN TERMS OF MAIN CHARGE

Charge	Number of Cases
*Treason	3
*Murder:	7
*Terrorism:	13
*Subversion/sedition:	1
*Intimidation:	9
*Public violence	2
*Arson:	1
*Assault:	2
*Possession of banned literature:	1
*Unlawful gathering:	1
*Failing to do military service:	1
*Inciting others to break the law:	1

GENERAL

Often public violence is used as an umbrella term, it is a charge used to cover any number of incidents - from arson and assault to stone throwing. But court monitors have reported that the charge of public violence seems to have become an infrequently used charge and has instead been replaced with charges such as murder, arson, assault or malicious damage to property.

GUILTY OR NOT

In many cases those on trial were acquitted. But, not after spending a long time - sometimes measured in years - in detention. Mention has already been made of the case of David Manyathilena.

Often the trials involving "intimidation" where unionists are involved are dropped. One reason given is: insufficient evidence.

As can be seen from the statistics presented above, the same can be said for those charged with squatting.

The heartache and misery of people whose lives are disrupted and disturbed by such trials, detentions and arrests needs only be imagined. This applies not only to the individuals involved but also to their families.

TRIALS-WITHIN-TRIALS

In many of the trials monitored there were claims by the accused that they had been assaulted while in custody. The court procedure was to enter into a trial-within-a-trial to establish whether a statement/confession made under such circumstances was valid.

Without exception the police version that no assaults had taken place was accepted. The difficulty, it appears, is the evidence of one accused on the one hand and that of several police on the other.

Of the cases watched 10 went into trials-within-trials. Some 10 people are known to have claimed they had been assaulted by the police.

The court monitors also noted that accused persons often alleged that they had been assaulted. These complaints did not always form part of a trial-within-a-trial. Allegations were that assaults had occurred during interrogation or at the time of arrest.

CONCLUSION

The power of the state to govern and enforce laws is derived from the consent of the people it governs. This consent is the legal cornerstone of state legitimacy. Thus when issues such as treason, sedition, subversion and even armed struggle are considered the element of legitimacy should not be omitted.

The number of trials in South Africa during 1988 which featured challenges - some of them violent - to the state's right to govern, highlight the strong undercurrents of state illegitimacy prevailing in our country today.

In South Africa the issue is further complicated by the fact that the governed are mainly black citizens while the governors are white. And it is this divide that is more often than not represented in our courts too. In the trials monitored by the group in 1988 the judges were white, the prosecutors were white and, with a few exceptions, the minor court officials were also white. But the accused were usually black. So by whose measure, by whose norms, are the so-called crimes judged? When the state prosecutes it does so on behalf of society. But which society? In South Africa there are at least two.

There is the society which has given its consent to be governed and expects to be protected in return, and there is the society which is governed without its consent and, further, is oppressed and denied even basic human rights such as living where they please and working where they please, a decent education and adequate health care. Without providing freedom with justice and without meeting basic needs and wants by what right does the state demand the loyalty of the "second society".

To reconcile this dilemma is the challenge facing South Africa's judicial system which currently dispenses what is widely regarded as "white man's justice".

If it fails to meet and resolve this challenge and continues to be regarded as nothing more than a branch of state executive coercion, history will judge it and find it wanting.