

COURTS

PRETORIA TREASON TRIAL.

1. Ncimbithi Johnson Lubisi (28),
2. Petrus Tsapo Mashigo (20),
3. Naphtali Manana (24),
4. Ikanyeng Moses Molebatsi (27),
5. Hloliile Benjamin Tau (24),
6. Phumulani Grant Shezi (24),
7. Jeremiah Radebe (26),
8. Boyce Johannes Bogale (26),
9. Thomas Mngadi (29).

As detailed on pages 39 - 41 of WIP 14, the 9 accused listed above currently face charges of High Treason, murder, attempted murder and robbery with aggravating circumstances, as well as alternative charges under the Terrorism Act.

The crux of the case revolves around the attack on the Soekmekaar police station, and the siege at the Silverton branch of Volkskas bank early in 1980. In addition to these incidents, out of which the charges of murder, attempted murder and robbery emerge, the accused are also alleged to be ANC members, to have undergone military training in ANC camps (mainly in Angola), to have been in possession of a large amount of arms, explosives and ammunition, to have investigated certain targets for the ANC (police stations, a petrol storage tank, and the Port Natal Bantu Affairs Administration Board). There are also charges of establishing ANC bases, and recruiting people for military training.

The state case is now nearing completion, and the trial has been

adjourned to mid October to allow for defence preparations. The state has not alleged that the accused were physically responsible for the death of 2 women at the Silverton bank, nor has it claimed that all the accused were involved in the Soekmekaar attack or the planning of the bank siege. What the prosecution does claim is that each of the accused joined and participated in an ANC conspiracy to overthrow the state; that the Silverton and Soekmekaar incidents were part of that general conspiracy, and that the accused are all accordingly responsible for acts in furtherance of the conspiracy. For example, the three ANC guerillas actually present at the Silverton siege (Humphrey Makhubo, Stephen Fanie Mafoko and Wilfred Madela) were all killed in the police raid on the bank; but in terms of the alleged conspiracy, and a legal doctrine of common purpose, the state holds the accused responsible for the acts of the 3 dead guerillas.

The state has led evidence in 3 major sections:

- the attack at Soekmekaar;
- the siege at Silverton;
- the specific involvement and acts of each of the accused.

Categories of witnesses have included

- accomplices of the accused;
- police witnesses;
- people involved with the accused but not held to be accomplices by the state;
- hostages at the Silverton siege.

One of the state's first witnesses was Lieut.-Col. Hermanus Stadler, who testified that he could be considered as an expert on the ANC. According to his testimony, the ANC was formed in 1912 as the South African Native National Congress, but later changed its name. In 1944 the ANC Youth League was formed under the leadership of inter alia Nelson Mandela, Walter Sisulu and Oliver Tambo. The Youth League introduced a more militant atmosphere into the ANC, and during the 1950s a programme of demonstrations and passive resistance took place.

In the mid 1950s the Congress Alliance was formed. This involved an alliance between five organisations - ANC, Congress of Democrats, Coloured Peoples' Congress, South African Indian Congress and the South African Congress of Trade Unions (SACTU). The Freedom Charter was adopted as the policy of these organisations after it was drawn up at the Kliptown Congress of the People.

Originally purely an african nationalist organisation, a split emerged in the ANC in about 1958 between the Charterists and the Africanists. The Africanists broke away from the ANC and formed the PAC which was anti-communist and had only african members. The ANC, according to Stadler, admitted members of all racial groups, and was influenced by a communist perspective.

After the ANC was declared unlawful in 1960, a military wing known as Umkonto

we Sizwe (MK or Spear of the Nation) was formed, and saboteurs who were arrested were found to be part of MK. Nelson Mandela was the first commander-in-chief of MK. A blueprint for guerilla warfare was drawn up and put into operation, which provided for sending people for military training, attacking targets, and distributing propaganda material.

The aims of the ANC, according to Stadler, included the violent overthrow of the government, founding of trade unions, strikes, protest marches, boycotts and distribution of propaganda material through pamphlets, posters, radio, records and tape recordings.

Stadler also referred to the assassination of people regarded by the ANC as traitors, such as Leonard Nkosi: a commander of one of the first ANC guerilla groups to fight in Zimbabwe in 1967, he was arrested in Durban and subsequently gave state evidence in a number of Terrorism Act trials. In 1970 he joined the security police, and remained a member until his killing in 1977.

Under cross examination, Stadler said that to have lasted all these years, the ANC must be accepted by black people. He also said that there was great rivalry between the ANC and PAC: both had, for example, claimed responsibility for the recent attack on SASUL, but "we don't pay much attention to the PAC because it is such a small faction", said Stadler.

Another major state witness, who in terms of a court order may not be identified, was claimed by the state to be an accomplice of the accused. After

completing his military training in Angola, he was appointed head of the ANC's Southern Natal Region. His duty was to organise attacks on targets of an economic, military and political significance. Among the targets he listed were Pik Botha, the judge in the Pietermaritzburg Treason Trial, Lieut. Col. Stadler of the security police, oil refineries, security police and state witnesses in Terrorism Act trials.

On December 27, 1979, the witness gave himself up to the police. He identified most of the accused as having undergone military training in ANC camps in Angola. In March 1979 he had carried out a mission to sabotage the Port Natal Administration Board building, but this had failed when a detonator did not go off as planned.

Another accomplice witness who may not be identified testified that, after receiving military training, he returned to South Africa and gave himself up to the police. He then led them to a hide-out of a group of guerillas where a gun battle took place in which a guerilla was killed.

Other important evidence led by the state came from police and hostages at the Silverton siege, police present at the Soekmekaar attack, and police involved in the arrest of two of the accused in Mundlo township, near Vryheid. According to a police witness Thomas Mngadi, accused number 9 in the trial, attempted to escape from the Mondlo house in which he was staying when police arrived. Arms and explosives were stored in the house. The police witness

testified that police chased Mngadi, firing shots at him before overpowering him in a struggle.

Evidence has also been led on ANC bases, arms caches and dead letter boxes uncovered by police at Kwaikhema near Springs, Ga-Rankua, Soekmekaar, and near Durban.

The trial is due to resume in mid-October in the Pretoria Palace of Justice.

TERRORISM ACT TRIALS.

"Thandi Ruth Modise (21), Moses Nkosi (24) and Aaron Slim Mogale (21):

Charges: Modise is alleged to have undergone military training in ANC camps in Angola and Tanzania, and returned to South Africa during 1978. During March 1978 the state claims that she set fire to piles of clothing in Johannesburg branches of Edgars and OK Bazaars. Modise also faces charges of possessing arms, ammunition and explosives, and investigating police stations and a Krugersdorp Bantu Affairs Administration Board with the aim of sabotaging them.

Nkosi and Mogale are alleged by the state to have harboured Modise on her return to South Africa, and storing a firearm and explosives belonging to her.

Much of the trial has revolved around the admissibility of statements made by two of the accused while in security police custody. Modise testified that she had been assaulted by police to make a confession, and Nkosi has claimed that he made a statement to avoid being tortured: "I thought that what had been done to others would be done to me too: I had not heard of

anyone who had been to John Vorster Square who had not been assaulted", Nkosi told the court.

A senior Johannesburg district surgeon who examined Modise while in detention, Dr Norman Jacobson, testified that in his opinion, "lengthy periods of interrogation ... could constitute an assault. I believe, and I have seen, that the Security Police subject detainees to strenuous interrogation".

Asked by the defence how a person could injure themselves while in police custody, security police witness Edward James Tierney claimed that at John Vorster Square "the floor is so slippery that a person can fall and injure himself or even fall while sitting on a chair".

Judgement on whether the statements involved are admissible as evidence against the accused will be given on October 22, when the trial resumes.

(Kempton Park Regional Court).

Markus Kutaka (40) and Hendri Kariseb (45).

Charge: The accused are alleged to have assisted SWAPO guerilla fighters by providing them with food and accomodation, and a plan of farm buildings of a farm near Grootfontein where they were employed. The farmhouse involved was subsequently attacked by guerillas on February 17, 1979.

The farm owner, JFL Louw, told the court that the 2 accused had been among his most trusted workers, and both were foremen. Prior to the attack, one of his workers had warned him to be careful because Kariseb was 'SWAPO oriented'. On the day of the attack, he had instructed Kariseb to run to a nearby farm to warn the family there that 'terrorists'

were in the area. He refused to do so, telling Louw to "save your breath". (Windhoek Supreme Court).

Athlone Khima (32).

Charge: The accused was alleged to have recruited 2 people for military training, namely Johannes Nkabela and Johannes Nkosi. Nkosi, a member of the police who wanted to join the security police, and was suspended from duty at the time of the trial, was found to be a dangerous and unreliable witness by the presiding magistrate.

Verdict: Not guilty.

(Pretoria Regional Court, 15.09.80).

Thabo Makunyane (24) and Ephraim Mogale (23).

Charge: Makunyane, a student at Turfloop University, and Mogale, president of COSAS, faced charges under the Terrorism and Internal Security Acts. They pleaded guilty to certain Terrorism Act charges, involving the promotion of ANC and communist objectives, forming an organisation known as the Communist Advance Movement, forming youth clubs to promote 'unrest', and distributing unlawful literature.

Charges related to recruiting people for military training were withdrawn against the accused.

Sentence is due to be passed on both accused at the end of September.

(Pietersburg Regional Court, 01.09.80).

INTERNAL SECURITY ACT TRIALS.

Ian Msekeli Mfijima (30).

Charge: The accused, a journalism student at Rhodes University, pleaded guilty to two charges under the Internal Security and Unlawful Organisations Acts. In a statement handed in to court, Mfijima said that he had

received several pamphlets, books and a tape from the ANC in Lesotho. He had shown these to various people. He was not an ANC member, although he had come to know something about their courier system used to get material into South Africa.

Verdict: Guilty on both counts.

Sentence: 8 years, of which 3 years were conditionally suspended for 5 years.

An appeal against sentence has been noted, and a bail application was brought by the accused. This was refused by the presiding magistrate on the basis that the ANC might assist Mfijima to flee South Africa.

(Port Elizabeth Regional Court, 11.09.80).

APPEAL PROCEEDINGS.

James Daniel Mange (24).

Mange was sentenced to death for treason on November 15, 1979, by Justice Hefer sitting in the Pietermaritzburg Supreme Court (see WIP 10 and 11 for details of the trial proceedings). It was found that he had prepared an attack on a police station and local magistrate at Whittlesea, near Queenstown, and had led the group intending to undertake the attack. Only his arrest for a traffic offence, according to the trial judge, prevented the attack taking place.

An appeal against the death sentence was argued. Counsel for Mange accepted the trial judge's findings that he had undergone military training, but disputed certain other findings. These were all based on the evidence of one accomplice witness, whose evidence was not challenged because, at that stage of the proceedings, the accused had chosen not to be defended, and refused to participate in the trial.

It was also submitted, on behalf of

Mange, that the trial judge's perceptions of him had been clouded by the atmosphere of the trial, where the accused refused to participate, were contemptuous of court proceedings, sang and disrupted the hearings.

In the judgement handed down, the Chief Justice upheld the appeal against the death sentence, and substituted a sentence of 20 years imprisonment. Chief Justice Rumpff said that while South African courts had thusfar been lenient towards offences of treason, a complete change of attitude would be neither surprising nor unjustified. At present South Africa was being subject to "blatant terror", said the judge.

I use the word 'terrorism' to describe violent attacks on, inter alia, completely innocent persons - more often than not committed by people from the Republic who have undergone military training in foreign countries. Trained terrorists seek....to kill innocent people in order to overthrow the State. This is terrorism in any language".

(Appeal Court, Bloemfontein, 11.09.80).

Jeremiah Kgokong Majatladi (23), Thami Gerald Mkhwenazi (38), Ronald Ephraim Mamoepe (18), Lebogang Christy Mokone (18), Petrus Karel Senabe (22), Andrew Mosti Phala (18), Deacon Sikibela Mathe (22), Cornelius Mpheti Leeuw (18), and a 16-year old youth.

As reported in WIP 12, pp41-43, the accused were convicted under the Terrorism Act and sentenced to 7 years imprisonment (Majatladi and Mkhwenazi), and 5 years (the other 7 accused). The trial magistrate found that Majatladi and Mkhwenazi had conspired to assist others to leave the country for military training, while the other accused were found guilty of either

recruiting, or being recruited, for ANC military training.

The appellants have submitted that

the sole and only interest of Mkhwenazi in the other men accused with him was to write a story about them in Post newspaper and also to further his career as a journalist.

Mkhwenazi also claims that it was not his intention to assist others to leave the country for military training.

As far as the other accused are concerned, the appellants have argued that

The court should have found that the version of the accused that they wanted their photographs taken so that these could be publicised in the newspapers in the event of their being detained was reasonable and possibly true.

The state has argued that the photographs were taken so that they could be published after the men had left the country for military training.

Judgement has been reserved. (Preterita Supreme Court).

2 youths.

On April 6, 1978, a group of youths aged between 14 and 16 were found guilty of Sabotage in the Port Elizabeth Regional Court, and sentenced to 5 years imprisonment each. (These are presumably some of the children Pik Botha denies are serving sentences on Robben Island). They appealed against conviction to the Eastern Cape Supreme Court, but this was turned down. 2 of the youths further appealed to the Appellate Division in Bloemfontein, and in September 1980 the appeal was upheld, and sentence set aside.

It was found that the trial magistrate had acted irregularly by refusing to accept

a plea of not guilty by the accused's legal advisor, and then directly questioning the accused at length, thereby obtaining certain admissions highly prejudicial to the accused.

(Appellate Division of the Supreme Court, Bloemfontein, 11.09.80).

LABOUR ACTION general

Itereleng Workshop for the Blind (Ge-Rankuwa): See WIP 13, page 32, WIP 14, page 50 for earlier events at the workshop. 41 of the 300 workers who had earlier lost their jobs were refused reinstatement and paid 'back pay' running from R21 to R28 - this for workers who had been at Itereleng for up to 27 years.

One worker said that Itereleng still fell under South African authority and that the supposed BophuthaTswana authority and responsibility was being used as a 'shield' by the management and the Transvaal Society for the Blind (see Star, 11.09.80).

Frametex (New Germany): See WIP 13, page 35, WIP 14, page 53 for reports.

'Fears of generating further industrial unrest' were said to be behind the reconsideration by Natal Attorney-General Rees of charges against 298 Frametex workers (Star, 05.09.80).

The charges and summonses were under the