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PLJ

The People's Law Journal

50 YEARS ON

Remembering Rivonia



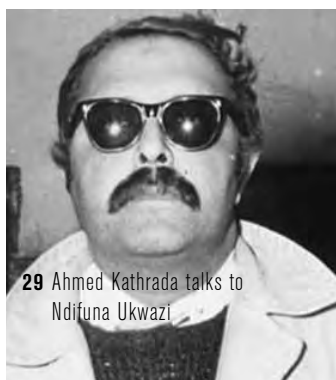
**“ I did what I did
because I wanted to
help my people in their
struggle for equal rights.**

**I know this is not the
place to describe in
detail all the heavy
burdens which an
African has to carry,
but I am telling the
Court of some of these
matters which make
our hearts sore and our
minds heavy. ”**

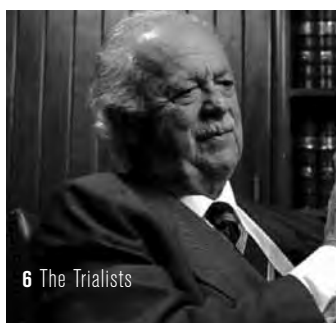


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Cover picture: Nqaphi Nosekeni, Nelson Mandela's mother with her grandchildren



“ There was nothing to read, nothing to do, nothing to occupy my mind – nothing except to think of what was happening to my children at home.

Security Branch men threatened that my children would be taken over by the State. I nearly lost hope (during 90 day detention without trial, 1963). ”



Albertina Sisulu

FOREWORD

Nelson Rolihlahla Mandela died on 5th December 2013 and this edition of the People's Law Journal is dedicated to Madiba, Walter Sisulu, Govan Mbeki, Elias Motsoaledi, Raymond Mhlaba, Ahmed Kathrada, Andrew Mlangeni and Dennis Goldberg. The PLJ is also dedicated to their families who carried the brunt of persecution, arrests, detention banning orders and unimaginable hardships. Their collective loss, suffering and pain represents the anguish of all families of political prisoners and detainees, those banished, banned and exiled under apartheid.

Bram Fischer, Arthur Chaskalson, George Bizos, Vernon Berrange, Harold Hansen and Joel Joffe's work as lawyers in the Rivonia Trial represented political lawyering at its best: the refused to compromise the principles of freedom, equality and justice for mercy from the apartheid court. They were humble lawyers who prepared for the trial in a meticulous analysis of evidence and law. This edition of the People's Law Journal (PLJ) is also dedicated to the lawyers of the Rivonia Trial and the hundreds of lawyers in our struggle for freedom.

Joffe's book *The State versus Nelson Mandela: The Trial that Changed South Africa* is one of the best and most moving accounts of the Rivonia Trial.

The interview with Ahmed Kathrada conducted in a seminar of about seventy mainly young Black working-class leaders and activists is a central feature of this journal. Today, Kathrada is the last of many generations of leaders in the liberation movements who embodies the Biblical injunction "serve, suffer and sacrifice." At 85, Ahmed Kathrada remains an activist leader tirelessly educating young people and he leads the campaign to free Marwan Barghout and all Palestinian people held in Israeli jails. Uncle Kathy as he is known to all of us gives this issue of the People's Law Journal special meaning.

As historical documents, Walter Sisulu's evidence and cross examination and Elias Motsoaledi's speech from the dock are published in full. Nelson Mandela's speech from the dock has been edited for length.

The PLJ has undergone a radical change aspiring to really become a people's journal. Beautiful photos, excellent design and plain language means that



this PLJ comes close to being a quality journal that activists, active citizens, students, academics and many more people can read. Our issue on 'The Urban Land Question' and the forthcoming one celebrating the Treatment Action Campaign's Constitutional Court mother-to-child HIV prevention will be important activist history and contemporary tools of struggle.

We worked on this PLJ as a team in the Ndifuna Ukwazi Fellowship Programme and leaders from our partner organisations the Social Justice Coalition and Equal Education Law Centre. We thank Ashley Richardson for designing this issue.

People's Law Journal Editorial Team

Timeline of the Rivonia Trial



WHAT ELSE HAPPENED IN THE 1960s?

The Sharpeville Massacre

21 March 1960

Early in the morning on 21 March, people were woken from their beds by members of the Pan-African Congress (PAC). The PAC had planned a large demonstration to protest against the Pass Laws.

The pass laws required Black South Africans to carry passes at all times and restricted their movements in urban areas.

The demonstration marched towards Orlando Police Station. Here approximately 5000 demonstrators faced 300 armed police officers. At around 1:15pm an officer was accidentally pushed over. Another officer who was sitting on top of an armoured

car panicked and began shooting into the crowd. Other officers immediately joined in and began firing on the crowd. After about 2 minutes, when the firing stopped and the dust settled, 69 people were dead and 180 people were seriously injured.

The protestors were unarmed and the demonstration was peaceful. At no point did police ask the crowd to disperse. An official inquiry afterwards also revealed that many people were shot in the back while trying to run away.

The Sharpeville massacre was one of the worst incidents of police brutality in South African history. ■

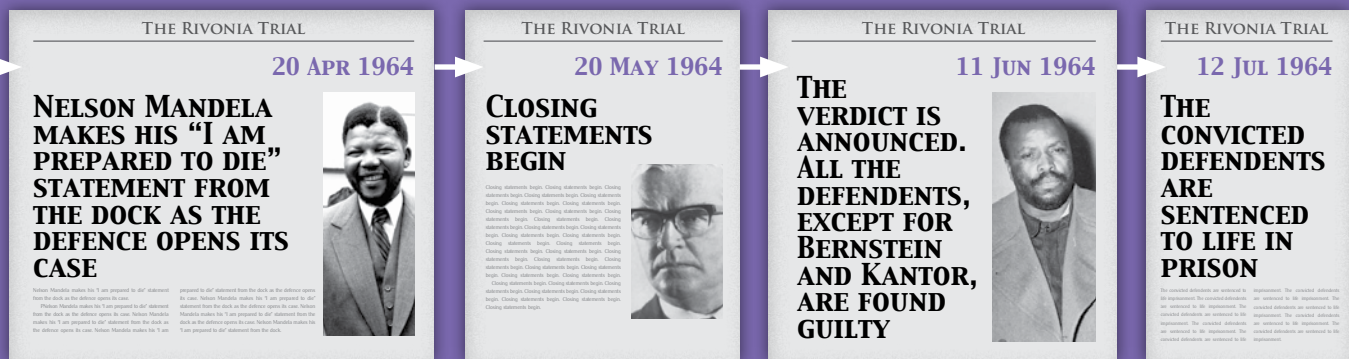
Banning of the ANC and PAC

7 April 1960



The passing of the Unlawful Organisations Act (34 of 1960) allowed the government to ban organisations that threatened public order or the safety of the public.

The African National Congress and the Pan-African Congress were immediately declared unlawful after the commencement of this act. ■



Treason Trial results in Acquittal!

29 March 1961

In 1955 a mass meeting called the Congress of the People was held in Kliptown. The Congress was used to draft Freedom Charter. The freedom charter contained the core principles of the anti-apartheid struggle.

In 1956 the police arrested 156 of the Congress leaders and charged them with High Treason. High treason carries a possible death sentence. The state failed to prove its case, and by the end of the trial on 31 March the court had discharged or acquitted all of the accused. ■

MK Launches its Sabotage Campaign

16 December 1961



According to Nelson Mandela, uMkhonto we Sizwe (MK) was formed to channel the African people's anger into more responsible form of violent resistance, and because he realised that violence was necessary to defeat the white supremacy of the Apartheid state.

MK tried to make sure that any act of sabotage did not result in someone being killed. On 16 December MK started its campaign of sabotage by blowing up an electricity generator. ■

90-Day Detention Law

2 May 1963

The General Law Amendment Act (37 of 1963) allowed police to detain a person for 90 days without charge. After release, a person could be rearrested for a further 90 days.

On 11 July 1963 Walter Sisulu, Govan Mbeki, Raymond Mlaba, Ahmed Kathrada, Lionel Bernstein, Denis Goldberg, Arthur Goldreich and Bob Hepple were arrested at Lilliesleaf Farm and detained under this law. ■

The Trialists

RIVONIA TRIAL FACT SHEET



▣ Ahmed Kathrada

21 Aug 1929 – Present

At the age of 12 Ahmed Kathrada joined the Young Communist League. His journey into revolutionary politics started when he had to carry a pass as an Indian child. He had to move from his home town of Schweizer-Reneke to Johannesburg because there was no Indian school in the town. He was arrested and detained on numerous occasions in the 1950s and early 1960s.

In 1962, he was subjected to house arrest, however, he continued to attend meetings at Lilliesleaf Farm – disguised as a Portuguese – where he was arrested with the other Rivonia trialists.

Although the case against Kathrada was weak and there was no evidence directly tying him to Operation Mayibuye or sabotage, Kathrada was convicted on one of the four charges against him and sentenced to life in prison.

He was released in 1989, after completing 26 years of his sentence.

When the ANC came into power in 1994, Ahmed Kathrada was elected as a member of the South African Parliament.

Today he continues to write, speak and educate.

▣ Andrew Mlangeni

6 Jun 1925 - Present

Andrew Mokete Mlangeni, originally from Soweto, joined the ANC Youth League and later in 1954 he joined the ANC. From 1958 to 1960 he was an ANC stalwart and in 1961 he was among the first to be sent for military training outside the country.

On his return in 1963 he was arrested after state witnesses told the court that he was one of the people responsible for recruiting and training an armed force.

He was found guilty and sentenced to life imprisonment on Robben Island.

Today, he is still an active member of the ANC.

▣ Arthur Goldreich

1929 – 24 May 2011

In 1961, Goldreich and lawyer Harold Wolpe bought Lilliesleaf Farm in Rivonia, Johannesburg, to use as headquarters for the SACP, and later, the secret headquarters of Umkhonto We Sizwe (MK), where the underground leadership of the banned ANC secretly met.

On 11 July 1963, Goldreich was arrested at the farm during the 'Rivonia Raid,' however, like Harold Wolpe, Arthur Goldreich never stood trial as he managed to escape from custody at Marshall Square Police Station in Johannesburg on 11 August 1963, after bribing a young prison official.

Eventually they made their way to Swaziland disguised as a priests. After his dramatic escape, he moved to Israel in 1964, where he became an architect.



▣ Denis Goldberg

11 Apr 1933 – Present

Denis Goldberg, a civil engineer by training, became a leading member of the Congress of Democrats in the mid-1950s. During the State of Emergency of 1960, he was detained for four months in prison without trial. He was dismissed from his job for his political activism after release.

By 1963, he was considered ‘the most dangerous white man in South Africa.’ Goldberg became a technical officer of the MK and was arrested in 1963 at Lilliesleaf Farm and sentenced in the Rivonia Trial to life imprisonment at the ‘whites only’ Pretoria Prison. He was the only white member of the MK to be arrested and sentenced in the Rivonia Trial to life imprisonment.

After his release in 1985 after 22 years in prison, Goldberg went into exile in London to join his family where he resumed his work for the ANC.

▣ Elias Motsoaledi

26 Jul 1924 – 9 May 1994

Elias Motsoaledi, originally from Sekhukune Land (in what is now South Africa’s Limpopo province), went to Johannesburg at the age of 17 in search of work and found a job in a leather factory where he became aware of labour unions. In 1945, Motsoaledi joined the CPSA; and in 1948, he joined the ANC, becoming a member of the Transvaal executive. In 1962, he joined the MK and became actively involved in its operations.

In 1963, he was arrested together with the Rivonia trialists under the 90-day detention laws, and was sentenced to life imprisonment during the Rivonia trial for his involvement in the MK.

Motsoaledi was released from Robben Island in 1989, after having served 26 years in prison. In 1991 he was elected to the ANC National Executive Committee.

▣ Govan Mbeki

9 Jul 1910 – 30 Aug 2001

Mbeki studied for a BA degree at the University College of Fort Hare where he completed a degree in Politics and Psychology. After graduating, Mbeki began a life of political activism and served on the editorial board of the *New Age*, a liberation movement journal, and was a leader of the ANC and the SACP. He was one of the leading pioneers in the founding of Umkhonto we Sizwe, and was sentenced to life imprisonment in 1964. Upon his release in 1987, he was immediately part of the people’s struggles to defeat the apartheid regime by contributing to the rebuilding of legal structures of the ANC and the SACP.

In the Preface to her book, *The Peasants Revolt*, Ruth First had this to say about Govan Mbeki:

‘Govan has a sharp mind, intolerant of the foolish and the faint-hearted. But in between the meetings, and the drafting



of circulars and resolutions, the stern disciplinarian becomes the gentle and considerate friend. The last years have been hard ones for a man who has renounced home and family life, comfort and study, to lead the life of the political outlaw...His own hatred of poverty and racial rule has led Govan Mbeki to place the cause of his people before his personal needs.'

▣ Harold Wolpe

14 Jan 1926 – 19 Jan 1996

Wolpe was born in Johannesburg to a Lithuanian Jewish family. As a lawyer, much of Wolpe's legal work was centrally connected with the South African struggles as he represented several anti-apartheid figures in the 1950s and 1960s in political court cases. He was an important member of the illegal SACP and was engaged with the ANC.

He was arrested and imprisoned after the 'Rivonia Raid' in 1963, but managed to escape from police custody with Arthur Goldreich. He lived in exile in England for 30 years where he was a lecturer at the University of Essex, and returned to South Africa in 1991.

▣ James Kantor

26 Feb 1927 – 1974

James Kantor was a skilled criminal and matrimonial lawyer. He was one of the defence lawyers in the Rivonia Trial until his brother-in-law and law practice partner, Harold Wolpe, one of the accused, managed to escape from police custody.

Kantor was then himself arrested and charged with the same crimes as the other defendants, as a hostage for Wolpe. Harry Schwarz, a close friend and a well-known politician, stepped in to act as his defence lawyer in the trial.

After aggressive treatment by the prosecutor Percy Yutar, Judge Quartus de Wet discharged Kantor, stating 'Accused No 8 has no case to answer.'

After his acquittal, Kantor moved to England where he left the legal profession and developed a successful publishing business.

▣ Lionel 'Rusty' Bernstein

20 Mar 1920 – 23 Jun 2002

Lionel 'Rusty' Bernstein, born in Durban of European Jewish immigrants, was an architect by profession.

He joined the SACP in 1939 as a student, and later worked as a full-time party official and secretary of the party's Johannesburg District.

He was arrested at Rivonia in July 1963 for and charged for his alleged membership of the central committee of the underground Communist Party at the time.

Although he had been present at Rivonia at the time of the raid, apparently to erect a radio mast, he denied being a member of Umkhonto We Sizwe, and because of the little evidence against him, he was acquitted.



▣ Nelson Mandela

18 Jul 1918 – 5 Dec 2013

In 1944, Mandela helped found the ANC Youth League, and was later elected national volunteer-in-chief of the 1952 Defiance Campaign and travelled the country organising resistance to discriminatory laws. He held numerous positions in the ANC, including ANC Youth League secretary (1948) and president (1950); ANC Transvaal president (1952); ANC deputy national president (1952) and ANC president (1991).

He co-founded the MK and was instrumental in planning a strategy of sabotage, raising funds for weapons, and arranging military training for possible guerrilla warfare. Mandela lived and worked at Rivonia before illegally travelling abroad to win foreign support. Upon his return to South Africa, he was arrested, tried, and convicted for leaving the country without a passport and inciting a strike. At the time of the Lilliesleaf raid, Mandela had been imprisoned on Robben Island for over eight months.

His prominent role in both the ANC and the MK made a verdict of guilty inevitable. He served 18 years on Robben Island before being transferred to a prison in Cape Town before his release in 1990.

▣ Raymond Mhlaba

12 Feb 1920 – 20 Feb 2005

Raymond Mhlaba, born in Mazoka village at Fort Beaufort in the Eastern Cape, worked in a dry-cleaning factory in Port Elizabeth. His experiences at the factory developed his political views and commitment to the labour struggle. He joined the CPSA and became Secretary for the Port Elizabeth branch until the party was banned in 1950. From 1944 Mhlaba maintained dual membership of the ANC and the CPSA.

The prosecution's case against Mhlaba during the course of the Rivonia Trial was weak. A taxi driver testified that Mhlaba was among a group of people that he drove to an electricity sub-station on the night it was sabotaged. This evidence, however, was contradicted by the prosecutor's own apparent acknowledgment later in the trial that Mhlaba was outside the country at the time of the attack on the sub-station.

Despite the weak case against him, Mhlaba was convicted and sentenced to life in prison. He was released in 1989.

▣ Walter Sisulu

18 May 1912 – 5 May 2003

From a young age, Sisulu worked in a variety of jobs ranging from being a delivery man for a dairy; a carpenter a miner, a baker; a paint mixer; a packer for a tobacconist; a part-time teller at the Union Bank of South Africa; and an advertising salesperson and real estate agent before joining the ANC as a founding member in 1940. In June 1961, Sisulu was one of four people, with Joe Slovo, Nelson Mandela and Govan Mbeki who secretly met and discussed the formation of the MK. Sisulu was continuously harassed by police and arrested six times, though charged only once.

Finally, in March 1963, he was convicted of furthering the aims of the banned ANC and for organising the May 1961 stay-at-home protest. He was released on bail pending an appeal and placed under 24-hour house arrest. On 20 April 1963 he skipped his bail conditions and went underground at the SACP's secret headquarters at Lilliesleaf Farm in Rivonia where he was later arrested during the Rivonia Raid.

Sisulu was the first defence witness to be questioned on the witness stand and was sentenced to life imprisonment for planning acts of sabotage. ■

The Lawyers

DEFENCE TEAM



▣ Abram 'Bram' Fischer ▣ George Bizos

23 Apr 1908 – 8 May 1975

Advocate Abram Louis Fischer, commonly known as 'Bram' was an outstanding lawyer, most famously known for representing anti-apartheid activists in the Rivonia Trial. In 1942, Bram, and his wife Molly, joined the Communist Party of South Africa (CPSA), and later, Bram became the chairperson of the CPSA.

His defence of and involvement with anti-apartheid activists led him to being implicated in illegal activities. After going underground, Bram Fischer was captured and brought to trial under the Sabotage Act and the Suppression of Communism Act in November 1965.

Fischer was sentenced to life imprisonment. While he was imprisoned in 1974, his failing health proved to be the result of cancer. Despite world-wide appeals, the Government refused to release him to the care of his family until death was imminent. He died in May 1975. The authorities refused to release his ashes to the family.

14 Nov 1928 – Present

Advocate George Bizos, arrived in South Africa as a World War II refugee from Greece after escaping Nazi occupation. He was then thirteen years old.

Bizos was admitted as an advocate in 1954. He has represented many political activists in high profile political trials including both the Treason and Rivonia Trials. During the Apartheid years Bizos dedicated his working life to fight for the basic Human Rights. After Apartheid, he turned his fight into ensuring that all South Africans equally enjoy those rights enshrined and guaranteed by the constitution. He has also appeared in the Truth and Reconciliation Commission representing the families of Steve Bantu Biko, Chris Hani and the Cradock Four.

Bizos who turns 86 in 2014, represents the Human Rights Commission and the families of miners who were killed in the Marikana massacre of 16 August 2012 at Judge Ian Farlam's commission of inquiry into the 44 deaths.

▣ Arthur Chaskalson

24 Nov 1931 – 1 Dec 2012

Advocate Arthur Chaskalson acted as defence counsel in a number of important political trials during the apartheid era, including the Rivonia Trial. He was a founding member and director of the Legal Resource Centre (LRC) which challenged the implementation of several apartheid laws.

Chaskalson was twice chairman of the Johannesburg Bar. As a leader of the bar, Chaskalson led South Africa's advocates in innumerable confrontations with the Vorster then Botha governments over legislative and executive measures striking at human rights and an independent administration of justice.

Chaskalson was director of the LRC from its inception in 1978 until 1993. In June 1994, he became the first President of South Africa's new Constitutional Court. During his time on the Constitutional Court bench he presided over two particularly outstanding judgments relating to the rights to life and health, *S v Makwanyane* (1995) and *Minister*



of Health and Others v Treatment Action Campaign and Others (2002).

On 22 November 2001 he became the Chief Justice of South Africa, until his retirement in 2005. In 2012, Chaskalson became a founding chairperson of the Equal Education Law Centre (EELC). The EELC engages in public interest litigation and advocacy in order to support progressive community-based action to improve South Africa's education system.

■ Vernon Berrangé

5 Nov 1900 – 14 Sep 1983

Advocate Berrangé built up a reputation as an outstanding criminal defence and human rights lawyer with a reputation for devastating cross-examination.

According to Joel Joffe,

"Vernon was always against authority; he revelled in danger and fighting. He was the most sought-after criminal lawyer of the time, and had also appeared in almost every political trial in the country, including the Treason Trial."

He was 65 years old when he joined the Rivonia Trial Defence Team.

Berrangé joined the South African Communist Party as a member in about 1938. Berrangé later reappraised and radically changed his views, to become critical of the theories and practices of the party. Despite this change of views he remained friends with some former comrades and subsequently defended Bram Fischer in court. He was a co-founder of The Organisation for Rights and Justice and Chairman of the Legal Aid Society. As such he was often willing to accept briefs in cases where non-whites were charged under the discriminatory apartheid laws, and in such cases usually acted pro bono.

■ Joel Joffe

12 May 1932 – Present

Attorney Joel Joffe studied law at the University of Witwatersrand, and worked as a human rights lawyer 1958–65, including at the infamous 1963–4 Rivonia Trial.

Later he moved to the United Kingdom, and worked in the financial services industry, setting up Hambro Life Assurance.

He is famously known for proposing the Private Member's Bill in 2003 which would legalise physician-assisted dying.

Joffe is currently a labour peer in the British House of Lords. ■



The Lawyer

FOR THE PROSECUTION



▣ Percy Yutar

29 Jul 1911 – 13 Jul 2002

Advocate Percy Yutar studied at the University of Cape Town on a scholarship where he was awarded a Doctorate in Law.

In 1940, he was appointed a junior State Prosecutor and eventually became the Deputy Attorney General for the Transvaal.

In 1963, Yutar prosecuted the Rivonia Trialists as the Chief

Prosecutor and wanted the death sentence for them.

Mandela showed kindness towards Yutar by inviting Yutar to lunch in November 1995, just months after he was inaugurated as the South African President.

Mandela agreed Yutar had played a minor role in the conviction and was doing his duty as prosecutor.

After the lunch with Mandela, Yutar, who once accused Mandela of being a Communist stooge plotting a bloody revolution, pronounced Mandela 'a saintly man.' ■

Presiding Judge

Justice Quartus De Wet 1899 – 1980



Quartus de Wet obtained a law degree in 1922 and was admitted as an advocate to the bar of Pretoria the same year. He became a judge of the Transvaal Provincial Division in 1950, and he became the Judge President of the Transvaal Provincial Division of the Supreme Court of South Africa in 1961.

He is famous for presiding over the Rivonia Trial.

During the Rivonia Trial, De Wet sentenced Mandela and other anti-apartheid activists to life imprisonment instead of a possible death sentence, for sabotage as a result of the trial. ■



The trial that changed South Africa

The Rivonia Trial was a political and moral victory over the Apartheid State but marked the defeat of the liberation movements for more than a decade.

“ I did not plan it in a spirit of recklessness, nor because I have any love of violence. I planned it as a result of a calm and sober assessment of the political situation that had arisen after many years of tyranny, exploitation, and oppression of my people by the whites.”





At an Ndifuna Ukwazi seminar, Ahmed Kathrada explained why the Rivonia Trial became the most well-known political trial in South Africa. The accused had agreed to conduct a political trial rather than address the 'criminal offences' with which they were charged. Kathrada recalled their strategy:

"If you go into the witness box, you proclaim your political beliefs, you don't ask for mercy. You don't apologise and, even if there is a death sentence, you don't appeal."

Apart from Mandela and Kathrada, the accused also included Walter Sisulu, Govan Mbeki, Elias Motsoaledi, Andrew Mlangeni, Lionel 'Rusty' Bernstein, Denis Goldberg, Andrew Mlangeni and James Kantor. Two of the accused Arthur Goldreich and Harold Wolpe escaped.

Intimidating legal framework

By the time the Rivonia Trial began on 26 November 1963, the apartheid state had created

an intimidating legal framework which it used to stamp out political dissent. The Rivonia Trialists were charged with crimes against the State under the 1962 General Law Amendment Act (commonly known as the Sabotage Act), the Suppression of Communism Act, and the 1953 Criminal Law Amendment Act.

The Rivonia Trialists used reason, fact and argument to put apartheid on trial in the eyes of the world.

The four charges

The first charge was that the accused had recruited and trained persons in guerrilla warfare and sabotage; the second

was charges of sabotage; the third charge related to furthering the objects of communism; the final charge accused them receiving international finance to fund their alleged sabotage and protests against the country's laws. These were 'crimes'.

Apartheid on trial

In criminal trials the state has to prove beyond a reasonable doubt that each accused is guilty of the offences they are charged with. But the Rivonia Trialists were charged with persecutory laws with one purpose: the repression of Black Africans freedom struggle and to remove their leaders from

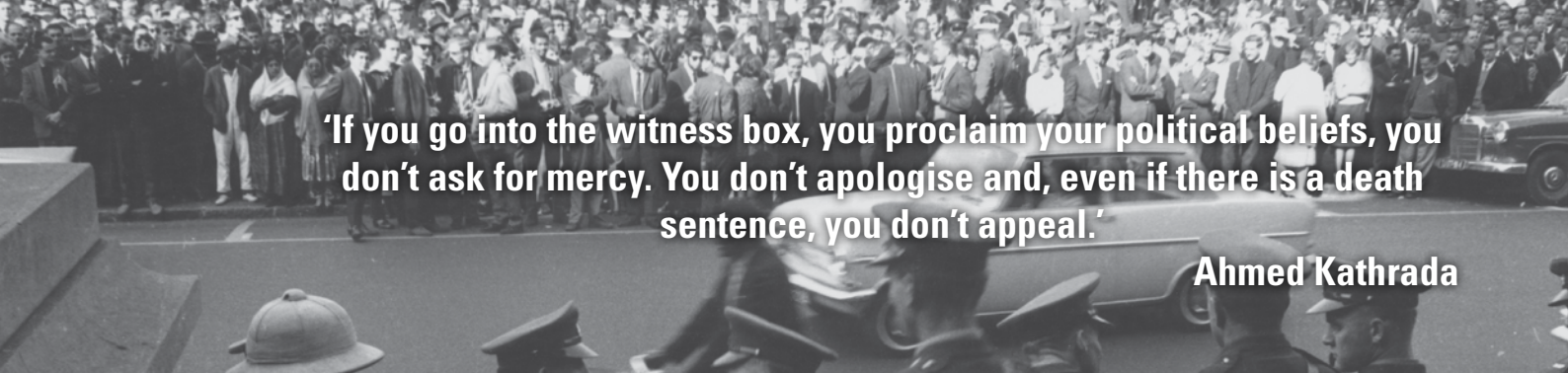
society. Under international law defying unjust laws in a struggle for freedom is not seen as a criminal act. Instead, the prosecution of 'dissidents' for such acts would be seen as persecution at the hand of the state and worthy of international protection.

The Rivonia Trialists used reason, fact and argument to put apartheid on trial in the eyes of the world. ■

A reasoned response

In his statement to open the defence's case, Nelson Mandela explained why he, the ANC and Umkhonto we Sizwe (MK) had consciously chosen to resort to move away from non-violent protest in defiance of laws they regarded as illegitimate, unjust and persecutory.

Mandela explained that ANC policy was historically non-violent. Prior to 1949 the movement had employed dialogue and petitions to advocate for the rights of the black African majority. After 1949, frustrated at not achieving their desired results, they turned to mass protest against discriminatory laws. The apartheid government reacted by passing laws prohibiting persons from protesting. Still the ANC remained committed to a peaceful struggle.



'If you go into the witness box, you proclaim your political beliefs, you don't ask for mercy. You don't apologise and, even if there is a death sentence, you don't appeal.'

Ahmed Kathrada

Turning to armed struggle

The 1952 Defiance Campaign saw thousands of volunteers imprisoned resisting apartheid laws such as the Pass Laws. Peaceful resistance from political activists was met with brute force by a government armed with repressive laws created to justify the use of force and to prosecute resisters. The Sharpeville Massacre where 69 people were killed and scores injured after participating in an anti-pass law protest organised by the Pan Africanist Congress changed politics when the ANC and PAC were banned. As a response, the ANC leadership turned to armed struggle and sabotage. This was a controversial decision supported by a majority.

Liberating black South Africans

Speeches and statements are important for what they say, the issues and arguments they emphasise or they deliberately choose to omit. In his speech, for reasons of unity, Mandela did not address the serious differences on the armed struggle. A minority of leaders including Moses Kotane and Bram Fischer believed that armed struggle was premature, it would lead to the repression of ANC activists in mass organisations such as the South African Congress of Trade Unions. They stated that it was still possible to organise underground and to build cadres to ensure that the mass movement was rebuilt. They did not oppose the

armed struggle on principle but as an immediate strategy.

Mandela did not deny his or the ANC's association with the Communist Party but clarified the need to forge such associations for the ultimate goal of liberating black South Africans.

"Theoretical differences amongst those fighting against oppression is a luxury we cannot afford at this stage," he said. "What is more, for many decades communists were the only political group in South Africa who were prepared to treat Africans as human beings and their equals; who were prepared to eat with us; talk with us, live with us, and work with us."

Reliance was placed on tainted evidence of state witnesses who were either criminals or former ANC and MK members who had been subjected to prolonged detention and torture under the 90-Day Detention Law. The state also failed to directly link all the accused to all the charges brought against them. Though the evidence against Mandela, Sisulu, Mbeki and

Goldberg was strong, evidence against the rest was very weak and in some cases non-existent.

Political, moral victory

Despite the weak evidence of the political leaders only Bernstein was acquitted. Kathrada was found guilty of one of the four charges. The remaining accused were found guilty on all counts. In the end, the sentence was life imprisonment. James Kantor, a lawyer with no links to the ANC who had been charged to punish his brother-in-law Harold Wolpe was also acquitted almost a broken man.

The Rivonia Trialists won a political and moral victory at home and across the world. The United Nations voted 106 to one (only South Africa voting against)

condemning apartheid and calling for the release of all political prisoners and detainees. They had been spared the death penalty, but the liberation movements were defeated for more than a decade as thousands of ANC and PAC leaders were imprisoned, banished or exiled. Mandela's speech from the dock helped educate the generation of 1976 and after. ■

The United Nations voted 106 to one (only South Africa voting against) condemning apartheid

The Families

We remember the leaders who stood trial, suffered abuse and died at the hands of the apartheid state. It is also important to remember the families of these men and women. The people who stood by their side, supported the family while the breadwinner was in prison, suffered the brutality of apartheid police, and in many cases became leaders of the struggle against apartheid themselves.

The Sisulu family

Walter Sisulu, an active leader of the ANC since the early 1940s, realised that it was only a matter of time before he was sent to jail. So on 19 April 1963 he said goodbye to his family and went ‘underground’. The security police were furious that Walter had managed to evade them and interrogated the entire family. After that his home was under constant surveillance, and the police raided it several times.

Walter was worried that the constant harassment by the police was difficult for his children. So he and his wife, Albertina, decide to send the three younger children to school in Swaziland. The eldest son, Max, decided to enrol in a school in Johannesburg instead.

Albertina worked as a nurse in a Johannesburg hospital. She was also an active leader of both the ANC Women’s League and the Federation of South African Women. On 19 June 1963 she became the first woman to be arrested under the new 90-day detention law while she was attending to patients. The security police allowed her to go home to change her clothes and pack a bag before being taken into detention.



The children were home for the holiday and had to watch as their mother was hauled off to prison. A few days later, while stopping by the house to check on his siblings, Max was arrested under the same law. He was arrested for no other reason than the fact that the police were looking for his father.

Isolation and indignity

Lindiwe, Zwelakhe, Mlungisa, Nkuli and their cousin Beryl, whose mother had died a few months earlier, were left all alone. There was a public outcry that these children had been left to fend for themselves. Many people, including the wife of the Deputy Consul of the British High Commission, sent food for the children. With Walter underground and Albertina in prison, neighbours began to look after the children.

In an interview with *Drum* magazine in 1963 Albertina described the isolation and indignity she suffered while in detention:

“Every time I wanted to wash, I had to cover the window with a small piece of cloth. There was nothing to read, nothing to do, nothing to occupy my mind – nothing except to think of what was



The Sisulu children, 1964

happening to my children at home. Security Branch men threatened that my children would be taken over by the State. I nearly lost hope.” (August, 1963)

Albertina was kept in solitary confinement. She received no news, except what the security police decided to tell her. She only heard about Walter’s arrest at Liliesleaf farm three weeks after it happened. The security police showed her a newspaper article on the arrest. She refused to make a statement against her husband. A week later she was finally released. She didn’t have any money, and had to walk down the road until she found someone willing to give her a lift home.

Intimidation not a deterrent

During the Rivonia trial the public galleries of the court were packed full. Despite a strong police presence, friends and relatives of the accused came in large numbers. Every Black person watching the trial had their name and photo taken by the security police. Despite this intimidation, a core group from the ANC Women’s League, including Albertina, attended every day of the trial. She was also able to see Walter, who was entitled to two visits a week. The children,

however, were not allowed to see their father as the law didn’t allow visitation by children under 16.

15 year old Mlungisa arrested in court

On one day Albertina brought her 15 year old, Mlungisa, son with her to the trial. He was too young to be allowed in the courtroom, but he was desperate to see his father. During the tea break one of the detectives demanded to see Mlungisa’s pass. Mlungisa tried to explain that he did not yet have a pass, as he was under 16. The detective refused to listen to Mlungisa, and arrested him. Albertina refused to be separated from her son, and had to watch while he was locked up. The attorney for the accused, Joel Joffe, had to intervene and threaten legal action against the police for Mlungisa to be released.

Like many other wives of those arrested and detained by the apartheid regime, Albertina was also struggling under the increasingly heavy financial and emotional burden of taking care of the family without her partner.

After the Rivonia Trial, Walter was sentenced to 25 years in prison on Robben Island. Albertina would not be reunited with him until his release in October 1989. ■



The Mandela family

Winnie and Nelson Mandela met in 1957, while Nelson was still on trial along with 155 other defendants for treason. At the time Nelson was still married to one of Walter Sisulu's cousins, Evelyn. Him and Evelyn had four children, Madiba; Makaziwe; Magkatho; and Pumla. Nelson's devotion to politics was taking its toll on his marriage. As he said in his autobiography *Long Walk to Freedom*:

"I could not give up my life in the struggle, and she could not live with my devotion to something other than herself and her family,"

In March 1958 Nelson and Evelyn divorced, and by June he was married to Winnie. Nelson had a banning order against him at the time, so he had to request special permission to travel to Pondoland for four days to marry Winnie. Winnie then moved into Nelson's house in Soweto. However, from now on the security police's harassment of Nelson extended to Winnie too.

There were constant intrusions into the Mandela home. The security police would bang on the door early in the morning. Once inside they would rifle through the family's belongings looking for banned or incriminating documents.

No family life

Over the next two years Winnie gave birth to two daughter, Zenani and Zindzi. From the beginning she was virtually a single parent.

After the treason trial ended in March 1961 Winnie and Nelson were able to spend a little more time together. Nelson's politics and his devotion to the struggle would take a lot of his time away from the family. Commenting on their family life, Winnie said:

"He did not even pretend that I would have some special claim to his time. There never was any kind of life I can recall as family life, a young bride's life where you sit with your husband. You just couldn't tear Nelson from the people: The struggle, the nation came first," (Part of My Soul Went with Him, by Winnie Mandela (1985))

Forced separation and imprisonment

Winnie's forced separation from Nelson began in 1962 when he went into hiding. The security police wanted to catch Nelson, and they watched Winnie and her family constantly. During this time he travelled extensively trying to get international support for the ANC's struggle. On 5 August 1962 he was arrested. For the next 28 years he would remain behind bars. He was initially sentenced to five years imprisonment on 7 November for leaving the country without a permit and incitement, before being sentenced to life imprisonment on 12 June 1964 at the Rivonia trial for sabotage. Winnie did have visitation rights during that period, but was not allowed to have any physical contact with her husband.

Financial hardships

On top of the forced separation from her husband, Winnie was finding it increasingly difficult to support her family financially. Since Mandela had gone underground, Winnie had been subjected to and banning order. The banning order limited her movements to Orlando Township in Soweto, making it very difficult for her to find work. Eventually she did manage to find a job at the Child Welfare Society, but as the conditions of her banning order became stricter she was forced to resign.

Winnie's 491 days in solitary confinement

During the 1960s Winnie began to play a much more active role within the ANC, attending underground meeting, and arranging for the printing and distribution of pamphlets. On 12 May 1969 she was arrested and charged under the Terrorism Act, along with 21 other people. One of the detainees, Caleb Mayekiso, was tortured to death on days after his arrest. Winnie spent the next 491 days in solitary

confinement. During that time she suffered both physical and psychological torture. She was jailed many more times after her release. Speaking about that time she said:

"The years of imprisonment hardened me.... Perhaps if you have been given a moment to hold back and wait for the next blow, your emotions wouldn't be blunted as they have been in my case. When it happens every day of your life, when that pain becomes a way of life, I no longer have the emotion of fear. ... there is no longer anything I can fear. There is nothing the government has not done to me. There isn't any pain I haven't known." (As quoted in Lives of Courage, ch. 6, by Diana E. H. Russell (1989)) ■



Caroline Motsoaledi

Caroline was never found guilty of anything. She was arrested from the public gallery, while watching her husband being tried at the Rivonia Trial. The police arrested her under the dreaded 90-day detention law, and she was kept in solitary confinement for 156 days.

While being arrested Caroline cried out, "What about my babies? They will be all alone!" At the time she had seven children, including a six month old baby. Bram Fischer asked Justice De Wet to intervene and stop the arrests. The Judge refused. He simply said that the police must have had a legitimate reason to arrest Caroline.

Caroline Motsoaledi had never been a political activist. By the time she was released from detention, her husband had been convicted and was being held on Robben Island. ■

Replica of 1964 pamphlet
produced by the London branch of
the Anti-Apartheid Movement

This is the story of one woman in South Africa today. Read it – then you may understand what life today is like for thousands & thousands of women & children living in that country now

Caroline Motsoaledi was arrested in the courtroom where the Rivonia trial was taking place. Her husband, Elias, was on trial for sabotage, facing a possible death sentence.

Her seven young children were in the temporary care of a neighbour. She was taken away from the spectators' benches, as she watched her husband in the dock, and placed in solitary confinement without warrant or charge.

She could not contact her children. The youngest was a breast-fed baby of six weeks, the eldest a boy of ten. When she failed to come home the

neighbour called the children's sick old grandmother from the country to care for these children whose father was being tried in one of South Africa's most important political trials, and whose mother was being held indefinitely in solitary confinement.

The Rivonia trial dragged on. Free, Caroline Motsoaledi could have visited her husband for a half-hour twice each week. Instead she saw no-one and knew nothing of what was happening in the Rivonia trial.

She was taken for questioning from time to time but told nothing.

Months later, Caroline Motsoaledi was released. The Rivonia trial had ended, and her husband, together with Nelson Mandela, Walter Sisulu and the other co-accused had been sentenced to life imprisonment and sent to pass the rest of their days on Robben Island. Caroline has been allowed to visit him once and may do so again in six months time. She herself was not charged and no-one knows why she was detained for so long.

This is but one case. Lettie Sibeko from Cape Town was newly pregnant when first detained in solitary confinement. She was charged after five months and released on bail fourteen days before her child was born. Pixie Benjamin, the mother of three

children, went on a hunger-strike while in detention; after seven weeks, when nearly dead in her cell, the police were forced to charge her. Her husband said: "My wife is innocent and her will to eat or starve is her only weapon against this monstrous injustice."

These instances are only three in thousands. They illustrate what is happening all over the country. They show how wives are detained often only for questioning about their husbands. Even when mothers are not themselves detained, the suffering they and their children undergo as their husbands, fathers and breadwinners are taken away in ever increasing numbers is limitless. We can only say that there are now an estimated 10-15 thousand children in South Africa today in need of assistance because one or both parents are in jail for "political crimes".

The problems of political prisoners in South Africa today is a moral one demanding the involvement of every human being, all over the world. To

stand aside is to connive at the crimes of apartheid, and so become as guilty through inaction as the German people were guilty at Belsen and Dachau.

The problem of the women and children, directly or indirectly affected by the actions of the apartheid police-state, is a human one, sounding its appeal across the differences of political outlook, across the barriers of nationality, across the frontiers of the world.

We demand:

- The release of all political prisoners in South Africa.
- The release of all political prisoners in South Africa.
- The release of all political prisoners in South Africa.

Speakers, literature, membership forms, available from:

Anti-Apartheid Movement
LAN 5311

Send your demands to:

Dr. Caryl Chessell
South Africa House
Trafalgar Square
London, W.C.2.

Copies to

U Thant,
United Nations,
New York.

and

Anti-Apartheid Movement
89 Charlotte Street
London, W.1.

Join the Anti-Apartheid Movement

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Rivonia: Lawyers who Helped Change South Africa

Revolutionaries and Lawyers:
The Rivonia Trial's
brilliant lawyers and their
relationship to the politics of
national liberation and the
criminal justice system holds
lessons for activists today.

Many lawyers live in our minds, hearts and history. Godfrey Pitje, Arthur Chaskalson, Bram Fischer, Oliver Tambo, Pius Langa, Dullah Omar and Victoria Mxenge are among those remembered for their commitment to freedom, equality and justice for all people. Today lawyers continue to play an important role in the struggles of social movements, workers and all vulnerable people but the Rivonia Trial set the highest standard for the relationship between movements and their lawyers.

The decision to use the Rivonia Trial to put the apartheid state on trial carried severe legal risk because angering the court or the state could have resulted in the death penalty for all the accused. Most lawyers imagine that they know everything and that a client just has to tell them what was wrong and pay. They would then fix the world. Convincing the lawyers would not be easy and therefore choosing the best legal team who would accept the instructions of the political leaders on trial was important.

The Rivonia lawyers: choose only the best

Choosing the best is one of the most important tasks when a movement needs lawyers. The Rivonia accused were held in solitary confinement under the 90-day Detention Law without access to lawyers. Almost every legal firm refused to represent the ANC leaders. After 70 days had

passed Hilda Bernstein found Joel Joffe asked him to act as an attorney for her husband, Lionel ‘Rusty’ Bernstein, should he and the other detainees be charged. She also told him Albertina Sisulu would contact him to represent her husband Walter Sisulu.

At the time he knew little about the accused, their politics or the support they enjoyed from the majority of the public - Joel Joffe was an attorney who had no political association and was on his way out of South Africa because of apartheid. All the other legal firms approached by Hilda Bernstein refused to represent the Rivonia Trialists. Joffe agreed to take the case, though he felt the trial would be a mere formality due to the volume of evidence the state had against the accused. A conviction was almost certain for everyone involved. Joel Joffe writes about being a ‘White’ attorney with little politics at the time:

“I am a lawyer, not a politician. I will do the job as well as I am able to do. But public opinion is so heavily against your husband and others that in the end it is likely to count heavily. ...”

“Public opinion”, she said. “Public opinion against the Rivonia prisoners?”

I looked at her surprised. ...

“Mr. Joffe, I think we speak a different language. You’re talking of white public opinion. I am talking of majority public opinion which is not against, but for the Rivonia accused.”

**Godfrey Pitje,
Arthur Chaskalson,
Bram Fischer,
Oliver Tambo,
Pius Langa,
Dullah Omar and
Victoria Mxenge
are among those
remembered for
their commitment
to freedom**

**“The government
should be in
the dock, not
me. I plead
not guilty.”**

“It is so easy to go astray in South Africa. One lives in a society which is exclusively white, where all one’s friends, neighbours and colleagues are white. ... It is so easy to think that white society is all society...”

Joel Joffe had learnt an important lesson – one that was to make him an effective lawyer, it was the opinion of the Black majority that would matter to the Rivonia leaders.

The state was represented by a malicious lawyer the Deputy Attorney-General Percy Yutar not known for any legal skill but political obedience to the Security Police and the apartheid government.

Joffe approached Bram Fischer and persuaded him to join the team as lead legal counsel. Fischer, a member of the then banned Communist Party made no secret of his political beliefs but he was also respected by the majority of conservative lawyers. George Bizos, Arthur Chaskalson, Vernon Berrange and Harold Hansen were then recruited by Fischer.

Bizos, a Greek political refugee was a lawyer active on behalf of political detainees and prisoners. He was a formidable cross-examiner like Berrange who was also politically active. Arthur Chaskalson was a young lawyer who never joined a political party but identified with oppressed people everywhere. Chaskalson and Fischer were not only regarded as brilliant legal technicians by their peers but they

were incredibly humble human beings capable of leading strong teams. Joel Joffe’s book *The State v Nelson Mandela – The Trial that Changed South Africa* is not only an incredible account of the trialists and the political strategy but also meticulously describes the lawyers. Rivonia’s political prisoners and their lawyers were formidable teams.

Know your stuff

Legal cases are won on the basis of compelling evidence not slogans or a simple assertion of rights. Evidence that includes the daily experience of human beings, events, strong technical expertise whether economic, scientific, medical or sociological will win cases.

Political leaders and activists have a duty to study hard evidence and law to ensure that their strategies are not dominated by legal technicalities.

The Rivonia Trialists had serious local and global knowledge as leaders and specific knowledge about their communities. Mandela was also a lawyer who grasped legal detail and process.

Activists also have a duty to accept the best legal advice because they may not have all the legal knowledge necessary to take the best decision. Political and legal strategy are both the responsibility of activists and communities. The Rivonia Trial accused did not let their legal team decide for them, but they made decisions that took into account their legal team’s advice.

Activists also have a duty to accept the best legal advice

Not all accused are as lucky as the Rivonia Trialists: Some lawyers are very smart and can do all the things mentioned above, but are arrogant or individualist and disregard their client's knowledge and wishes. One of the greatest successes of the trial was the assembling of a team of lawyers with such a strong sense of justice and humility; a team that valued the knowledge of the accused and was prepared to acquiesce when political realities and the law inevitably clashed.

The Trial

As the trialists had predicted, from the moment their trial began it seized international attention – attention they would use to advance the liberation struggle. To this end, the legal team allowed their clients, with their knowledge of political strategy, to frame their response to the charges brought against them.

Proceedings kicked off with a bang when Accused Number One, Nelson Mandela, was asked to plead and responded, “The government should be in the dock, not me. I plead not guilty.”

“It is the government which is guilty, not me,” was Walter Sisulu’s response when asked, and the rest of the accused followed suit, a move that ingeniously placed

the apartheid state in the dock alongside the other accused in the eyes of millions around the world.

As the trial proceeded, the legal team destroyed the false evidence of the state. The accused admitted to some of the allegations against them, they refused to answer any questions that could implicate their comrades. Their defence team did not always agree with this strategy, as they thought it might strengthen the state’s case.

But the accused were determined: They wanted to show the government and the world that their trial was about principles and moral imperatives and that they would stand by theirs no matter what.

Nelson Mandela’s speech from the dock at the opening of the defence’s proceedings marked a turning point, he put the apartheid state on trial. The Rivonia Trialists first audience was the people of South Africa. Knowing they would be reaching an international audience struggling to understand the harsh reality of life in South Africa for black Africans, Mandela was tasked by his co-accused with laying out the political context of the country and explaining why they had been forced to take up arms against an increasingly oppressive minority government.

Political leaders and activists have a duty to study hard evidence and law to ensure that their strategies are not dominated by legal technicalities.

“[The ANC’s] struggle is a truly national one. It is a struggle of the African people, inspired by their own suffering and their own experience. It is a struggle for the right to live,” he said, before closing with one of his most-quoted statements: “During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But, if needs be, it is an ideal for which I am prepared to die.”

Mandela had initially planned to say, ‘It is an ideal for which I am prepared to die.’ The legal team, already worried that their clients’ political stand was infuriating the judge and making the death penalty more likely. They urged Mandela to drop it. He refused but agreed to add phrase: “*if needs be*, I am prepared to die” phrase.

The strategy of the accused, ultimately with the full support of their lawyers, was to go on the offensive and place the apartheid government on trial in the eyes of our people and the world. This strategy, along with pressure from the international community, had a decisive impact in swaying Judge Quartus De Wet toward a life sentence of hard labour rather than the death penalty. ■

Rivonia then, Khayelitsha today

The Rivonia Trial cannot accurately be compared to any trial or court case in post-apartheid South Africa, as the country has fundamentally changed in the 50 years since the trialists were sentenced. We now have one of the best constitutions in the world and the laws governing our society today are completely different from those of 1964.

Still, it can be argued that some of the issues Mandela spoke about still exist in today's South Africa. We see violations of constitutional rights in many of our poor and working class communities. Marikana, Andries Tatane, Lwandle... These examples are the most glaring and headline-grabbing, but the sad reality is millions of South Africans live under conditions that could be classed as a violation of constitutional rights.

People in poor communities are most often low-paid, unemployed and live without adequate sanitation, infrastructure such as street lighting, schools and access to healthcare. This creates a need for movements such as the Rural Women's Movement, Social Justice Coalition, Treatment Action Campaign, Equal Education, Right to Know and support organisations such as SERI, Section 27, Ndifuna Ukwazi and many others in the struggle of justice and equality.

The struggle for a safe Khayelitsha and a democratic, accountable, effective and ethical police service under professional and ethical command is a recent example of the relationship between politics and law.

A democratic government puts itself on trial

Recently, the SJC, TAC, EE and NU mentioned above were involved in the landmark 2013 Constitutional Court case "Minister of Police and Others vs Premier of the Western Cape and Others". The case was a result of the then Minister of Police, Nathi Mthethwa, trying



Khayelitsha activists protest outside the Western Cape High Court

to stop the creation of a Commission of Inquiry into allegations of police inefficiency and a breakdown in relations between the community and the police in Khayelitsha, Cape Town.

The Commission came about after the organisations and Khayelitsha community members became outraged about the lack of adequate policing in Khayelitsha and laid a complaint with the Premier of the Western Cape, Helen Zille.

Minister Mthethwa went to Court and he caused the government to be put on trial because he failed at the Western Cape High Court and then he appealed to the Constitutional Court. The police lawyers main argument was that the Premier did not have the power to appoint a Commission that could subpoena members of the South African Police Service (SAPS).

Deputy Chief Justice Dikgang Moseneke lashed out at SAPS' legal team for forgetting about the rights of Khayelitsha residents. Addressing Advocate Norman Arendse, leader of SAPS' legal team, Moseneke said, "I haven't heard an iota of evidence or a suggestion that there is not a proliferation of crime [in Khayelitsha], that people are not suffering from the burden of crime or even that there is effective policing."

It became clear that while SAPS' lawyers had zoomed in on technical legal issues, they had ignored the real issues affecting the lives of Khayelitsha residents: their constitutional rights to life, dignity, freedom and security of person were being violated daily. Thus, in a similar way to how Mandela and his co-accused used the Rivonia Trial to challenge apartheid, the unnecessary legal fight by SAPS for the launch of the Khayelitsha Commission of Inquiry became a platform for citizens and activists to bring the ongoing violation of constitutional rights in today's South Africa more firmly onto the national agenda. ■

A Trial of its Time

The Rivonia Trial took place against the backdrop of a rapidly changing South Africa, as an increasingly oppressive state clung to its ideal of white-minority rule



While much of Africa felt positive ‘winds of change’ blowing through it during the 1960s as many colonised states gained independence, in South Africa the decade brought winds of change of a more sinister kind.

As the struggle against the minority apartheid government moved away from its non-violent stance, the state reacted by adopting increasingly draconian security legislation to quell dissent and sow fear among political dissidents.

The decade was marked at both ends by landmark trials involving political activists: the Treason Trial, which ended in 1961, and the trial of Samson Ndou, Winnie Mandela and others in 1969. These, among many other arrests and trials, were a result of the enactment of a series of repressive laws created in order to limit resistance and advance the

goals of the apartheid state.

In her article in *The Road To Democracy in South Africa: Volume 1*, Madeline Fullard notes,

“The first half of the 1960s saw a dynamic interplay between the forms of resistance adopted by the liberation movements and legislation developed by the state to counteract them,” with the effect that by the end of the decade the apartheid state had “profoundly reconstituted the political and legal terrain.”

Law used against its people

While it held power, the apartheid government passed a series of laws which allowed it to persecute its political opponents, ban liberation movements and stifle press freedom. The government largely convinced the white minority that these national security laws were necessary to safeguard the country’s

peace and stability.

The 1962 General Law Amendment Act, the 1964 General Law Amendment Act, the Public Safety Act, the Suppression of Communism Act and the 1953 Criminal Law Amendment Act were all enacted as attempts to quash political protests and end attempts to bring about regime change.

The Rivonia Trial of 1963 and 1964 is one of the most famous examples of how the apartheid state used the legal system to discourage dissent while sowing fear and tightening its hold over fearful white citizens.

Of course, what the apartheid government didn’t realise was that its crude attempts to massage world opinion by manipulating the law would be matched by its opponents. The Rivonia Trial would go on to become one of the most



widely publicised in South African history. It provided the apartheid government a platform to present its case for the ‘necessity’ of its oppressive laws, but also provided a platform for the liberation movements to bring the plight of black South Africans to the attention of the world.

In his three-hour opening statement from the dock, Accused Number One, Nelson Mandela, explained why, in the face of an increasingly oppressive legal framework, the accused had felt it necessary to resort to violence in defiance of the country’s laws.

“We felt that without violence there would be no way open to the African people to succeed in their struggle against the principle of white supremacy,” he said. “All lawful modes of expressing opposition to this principle had been closed by legislation, and

we were placed in a position in which we had either to accept a permanent state of inferiority, or to defy the government. We chose to defy the law.”

You say terrorist, I say freedom fighter

Many historically renowned freedom fighters laboured under very different labels – such as ‘terrorist’ and ‘communist’ – during their struggles against unjust systems. Usually, the label ‘terrorist’ was applied to them in the name of national security. Legislative trickery has long been employed by governments worldwide to help frame acts in support of freedom and equality as being ‘treasonous’ and a ‘threat to national security’.

Oppressive regimes passed harsh laws not only to entrench their power and instil fear among their

constituents. Finding ways to brand freedom fighters as terrorists also helped to garner support from the international community, who were more willing to turn a blind eye to the actions of oppressive governments if such actions were able to be explained away as a government ‘acting against terrorists’.

This is not an archaic phenomenon and it did not end when South African liberation movements were unbanned and political prisoners released in 1990. Many modern democracies continue to use the spectre of ‘threats against national security’ in order to create laws that ultimately violate its citizens’ basic human rights. In the most extreme cases, national security legislation is still used to allow law enforcement officials to detain, without trial, citizens deemed to be a threat to national security. ■



AHMED KATHRADA REMEMBERS

**50 Years
Since
Rivonia...**



**20 Years
of Freedom**

DISCUSSION BETWEEN NDIFUNA UKWAZI AND AHMED KATHRADA

Ndifuna Ukwazi: You all know, Mr Ahmed Kathrada was one of the Rivonia trialists. And spent many, many years on Robben Island. Mr K, just as you know, we have been teaching in our fellowship. They've been studying the Rivonia Trial and they want you to start off by giving an introduction to what you understand the Rivonia Trial was about, where it came from, and so on.

Ahmed Kathrada: Thank you for inviting me this morning. It is really an honour for us to present here. I will have to start off by saying a few words about what preceded the Trial. There was the 90 day detention law, which allowed the police to detain political suspects for three months at a time. During those days you are not even allowed to talk to the people with whom you are arrested. No lawyers. No visitors. No newspapers. No books. The only visitor you get are the police, and they come with one message only: "Give me this information." If you don't, you are going to hang.

They pretend to be reading from some piece of paper, and they drum it into your head you are going to die if you don't talk. One has to prepare oneself to withstand that

type of interrogation, because they pretend to have a lot of information and sometimes they do have that information.

The expectation was death

A lot of people were tortured to death under that law. Steve Biko is the most well-known one. Others were tortured, survived the torture, and were then tried in various cases. They appeared in court and landed on Robben Island or the female prison.

After the 90 days were over we saw our lawyers for the first time, and they told us to prepare for the worst. The preparation right for the start was death. Madiba came in. There were four senior leaders in the ANC, Mandela; Sisulu; Mbeki; and Raymond Mhlaba. They suggested to us that this trial should be conducted as a political trial, and not as an ordinary criminal trial. Madiba in his address to the court set the tone of the trial.

To paraphrase in a few words what he had said: 'If you go into the witness box, you proclaim your political beliefs, you don't ask for mercy. You don't apologise and, even if there is a

death sentence, you don't appeal.'

That was the way the trial was conducted. So right from the beginning 'til the very last day when sentence was going to be passed, the expectation was death.

Now in those days the court procedure was [that] the judge would say at the end: "Accused number so and so, have you got anything to say before I sentence you to death?" The lawyers and the accused went to court expecting the death sentence, and Madiba had prepared to repeat more or less what he had said in that three or four hour speech. Fortunately there was no death sentence, it was life sentence. For political prisoners, life sentence meant life. For common law prisoners, life sentence is reviewed after 15 years. Depending on so called good behaviour, they could be released after 15 years.

In our case, in the case of political prisoners serving a life sentence, there was no date and so Madiba, as you all know, spent 27 years [in jail]. That is the trial in a few words, but I don't know if you want to know any more about the trial.

**For political
prisoners,
life sentence
meant life.**

'Growing up, joining the Indian Congress and the Communist Party'

Ndifuna Ukwazi: I know you don't really like talking about yourself, but I would really like you to start by telling us where you grew up and what made you join the Indian Congress and the Communist Party.

Kathrada: I was born in a little place called Schweizer-Reneke. It is about 100 miles from Johannesburg. When the time came to go to school I was not admitted into the white school, not admitted into the African school, and there was no Indian school in this little place. So at the age of eight I was sent to Johannesburg for schooling.

One could be very brave

In Johannesburg, [while] living in Fordsburg, I came across through friends an organisation, little club. Young people like cinemas, picnics, lectures and so forth, so I joined this club. It was run by the Young Communist League. That was my introduction to the Young Communist League. So at the age of 12 I joined the Young Communist

League and went on to the Communist Party and the Indian Congress.

Ndifuna Ukwazi: A little bit more about your youth.

Kathrada: In those years, although the security police were there, there was no such thing as torture and there was no 90 day detention. So you could be very brave you can shout at the police, swear at them, as we did. This was the late 40s [and] 50s. You can say what you like. You can call them dogs. Anything. You can be as brave as you want knowing that you are not going to be touched physically. The tortures, physical tortures, only came in the early 60s. In those years one could be very brave, so we took full advantage of that situation.

Ndifuna Ukwazi: The politics of the 50s, will you tell us a little about it. When you were cross-examined in the dock they asked you how many times you were arrested. Do you want to tell us about the many times you were arrested?

Kathrada: Well, our lawyers went into that. I didn't know how many times. They said 17 times arrested and faced a trial. They were not counting arrests for putting up posters. 17 times I was tried. Interestingly, there were three major trials of the 50s. The Defiance

That truck is at Liliesleaf Farm. All you have to do is go in, press the button, and see the video of arms being hidden ...



Campaign Trial, the Treason Trial and the Rivonia Trial. So for my crimes I was in all three trials. There was only two others who were in all three trials. Madiba and Walter Sisulu.

...

Ndifuna Ukwazi: Bring us to Rivonia and what led to Rivonia.

Kathrada: Now in 1960, you have all heard of the Sharpeville Massacre, where 69 people were killed in a peaceful demonstration... The demonstration was organised by the PAC and thousands of people marched to the police station in Sharpeville.

There were three major trials of the 1950s. The Defiance Campaign Trial, the Treason Trial and the Rivonia Trial. So for my crimes I was in all three

AHMED KATHRADA REMEMBERS

[They were] unarmed, but the police opened fire and 69 people were killed. A State of Emergency was declared, in which thousands of people throughout the country were detained. During the State of Emergency in 1960, both the PAC and ANC were declared illegal. They were not allowed to function legally anymore.

There's a farm called Lilliesleaf

So after the Treason Trial when all the people were acquitted in 1961, the ANC had asked Madiba to remain in the country, but to continue his political work disguised. In other words underground. You all know what is underground? That by some disguise or other, you avoid the police.

I myself for 30 years of my life was an Indian, and then they turned me into a Portuguese [man]. I was also disguised, and so was Sisulu and Madiba. Madiba was a farm labourer, so was Govan Mbeki and Raymond Mhlaba. These [men] were all disguised as farm labours working. There's a farm called Lilliesleaf. It's still there in Johannesburg. If any of you go to Joburg you must visit it...

At this farm...it's got a safari truck which used to bring visitors to South Africa from Zambia. This

truck brought 40 loads of visitors. What the visitors did not know is that all the 40 journeys it made from Zambia, every one of them was loaded with guns. They didn't know that. The visitors didn't know [and] the police didn't know. Nobody knew. That truck is there at Lilliesleaf Farm. All you have to do is go into the truck, press the button, and you see the video of arms being hidden, and the journey to South Africa, and [the] unloading of the arms. But that was just a by the way.

Everyone had to take an oath

After the banning of the ANC and PAC Madiba was asked to go underground, and in 1961 a strike was organised. [A] national strike which was crushed by the police and the army. While Madiba was underground he was interviewed by a journalist, and that is the first time he mentioned that avenues of peaceful protest are now closed and we must now think of other means of struggle. So that is the first indication he gave of uMkhonto we Sizwe or MK.

Following on what he said, this organisation was formed. uMkhonto we Sizwe, MK for short. Recruits were recruited from throughout the country, working in cells of three or four each. There were trained in the manufacture



50 years on: Dancing girl at The Nelson Mandela statue in Sandton, near Rivonia

'Bram Fischer... His father was the Judge President of Free State'

and planting of bombs... But everyone had to take an oath that when bombs are planted, there are no injury to human beings. So these bombs are planted at night.

Now it is that campaigning of MK that led to our arrest, to that Rivonia Trial. As I said, four of the leaders of the ANC and of the MK were among the eight of us and that led to the Rivonia Trial. I don't know how many hundred bombing or activities were brought in evidence... But that is when the police gave evidence about all these sabotage activities and several hundred throughout the country. We were sentenced to Life in imprisonment.

They were political lawyers

Just to end this part of it, our eighth body was white, Denis Goldberg. There were no white prisoners on Robben Island, and no females either. So on the night of the sentence, the seven of us were suddenly woken up, handcuffed,

**Because the
breadwinners
were arrested,
the wives had
to... keep the
families going**

[put in] leg irons, and flown to Robben Island. Denis Goldberg of course being white was kept with other white political prisoners in Pretoria. So we are not going to Robben Island. I will stop there.

Ndifuna Ukwazi: Tell us a little bit about your lawyers.

Kathrada: Joel Joffe was on his way out of the country. Bram Fischer, who was the leading lawyer in our case, persuaded him to just postpone his trip to appear as the attorney in our case... Bram Fischer [was] one of the most senior lawyers in South Africa. He was the only political prisoner who was given bail to go and fight a case in London. So Bram Fischer was the leader in our case. [The other lawyers were] Vernon Berrange, Arthur Chaskalson and George Bizos. Of those lawyers, only George Bizos is alive.

These were not necessarily members of organisations. Like you take George Bizos or Arthur Chaskalson, they were not members of any organisations, but they were political lawyers. So when it came to fighting cases politically, they knew what they were doing. The only known political party man was Bram Fischer, who was a

member of the Communist Party.

Ndifuna Ukwazi: Did you know him and Molly Fischer, his wife?

Kathrada: I knew them very well. I grew up on them. They were an outstanding couple from a very well-known Afrikaans family. Both of them. Bram Fischer's grandfather was the Prime Minister of the Free State Republic. His father was the Judge President of Free State, and he himself was a top lawyer. His wife Molly, she's from the Krige family. Her cousin was Uys Krige. So they were from leading Afrikaans families.

They never charged any money

George Bizos immigrated to South Africa during the war, from Greece, and had his law practice. Chaskalson –turned out to be one of the top lawyers in the country, he died about two or three years ago. Those were our lawyers.

One other thing I must say about the lawyers of that time. For smaller cases, relatively smaller cases, they never charged any money, which you don't find these days any more. Even for big cases, they had reduced fees. The Treason Trial took four years or more. So obviously the lawyers had to be paid, but they

AHMED KATHRADA REMEMBERS

charged a very reduced rate...For example, [in] one of my cases where Joe Slovo had to go to Bloemfontein six times he didn't charge a penny.

...

Ndifuna Ukwazi: Do you want to tell us a little about the families. Because there is a story about Caroline Motsoaledi and what happened to her. How families suffered...

Kathrada: Families bore the brunt of the police harassing. Children, like Walter's children, some of them had to go into exile. Others stayed. His wife and Winnie [were] taken in and out of jail...They were harassed, and that applied to Caroline Motsoaledi [and] June Mlangeni. All these wives were harassed because they were also active. Harassed by the police, detained, let go and then detained again...they bore the brunt of the suffering that families underwent. They were very courageous and sacrificed a great deal. Because the breadwinners were arrested, the wives had to do all sorts of things to keep the families going. Fortunately there was a defence and aid organisation in London, a small part of it in South Africa, that collected money

for the legal fees and also partly [gave] aid...to families where the breadwinners were in prison.

Ndifuna Ukwazi: During the trial there was significant international aid and support for the ANC and the Rivonia Trialists. Do you want to say a little bit about that?

Kathrada: Well there was the anti-apartheid movement had already been formed, mainly in England. It was a very active anti-apartheid organisation...In many countries in the world they had anti-apartheid organisations. But in the countries like England and Holland, they also collected funds together with defence and aid organisations. In London they collected a lot of money for lawyers in political cases, and for welfare for families...

The next phase of the struggle

Then you had the Scandinavian countries – Norway, Sweden and Denmark – that provided humanitarian aid. The ANC had camps all over Africa, and those people in the camps had to have clothing and food. So the Scandinavian countries and India contributed clothing, medicines,



There were no white prisoners on Robben Island, and no females either.

'Coloured and Indians were treated the same way, Whites were not on Robben Island, and Africans were treated differently'

food and so forth for the camps. The Soviet Union provided money and arms.

When we got arrested we were discussing a document called Operation Mayibuye. It was a controversial document that was for the next phase of the struggle. The bombing part was the sabotage campaign, but then there were discussions to go to a phase of armed combat. I don't know the exact figures, but a few thousand I suppose were trained as soldiers and a lot of arms and ammunition were smuggled into the country. So discussions were taking place on the feasibility of that phase of the struggle.

...

Ndifuna Ukwazi: Before I open it up for questions from people, there are two things I want you to deal with. Robben Island and coming out of jail. What happened when you came out of jail, the first years of freedom?

Kathrada: I will talk about Robben Island. Eight of us were sentenced to life imprisonment. And as I said our eighth body was White and there

**In those years
all Africans
were regarded
as boys or
children**

were no Whites on Robben Island. He was kept in Pretoria, together with other White colleagues. On the night of our sentencing we were suddenly woken up, the seven of us handcuffed, leg ironed taken to the military airport in Pretoria. They took off the shackles and put us on the plane.

On the morning of the 13th of July 1964 we landed on Robben Island, on a very cold winter's day. Rain and all. Now I am talking about the seven of us. Of the seven of us, at the age of 34, I was the youngest. Govan Mbeki was 20 years older, Sisulu 18 years older, Madiba 11 years older, and I was the youngest. I am deliberately saying this, and I am also deliberately saying I was the only Indian. Now I will tell you why.

Change into prison clothes

The first thing we had to do on Robben Island is to change into prison clothes. So there were different regulations for different groupings. Coloured and Indians were treated the same way, Whites were not on Robben Island, and Africans were treated differently. I was given long trousers, socks etc. All my colleagues, who were not only my leaders but elders, because they were African they had short trousers...

In those years all Africans were regarded as boys or children. That was apartheid language. Verwoerd and all them talked of Africans as children. Children wear short trousers. So all my colleague were wearing short trousers because they were children, they were boys...I was given long trousers.

The next day: breakfast; porridge; soup; [and] coffee. I am given a little more sugar than Madiba, but less than Denis Goldberg. Denis Goldberg was in Pretoria. I was given a quarter loaf of bread every day. That was for Indians and coloured. Africans got bread for the first time after 10 years. That was our food situation on Robben Island.

So there were protests, hunger strikes and so forth. I should mention, when we landed on Robben Island, Madiba said:

'We are no longer leaders. We are all ordinary. Our leaders are outside. Chief Luthuli, Oliver Tambo, Dadoo, Slovo, Kotane, they are the leaders, they make policy, they are in charge now. We are ordinary prisoners. We don't make policy, we don't give instructions.'

They concentrated on the welfare of fellow prisoners. So when he said

AHMED KATHRADA REMEMBERS

we are ordinary prisoners, Madiba behaved like an ordinary prisoner. Every prison chore, he did...

...

In the section where we stayed, there were 25 to 30 of us. We were completely isolated from the rest of the hundreds and hundreds of political prisoners. I mean President Zuma [and] Deputy President Kgalema Motlanthe, they were there for 10 years. They never saw us and we never saw them. So we were completely isolated.

We had blisters and bleeding hands

In the section where we lived, there were no flush toilets. They had buckets. If you go to Robben Island, you will see Madiba's cell. You still see the bucket there. So every morning, you had to take it to the toilet. You had to take it, empty it [and] wash it. So Madiba, who was strong...used to carry people's buckets when they were ill, empty them, wash them and so forth. There was a time when all of us went down with flu. The whole lot of us excepting Madiba and three of the new arrivals who were still fresh...they used to carry out all our buckets, empty them, wash them, put them in the sun and so forth.

We were working with pick and

shovel. None of us had done that work before. So the first weeks and months we had blisters and bleeding hands. There again, they were with us working there. All I am trying to say is that right from the beginning, our leadership said: 'We are all equal. No preferential treatment, except if the doctor prescribed it.' So we did not ask for preferential treatment.

In 1977...Madiba was offered release provided he goes and stays in the Transkei. His response was: 'The whole of South Africa belongs to Black and White. I am not prepared to go to the Transkei.' So he refused.

Not interested in being released

[In] 1985...five of us, Mandela; Sisulu; Mhlaba; Mlangeni and myself were transferred to Pollsmoor Prison...Now while we were at Pollsmoor Prison President Botha offered to release all political prisoners on certain conditions. They had called Madiba that morning to the office, and given him the Government Gazette which had made this offer. We didn't have to debate that because right from the start we said we were not going to accept any conditional releases. If they wanted to release us, they must release us without conditions.



Pollsmoor Prison, Cape Town

'Anyway, the next morning they just released us.'

So we didn't have to debate that. We just told Madiba to draft the letter, which all five of us signed, and sent it to the Minister of Justice. We are not interested in being released on condition.

...

Ndifuna Ukwazi: Then you came out [of prison].

Kathrada: By that time Madiba was living in a house, in the Victor Verster Prison. We were taken from time to time to see him, the four of us. On the morning of October the 10th we were taken to see him. He said 'Chaps, its goodbye.' We said we will believe it when it comes.

A fax from Pretoria

That night they didn't take us straight back to Pollsmoor. They said we are going to eat there. So we were having supper and they brought a television, which said 'President de Klerk announces the following: eight people are going to be released'. Next day I looked for my own name. It was there, number 8, but didn't say when. That was on a Tuesday night. On the Friday they put us on a plane to Johannesburg prison...

Saturday night the warder came to us and said: 'We have just received a fax

from Pretoria headquarters that you are going to be released tomorrow.'

...

Anyway, the next morning they just released us. We went home, and of course the first day out was a blank. All I could remember was [that] we were a curiosity for children. Children heard of this chap [who] was in jail. To children this was some other kind of human being. They just crowded around us and feeling us and all that. But that's what I remember. It was only when I saw the video some weeks later that I remembered the rest of the day. Otherwise the first day was just blank. I didn't even know that I went to Soweto twice. I only remembered going to Walter's place. When I saw the video, I saw I went twice to Soweto. My mind was a blank. It was quite overwhelming

because it came so suddenly.

**... that by some
disguise or other,
you avoid the
police. I myself
for 30 years of
my life was an
Indian, and then
they turned me
into a Portuguese
[man]**

We got into a lot of trouble

When President de Klerk announced that the following eight are going to be released, the media from throughout the world gathered in South Africa. Every day, at my family place, they waited till four o'clock that Sunday morning, then they went away. The ones in Soweto did not go away. So

they saw Walter and them come in. We didn't have a chance to go on holiday or anything. The first weeks were just taken up by the media. Interview after interview.

...

By the way, we didn't get newspapers for 16 years, so we had to smuggle... We did everything possible to get news, being political prisoners. We even smuggled a radio... We got into a lot of trouble...

A long prayer

Before that, we were regular church goers. Every denomination, Methodist; Anglican; Muslim; and Hindu. Out of respect of the clergy persons, but our favourite priest was the Reverend September. He had long sermons, and the longer the sermons, the longer we were out of our cells, in the sun. So one day prisoner Hennie Ferris from Worcester... He asked the Rev whether he, Hennie, would be allowed to lead a prayer. The Reverend September was very excited to hear a prisoner. Hennie led quite a long prayer, and at a certain stage all the congregation closed their eyes, including the Reverend September. When our eyes were closed, Hennie signalled to Eddie Daniels who is a Capetonian sentenced to 15 years. Eddie opened Reverend September's suitcase [and] retrieved the Sunday Times. Today we had news... we had to keep ourselves informed. All sorts of punishment, we had to endure that.

AHMED KATHRADA REMEMBERS

Questions from Ndifuna Ukwazi Fellows

In your defence at the Rivonia Trial, how did all of you decide to state your case when you gave evidence?

Kathrada: The approach was that if they had genuine evidence, we don't dispute it. On the other hand, we don't volunteer evidence that is not there. But those of you that go into the witness box, you proclaim your political beliefs. You don't apologise. You don't ask for mercy. You proclaim your beliefs. That was how that trial was. It was agreed by all of us, and our lawyers, that this was how we should conduct the trial.

So Madiba has set the lead with his speech. It's been published quite a bit now because its 50 years since he made it. He ended by saying 'all my life I've fought for justice and equality. This is what I hope to achieve and this is what I am prepared to die for.' So the rest of us who gave evidence took that message, and in our evidence we said the same thing. We don't apologise. We don't ask for mercy. We proclaim our political beliefs, and if there is a death sentence we don't appeal. That was how the whole case was conducted.

Why did you choose to use Liliesleaf Farm?

Kathrada: Well, the Communist Party was banned in 1950. The ANC and PAC [was only banned] in 1960. What the Communist Party did, its own leadership, they bought that farm to carry on their activities. So they had the time to organise and buy this farm, to carry out their political work. For instance, after the Treason Trial

acquittal, Madiba was asked by the ANC to go underground. The Communist Party invited him to stay there, at Liliesleaf, because it was not known to the police at all. Proper farming went on there. If you know Johannesburg, if you leave Houghton, there was nothing. It was just farms.

A Portuguese man

That's why the Communist Party got this as a safe place, but when the ANC got banned they did not have a place. The Communist Party allowed them to stay there on the understanding that until they get their own place, they can stay there. The ANC did find its own place, they moved away from Liliesleaf.

I, being [disguised as] a Portuguese [man], also moved away from my house. So there was nobody left at Liliesleaf, but we were discussing this document [Mayibuye] and we didn't have a safe place. So we decided to go back to Liliesleaf and that's where we got arrested, because we didn't have another place to meet...

Did you achieve 'Operation Mayibuye'?

Kathrada: The document, Operation Mayibuye, was a very controversial document. It was never agreed. As I said, the day we were arrested we were still discussing that document and it was found in our possession at the table. So it was not an agreed document. Because that was taking the struggle one step further, and that is armed combat. Because by that time we had trained soldiers, and there was a feeling among some



Various disguises: Govan Mbeki (miner), Walter Sisulu (farmworker), Ahmed Kathrada (Portuguese man), Bram Fischer (photographer)

'Oh yes, there is always a need for political education.'

people that we can now come to the stage where we can have armed combat...

Did you study revolutions from other countries?

Kathrada: One thing about Madiba, anything he undertakes he studies. Even when he started learning chess in jail, he ordered chess books to study. So when the ANC decided to set up MK, he ordered [and] got hold of books on every struggle, whether it's Algeria, India or China... And then when they embarked on the idea of MK, he had some idea of what we are doing. It wasn't just a blind thing.

What did you read? How important was reading in jail?

Kathrada: Without reading, without education, you can't get anywhere. In jail there was a great emphasis on studies, because in jail there were a sizable number of prisoners who were completely or semi-illiterate... Without education you can't move forward, but in jail that was a challenge. Only people who had money could register with a university or college, and that money had to come from your immediate family. Apparently it was jail regulations. So that excluded the vast majority of prisoners, because the families couldn't send money.

In prison we had quite a large number of people [who] were teachers, or educated people... Professor Neville Alexander was in our section, we had a small section there. He set up a little group of teachers who taught others. So nobody left Robben Island illiterate.

You don't always need certificates

Take President Zuma, I hear he came into prison with Standard 2. His family had no money to send, so he couldn't register with any institution. After ten years, he left prison without a certificate but an educated man. So you don't always [need] certificates to be educated, and you have many like that under very adverse conditions who studied. They made the best of those years.

After the '76 uprising, when the young people came to prison, they came very angry. Some of them said, 'We haven't come to prison to study. We want to fight.' A little group did decide to fight. In jail, the most common weapon is a sharpened spoon, which is a knife. They decided to kill the white wardens. There were only white wardens. They stabbed one man, and he was the best officer... fortunately they didn't kill him. Our leadership had to tell these young chaps, 'We understand your anger. Your wanting revenge and all that, but you can kill 10 wardens [and] you will hang. You will achieve nothing.' So they had to be persuaded – 'Don't waste your time in jail, study!' They eventually agreed, and they studied.

How did you make each other more politically aware?

Kathrada: Do I understand that you want to know about political education in jail? I can only talk about the ANC. In the ANC there

was not only emphasis on academic studies, but also on political studies. We had a syllabus, which included Marxism. There was a move to set up a Communist Party in jail, but then they were convinced that it would be part of the syllabus. The ANC had a syllabus that we had to go through. All members of the ANC that came to prison had to go through it. That remained the top of the agenda.

Is there still a need for political education?

Kathrada: Oh yes, there is always a need for political education. You can't go blindly into a struggle not knowing politically what your struggle is all about. Political education is as important as academic education. Without it, your political organisation that you belong can't function. They must have political education. You can't just form a political organisation without it.

How did you train to psychologically deal with the harassment, torture and detentions by the police without giving up on the struggle?

Kathrada: When people joined MK, they were made aware of what the consequences could be, and had to be prepared for that. Where necessary, if they had to plant bombs, they were given instructions on how to make bombs and how to plant them. Those preparing for the second phase of the struggle, the armed struggle, got their training outside South Africa in some of the African countries...

AHMED KATHRADA REMEMBERS

Nobel Square in the Victoria & Alfred Waterfront features statues of South Africa's four Nobel Peace Prize winners - Albert Luthuli, Archbishop Desmond Tutu, FW de Klerk and Nelson Mandela



Torture

You can't train yourself to withstand torture. In my case I was never harmed physically, but in isolation there is always the question of the death sentence. Then the police used to come and visit to get information. So you had to steel yourself to withstand the offers that the police made. To me, for instance, they used to come there [and] some of them said, 'We know your family. We know you so well. Why do you want to get mixed up with this?'

Give us this bit of information. Not only will we release you, we'll take you to the border and you can leave the country.' They'd make all sorts of offers to different people.

Others were physically tortured, many severely... So the police

offered all kinds of things. Others were tortured to give information. There is no special training. You are told when you join these organisations, what the consequences could be, and you accept those consequences when you join. I don't know how I withheld...I could have easily broken down. Nobody can really prepare to withstand torture.

Freedom of speech

One other things about political prisoners like us, one of the great deprivation in jail is freedom of speech. So when we get an audience like you, very quiet and attentive, we try to make up for 26 years of deprivation.

Thank you very much for your patience and for the questions.

Ndifuna Ukwazi: We want to say thank you very much to you and we forgot to get you a present, but we will send it! ■

Constitutionally protected rights

Legally speaking, South Africa is a vastly different country to what it was during the Rivonia Trial. But in recent years the reappearance of a familiar phrase has started ringing alarm bells.



Fifty years after the Rivonia Trial, South Africa is a country far removed – in a legislative sense, at the very least – from where we once were. But despite the undeniably impressive legal strides taken, restrictive legislation promulgated in recent years – among them the ‘Secrecy Bill’ and the National Key Points Act – has prompted citizens to wonder how much the current, democratically elected, government has actually learnt from the failings of the apartheid government.

Dawning of a new legal era

On 10 December 1996, President Nelson Mandela signed the Constitution of the Republic of South Africa into law as the country’s supreme legal framework. Our world-renowned Constitution places limits on Parliament’s ability to pass laws, especially laws that limit constitutionally protected rights.

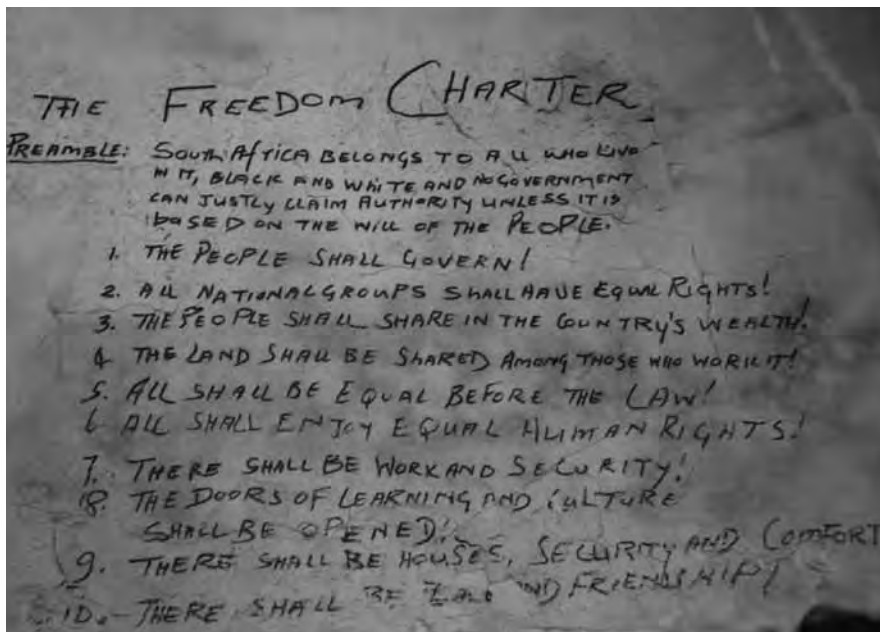
As opposed to the draconian state security legislation passed

throughout the 1960s, which sought to place firm controls over citizens’ rights, the rights enshrined in our Constitution are a reminder of the progress South Africa has made, particularly because these rights were specifically denied by apartheid state legislation: the right to assemble, demonstrate, picket and petition; freedom of association; freedom to make political choices and the right to vote; freedom of movement and residence; the right to access courts; specific rights relating to arrested, detained and accused persons, including the right of an arrested person to be brought to court no later than 48 hours after his or her arrest, the rights of a detained person to be informed of the reasons for his detention, to consult with a legal practitioner and to be visited by relatives, and every accused person’s right to a fair trial.

Echoes of the past

This year marks the 20th anniversary of South Africa’s democracy. While South Africa’s

The Rivonia Trialists refused to submit to laws intended to deny their fundamental rights



The Freedom Charter on the wall, Palace of Justice, Church Square, Pretoria

current legislative framework is light years removed from the oppressive laws of the apartheid regime, there has in recent years been a noticeable increase in efforts by the government to pass national security laws, presumably to protect citizens against external threats.

The **Protection of State Information Bill**, commonly referred to as the 'Secrecy Bill', has been strongly rejected by opposition political parties and civil society. This Bill, critics say, aims to erode freedom of expression and press freedom. In November 2013 a parliamentary majority voted in favour of the Bill despite strong protests by opposition parties.

Opponents say the Bill in its current form includes a number of constitutional violations and limits the public's access to information. A successful democracy requires, among other things, a transparent government and the freedom to express one's opinions and thoughts. Citizens deserve to know that their elected representatives are acting

in their best interests. This Bill seeks to criminalise the publication of certain information, on the basis that such information could expose the country to national security threats. This, opponents say, gives government wide powers to withhold information from the public and grants the state unfettered control over the information citizens are allowed to see.

In addition to the Secrecy Bill, the **Immigration Act** and the **Refugees Act** are also being revised, with amendments aimed at promoting national security by preventing or discouraging migration. Lastly, the **National Key Points Act** was used to justify spending R246 million on upgrading President Jacob Zuma's Nkandla residence. Ministers in the security cluster tried to use 'national security' as a basis for obstructing the public protector's investigation into the use of these funds.

The use of 'national security' laws to persecute the Rivonia Trialists and other political prisoners should

serve as a lesson to all citizens. If we allow any government to again deny us our rights on the basis of phantom threats to our security, we risk allowing it to manipulate us, as the apartheid government did with the white minority before 1994.

The way forward

The Rivonia Trialists refused to submit to laws intended to deny their fundamental rights. They protested against them and provided us with a platform to do the same.

As Mandela said during his 1994 inauguration,

"Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another."

It is our duty to remain vigilant and ensure that no government ever again robs us of the rights so many gave their lives for. ■

A legal framework for repression

From the 1960s repressive laws were used to remove the leadership of liberation movements, political parties and trade unions from society and to instill fear in people.

“I will start off by saying a few words about what preceded the Trial. There was the 90 day detention law, which allowed the police to detain people for three months at a time. During those days you are not even allowed to talk to the people with whom you are arrested. No lawyers. No visitors. No newspapers. No books.”
Ahmed Kathrada (Rivonia Trialist)

“We had come on legal business... But it was clear that they were in no mood for consultation. They were rediscovering, it seemed to us, the joys of speech, not unlike people who had been dumb and had suddenly had the power of speech restored to them... They were drunk with speech, with human communication and contact, with being able to talk... too involved in all these new sensations, too intoxicated with them to be prepared to consider serious problems of law. It was very obvious that our legal consultations on that day were not going to get very far.”
Joel Joffe describing the Rivonia Trialists first meeting with their lawyers after spending 90 days without trial.

“Everyone has the right to freedom and security of the person which includes the right not to be detained without trial.”
Section 12 of the Constitution (1996)



The apartheid government did some things very well – one of its chief triumphs was its success in making laws to counter resistance movements that were increasingly hard to contain and control. Repressive laws removed the leadership of liberation movements, political parties and trade unions from society and instilled fear in people. Today, we celebrate political freedoms and the rights of arrested, detained and accused people in our Constitution.

However our schools, history departments and law faculties at universities as political parties fail to teach us the laws that were made to silence opponents of the government. Understanding these laws are necessary to resist new ones such as the 'Secrecy Act' that will criminalise access to information that exposes the failures. Since 11th September 2001, the United States has pressured most countries to introduce laws that are similar or worse than those used under apartheid to spy on, detain, torture, house-arrest, ban and execute people they *suspect* of being 'terrorists'.

**The SCA... defined
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change**

1950

The 1950 **Suppression of Communism Act** (SCA) was the first major salvo in creating a legal framework for the apartheid state's increasingly iron-fisted reaction to resistance. Although passed prior to the 1960s, the SCA was to be 'the building block from which legislation and amendments were hewn and prosecution launched', Madeline Fullard wrote in *The Road To Democracy in South Africa: Volume 1*.

The purpose of the SCA was ostensibly to outlaw communism and the Communist Party. But it defined communism so broadly that it allowed for the charging of any person who called for social and political change. The SCA allowed the Minister of Justice to list members, supporters or sympathisers of 'communist organisations' and to ban them from public office and from attending public meetings. Banned persons were denied civil rights, including the right to communicate with any other banned persons. The Rivonia Trialists were charged under the SCA for, among other things, advancing communism.

The SCA also empowered the Minister to banish individuals to remote areas of South Africa, usually far away from their families and communities. Initially, banishment under the SCA was used to restrict certain political prisoners to specific and usually rural areas of South Africa immediately after their

release. Pan Africanist Congress (PAC) activist Zephania Mothopeng and African National Congress (ANC) activist Elias Tsimo were banished to the tiny reserve of Witzieshoek, Orange Free State, after being released from Robben Island, despite the fact that both had lived in Soweto prior to their capture.

1960

The **Unlawful Organisations Act** was passed in the week following the Sharpeville Massacre of 21 March 1960. It was a response to the ANC- and PAC-led anti-pass law campaigns and declared unlawful any organisation threatening the safety of the public. After its enactment, the ANC and the PAC immediately became illegal organisations. The Unlawful Organisations Act was among the laws most commonly used during the 1960s to charge hundreds of anti-apartheid activists. If you carried an ANC pamphlet or flag you could go to jail for five years for 'furthering the aims of a banned organisation'.

1961

After the successful general strike organised by the ANC in May 1961, the government rushed the **1961 General Law Amendment Act** through Parliament to allow for detention without trial for a period of 12 days. The passing of this law was the beginning of the incremental build toward indefinite detention-without-trial laws.

1962

The 1962 General Law

Amendment Act, commonly known as the ‘Sabotage Act’, was the apartheid government’s direct response to the resistance movement’s increasing use of sabotage as a means of protest. Any person who committed an act viewed as endangering the public, threatening the maintenance of law and order or disrupting the supply of services such as water or electricity could be tried for sabotage under this Act. Crimes committed under the Sabotage Act carried the death penalty. The Rivonia Trialists were charged in terms of this Act for ‘conspiring to overthrow the state’.

The Sabotage Act also increased the President’s power to declare organisations unlawful. Under this Act, individuals could be banned from social gatherings (including having more than one visitor at a time), and the Minister was empowered to list banned persons in the Government Gazette.

1963

One of the most draconian laws created by the state in the 1960s was the so-called ‘90-Day Detention Law,’ contained in the **1963 General Laws Amendment Act**. This law allowed a suspect to be held in police custody, without trial and in solitary confinement, for a period of

One of the most draconian laws created by the state in the 1960s was the so-called ‘90-Day Detention Law,’

up to 90 days. During this 90-day period, detainees were often subjected to torture by the police. They were prohibited from speaking to other prisoners, relatives or lawyers, and were not allowed to communicate in any way with any person outside the prison walls. They were also not allowed access to reading or writing materials. About 73 political detainees were killed in detention or died after torture.

Prisoners were often released after 90 days only to be re-detained on the same day for a further 90-day period. Within 18 months of the passing of the 90-Day Detention Law it had been used to detain 682 people for up to 90 days; 61 were held for more than 90 days; eight were held for more than 180 days. By the time the 90-Day Detention Law was suspended in 1965, it had been used to detain more than 1 000 people in solitary confinement.

The 90-Day Detention Law was also used to secure state witnesses. Prisoners who had

been interrogated while in solitary confinement were sometimes found to have suffered brain damage as a result of solitary confinement. The brain damage could result in witnesses being unable to distinguish truth from fantasy. They sometimes believed the evidence they were giving was true when in fact it was not, and witnesses believed they had committed acts which they had not.

The 1963 General Laws

Amendment Act also included what was called the ‘**Sobukwe Clause**’, which gave the Minister of Justice the power to prolong the detention of any political prisoner indefinitely, even **after** his or her prison sentence had been completed. The Sobukwe Clause was created primarily to keep PAC founder Robert Sobukwe imprisoned in solitary confinement on Robben Island for an additional six years after the completion of his initial three-year sentence for his role in organising the nationwide protests of 21 March 1960.

1965

The **1965 Criminal Procedure Amendment Act** doubled the detention-without-trial period to 180 days and allowed for a person to be re-arrested after his or her detention period was over. The Attorney-General was empowered to order the detention of persons

likely to give evidence for the state in any criminal proceedings relating to certain offences.

Unlike the 90-Day Detention Law, this 180-Day Detention Law did not specify interrogation as part of the detention. Detainees could be held for six months in solitary confinement and only state officials were permitted access to the detainees. Courts did not have jurisdiction to order the release of prisoners or to rule on the validity of the Act's regulations. According to Madeline Fullard's *The Road To Democracy in South Africa: Volume 1*, in the first three years after its adoption almost 400 people had been detained under the 180-Day Detention Law, and four were found hanged in their cells.

Another harsh law passed in the 1960s was the **Terrorism Act**, which built on the Sabotage Act and authorised indefinite detention without trial on the authority of any policeman of the rank of Lieutenant-Colonel or above. The new offence of 'terrorism' was created in this Act and was defined broadly to include most criminal acts. No time limit was specified for detention, which could be continued until the detainee gave satisfactory replies to all questions.

The Terrorism Act was made retroactive to 27 June 1962, meaning that people could be

**Prisoners were
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90-day period**

charged under this Act for an offence committed prior to the Act being passed. The Act also applied to South West Africa (Namibia). It differed from the 90-Day and 180-Day Detention laws in that the public was prohibited from accessing information relating to the identity and number of people detained under the Terrorism Act. People detained under the Terrorism Act were 'placed beyond the reach of the rule of the courts,' Fullard wrote, and were 'at the mercy of security police,' who were only accountable to the Minister.

The trial of Andimba Toivo ja Toivo, a regional secretary of the South West Africa People's Organisation (SWAPO), is an example of how the Terrorism Act operated extraterritorially and retroactively. In 1966, Toivo and 35 other Namibians were arrested for their activities in support of Namibian independence and deported to Pretoria, where they were subjected to brutal



interrogation before being tried under the Terrorism Act.

The harshness of the Terrorism Act was revealed in Toivo's statement from the dock:

"The South African government has again shown its strength by detaining us for as long as it pleased, keeping some of us in solitary confinement for 300 days to 400 days and bringing us to its capital to try us. It has shown its strength by passing [the Terrorism Act] especially for us and having it made retrospective..."

By the end of the 1960s, the apartheid state had travelled a long way in altering South Africa's legal framework to ensure its agenda for absolute control and repression had a sound legal footing:

The crimes of sabotage and terrorism were created, both carrying the death penalty; courts were stripped of their powers in respect of the detention of political

In the end, unjust laws could not stop the resistance of millions against apartheid



suspects; prosecutors could order the detention of witnesses for 180 days in solitary confinement; preliminary hearings for political trials were abolished; political accused carried the burden of disputing their guilt beyond reasonable doubt; and, ultimately, the Minister of Justice had been given unlimited power to prohibit persons from performing any act, or from being in or absenting themselves from any place encompassed by the law.

In the end, unjust laws could not stop the resistance of millions against apartheid and today – the Constitution does not only guarantee political freedom but prohibits detention without trial, torture and the banning of activists. Rights of arrested, detained and accused people such as the rights to choose and see lawyers, family, doctors and study are guaranteed in the Constitution. We must guard and advance our freedom to organise, oppose inequality and injustice. ■

Speeches from the dock

NU ARCHIVE

Access to information and knowledge requires access to historical documents. Ndifuna Ukwazi will publish historical documents, including court documents in the People's Law Journal. In this case, we have published testimony and speeches from the dock.



‘I am prepared to die’

NELSON MANDELA

On Monday, 20 April 1964, in Pretoria’s Palace of Justice, Nelson Mandela spoke from the witness stand.

In 1962 Mandela had already been sentenced to a five year term for incitement. In that trial he had refused to be cross-examined because fair justice would be impossible in a court controlled by Whites, enforcing laws made in a parliament where the majority of the population are not represented. He chose rather to make a strong statement from the dock, attacking the institutions of White supremacy.

His co-defendants in the Rivonia Trial felt that Mandela would be contradicting his earlier principled stand if he stood in the witness box for cross-examination. They also wanted to put their side of the case to the world, which would be difficult in a question and answer session. So the decision was that Mandela would make a statement from the dock, and not submit to cross-examination. This is an excerpt from that statement.



I hold a Bachelor’s Degree in Arts and practised as an attorney in Johannesburg for a number of years in partnership with Oliver Tambo. I am a convicted prisoner serving five years for leaving the country without a permit and for inciting people to go on strike at the end of May 1961.

...

In my youth in the Transkei I listened to the elders of my tribe telling stories of the old days. Amongst the tales they related to me were those of wars fought by our ancestors in defence of the fatherland. The names of Dingane and Bambata, Hintsa and Makana, Squngthi and Dalasile, Moshoeshe and Sekhukhuni, were praised as the glory of the entire African nation. I hoped then that life might offer me the opportunity to serve my people and make my own humble contribution to their freedom struggle. This is what has motivated me in all that I have done in relation to the charges made against me in this case.



...

Some of the things so far told to the Court are true and some are untrue. I do not, however, deny that I planned sabotage. I did not plan it in a spirit of recklessness, nor because I have any love of violence. I planned it as a result of a calm and sober assessment of the political situation that had arisen after many years of tyranny, exploitation and oppression of my people by the whites.

I admit immediately that I was one of the persons who helped to form Umkhonto We Sizwe, and that I played a prominent role in its affairs until I was arrested in August 1962.

Violence had become inevitable

I and the others who started the organization did so for two reasons. Firstly, we believed that as a result of Government policy, violence by the African people had become inevitable, and that unless responsible

leadership was given to canalise and control the feelings of our people, there would be outbreaks of terrorism which would produce an intensity of bitterness and hostility between the various races of this country which is not produced even by war. Secondly, we felt that without violence there would be no way open to the African people to succeed in their struggle against the principle of white supremacy...

The ANC refused to dissolve

In 1960, there was the shooting at Sharpeville, which resulted in the proclamation of a state of emergency and the declaration of the ANC as an unlawful organization. My colleagues and I, after careful consideration, decided that we would not obey this decree... The ANC refused to dissolve, but instead went underground. We believed it was our duty to preserve this organization which had been built up with almost fifty years of unremitting toil. I have no doubt that



no self-respecting white political organization would disband itself if declared illegal by a government in which it had no say.

We were not entitled to vote

In 1960 the government held a referendum which led to the establishment of the Republic. Africans, who constituted approximately 70 per cent of the population of South Africa, were not entitled to vote, and were not even consulted about the proposed constitutional change. All of us were apprehensive of our future under the proposed White Republic, and a resolution was taken to hold an All-In African Conference to call for a National Convention, and to organize mass demonstrations on the eve of the unwanted Republic, if the Government failed to call the Convention. The Conference was attended by Africans of various political persuasions

...

The stay-at-home, in accordance with ANC policy, was to be a peaceful demonstration. Careful instructions were given to organizers and members to avoid any recourse to violence. The Government's answer was to introduce new and harsher laws, to mobilise its armed forces, and to send Saracens, armoured vehicles and soldiers into the townships in a massive show of force designed to intimidate the people...

What were we, the leaders of our people, to do? Were we to give in to the show of force and the implied threat against future action, or were we to fight it, and if so, how?

Our policy had achieved nothing

We had no doubt that we had to continue the fight. Anything else would have been abject surrender. Our problem was . . . how to continue the fight? We of the

ANC had always stood for a non-racial democracy, and we shrank from any action which might drive the races further apart than they already were. But the hard facts were that fifty years of non-violence had brought the African people nothing but more and more repressive legislation, and fewer and fewer rights... When some of us discussed this in May and June of 1961, it could not be denied that our policy to achieve a non-racial state by non-violence had achieved nothing, and that our followers were beginning to lose confidence in this policy and were developing disturbing ideas of terrorism.

...

After a long and anxious assessment of the South African situation, I and some colleagues came to the conclusion that as violence in this country was inevitable, it would be unrealistic and wrong for African leaders to continue preaching peace and non-violence at a time when the Government met our peaceful demands with force.

....

In the Manifesto of Umkhonto we Sizwe published on 16 December 1961, we said:

"The time comes in the life of any nation when there remain only two choices – submit or fight. That time has now come to South Africa. We shall not submit and we have no choice but to hit back by all means in our power in defence of our people, our future and our freedom."

...

We took the decision

IUmkhonto was formed in November 1961. When we took this decision, and subsequently formulated our plans, the ANC heritage of non-violence and

racial harmony was very much with us. We felt that the country was drifting towards a civil war in which blacks and whites would fight each other. We viewed the situation with alarm. Civil war could mean the destruction of what the ANC stood for; with civil war, racial peace would be more difficult than ever to achieve. We already have examples in South African history of the results of war. It has taken more than fifty years for the scars of the South African War to disappear. How much longer would it take to eradicate the scars of inter-racial civil war, which could not be fought without a great loss of life on both sides?

...

Four forms of violence are possible... sabotage... guerrilla warfare... terrorism and... open revolution. We chose to adopt the first method and to exhaust it before taking any other decision....

Sabotage did not involve loss of life, and it offered the best hope for future race relations.

...

The response to our actions and Manifesto among the white population was characteristically violent. The Government threatened to take strong action and called upon its supporters to stand firm and to ignore the demands of the Africans. The whites failed to respond by suggesting change; they responded to our call by suggesting the laager.

The freedom charter

In contrast, the response of the Africans was one of encouragement. Suddenly there was hope again. Things were happening, people in the townships became eager for political news. A great deal of enthusiasm was generated by the initial successes and people began to speculate on how soon freedom would be obtained.

...

‘During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve.’

Experience convinced us that rebellion would offer the Government limitless opportunities for the indiscriminate slaughter of our people. But it was precisely because the soil of South Africa is already drenched with the blood of innocent Africans that we felt it our duty to make preparations as a long-term undertaking to use force in order to defend ourselves against force.... The fight which held out the best prospects for us and the least risk of life to both sides was guerrilla warfare....

The ideological creed of the ANC is, and always has been, the creed of African nationalism. It is not the concept of African nationalism expressed in

the cry, “*Drive the white man into the sea*”. The African nationalism for which the ANC stands is the concept of freedom and fulfilment for the African people in their own land. The most important political document ever adopted by the ANC is the ‘Freedom Charter’. It is by no means a blueprint for a socialist state. It calls for redistribution, but not nationalisation, of land; it provides for nationalisation of mines, banks and monopoly industry, because big monopolies are owned by one race only, and without such nationalisation racial domination would be perpetuated despite the spread of political power...

Today I am attracted by the idea of a classless society, an attraction which springs in part from Marxist reading and, in part, from my admiration of the structure and organization of early African societies in this country. The land, then the main means of production, belonged to the tribe. There were no rich or poor and there was no exploitation.

...

I am an admirer

From my reading of Marxist literature and from conversations with Marxists, I have gained the impression that communists regard the parliamentary

system of the West as undemocratic and reactionary. But, on the contrary, I am an admirer of such a system.

The Magna Carta, the Petition of Rights and the Bill of Rights are documents which are held in veneration by democrats throughout the world.

I have great respect for British political institutions, and for the country's system of justice.... The American Congress, that country's doctrine of separation of powers, as well as the independence of its judiciary, arouse in me similar sentiments.

I have been influenced in my thinking by both West and East. All this has led me to feel that in my search for a political formula, I should be absolutely impartial and objective. I should tie myself to no particular system of society other than that of socialism. I must leave myself free to borrow the best from the West and from the East...

As I understand the State case . . . the suggestion is that Umkhonto was the inspiration of the Communist Party which sought, by playing upon imaginary grievances, to enrol the African people into an army which ostensibly was to fight for African freedom, but in reality (would be) fighting for a communist state.... The suggestion is preposterous. Umkhonto was formed by Africans to further their struggle for freedom in their own land.... Our fight is against real, and not imaginary, hardships, or to use the language of the State Prosecutor, 'so-called hardships'. Basically, we fight against two features which are the hallmarks of African life in South Africa and which are entrenched by legislation which we seek to have repealed. These are poverty and lack of human dignity, and we do not need communists or so-called 'agitators' to teach us about these things.

Africans live in poverty and misery

South Africa is the richest country in Africa and could be one of the richest countries in the world. But it is a land of extremes and remarkable contrasts. The whites enjoy what may well be the highest standard of living in the world, whilst Africans live in poverty and misery. Forty per cent of the Africans live in hopelessly over-crowded and, in some cases, drought-stricken

"By the time he had reached the end of his address we were moved beyond words. And the women! The women were all in tears. When he said 'I am prepared to die,' I did not realise that tears were pouring down my face."

reserves where soil erosion and the overworking of the soil make it impossible for them to live properly off the land. Thirty per cent are labourers, labour tenants and squatters on white farms and work and live under conditions similar to those of the serfs of the Middle Ages. The other thirty per cent live in towns where they have developed economic and social habits which bring them closer in many respects to white standards. Yet most

Africans, even in this group, are impoverished by low incomes and the high cost of living.... Poverty goes hand in hand with malnutrition and disease....

There are two ways to break out of poverty. The first is by formal education, and the second is by the worker acquiring a greater skill at his work and thus higher wages. As far as Africans are concerned, both these avenues of advancement are deliberately curtailed by legislation.

...

The lack of human dignity experienced by Africans is the direct result of the policy of white supremacy. White supremacy implies black inferiority.... Whites tend to regard Africans as a separate breed. They do not look upon them as people with families of their own; they do not realise that they have emotions--that they fall in love like white people do; that they want to be with their wives and children like white people want to be with theirs; that they want to earn enough money to support their families properly, to feed and clothe them and send them to school. And what 'house-boy' or 'garden-boy' or labourer can ever hope to do this?

The pass laws

Pass Laws, which to the Africans are amongst the most hated bits of legislation in South Africa, render any African liable to police surveillance at any time. I doubt whether there is a single African male in South Africa who has not at some stage had a brush with the police over his pass. Hundreds of thousands of Africans are thrown into gaol each year under Pass Laws. Even worse than this is the fact that Pass Laws keep husband and wife apart and lead to the breakdown of family life.



A living wage

Poverty and the breakdown of family life have secondary effects. Children wander about the streets of the townships because they have no schools to go to, or no money to enable them to go to school, or no parents at home to see that they go to school, because both parents (if there be two) have to work to keep the family alive. This leads to a breakdown in moral standards, to an alarming rise in illegitimacy and to growing violence which erupts, not only politically, but everywhere. Life in the townships is dangerous. There is not a day that goes by without somebody being stabbed or assaulted. And violence is carried out of the townships into the white living areas. People are afraid to walk alone in the streets after dark. Housebreakings and robberies are increasing, despite the fact that the death sentence can now be imposed for such offences. Death sentences cannot cure the festering sore.

Africans want to be paid a living wage. They want to perform work which they are capable of doing, and not work which the Government declares them to be capable of. Africans want to be allowed to live where they obtain work, and not be endorsed out of an area because they were not born there. Africans want to be allowed to own land in places where they work, and not to be obliged to live in rented houses which they can never call their own. We want to be part of the general population, and not confined to living in our own ghettos. African men want to have their wives and children to live with them where they work, and not be forced into an unnatural existence in men's hostels. African women want to be with their men folk and not be left permanently widowed in the Reserves... we want to be allowed to travel in our own country and to seek work where we want to and not where the Labour Bureau tells us to. We want a just share in the whole of South Africa; we want security and a stake in society.

Above all, we want equal political rights, because without them our disabilities will be permanent. I know this sounds revolutionary to the whites in this country, because the majority of voters will be Africans. This makes the white man fear democracy.

It is a struggle for the right to live

It is not true that the enfranchisement of all will result in racial domination.... The ANC has spent half a century fighting against racialism. When it triumphs it will not change that policy. This then is what the ANC is fighting for.... It is a struggle of the African people, inspired by their own suffering and their own experience. It is a struggle for the right to live.

During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die¹.

Mandela had spoken for five hours. The court was silent. From the benches you could hear "people release their breath as the moment of tension passed"¹. Walter Sisulu's wife, Albertina, describes the scene:

*"By the time he had reached the end of his address we were moved beyond words. And the women! The women were all in tears. When he said 'I am prepared to die,' I did not realise that tears were pouring down my face."*²

This was one of the greatest political statements ever made from the dock. ■

¹ J Joffe. *The State vs Nelson Mandela*. (2007) 160.

² E Sisulu. *In Our Lifetime*. (2002) 168.

‘I have suffered’

WALTER SISULU

On 20 April 1964, following Nelson Mandela’s powerful opening statement, Walter Sisulu was asked to take the stand. Being unable to cross examine Mandela as planned, a visibly frustrated Percy Yutar, directed the full fury of his attack on Sisulu.

Sisulu was on the stand for five days, during which time he was completely isolated from his lawyers and his co-defendants.

This is his testimony.



EXAMINATION IN CHIEF BY ADVOCATE BRAM FISCHER



Fischer: And have you suffered from these hardships [under apartheid] personally?

Sisulu: I have suffered. I have personal experience of various disabilities, as for instance the pass laws, and the question of being underpaid, and the question of persecution. I have been banned under the Suppression of Communism Act. I have been confined. I have been ordered to resign from political organizations to which I have belonged. I have been house-arrested. I have been detained. I have been separated from my family...

Fischer: What was your attitude then to the banning of the Congress?

Sisulu: We could not accept the ban on the African National Congress because it was the mouthpiece of the African people. It was the only hope that the

African people had which could liberate them from oppression....

Fischer: Mr. Sisulu, you have chosen to give evidence under oath so that your story can be tested by cross-examination in the ordinary way. Is that so?

Sisulu: That is correct, my Lord. Except that I must explain to the court that I would like to make my position very clear. I am prepared to testify in this case in regard to the part I have played and in regard to the part which my organization has played and some of the people connected with it. But my Lord, I would certainly find it difficult to testify or to answer any questions relating to my organization which might lead to the prosecution of my people. I would not do anything which would lead to revealing the workings of my organization and confidential matters. I would not be able to testify insofar as that aspect is concerned. I am aware that by so doing I might worsen my position. But I find that I cannot do otherwise.

Fischer: Looking back on it, Mr Sisulu, do you consider that you could or should have acted otherwise than you did?

Sisulu: I can't see how I could have done otherwise, other than what I have done. Because even if I myself did not play the role I did, others would have done what I have done instead.

Fischer: Now, Mr. Sisulu, as a background to what

eventually made the ANC agree to permit sabotage what happened to all those efforts which had been put forward in 1945?

Sisulu: Well, I'd like to mention that both in policy, programme and practice, the ANC adopted the most reasonable and sober attitude for the unity and harmony of its citizens... but the Europeans of this country, through their political representatives, were not prepared to accept the line we have chosen to a peaceful settlement of all problems by negotiations. Instead they chose to make South Africa an armed camp.... With the banning of meetings, banning of organizations and suppressing of all legal methods, it was not possible for Africans to accept this situation. No self-respecting African would accept this situation....

The Africans in South Africa are among the best informed about events, particularly in their own country. [By 1960] they were aware that in Africa, one country after another was getting freedom and that the ANC, although it was one of the oldest organisations, was not coming anywhere near their cherished ideals. It did not surprise some of us that the people should become impatient.... I was myself convinced that civil war would eventually become inevitable unless the Government changed its policy.... I felt that in the interest of my own people it would be better that we should bring about a state of affairs whereby such violence would be controlled.

CROSS-EXAMINATION BY ADVOCATE PERCY YUTAR

Yutar: So — money to promote sabotage?

Sisulu: No, that is a different matter altogether. Would you grudge a man his defense?...

Yutar: What precautions were taken to avoid injury to persons?

Sisulu: The fact that this was to be avoided was stressed repeatedly, and the targets were chosen with this in view.

Yutar: If you remove a rail from a railway line you endanger human life, don't you?

Sisulu: This kind of sabotage was not encouraged by Umkhonto.

Yutar: What are the consequences if a bomb is hurled into a room?

Sisulu: It was not in the nature of Umkhonto to do that.

Yutar: What of the two children who were severely burnt in Port Elizabeth, and one of whom died?

Sisulu: Mbeki said that this had not been the work of Umkhonto.

Yutar: Then who was responsible, if not Umkhonto?

Sisulu: Mbeki did not say.

Justice de Wet: There was a trial during the last war that I remember in which a bomb was placed next to the Benoni post office. Some unfortunate passer-by came to post a letter; the bomb exploded and he was killed. If you are going to start bombing buildings is it possible to avoid



that type of accident? Can you ever be sure that you have avoided killing or injuring people?’

Sisulu: My Lord, an accident is an accident. But the precaution in fact is in the intention, and the method used—for instance at night, when people are not there. These are some of the things we take into consideration, that it should not be done at any time in any manner, in order to avoid the loss of life.

Justice de Wet: Your argument is that as long as you have not got the intention to kill people, it does not matter if you kill people. Is that your argument?

Sisulu: No sir. I am saying that precautions are taken in order to avoid such a thing. I am not saying that it can’t happen. But I am saying that precautions are taken that it should not happen...

Yutar: Name me one responsible person in the whole [Umkhonto] organization?

Sisulu: I am not prepared to give names.

Yutar: Were your saboteurs required to possess any academic qualifications?

Sisulu: No.

Yutar: In other words, you were reckless in your choice of persons who handled explosives?

Sisulu: That is an exaggeration.

Yutar: (reading from one of the documentary exhibits): It says here that informers will be tracked down, if it takes ‘five years or a hundred’, and that ‘no mercy is to be shown to such.’

Sisulu: This was never the policy of the ANC.

Yutar: In your eyes witness X [Mtolo] who appeared in this court is a traitor and an informer. What will be done to him?

Sisulu: He will be ostracized.

Yutar: Not according to this document. It says here that he will be tracked down, whether it takes ‘five years or a hundred’, and that he will be shown no mercy....

Justice de Wet: Did you also regard it as your duty to tell your people that they were being oppressed?

Sisulu: All the African peoples on the continent desire freedom. The Africans of this country are no exception.



Yutar: Do you know anything about a book ‘The Gun’— the book which contains the key to this code [used in ANC/Umkhonto documents]? That is the one piece of documentary evidence we still lack.

Sisulu: I know nothing about it.

Yutar: In other words, you permitted the secretariat to write and to receive letters of which you did not know the contents?

Sisulu: Yes....

Yutar: Did the ordinary members of the ANC know that this organization was hand in glove with the Communist Party?

Sisulu: It was a well-known fact.

Yutar: How do you account for the fact, stated by X in his evidence, that it was not to become generally known that the ANC was co-operating with the Communists?

Sisulu: I refuse to accept X [Mtolo’s] evidence. I believe what Mandela has said....

Yutar: Well, unless his Lordship stops me, I’m going to insist on a name. I want to know who, on behalf of Umkhonto, drafted this pamphlet.

Sisulu: It doesn’t help you to insist on the name. I have explained that insofar as people who are in the country are concerned, I will certainly not answer.

Yutar: Not answer?

“Walter in the witness box had been a triumph...”



... the whole court had been impressed by this small man of meagre education but of tremendous sincerity, calm, conviction and certainty."

Justice De Wet: Yes, very well....

Sisulu: We educate people in this country and the people abroad that the only solution in South Africa is living together as black and white—that there is no other solution.

Justice de Wet: Living together? But doesn't that involve— according to your ideas—control by the non-white element because they have more in numbers?

Sisulu: My Lord, we have always maintained that because of historical conditions in this country the mere fact that the Africans are in the majority would not mean black domination.

Justice de Wet: No, but black control! Won't it mean black control?

Sisulu: No. But I will answer to people who are outside.

Yutar: Oh. They're safe!

Sisulu: Of course!

Yutar: I want to know who drafted this pamphlet.

Sisulu: Well, my Lord, I am not prepared to answer that question.

Justice de Wet: You are not prepared to answer?

Sisulu: I am not prepared to answer.

Sisulu: Only in the sense that the majority of rulers will be black.

Justice de Wet: That necessarily involves control, not so?

Sisulu: Well it might be that control can be exercised by both races together. We have in the history of this country, an example in the Cape Province where the Africans themselves elected a European.

Justice De Wet: You would never agree to that, would you?

Sisulu: Why not?

Justice De Wet: You being represented by a white person?

Sisulu: No, not to be represented, my Lord. We don't want to be represented. But we say if the people of South Africa elected Dr Verwoerd, by all means let him come to Parliament—if he is elected by the whole lot. We are not fighting the issue on the basis of colour....

Yutar: What for? The police don't arrest people indiscriminately, unless...

Sisulu: They arrest many people indiscriminately. For no offence people have been arrested.

Yutar: Would you like to make a political speech?

Sisulu: I am not making a political speech. I am answering your question.

Yutar: How do you know they arrest people innocently?

Sisulu: I know. They arrested my wife. They arrested my son. That was indiscriminate.

Yutar: Without any evidence whatsoever?

Sisulu: What evidence?

Yutar: I don't know. I am asking?

Sisulu: I have been persecuted by the police. If there is a man who has been persecuted, it is myself. In 1962 I was arrested six times. I know the position in this country.

Yutar: You do?

Sisulu: I wish you were in the position of an African! I wish you were an African and knew the position...

Justice De Wet: If the technicians are so clever that they can trace the origin of a broadcast within a few

minutes, then it doesn't matter where you hold the broadcast, they will catch you red-handed.

Sisulu: We would still take the risk. There was no doubt that those who were there were taking a big risk. But the point is that we were in hiding, and that is the reason it was not done at Rivonia. We were staying there, and we would have been exposing it to the police.

Justice De Wet: So you don't mind the people who were working the broadcast and putting your recording over the air—you wouldn't mind their being caught so long as you are not caught? Is that the position?

Sisulu: No, that's not what I'm trying to say. One does take the risk. But you would not put all your eggs in one basket. Those who were to do it were there. That's why we were not there—not that we don't care about any particular person who might be arrested.

Justice De Wet: Isn't that rather typical of patriots? That they are always prepared to let the rank and file take the risk, and see that they don't put themselves in danger. Isn't that the position?

Sisulu: I don't think that that interpretation is correct. Take the case of war ... the generals are sometimes not very exposed, not because they want to expose others.

Justice De Wet: But exactly the same thing happens with people who are plotting a rebellion or revolution. They look forward to being the government in due course. And they see to it that they preserve their own skins, not so?

Sisulu: My understanding, my Lord, is that we, to the best of our ability, want to preserve everyone....

RE-EXAMINATION BY ADVOCATE BRAM FISCHER



Fischer: You were first convicted in 1952 in the Defiance of Unjust Laws Campaign?

Sisulu: That is correct.

Fischer: In consequence of taking a lead there you were convicted a second time under the Suppression of Communism Act, for organizing the Defiance Campaign and taking a part in it?

Sisulu: That is correct.

Fischer: That could have given you ten years in jail, couldn't it?

Sisulu: That is correct.

Fischer: Then again you were arrested in 1954 and convicted for attending a gathering. At that time you had been banned from gatherings?

Sisulu: Yes.

Fischer: You were convicted, but acquitted on appeal?

Sisulu: That is correct.

Fischer: In 1960 you were detained during the State of Emergency?

Sisulu: That is correct.

Fischer: In 1961 you were convicted twice, and in 1962 you were first arrested for attending a gathering and then the charges were withdrawn?

Sisulu: That is correct.

Fischer: In April you were arrested again in Johannesburg under the Suppression of Communism Act, and there you were acquitted on the charge of attending a gathering?

Sisulu: Yes.

Fischer: Then in 1962 I think you were arrested on several occasions?

Sisulu: Six times in 1962.

**We educate
people in this
country and the
people abroad that
the only solution
in South Africa is
living together as
black and white
— that there is no
other solution**

Fischer: One of these occasions was when your mother died and people came from your neighbourhood to your house to sympathize?

Sisulu: They came as you say. And I explained the position to the police, but despite my explanation they arrested me. Eventually the charge was withdrawn.

Fischer: When the ANC became illegal, you have told the court you continued to participate in its activity. And that of course exposed you I think to a sentence of ten years?

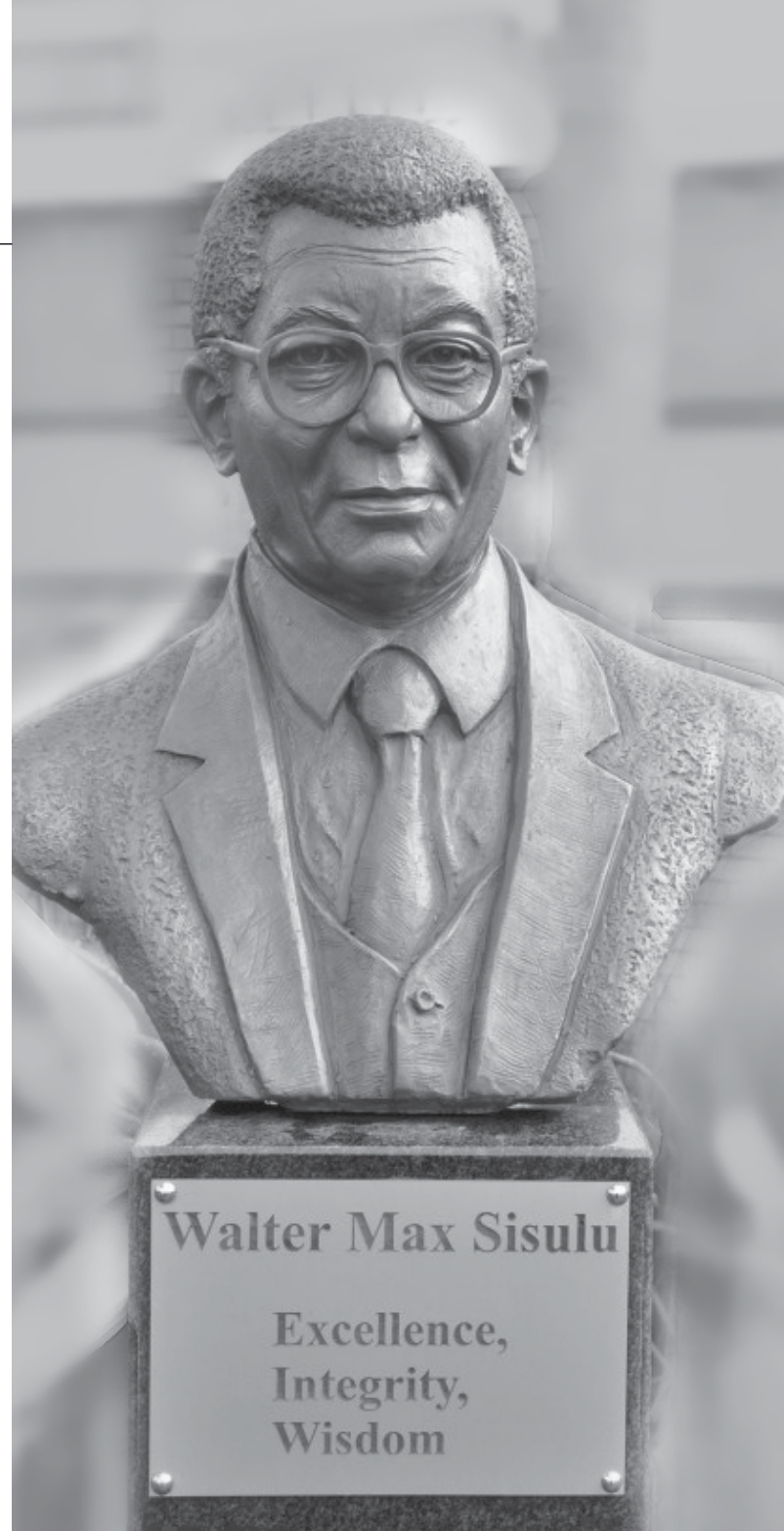
Sisulu: That is correct.

Fischer: And when you were detained for 90 days (that is to say, from day of the arrest at Rivonia) were you approached and interrogated in any way?

Sisulu: Yes, I was interrogated by members of the Special Branch several times. They said they believed I was in possession of vital information which would help the State, and that I was facing a very grave charge, the penalty for which is death. They told me I could escape if I was prepared to give evidence, or rather to give them information confidentially. They said it would not be known by anybody. And they told me that some of the Europeans had already spoken and given information about me. They repeated examples of the rebellion of 1914 when Jopie Fourie was hanged. I, however, said that I would never give information about my colleagues and they could do what they wished.

Fischer: So you did not accept any offer, though it may have saved you from the death penalty?

Sisulu: Yes.



Defence concerns for Sisulu on the stand

The defence team had been concerned that Sisulu would not be able to cope with the tough cross-examination that Percy Yutar was sure to launch against him.

They were concerned that Sisulu, with little formal education, would not be able to match Yutar who had a Doctorate in Law. The lawyers concerns proved to be completely unfounded.

Joel Joffe, attorney for the accused, thought that Sisulu's testimony had been one of the best he had ever seen.



*'... Walter in the witness box had been a triumph... The whole court, I think, had been impressed by this small man of meagre education but of tremendous sincerity, calm, conviction and certainty.'*¹ ■

¹ J Joffe. *The State vs Nelson Mandela*. (2007) 180.

‘There was nothing else I could do’

ELIAS MOTSOLEDI

On Monday, 20 April 1964, following the completion of Nelson Mandela’s and Walter Sisulu’s powerful testimonies, **Elias Motsoaledi** stood up before the court.

Motsoaledi chose to make a statement from the dock. He had been lower in the leadership of Umkhonto we Sizwe and the defence did not want the prosecution to distort his level of involvement. Motsoaledi kept his statement short and to the point.





The symbol for
Umkhonto we Sizwe
(Spear of the Nation)

My Lord, I am 39 years old. I was a clerk and canvasser. I am a married man and have seven small children...

I came to Johannesburg to earn a living to help my family. I earned 24 shillings a week in a boot factory. When workers asked for better wages, I was sacked.

I joined the African National Congress in 1948 and remained a member until 1954 when I was banned from membership of this organization. Although I am a listed communist I did not join the Communist Party after it had been banned, but I do admit that I was on the technical committee of the Johannesburg Region and was recruited to Umkhonto we Sizwe during the end of 1962...

There was nothing left for us to do except suffer [after the ANC was banned]. Then Umkhonto we Sizwe was formed. When I was asked to join it I did so. There was nothing else I could do. Any African who thought the way I did about my own life and the lives of my people would have done the same. There was nothing else...

I did what I did because I wanted to help my people in their struggle for equal rights. I know this is not the place to describe in detail all the heavy burdens which an African has to carry, but I am telling the Court of some of these matters which make our hearts sore and our minds heavy. When I was asked to join Umkhonto we Sizwe it was at the time when it was clear to me that all our years of peaceful struggle had been of no use. The government would not let us fight peacefully anymore and blocked all our legal acts by making them illegal. I thought a great deal about the matter. I could see no other way open to me. What I did brought me no personal gain. What I

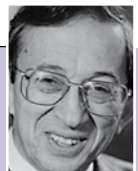
**What I did, I did
for my people and
because I thought
it was the only
way left for me to
help my people.**

did, I did for my people and because I thought it was the only way left for me to help my people. That is all I have to say.

In addition, my Lord, I want to say that I was assaulted by the Security Branch in an attempt to make a statement. More than three months ago they arrested my wife and detained her under 90-days. And when she finished her 90-days, she was re-arrested again. As it is she is still in jail. I consider this disgraceful on the part of the police, my Lord, that a woman with seven children should be punished, because of offences committed by me. That is all I have to say.

Considerable effect on the court

Joel Joffe, attorney for the accused, believed that Motsoaledi's statement had a considerable effect on the court:



'I think Elias Motsoaledi's statement moved me more than anything said by any of the other accused.'

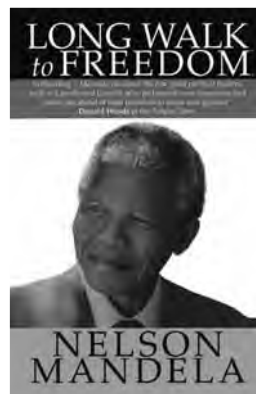
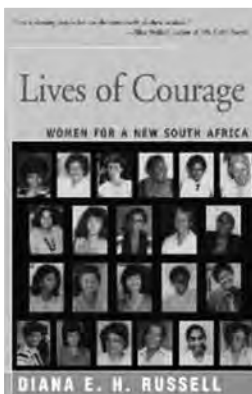
'We had all grown to like and respect him. He was always cheerful, always smiling. The only exception to this was when his wife Caroline had been arrested in court while listening to the case where her husband was on trial for his life, and taken off to solitary confinement for interrogation.'

For a short while he was angry and bitter, but it wasn't long before he recovered to announce proudly that his Caroline would never agree to be a State witness against anybody – even if she knew anything. How right he was.' ■

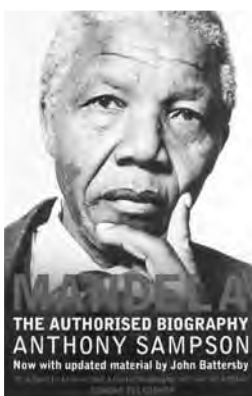
Suggested Reading



- 491 Days: Prisoner Number 1323/69 by **Winnie Mandela** (2013)
- The Forgotten People: Political Banishment Under Apartheid by **Saleem Badat** (2013)
- The Lady: Life and Times of Winnie Mandela by **Emma Gilbey** (1994)



- Lives of Courage: Women for a New South Africa by **Diana Russell** (1989)
- Long Walk to Freedom: The Autobiography of Nelson Mandela by **Nelson Mandela** (1995)



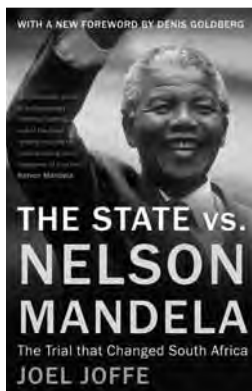
- Mandela: The Authorised Biography by **Anthony Sampson** (1999)
- Part of My Soul Went with Him by **Winnie Mandela** (1984)



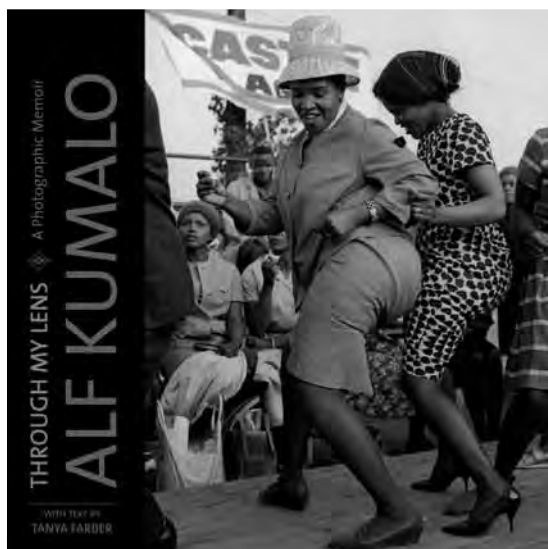
- Rise and Fall of Apartheid: Photography and the Bureaucracy of Everyday Life by **Okwui Enwezor** (Editor), **Rory Bester** (Editor), **Michael Godby** (Contributor), **Khwezi Gule** (Contributor) and **Patricia Hayes** (Contributor) (2013)
- The Road to Democracy in South Africa, Vol 1: 1960-1970 by the **South African Democracy Education Trust** (2005)

South Africa:
THE VIOLENCE
OF APARTHEID

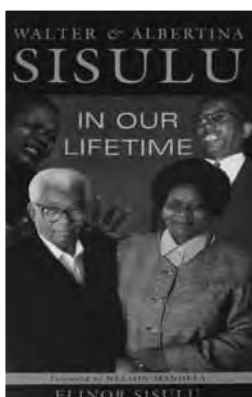
by A. Sachs



- South Africa: The Violence of Apartheid by **Albie Sachs** (1969)
- The State vs. Nelson Mandela by **Joel Joffe** (2007)



- Through My Lens: A Photographic Memoir by **Alf Kumalo** (2011)



- Walter and Albertina Sisulu: In Our Lifetime by **Elinor Sisulu** (2003)
- The World That Was Ours by **Hilda Bernstein** (1967)



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“No single person
can liberate a country.

You can only liberate a
country if you act as a
collective.”

Nelson Mandela



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