

Chapter Nine

POLITICAL TRIALS AND DETENTION

THE MARITZBURG TRIAL (JUNE 1971 - APRIL 1972)

ACCUSED: Kader Hassim, Joseph Bransby Vusani, Mogani Josiah Moeng, Mofolwene Mbele, Pindiso Zimambane, Dam Gideon Mahanjane, Ncikwa Naki Vimba, Max Bantwini Tabata, Frank Anthony, Robert Cedric Wilcox, Albert Kwezi Tshangane, Surinayan Kala Venkatratham, Montford Mozoli Mabuto and Joseph Tshukudu Maleka (1).

INDICTMENT: The men faced charges under the Terrorism Act. They were alleged to have endangered the maintenance of law and order and with the African People's Democratic Union of South Africa (APDUSA) and the Non-European Unity Movement (NEUM), sought to overthrow the government by force of arms, and with foreign assistance.

COURSE OF THE TRIAL: Mr Cecil Rees, appearing for the state, led evidence that during about 1963 Mr Tabata and the majority of the leaders of the APDUSA, including Dr Limbada, Tsotsi and Jane Gool (all co-conspirators) left the Republic secretly and established a headquarters of the Unity Movement in Lusaka. Dealing with the 1970 alleged conspiracy, Mr Rees said that the leaders of APDUSA and NEUM in Zambia were engaged in preparation for sending four persons to South Africa to revive APDUSA and to recruit persons to undergo military training. The four persons were Leonard Nikane, Edward Ncala, Ernest Jama and Diliza Lande. At least 200 recruits were required. Mr Rees

further said that there was a matter of urgency in the preparations because Mr Tabata indicated that the United Arab Republic was prepared to accept recruits for military training and that there was a possibility that the recruits might be accepted by the O.A.U. for training (2).

JUDGMENT: The Judge President of Natal, Mr Justice James found all the accused guilty on 2 or more counts. Mfolwane Mbele, Pindiso Zimambane, Dam Gideon Mahanjane and Ncikwa Vimba were found guilty on the main count of conspiracy.

Mr Justice James found all the four accused mentioned above also guilty of attending secret meetings connected with a military recruitment campaign and guilty of inciting, instigating, aiding or encouraging persons to undergo military training.

Mr Justice James dismissed the allegations by some of the accused of ill-treatment at the MkaMbathi forest camp in Pondoland. Dealing with the evidence of the accused relating to the alleged assaults by the police, the judge said that in a case of this sort where it was obvious that the police would wish to get information on what appeared to be a dangerous situation developing in Pondoland, the temptation to take short-cuts by applying third degree methods must have been strong but that on the other hand there was no doubt that the temptation in the way of the accused to make false charges against the police in an endeavour to cast doubt upon the truth of the evidence against them, would have been a real one (3).

SENTENCE

Kader Hassim
Joseph Vusani

8 years imprisonment 1st count, 8 years on 2nd count and 5 years on the 4th count. Sentences on count two and four to run concurrently.

Mogami Moeng

8 years on 1st count, 7 years on 2nd, and 5 years on 3rd. Sentences on count 2 and 3 to run concurrently with count 1.

Mahanjane and Vimba

7 years on 1st count, 7 years on 2nd count and 5 years on 3rd count. Sentences on count 2 and 3 to run concurrently with count 1.

Mbele and Zimambane	8 years on 1st count, 8 years on 2nd count and 5 years on 3rd. Sentences on count 2 and 3 to run concurrently with sentence on count 1.
Tabata, Tshangane and Mabuto	5 years on 1st count and 5 years on 2nd count. 2nd term runs concurrently with the first.
Anthony, Venkatratham and Wilcox	6 years on first count and 6 years on 2nd count. 2nd term runs concurrently with the first.

COST OF TRIAL: At the beginning of the trial the cost was estimated at R50 000. The wives of three of the accused men made appeal for financial aid to various people, including the Archbishop of Canterbury, Dr Michael Ramsey, U Thant, Indira Gandhi, Senator Edward Kennedy, and the Secretary of the International Commission of Jurists (4).

APPEAL: The accused in this Maritzburg Trial were granted leave to appeal and their case is not expected to appear before the Appellate Division until next year. Bail has been granted to three of the accused, viz. Mabuto, Tabata and Tshangana. Attempts are being made to raise a total of R9 000 for their freedom (5).

THE ESSOP TRIAL (JUNE - NOVEMBER 1972)

ACCUSED: Mohammed Salim Essop, Amina Desai, Indrasen Moodley and Yusuf Hassem Esack.

INDICTMENT: The four accused appeared on the main charge under the Terrorism Act and on three alternative charges under the Suppression of Communism Act.

COURSE OF TRIAL: Mr J.E. Nothling led the prosecution team. The hearing was based on the activities of the A.N.C. and the South African Communist Party, (SACP) both banned organisations. Mr Nothling said that despite the bannings, the activities of these organisations continued and that the aim of these organisations was to overthrow the government by violent means (6).

It was alleged by the state that the organisations distributed pamphlets through the post and through explosive devices which were accompanied by the broadcast of a speech. Even gramophone records came into the country under the cover of Christmas labels to propagate the cause of these organisations.

The state alleged that in the boot of the car in which Mr Timol (who died whilst in police custody) and Mr Essop were travelling, were found hundreds of copies of *Inkululeko*, and 787 copies of the leaflets *'Sons and daughters of Africa'*, and 447 copies of *'The African National Congress says to Vorster and his gang: Your days are numbered'*. It was further alleged that the police had also found a number of letters to 'Dear Ahmed', 'My dear Ahmed' and 'My dearest Ahmed' with a secret text on the back which was invisible and could only be brought out by chemical means. One of the messages, Mr Nothling said, was a request from 'CC' for a list of people to whom the pamphlets would be sent. They alleged that Timol supplied 8 000 names. Another message contained a formula for manufacturing gunpowder while another said that Mr Timol would receive a 'present'. This was a box of Fortnum and Masons Darjeeling Tea, which contained pamphlets for distribution in South Africa. The pamphlets were said to have been found by police in Mr Timol's car on 23 October 1971.

Later the police had found in Mr Essop's room in Roodepoort a list of 583 names and addresses and 287 addressed envelopes. The state alleged that this list was for the purpose of distributing documents for the benefit of SACP and/or ANC.

The admissions before the court included methods of propaganda by use of postal services, the 'bucket bomb system', street broadcasts, records, and smuggling literature in South Africa. Included in the 'bucket bomb system' were explosions which took place in Johannesburg, Durban, Cape Town and Port Elizabeth in August 1970 and August 1971. In 1970 the explosions were followed by pre-recorded tapes with a message from the ANC. The message was from the pamphlet entitled *'The ANC says to Vorster and his gang: Your days are numbered'*. The recording said that the ANC defied Vorster, his laws, his bannings, his prisons and his police thugs, to bring a message of the freedom struggle; the message of freedom for our people.

With regard to records the admission states about 1 200 recordings were distributed to 'selected citizens' and were seized or handed to the police. The distribution is acknowledged in the ANC organ *'Seshaba'*, Vol. 4, No. 4 of April, 1970, page 11. Also included in the admission was the fact that various ANC pamphlets - among them, *'The ANC calls you to Action'*, *'We are at War'*, *'These men are your brothers'* - were seized

while general cargo was unloaded from ships in Cape Town, Port Elizabeth and Durban.

The admission also included the fact that the car in which Timol and Essop were travelling when they were stopped by police belonged to Mrs Desai or was in her lawful custody.

JUDGMENT: Mr Justice Snyman convicted all four accused on the main charge of participating in terrorist activities. Because of the conviction on the main count the judge said it was not necessary to deal with the alternative counts. Justice Snyman said that the accused had conspired together with Ahmed Timol and the outlawed SACP and ANC to promote the cause of the organisations (7).

SENTENCE: All four accused were each sentenced to 5 years imprisonment. Justice Snyman subsequently refused to grant them leave to appeal (8).

THE MZIMELA TRIAL (MARITZBURG: NOVEMBER 1972)

Accused: Fana Cletus Mzimela

INDICTMENT: The first count related to leaving and entering the country secretly without official travel documents, undergoing training in welfare, guerilla warfare and espionage, entering Rhodesia bearing arms and participating with other persons in armed fighting against the Rhodesian security forces with the intention of making his way through Rhodesia to the Republic so as to organise, encourage, support and participate in armed revolution in the country, entering the country with falsified identity documents and attending the Morogoro Conference.

The second count related to undergoing training in warfare, guerilla warfare, methods of revolution, communism, propaganda and methods of secret communication during or about 27 June, 1962 and 28 September, 1972 (9).

COURSE OF THE TRIAL: Mzimela pleaded guilty on both counts. A witness (who could not be named, by court order) described how he became disenchanted with PAC and had then joined ANC in 1963 in Tanzania. The witness told the court that Joe Modise, Commander-in-chief of Anti-South Africa guerilla forces, took him and a contingent of others for military training. The group first went to Odessa, Russia. The witness said he first met Mzimela in Odessa and that Mzimela was going under the name of Malinga. The witness told the court that Mzimela specialised in politics, infantry tactics, chemical weapons and self-

defence. The training course was completed in the winter of 1964. The witness said that he returned to Tanzania and stayed there until the end of 1964.

In 1965, according to the witness, after the leadership of ANC came to their camp, Oliver Tambo administered an oath which the witness and others, including Mzimela, took. The oath was of allegiance to ANC.

The witness told the court that in 1969 he met Mzimela who told him that he had attended the Morogoro Conference in Tanzania, the purpose of which was to investigate complaints from the ANC and to 'fix up things that were blocking the struggle'. The witness also described how he had met Mzimela at Moscow airport and how they had travelled, together with others, to East Berlin to undergo military training.

Another witness, Mr Leonard Nkosi, 'a Moscow-trained terrorist' who deserted his group, gave a graphic description of two skirmishes between his group and the Rhodesian Security Police.

JUDGMENT: Mzimela was found guilty and sentenced by Mr Justice Henning on 21 November to 15 years imprisonment on the first count and 5 years imprisonment on the second count. The sentences were to run concurrently (11).

THE MOUMBARIS TRIAL

Six men, viz. Mr Alexander Moumbaris, an Australian of French extraction; Theophilus Cholo, an African from the Transkei, Justus Mpanza and Petros Aaron Tembu, both Africans from Natal, Gardner Kitchener Sejaka, an African from the Transkei, and John William Hosey of Northern Ireland appeared briefly on 24 November, 1972 in the Pretoria Supreme Court on charges under the Terrorism Act.

They were not asked to plead and were remanded to January 15, 1973.

DETENTIONS UNDER SECURITY LAWS

Persons convicted in 1971

Replying to a question in Parliament on 27 May, 1972, the Minister of Community Development (for the Minister of Police) gave the following information relating to persons convicted under the security laws in 1971.

	Whites	Coloureds	Asian	'Bantu'
Section 21, General Law Amendment Act of 1962	-	-	-	-
Suppression of Communism Act	3	-	-	13
Unlawful Organisations Act	-	-	-	-

Persons serving sentences

The Minister also gave the following information about persons serving sentences imposed under the security laws. The statistics are:

	Whites	Coloureds	Asian	'Bantu'
Section 21, General Law Amendment Act of 1962	5	9	13	248
Suppression of Communism Act	4	1	1	23
Unlawful Organisations Act	-	-	-	109
Terrorism Act	-	1	-	50

Persons arrested in terms of Section 6 of the Terrorism Act on 24 and 25 October, 1971

On 4 February, 1972, the Minister of Police, replying to a question in Parliament, confirmed that a number of persons were arrested on 24 and 25 October, 1971. The Minister, however, refused to disclose the exact number of people arrested.

The Minister also mentioned that two of the detainees had made representations to him. In one case there was a request for medical treatment, which was granted. The same person requested to be released. This

request, according to the Minister, was refused, but the detainee was released a month after he had made the application.

In the other case the request was to be released, which was refused. According to the Minister, all the detainees were visited by a magistrate at least once a fortnight.

The Deputy Minister of Finance and Economic Affairs (for the Minister of Police), on 11 February, when asked whether any of the detained persons had been charged, replied in the affirmative and said that the offence they were charged with was contravention of Section 11 (e) of the Suppression of Communism Act and of Section 83b of Act 91 of 1964.

The Minister further stated that since 25 October a number of people had been arrested and detained in terms of Section 6 of the Terrorism Act, but declined to give the exact number of those still detained and those that had been released. He did, however, mention that four of the people arrested since 25 October had been charged. One was charged with contravention of Section 2 (1) of the Terrorism Act, alternatively, contravention of the provisions of the Suppression of Communism Act. The three other people were charged with contravention of the Suppression of Communism Act. Before being charged, one person was, according to the Minister, detained for 85 days, two others were detained for 37 days and the fourth was detained for 36 days.

Replying to a question in Parliament on 21 March, the Minister of Justice and Prisons (for the Minister of Police) disclosed that 5 of the people arrested in terms of Section 6 of the Terrorism Act on 24 and 25 October, 1971, had been subsequently detained in terms of Section 215 bis of Act 56 of 1955; and that 8 had been charged: 4 with contravention of Section 2 of the Terrorism Act with alternative charges in terms of the Suppression of Communism Act, 3 with contravention of Section 11 (a) of the Suppression of the Communism Act and contravention of Section 83 of the Customs and Excise Act.

The names of these people were revealed by the Minister of Police on 11 April in Parliament. The names of the five ex-detainees under the Terrorism Act who were subsequently held in terms of Section 215 bis of Act 56 of 1955 were:

Jacob Varachia
Dennis Naik
Benjamin Zwane
Sidom Tilotsane
Martin Cohen

The four people charged with contravention of Section 2 of the

Terrorism Act, with alternative charges in terms of the Suppression of Communism Act were:

Mohomed Salim Essop
 Amina Desai
 Indhrasen Moodley
 Quentin Jacobsen

Persons charged under the Terrorism Act and held in terms of the Criminal Procedure Act

In Parliament on 8 May the Minister of Police gave the following statistics relating to people charged under the Terrorism Act during 1971:

	Not Guilty	Guilty
Whites	1	-
Coloureds	-	3
Asian	-	2
'Bantu'	1	9

N.B. These trials were only concluded in 1972. After these trials were concluded, the two people who were acquitted were, according to the Minister, held under the Terrorism Act. The white was held for 9 days and the African was held for 160 days.

Persons in detention in terms of Proclamation 400 of 1960

Replying to a question in Parliament on 18 February, 1972, the Minister of Police disclosed that as at 1 April, 1971, nobody was held in terms of Proclamation 400 of 1960 but that regarding those who were in detention at that date, 20 people were released without being charged and 4 were charged.

The periods of detention of those who were released without being charged were, according to the Minister:

1 for 103 days
 3 for 168 days

1 for 179 days
 2 for 182 days
 1 for 197 days
 1 for 207 days
 1 for 213 days
 5 for 235 days
 1 for 242 days
 1 for 283 days
 2 for 301 days
 1 for 303 days

Of the 4 people who were charged, one was detained for 146 days before being charged, and the other three were detained for 177 days. The trial of the four people charged had not yet been concluded by 18 February.

After 1 April, according to the Minister, six more people were arrested and subsequently released. The period each spent in detention before release:

1 for 16 days
 1 for 68 days
 1 for 114 days
 1 for 149 days
 2 for 167 days

DEATHS IN DETENTION

Death of persons detained in terms of Section 6 of the Terrorism Act

Ahmed Timol

Mr Ahmed Timol, a 30-year-old Roodepoort teacher, fell to his death from the tenth floor of John Vorster Square police headquarters in Johannesburg on 26 October, 1971. Major-General C.A. Buys, the chief of the C.I.D., in giving an account of the last minutes of Mr Timol's life, said Timol had not been threatened or assaulted. In the office on the tenth floor there was the most relaxed atmosphere one can imagine in such circumstances. He said that Ahmed Timol had been sitting calmly on a chair on the tenth floor when he suddenly sprang up and ran to his death.

The dead detainee's father, Mr Yusuf Timol, described General Buys's account as 'absurd'. 'No Moslem would commit suicide. He would be out of Islam', he said (12).

The *Sunday Express* reported that a few weeks before his death, Mr Ahmed Timol, speaking about a political detainee who had fallen to his death from the seventh floor of Security Police headquarters in Johannesburg in 1964, had said: Everyone knows that no-one with any sense would have been that stupid to commit suicide (13).

The death of Timol was followed by mass protest meetings held all over the country. In the wake of these meetings, Brigadier Piet Kruger, deputy head of the security Police told a Nationalist newspaper that Mr Timol was a 'hero' of the Communists. 'We who know the Communists', he said, 'know that when they want to resort to violence, they make people swear an oath to commit suicide rather than reveal the names of their comrades. They are taught to jump out rather than be questioned'.

An inquest into the death of Timol was held on 1 December, 1971, at the Johannesburg Magistrate's Court. The Regional Magistrate, Mr J.L. de Villiers refused an application by Mr I.A. Maisels, for the Timol family, for documents and information at the start of the inquest. An application was made to the Supreme Court to challenge that ruling. On 28 January, the Supreme Court ruled that the Regional Magistrate had erred in refusing the documents.

The inquest into Timol's death resumed on 24 April, 1972. During the inquest, evidence was led to the effect that Timol's body had abrasions and bruises which were sustained before his death. The state pathologist and the pathologist instructed by the Timol family, Dr Gluckman, disagreed on the age of the injuries. The findings of the inquest were given by Mr J.J.L. de Villiers on 22 June, 1972. The Regional Magistrate found that nobody was to blame for Timol's death (14).

Death of persons detained in terms of Proclamation 400 of 1960

Two people died during their detention in terms of the Act mentioned above. This was disclosed by the Deputy Minister of Finance and Economic Affairs on 11 February in response to a question in Parliament (15). The two people were Nogeni Gaga and Pongolo Hoyo, who were reported to have died on 7 and 8 May 1965 respectively. Both of them died, according to the Minister, of natural causes.

Death of persons in detention other than detention in terms of the Terrorism Act, during 1971

According to the information given in Parliament on 8 February, 1972, by the Minister of Police, a total of 42 people died in detention other than detention in terms of the Terrorism Act (16). These deaths can be analysed as follows:

No. of people reported to have died of suicide:	16
No. of people reported to have died of natural causes:	12
No. of people who died neither of suicide nor natural causes:	12
No. of people who died but post mortem proceedings had not been completed by 8 February, 1972:	2
TOTAL	42

Terrorism Act: Actions for damages settled out of court

In reply to a question in Parliament on 5 May, 1972, the Minister of Police disclosed that 8 of the people who had been detained in terms of Section 6 of the Terrorism Act had brought actions for damages against him and/or any member of the police force (17). One case was settled out of court, and the plaintiff, Mrs G. Haron, was paid the sum of R5 000,00. The seven other actions were pending, the Minister said.

Suppression of Communism Act: Advocates and Attorneys struck off the roll

The Minister of Justice, replying to a question in Parliament on 21 March, 1972, said that two advocates and 4 attorneys had been struck off the roll in terms of Section 5 quat of the Suppression of Communism Act. The two advocates were M.D. Naidoo and A.P. O'Dowd. The four attorneys were: L. Baker, J. Cohen, R.I. Arenstein, and Mrs S. Muller (born Movshowitz) (18).

Feeding of persons detained in police cells

Replying to a question in Parliament on 5 February, 1972, the Minister of Police gave the following information relating to the scales of rations in respect of the feeding of persons detained in police cells (19).

No ration scales were prescribed for whites and 'non-whites', while the following scales per meal apply:

Coloureds and Africans

8 ounces mealie-meal

one-third ounce fat

one-sixth ounce salt

The mealie-meal may be substituted by beans.

Asians

8 ounces rice

one-sixth ounce fat

The rice may be substituted by beans.

According to the Minister, these scales were laid down in 1927 and apply to persons who are, in terms of the Criminal Procedure Act, to appear in court within 48 hours, and who are thereafter removed to prison. The Minister added that in practice the prescribed scales were not being strictly adhered to and supplementary food like bread, coffee, etc., with at least equal nutritional value, is provided.

The daily costs permitted for feeding prisoners were given as follows:

Whites and Coloureds	60c per day
Africans	15c per day
Asians	30c per day

In respect of persons detained as witnesses or for purposes of questioning, in terms of current legal provisions, the daily costs permitted for feeding them were given by the Minister as follows:

Whites	R1,50
Coloureds and Asians	75c
Africans	45c

The Minister of Police also added that the revised ration scales would become operative on 1 April, 1972.

The daily costs of rations before 1 April, 1972

The Minister informed the Assembly that in respect of those ration items which had to be purchased, the average cost was approximately R0,17 per prisoner per day, but that this amount of R0,17 did not include vegetables, in respect of which the department was self-supporting, whilst large quantities of meat, fruit, honey and dairy products were also produced. In the Western Province gaols, the department also supplied poultry and eggs produced by itself.

Revised scales of rations for prisoners as from 1 April, 1972; daily costs permitted in respect of feeding.

The Deputy Minister of Finance and Economic Affairs (for the Minister of Police) gave the following information in Parliament on 17 March, 1972, (20) relating to the revised scales of rations:

Whites

Breakfast

57g. mealie-meal or 114g. brown bread
57g. brown bread or 114g. brown bread
28ml. tea or coffee
43g. sugar
43g. milk
57g. jam or syrup

Lunch

57ml. soup consisting of 28g soup powder
and 57g. vegetables
227g. brown bread
57g. syrup or jam
8g. fat or margarine

Supper

142g. meat
227g. brown bread
227g. vegetables
28ml. tea or coffee
28ml. milk
14g. sugar
14g. salt per person

Asians and Coloureds*Breakfast*

Scale A

170g. brown bread
15g. brown sugar
2½ g. coffee

Scale B

225g. mealie-meal
15g. brown sugar
2½ g. coffee
5g. salt

Lunch

Scale C

225g. rice
15g. soup powder
5g. salt

Scale D

225g. mealie-meal
5g. salt
15g. soup powder

Supper

Scale E

225g. mealie meal
15g. soup powder
5g. salt
2½ g. coffee
15g. brown sugar

Scale F

170g. brown bread
15g. soup powder
5g. salt
2½ g. coffee
15g. brown sugar

Africans*Breakfast*

Scale G

170g. brown bread
15g. brown sugar
2½ g. coffee

Scale H

225g. mealie-meal
15g. brown sugar
2½ g. coffee
5g. salt

Lunch

Scale I

225g. mealie-meal
5g salt
15g. soup powder
50g. 'magon'
powder

Scale J

170g. brown bread
15g soup powder
50g. 'magon' powder
5g. salt

Supper

Scale K

225g. mealie-meal
5g. salt
15g. brown sugar
2 ½ g. coffee
15g. soup powder

Scale L

170g. brown bread
5g. salt
15g. brown sugar
2 ½ g. coffee
15g. soup powder

The Minister further informed the Assembly that the new daily costs to be permitted had not yet been determined but that the matter was being considered and would be submitted to the Treasury in due course.

REFERENCES

1. *The Rand Daily Mail*, 17 June, 1971.
2. *The Rand Daily Mail*, 10 March, 1972.
3. *The Rand Daily Mail*, 6 April, 1972.
4. *The Sunday Times*, 25 July, 1971.
5. *The Rand Daily Mail*, 24 May, 1972.
6. *The Rand Daily Mail*, 14 June, 1972.
7. *The Rand Daily Mail*, 31 October, 1972.
8. *The Star*, 1 November, 1972.
9. *The Rand Daily Mail*, 20 November, 1972.
10. *The Rand Daily Mail*, 21 November, 1972.
11. *The Rand Daily Mail*, 22 November, 1972.
12. *The Rand Daily Mail*, 11 November, 1971.
13. *The Sunday Express*, 31 October, 1971.

14. *The Rand Daily Mail*, 23 June, 1972.
15. Hansard 2, Col. 164.
16. Hansard 2, Cols. 88-90.
17. Hansard 13, Col. 978-979.
18. Hansard 8, Col. 646.
19. Hansard 3, Col. 207-208.
20. Hansard 7, Col. 582-584.