



# Courts

**I**n previous years, the courts have been a barometer of political resistance. Numerous treason and terrorism trials have illustrated the level of political and military activity in the country. But all that seems to be changing, argues **GLENN MOSS**. Fewer people are being brought before court - they are either killed, detained indefinitely, or, possibly, persuaded to spy on their own organisations.

**M**ore than 50 South Africans were accused of high treason during 1988. This is a serious political charge, carrying the death penalty in most countries - South Africa included.

Hundreds more have faced charges in dozens of other political trials, accused of murder, terrorism, membership of banned organisations, undergoing military training, and possession of arms and explosives. Sentences of those convicted have ranged between death, 25 years' imprisonment, flogging - or a fine.

By the middle of the year at least 56 people sentenced in trials with political overtones had spent time on Pretoria's death row waiting for appeal outcomes, reprieves, or the sheriff's invitation to die at the end of a rope.

In June, the University of Witwatersrand's Centre for Applied Legal Studies counted nearly 70 political trials in process, or due to begin within the next two months. They involved over 450 accused.

But despite these figures, some analysts believe political trials are less significant than they once were.

**E**ight years ago, *Work In Progress* argued that a study of political trials could 'provide insights into organisations involved in resistance activity'; give 'an indication of the level and intensity of popular resentment and organisation present within the dominated classes'; and indicate 'long-term trends both as far as resistance activity is concerned, as well as possible state response to such activity'.

For years, political trials provided one of the few legal sources of material on the nature and development of armed struggle, and developments and policies within resistance organisations.

More recently, *WIP* and other publications were able to lift a corner of the state of emergency's veil masking the township conflicts and struggles of

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1985 and 1986, through careful and creative reporting of political trials.

Why, then, the argument that trial proceedings have become less significant? After all, the ongoing treason trial of Moses Mayekiso and four others has provided a wealth of information on Alexandra township during the 'insurrectionary' period of 1985 and 1986: people's courts and street committees, vigilantes allegedly linked to township police, organising strategies of youth, student and civic organisations - this is the very guts of a trial in which the state is seeking to prove that the constitution of alternative structures of power - 'people's power' - involves treason.

A recently-concluded trial of eight young Alexandra residents found guilty of sedition provided substantial detail on the operation of people's courts in that township during 1985 and 1986.

The 'Delmas' treason trial, now drawing to a close in a Pretoria court, has examined, analysed and dissected the UDF and its Vaal affiliates in tens of thousands of pages of evidence, exhibits and argument. This trial - in which 19 UDF and Azapo members are charged with a conspiracy to overthrow the state - details the development of the 1984 Vaal rent boycott, which some view as the beginning of the 'insurrectionary' politics of the

mid-1980s. Prominent among the accused are 'Terror Lekota and Popo Molefe, both senior national UDF officials at the time of their detention.

The trial of alleged ANC 'big fish' Ismail Ebrahim and his two co-accused, Acton Maseko and Simon Dladla, has placed a wealth of usually unavailable information on ANC structures and activities before the public. This includes the evidence of four ANC defectors (referred to only as X1, X2, X3 and X4) and evidence taken on commission in London, where senior ANC personnel like military intelligence head Ronnie Kassrils and national executive committee member Jacob Zuma gave details about ANC policy, military and political structures, lines of command and hierarchy.

But these sorts of trials have become exceptions during 1988. There are others like them, of course: two important conspiracy trials in Cape Town involve 28 people allegedly associated with ANC military activity. It is probable that at least one of these trials will reveal details about Umkhonto we Sizwe's Western Cape operations over the past few years, including local cell structures and acts of sabotage.

And the trial of six alleged PAC members in Pretoria has provided some insights into that organisation's attempts to develop a military presence in South Africa, and forge links with Qibla, a Cape-based Islamic movement.

But trials involving active opposition to apartheid - be it in the form of armed struggle, mass politics, underground activity or popular opposition and resistance - have become less important. Not to those involved, of course. And not necessarily to the broad anti-apartheid opposition. But for the state, bringing people to court to face politically-motivated charges is not as important as it once was.

Organised township opposition and resistance to apartheid has lessened under the impact of successive states of emergency, massive waves of repression, and new state strategies





Messina trialists Mthethelei Mncube and Mzaondeleli Nondula, who received multiple death penalties this year — the acts were committed during 1985 and 1986. In terms of the Prisons Act, their photographs may not be published.

combining repression, control and material upgrading.

Localised township insurrections - witnessed nationally during 1985 and 1986 - are over for the present. And the sort of political trials this period gave rise to are also dwindling. The courts are still hearing some cases of public violence, arson, malicious damage to property and murder which emerge from this period. But trials of this nature are becoming less frequent, and few relate to contemporary resistance.

There is still a regular flow of trials in which accused face charges of undergoing military training, usually under the auspices of the ANC. These trials have shown that most initial training of Umkhonto recruits takes place at ANC camps in Angola, with more specialised courses held in East Germany or the Soviet Union. However, there are growing indications of basic training taking place within South Africa.

The majority of those facing terrorism charges are alleged to have

undergone external training, and returned to South Africa with the intention of either smuggling in weapons, establishing arms caches, reconnoitring potential targets for attack, or undertaking acts of sabotage.

**N**oticeable about many of these trials is the speed with which this category of Umkhonto recruit seems to be apprehended by police. A number of current terrorism trials involve accused who were arrested very shortly after crossing back into South Africa - sometimes being apprehended within hours of entering South African territory.

This group also seems at some risk of being shot by police when apprehended. Police spokesmen claimed that 79 ANC guerillas were arrested in the first six months of 1988, while a further ten were 'killed in clashes'. According to police figures, a total of 106 guerillas were either arrested or killed during 1987.

Police releases in the second half of

the year have been peppered with further reports of arrests and deaths of 'terrorists' - although it is almost impossible to confirm the accuracy of these reports.

On June 16, for example, Law and Order Minister Adriaan Vlok announced that police had killed nine ANC members the week before, when they had confronted 'two heavily-armed groups of terrorists' near Swaziland. In mid-July, the SADF announced that four ANC members had been killed in the Kruger National Park in a joint army and air force operation. On July 24, four suspected PAC insurgents were killed at a roadblock in the Western Transvaal.

On August 4, police announced that they had killed five suspected guerillas near Alldays in the Northern Transvaal. This brought the number of alleged insurgents killed in the area in the previous fortnight to nine. Police announced the death of another suspected guerilla in the area on August 9.

If police statistics are to be



believed, these figures alone (and they are far from comprehensive) show that South African security forces killed ten suspected guerillas during the first half of the year - and trebled this figure in the next two months.

**M**any alleged guerillas now on trial were apprehended by police in late 1986 or 1987. The delay between detention and trial is an integral part of South Africa's legal process with long periods of interrogative detention a normal prelude to trial, release or other action.

But despite this time lag in legal proceedings, it is clear that guerillas charged with acts of sabotage appear in court very infrequently. Police claim there were 230 acts of 'terror' in South Africa during 1986; 234 incidents in 1987; and nearly 90 had been recorded by June 1988. Yet during 1988, surprisingly few accused have faced charges related to these incidents of guerilla activity.

The Messina trial related to land mine explosions during 1985 and 1986; the Ebrahim treason case includes allegations of 'mine warfare' on Eastern Transvaal farms during 1986; two Cape Town trials include allegations of limpet attacks at DF Malan airport and elsewhere; and Gordon Webster - captured by police, released by colleagues in a daring raid on a hospital, and then recaptured on his return to South Africa - was found guilty of sabotaging an electrical sub-station and sentenced to 25 years' imprisonment. A Johannesburg trial which involves a bomb attack on a Hillbrow cafe starts shortly, but few 1988 trials have related directly to incidents of guerilla activity.

It is possible that the legal process is taking even longer than before to bring accused to court in political trials. There has also been speculation that periods of interrogative detention are often being used in attempts to 'turn' guerillas into spies for South Africa. Certainly the conditions of indefinite solitary confinement and total dependence on interrogators and

other state officials create the preconditions for 'turning' soldiers. American experiences in Korea and Vietnam demonstrate this well.

Nonetheless, there are indications that fewer guerillas who have been involved in acts of sabotage are being apprehended by the police - or if they are being apprehended, they are not appearing in court. The increasing numbers of alleged guerillas killed by police and army may partially explain this.

**T**he period of apartheid rule associated with Prime Ministers Verwoerd and Vorster was strange in its emphasis on legal procedures. The juridical process was increasingly perverted during this period, becoming an administrative caricature of justice. Yet the carefully-worded banning and house arrest orders of the time, the inquests into the growing number of deaths in detention after 1963, and the show trials were a strange legalistic feature of an exceptionally brutal system. The John Vorsters and Jimmy Krugers of the 1960s and early 1970s aimed to convince white South Africa and its international allies that their government faced a real threat from 'terrorism' and 'international communism', and was accordingly worth supporting. One convenient tactic in this strategy was the show trial - large numbers of ANC supporters or members, charged in gradiose conspiracies allegedly aimed at overthrowing the state by violence.

But the administration of Botha, Malan and their militarist clique has different priorities. Their government has faced a real threat from opposition forces and the international community. South Africa's rulers badly need to portray national stability to hold white support internally, and attract investment and support internationally. The show trial of notable opposition leaders, or indications of internal resistance and armed struggle, run counter to this portrayal of stability.

More importantly, the form of state developing in South Africa is dominat-

ed by secrecy: decisions and their implementation are increasingly controlled by a national web of joint management centres, local and regional mini-centres, regional services councils and the state security council.

State strategies have little to do with court proceedings or trials of leaders, activists or individual guerilla fighters. The public nature of these proceedings runs counter to the ethos of secrecy which is central to the current South African state.

The shadowy world of vigilante activity and abduction is more in tune with the national security management system than trials open to the public and press, where defence witnesses, lawyers and accused can challenge the state's version of reality. The long-term preventive detention of thousands of apartheid's political opponents also makes political trials less central than before. Incarceration, punishment and removal from the political arena are achieved at the stroke of a pen, avoiding court proceedings which can sometimes be embarrassing to the state.

And the effective banning of opposition organisations, linked to stringent censorship and control of the media, allows government to achieve its blanket of silence without recourse to public political trials. Government threats to limit court reporting further - and the possibility of holding some categories of political trials behind closed doors - could hide resistance to apartheid even more.

Political trials will not disappear. But the changing form of the state, and its changing priorities, suggest that the prosecution of political opponents will be less common than before.

Raids into neighbouring states; attacks on ANC centres and personnel; vigilante activity; long-term detention under emergency regulation; censorship and control of information; restrictions on organisation and individuals; 'dirty tricks' departments; disinformation campaigns: these, rather than political trials, are the repressive weapons which have dominated 1988.