THE TREASON TRIAL—FOREVER?

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It is now more than two and a half years since 156 people from all over South Africa were dramatically arrested at dawn and sent by military aircraft and police vehicles to detention in Johannesburg, there to face a tediously sensational trial on charges of high treason.

In that time there have been starts and stops and starts to proceedings in confusing proliferation; there have been adjournments, discharges, quashings, recusal, attempts at appeal; there have been volumes of evidence, months of legal argument, four indictments, uncounted amendments, an interwoven refrain of demands for further particulars; and still, at the time of writing, the trial has not yet begun—in the sense that any of the accused has yet pleaded.

It would not be surprising if only the accused and the lawyers in the case managed to keep any track at all of what is going on; in fact, it would be a wonder if many of the accused were to know what is happening to them, simple folk as some of them are, living in remote areas and without the price of a daily newspaper to help them follow developments. It is certainly not surprising that the reaction of the general public swings between: "Treason trial! Is *that* still on?" and the fatalistic acceptance that treason trials, like the poor, are now always with us.

The management of the treason trial has been heavily criticised both in South Africa and abroad. The correctness of judicial proceedings, of course, has, it is widely agreed, been above question. It is the shifting vagueness of the Crown that has come under fire: the gargantuan mass of undigested material, documents, speeches, witnesses' evidence which was brought—hope, apparently, springing eternal in the Prosecution that the slow mills of judicial proceedings would grind all into a valid, acceptable case; the dragging in, very obvious in the course of the preparatory examination, of all sorts of afterthoughts—'Cheesa-Cheesa' letters, Mau-Mau, and the Evaton bus boycott—which were not mentioned in the earlier stages; three bits of new legislation which palpably affect the trial and make the defence task more difficult. In the event, however, the mills of the Court have ground so small that the mass of Crown material has been whittled to a fraction of its original volume (though it remains large enough in all conscience), while all four much-

amended indictments (framed with the indirect assistance of Defence and Court) have remained without the particulars necessary to make them acceptable. Both of the original alternative charges under the Suppression of Communism Act have had to be jettisoned.

The Defence has deliberately concentrated on this aspect of the case, giving perhaps the impression that the actual trial is being indefinitely postponed: but this is not from any lawyer's passion to win victory by scoring technical points, but because in the formless welter of allegations against the accused, it would have been impossible to defend them; or, if defence had been attempted, the case would have gone on forever. Now the Crown is compelled to some precision; it must tell the accused precisely with what each is charged. When the accused come to plead, as a result of these long preliminary months of tussle, they will know exactly what evidence the Crown relies upon in the case against each one of them, and they can prepare to defend themselves accordingly.

That the case should have taken this course could hardly have occurred to the instigators of the mass arrests. The dawn action, the secrecy, the atmosphere of urgency, incarceration, the early attempts in the Fort, in Johannesburg, to isolate the prisoners from friends, the initial refusal of bail, might have been expected to create a climate of drama, suspense, danger, in which, presumably, a shocked and frightened public was expected to thank a strong, alert government for a timely averting of incipient bloody revolution.

But the day the news of the arrests broke, counter-action began. The authorities were not to foresee that a distinguished, albeit small, group of bishops, retired judges, trade unionists, experts in race-relations, all well-known at home and abroad, basing their action on the principle that a person is innocent until he is proved guilty, would mobilise South African and overseas public opinion in sufficient strength to form a Fund for the defence of the accused and the assistance of their families. Within two weeks, all 156 accused were released on bail of surprisingly small sums for so dire a crime as high treason, though with onerous limitations on movement and participation in meetings; while the case made world head-lines (which it continues to do with increasingly hostile comment) and the unimpeachable names of the sponsors of the Fund ensured a steady flow of money from all over South Africa and from far

beyond its borders.

The accused were arrested after two or three years of intense Special Branch (political police) activity, widespread and indiscriminate raids on offices and homes, industrious note-taking at meetings, and dark ministerial forebodings repeatedly expressed in Parliament. They appeared in a preparatory examination before a magistrate, in a specially furnished court-room in the Drill Hall in Johannesburg.

The Drill Hall proceedings, were it not that treason is a capital offence, would have possessed a strong element of farce. There was the fantastic cage which enclosed the accused on the first day and which was promptly removed after angry protests from the Defence. This was succeeded by a clubby cosiness: deck-chairs, correspondence course lectures, cross-words, and knitting through the sessions; and in adjournments, darts, fraternising across court-room and colour bar, choir practice and poker.

The extraordinary mountain of evidence accumulated in the course of raids included, it will be remembered, such news-worthy items as a dragon-embroidered dressing-gown, a book of Russian recipes, labels (appropriated at meetings) reading "soup-with-meat" and "soup-without-meat", a schoolboy's essay on "The Congress of Vienna, 1815". Statistics gleaned by zealous reporters showed the Crown evidence totalled $2\frac{1}{2}$ million words and that 10,000 documents were submitted in support of its case; written evidence and argument filled 8,000 pages, or as much as would be required by 33 novels. An enthusiast even computed that to listen to the recorded evidence would take 35 hours—the equivalent of 15 full-length films.

Be that all as it may, a motley battalion of detectives gave evidence, many from illiterate notes. One, alleging an accused man had urged, "We must shoot Malan", agreed under cross-examination that the word he had actually noted, SHEK, was more likely to stand for *check* than *shoot*. Among the more sensational witnesses were a white expert on Mau-Mau and Communism from Kenya, who could not name a single book which an aspirant Marxist might study; an African, Magubasi, ". . . self-confessed liar and cheat" whom the police brought to give evidence from Kimberley where, it transpired, he awaited trial on charges of fraud; Professor Murray, Crown expert on Communism, who admitted words of his own took a place, on the tests he applied, beside those of Lincoln, Heine and Shelley as

'communistic'. There was the sensation of the Cheesa-Cheesa letters, instigation to arson, which the Prosecution attempted to link with the typewriter of one of the accused in what Mr. V. C. Berrangé, for the Defence, described as "as foul a conspiracy as ever disgraced our courts." These took up days and days of argument and cross-examination, but it is significant that all of this was dropped with much else by the Prosecution and now has no part in the trial.

Mr. O. Pirow, Q.C., appearing for the first time to conclude this stage of the Crown case, maintained that there was a dangerous Communist conspiracy to overthrow the State and replace it by a Communist Peoples' Republic. The Crown case, he said, was based on the Freedom Charter,† which was no theory for the future but something to be translated into "actual, practical politics in our time", and he asserted that in speeches of the accused their ostensible—or rather, ostentatious—reference to non-violence tended, in fact, to incite violence.

Mr. Berrangé, for the Defence, maintained that the extra-parliamentary and non-constitutional methods advocated by the accused had not been proved unlawful; indeed, Crown witnesses stressed that speakers at Congress meetings repudiated race hatred. Referring to the Congress of the People, at which the Freedom Charter was adopted, Mr. Berrangé, putting what is probably the crux of the case, said, "Never before in the history of civilized states has it been treated as treason to draw up or adopt in a peaceful gathering a statement of this nature . . . If every concrete proposition in the Freedom Charter were adopted, it would do no more than bring the state of the Constitution and the law into line with most Western European countries . . . If its adoption is held to constitute treason it will mean that the most rigid thought control in the world will have been enshrined in our law."

The Drill Hall inquiry, with adjournments, took just over a year, and at the end of it 65 of the accused were discharged with no case against them (and no compensation for the 13 months' disruption of their lives). The remaining 91 were committed for trial on a charge of high treason, with two alternative charges under the Suppression of Communism Act.

Months of preparation followed. A team of eight counsel was briefed for the Defence, headed by Mr. I. Maisels, Q.C., an advocate with a considerable reputation both within and outside

† See 'Africa South', Vol. I, No. 3.

South Africa.

The trial began on 1 August, 1958, before a Special Court of three judges appointed by the Minister of Justice (who had to authorise this procedure by retrospective legislation), in Pretoria's "Old Synagogue", converted into a Court for the purpose. It opened dramatically with the Defence attacking the composition of the Court and asking two of the three judges to recuse themselves: Mr. Justice Rumpff (presiding) because the Minister of Justice had said in Parliament that he had consulted Rumpff in the appointment of his colleagues; and Mr. Justice Ludorf because he had, in 1954, while still an advocate, acted for the Minister in a case in which some of the treason trial evidence was used. These factors had created a reasonable fear in the minds of the accused that they would not get a fair trial. Mr. Justice Ludorf withdrew from the case and was replaced by Judge Bekker, while Mr. Justice Rumpff, denying that he had in fact been consulted in the appointments, declined to withdraw.

Once more the case opened, again with surprise tactics. Mr. Maisels, in a $9\frac{1}{2}$ hour attack on the indictment, applied for it to be quashed—on the grounds that the charge did not disclose any offence, that not enough detail was given to enable the accused to know what case they would have to meet, and that the 91 accused were wrongly joined together in one trial. He said the Crown's attitude appeared to have been, "let's throw in everything the police have been able to find and see what comes out at the end." The accused seemed expected to read the whole preparatory examination record (40 volumes of 8,000 pages) and all the exhibits (nearly 1,000 documents). He pointed out that the photostat copies, piled up, reached a height of $17\frac{1}{2}$ feet. The exuberant use of the words "and/or" in the indictment meant, on an actuarial calculation he had had done, that each accused faced 498,015 charges in all. On the basis of the Crown's indictment, the case could go on for years. Mr. A. Fischer, Q.C., made a similar attack on the alternative charges under the Suppression of Communism Act. Argument altogether lasted for 10 days. The Court quashed one of the two alternative charges and ordered the Crown to supply the Defence with a large number of further particulars.

After the month allowed to the Crown in which to supply the particulars ordered, the Prosecution withdrew the second alternative charge and Mr. Pirow announced that they would rely only on "conspiracy" in the remaining charge of treason.

"If the Crown fails to prove a conspiracy then all the accused go free." The Defence maintained that the indictment was still inadequate and that there was still misjoinder. Mr. Trengrove, for the Crown, had barely begun a defence of the offending indictment, when Mr. Pirow, on behalf of the Attorney-General, abruptly withdrew the entire indictment. The Court adjourned. These events lasted, with lengthy adjournments, from 1 August to 13 October, 1958.

After a month of uncertainty and rumour, the accused were reindicted in two separate groups. The trial of the first group of 30 began before the same Court in Pretoria on 19 January, 1959. This new indictment was in general similar to what was left of the earlier one after quashing, withdrawal and amendments; though the number of the accused was reduced, as were the number of documents and the number of meetings, very considerably, and the period shortened from 1952—54 to 1954—56. Apparently accepting the Defence contention that violence is an essential element of treason, the Crown put more stress than previously on the element of violence in the case. There were no alternative charges.

The Defence again opened with an attack—this time on the venue, applying for the trial to be conducted in Johannesburg where all the accused (as well as all defence counsel) lived or lodged. It was argued that the 6 hours, at least, spent in daily travel was a very great hardship, still further reducing the hours of employment open to the accused and making consultations most difficult to arrange. The accused were in consequence prejudiced. Mr. Pirow, citing disturbances which occurred in Johannesburg in the early days of the preparatory examination, opposed the application, arguing that the large cities "are nothing short of dynamite", a view accepted by the judges who did not allow the change.

The Defence made their now routine attack on the indictment and on the Crown's obstinate reluctance to reveal its case. The arguments were similar to earlier contentions—that the indictment was inadequate, that there was insufficient particularity, and that there was nothing to support the allegations of violence. "If there is no case which the Crown can present to the accused and to the Court in an intelligible form, then there is no case at all . . . It is *vital* for the Defence to know from where or what the Crown infers violence. The task cannot be evaded even if it can be postponed, and in fairness to the accused it should *not* be

postponed."

The Court, after 10 days of argument, refused to quash this second indictment, but again ordered the Crown to supply still further particulars, especially those relating to allegations that the policy of various organisations was violence against the State. The Defence was allowed to refer certain questions of law to the Appeal Court; in particular, whether words can constitute an overt act of treason (is it treason to wage war against the State internally by means of meetings, speeches and writing?), and whether the accused are correctly joined in the indictment. Argument began in the Appeal Court, in Bloemfontein, on 15 June. The Appeal Judges accepted the Crown argument that the Court could not hear an appeal before the end of the trial and the matter was struck off the Roll.

In the meantime, the remaining 61 accused had been further divided into two groups of 30 and 31 and separately charged in two new indictments (the third and fourth) which differed from each other and the previous one mainly in the dates which they covered. All appeared before the same Special Court on 20 April.

The Crown, on this occasion, clearly expected an immediate postponement until after the hearing of the appeal in the first case, and had provided mere skeleton indictments without the particulars which the Court had previously and repeatedly ordered. The Defence made the strongest possible objection, arguing as before that the indictments were so defective that it was not possible for the accused to prepare their case and that by now the Crown should have realised what details were essential to the charge. The Court, agreeing that they should not have been served in that form, quashed both indictments.

The legal position of the accused at the present time is that the first case against the 30 is adjourned until 3 August, while the 61 are in the position they were in at the end of the preparatory examination 18 months ago, awaiting yet other indictments or formal discharge.

As for their personal situations: there can be nothing but admiration for the resilience, the solidarity and the courage of these people on trial for their lives, in the struggle to retain their jobs, maintain their families and surmount the increasing obstacles and frustrations that come their way as the trial drags on and as legislation makes life generally more restricted. Meanwhile, the public is becoming increasingly aware of the intentions and implications of these long drawn-out proceedings.