TRIAL UNDER THE TERRORISM ACT

In view of the United States Government, the nature of the Terrorism Act and the obligations which this Organization has toward the inhabitants of the Territory require that we call upon the Government of South Africa to halt these prosecutions and cease application of the Terrorism Act in South West Africa. South Africa must respect the international status of South West Africa.

U.S. Ambassador to the United Nations
Eugenie Anderson, September 12, 1967

You are receiving this memo at the same time that 37 South West Africans are on trial for their lives in a South African court. This trial ranks in importance with the famous South African “Treason Trials” and the Rivonia Trial. But it is also of unique importance because the case is a direct concern of the United Nations. This derives from the U.N.'s declaration of responsibility for the administration of South West Africa, and therefore its responsibility to the people of the territory.

The trial began on September 11. On one level the trial is simply one more in the long history of South African “witch hunts” against so-called enemies of the State; but on another plane it involves fundamental legal, moral and international questions for the future of South African-South West African relations. The implications of this trial include the issues of South Africa's relation to the internationalization of the South West Africa (that is South Africa's “right” to try South West Africans) and the legality of the Terrorism Act as it applies to South West Africa. Therefore, this trial, which has not received publicity in the American press, demands the attention of the international community.

The trial of the 37 symbolizes the South African Government's complete defiance of international opinion as represented at the U.N. The action taken by South Africa in bringing these men to trial is based on the presumption of her legal jurisdiction over the territory of South West Africa, a presumption negated by the international community. South Africa's jurisdiction was historically founded on the League of Nations mandate system which granted to South Africa the mandatory power over the former German colony of South West. But the mandate was declared terminated by the U.N. General Assembly on October 27, 1966 in Resolution 2145. This resolution (South Africa and Portugal cast the only two negative votes) states that “henceforth South West Africa comes under the direct responsibility of United Nations.” Therefore, according to international opinion, the South African system of law and its enforcement officers do not have the right to function in the “international” territory of South West Africa. In essence, then, the South West Africans' case is one in which the accused were seized by agents of a “foreign” power (South Africa), transported into a “foreign” country to be tried by an alien court—all beyond the pale of international jurisdiction.

The accused Africans have been charged under the above mentioned Terrorism Act, and two alternative charges under the Suppression of Communism Act. The State has filed a 41 page indictment which lists specific names, dates and places of so-called “terrorist” activities committed by the accused from June, 1962 through May, 1967. The charges are that they entered South West Africa in order to create a violent revolution and take over the Government; that 18 of the accused received training in “terrorist” tactics in Africa (Egypt, Algeria, Ghana, and Tanzania) and abroad (Russia); that they set up camps in Ovamboland (the northern area of SWA) and trained people in guerilla tactics; and finally that they attacked white and African government officials and farmers.

The Terrorism Act is a fantastic piece of legislation which flaunts at every turn the very foundations of western law. It was passed by this year's South African (all-white) Parliament and promulgated on June 21, and is retrospective to July 27, 1962 when the Sabotage Act was passed. The Act calls for a minimum sentence of at least five years imprisonment and a maximum death penalty (hanging). It defines Terrorism as acts committed “anywhere” with the intent to endanger the maintenance of law and order in South Africa and South West Africa. It considers any training with the intent to endanger the maintenance of law and order as illegal, as well as possessing explosives, weapons, armaments, ammunition and concealing, assisting or harboring “terrorists.” Certain provisions of the Act define “participation in terrorist activities” in a manner obviously designed to enable the South African Government to convict anyone for almost any activity it does not desire. For example, the accused can receive the death penalty for causing “substantial financial loss to any person or the State” or embarrassing “the administration of the affairs of the State.” Under the Act the accused may be arrested without a warrant and held in solitary confinement; detained indefinitely for the purposes of interrogation; and denied access to lawyers or family. A court may not intervene and the Minister of Justice does not have to inform Parliament or the family of the accused of his arrest. The trial is prescribed as by judge alone and without jury, and finally the onus of proving one's innocence beyond a reasonable doubt rests with the accused himself.
The 37 South West Africans were held, each in solitary confinement for at least 200 days, until the Terrorism Act was passed, and formal charges were issued against them the day after its promulgation. The accused, in accordance with a provision of the Terrorism Act, are being tried in South Africa—a thousand miles away from their own homes; this made it extremely difficult for them to obtain counsel, witnesses etc. The defense counsel, who requested a postponement of the trial in order to consider whether the Terrorism Act was applicable to South West Africa and to consult with his clients (some of whom speak only the Ovambo language), attempted to prove that the South African law is invalid for South West as it was passed by the South African Parliament. The defense also offered a special plea that the court uphold a point of international law relating to the League of Nations, South Africa's mandate and acceptance of the Covenant, the United Nations' role as successor to the League, and therefore the legality of the U.N. resolution revoking the mandate. The court dismissed these pleas, therefore establishing the trial on its own terms.

The men on trial come from many different occupational backgrounds including 21 laborers or "unemployed" persons; 4 peasants, 3 farmers, 2 teachers, 1 mechanic and 1 clerk. Some of the accused are members of the Executive Committee of the nationalist South West Africa People's Organization (SWAPO) including Mr. Nathaniel Maxuiriri, Acting President; Mr. John Otto, Acting Secretary General; and Mr. Jason Mutumbulua, Secretary of Foreign Affairs; in addition to the Regional Secretary of the North, Mr. Toivo ja Toivo.

This memo need not examine the history of South West Africa and the system of apartheid in order to understand the oppression to which these men, as non-white South West Africans, have been subjected all of their lives. It is enough to quote the International Commission of Jurists:

The attention that has been focused on the legal and technical arguments involved [in the South West Africa issue before the World Court and the U.N.] has pushed into further obscurity the actual social and material conditions of the non-white majority of the people of South West Africa, who, during forty-five years of South African rule, have been reduced systematically to a state of degradation and misery of which most of the world remains unaware.

This "degradation and misery" continue with the trial in Pretoria. The U.N. has proclaimed the right of freedom and self-determination for all South West Africans—South Africa has denied them this right.

The defense of these men will cost a minimum of $60,000.00. The defense counsels, who might under more normal circumstances work on the case for greatly reduced fees, cannot do so because the controversial nature of the trial makes anyone identified with the accused suspect. They must protect themselves by accepting full fees. This in itself is a commentary of the police state mentality in South Africa. Each day in court (20 days a month) costs the defense in legal, printing, paper expenses between $600.00 and $1,000.00. And the trial is expected to run into the year 1968. These funds are not available in South Africa, especially since the South African Defense and Aid committees were declared illegal ("banned") in March, 1966. Thus outside funds must be found!

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