

Room 705
211 East 43rd Street
New York, New York 10017

October 6, 1967

Dear Colleague:

Enclosed is a statement on the trial of 37 South West Africans now taking place in South Africa which we hope you will join us in signing. This trial is clearly a violation of nearly unanimous resolutions of the United Nations, and it has not received the international attention we strongly feel it warrants.

We feel that as lawyers we should speak out against the course which the South African government is following in this case. We plan to send the statement to the South African Prime Minister and Minister of Justice, and also to appropriate officials in our own government. The statement will also be released to the press.

We were glad to note that in the Committee of 24 at the United Nations on September 12, Ambassador Eugenie Anderson, speaking for the United States, said:

In the 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.

We urge you to return the enclosed slip indicating your willingness to join us in issuing this statement. We also hope you will pass this statement along to any of your colleagues who you think might also be interested in signing it. Inasmuch as the trial is presently in progress, please reply as soon as possible. Thank you.

Sincerely,
(Signed)

Thomas M. Franck,
Director, Center for International
Studies, New York University

Robert Carter
General Counsel, NAACP

Richard Falk,
Professor of International Law and
Practice, Princeton University

RETURN TO: ROOM 705
211 East 43rd Street
New York, N.Y. 10017

_____ I join in signing the statement on the trial of
37 South West Africans.

NAME

(please print)

ADDRESS

TITLE

STATEMENT ON SOUTH WEST AFRICA CASE

Thirty-seven South West Africans now on trial in South Africa face a possible death sentence under a statute which South Africa has enacted contrary to international law and which, in addition, violates every accepted standard of fair procedure.

On October 27, 1966, the United Nations General Assembly terminated South Africa's right to administer, and to legislate for the Territory of South West Africa, because of the South African violations of the mandate agreement under which it governed the Territory on behalf of the world community. Nevertheless, seven months later, in June 1967, the South African Parliament enacted the Terrorism Act, which it made applicable to South West Africa and under which the South West Africans are now being tried. The application of this statute to these South West Africans, arrested outside South Africa for acts not even alleged to have been committed in South Africa, is thus in flagrant violation of international law.

Moreover, the provisions of the act under which the 37 defendants are being tried are contrary to the Rule of Law and to civilized justice.

The statute constitutes blatant ex post facto legislation. It provides the death penalty for acts committed up to five years before its enactment. All 37 defendants are being prosecuted for actions allegedly committed before the Act was even introduced in Parliament.

The statute further creates presumptions, justified neither by necessity nor logic, which place virtually the entire burden of proof on the defendants and requires them to establish their innocence beyond a reasonable doubt. In particular, any joint action by the defendants at any time during the period in question is sufficient to render all of them jointly guilty of the acts committed individually by any of them.

In addition, the statute permits defendants to be tried anywhere in South Africa, regardless of where the crimes were allegedly committed. Consequently, all 37 defendants are being tried in Pretoria, over 1000 miles from Ovamboland, where some of the acts are alleged to have taken place - the other "crimes" for which they are being tried all having occurred in foreign countries, outside both South and South West Africa. Moreover, all 37 are being prosecuted in a single mass trial, although the specific actions attributed to each differ as to their nature and as to the place and date of occurrence, and although the defense of some may be inconsistent with that of other co-defendants.

The burden of defense is further increased since funds from international sources of assistance are liable to seizure and confiscation in South Africa as promoting the aims of the South African Defence and Aid Fund, an organization outlawed by the regime in 1965 because of its help to defendants charged with political offences.

Statement on South West Africa Case

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As members of the legal profession concerned by the imminent threat of death of 37 of our fellow men resulting from South Africa's illegal assertion of jurisdiction and of its violation of the Rule of Law and of civilized standards of fair procedure, we the undersigned, protest the unlawful prosecution of South West African citizens under the Terrorism Act, and we call upon our brethren of bench and bar to join us in this protest.

Messes. Franck, Carter and Falk
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New York, N.Y. 10017