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339 Lafayette Street
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SHARPEVILLE SIX CONDEMNED TO HANG ON FRIDAY, 18 MARCH 1988

'...it has not been proved in the case of any of the six accused convicted of murder that their conduct had contributed causally to the death of the deceased.....In the present case I am dealing with the position of the six accused who have been convicted of murder solely on the basis of common purpose.'

- Appellate Division, South African Supreme Court

Mojalefa Reginald Sefatsa	- age 33
Oupa Moses Diniso	- age 31
Reid Malebo Mokoena	- age 25
Theresa Ramashamole	- age 27
Duma Joshua Khumalo	- age 27
Francis Don Mokhesi	- age 31

International appeals for clemency for these latest targetted political victims of the apartheid regime have so far failed, and the date for their hanging has been set.

A last world-wide effort to gain clemency for them must be made. 'Common purpose' will become the rule of thumb for Pretoria in dealing with those who in the increasing turbulence of South Africa express their opposition to apartheid and draconic rule.

SEND YOUR MESSAGES TO:

President P. W. Botha
State President's Office
Private Bag X213
Pretoria 0001, South Africa

Telexes: 3-21695 SA
3-21890 SA
3-22158 SA

Ambassador Piet Koornhof
South African Embassy
3051 Massachusetts Avenue, NW
Washington, DC 20008

PHONE: (202) 232-4400

President Ronald Reagan
The White House
Washington, DC 20500

PHONE: (202) 456-1414

Secretary George Shultz
Department of State
Washington, DC 20520

PHONE: (202) 647-4000

The Sharpeville Six And Political Executions In South Africa

On December 1st, 1987, the Appellate Division of the South African Supreme Court denied the appeal of six political activists who were convicted of murder and subversion on December 10, 1985 and sentenced to death. Commonly known as The Sharpeville Six, they are: Mojalefa Sefatse (33), Oupa Moses Diniso (31), Reid Malebo Mokoena (25), Theresa Ramashamela (27), Duma Joshua Khumalo (27) and Francis Don Mokhesi (31).

The arrest of The Sharpeville Six took place in a context of widespread civil unrest touched off by the 1984 imposition of a revised but unacceptable Constitution which denied political participation to the 73% Black majority and offered only limited participation to the Indian and "Colored" populations. Unpopular government appointed township councils, which had attempted to levy rent increases, bore the brunt of public enmity as impoverished residents, pushed to the breaking point, demonstrated en masse their opposition. Township Councillors became live targets of public anger.

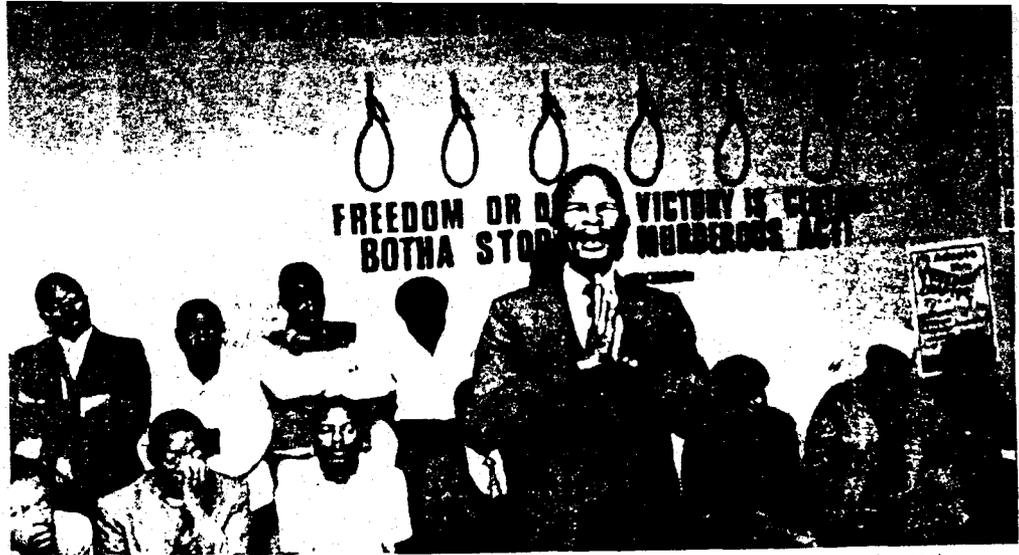
Township Councillor Jacob Dlamini was killed after he provoked a crowd, thousands strong, by shooting into it. In convicting the Sharpeville Six for his murder, the judge acknowledged that none of the six accused had committed acts which in fact caused his death. But the actions of others in the crowd, which actually caused Dlamini's death, were imputed to the defendants. In addition, the trial was marked by glaring irregularities, notably: secret witnesses, denial of cross-examination, and confessions extracted under torture.

South Africa has one of the highest per capita execution rates in the world. Trials on charges of high treason, a capital offense, often with alternative common law charges, are increasing as authorities attempt to criminalize any form of popular mobilization and organization as treasonous activity. Despite the growing international outcry, South Africa still continues to execute political prisoners. The July, 1987 count of 32 political activists on Death Row has now climbed nearer to 40. The authorities have also resorted to hasty and sometimes secret executions as a tactic to circumvent public pressure.

Since the declaration of the State of Emergency, more than 30,000 people have been detained without charge or trial, more than 10,000 have been children. Torture, ill treatment, disappearances, deaths in detention, extra-judicial killings, as well as an upsurge in judicial executions form the backdrop for the acts of those condemned prisoners on Death Row in South Africa. Whatever our view may be of their tactics, the acts of political activists are inspired by their legitimate opposition to apartheid. The Sharpeville Six and all other political prisoners have been tried by the apartheid legal system, an inherently flawed legal system. Therefore the accused are themselves victims.

The international community must urge the South African Government to take a wiser path:

1. Forego as a matter of policy the imposition of the death sentence on political prisoners, and
2. Commute the death sentence for The Sharpeville Six and those other political prisoners presently on Death Row.



An international campaign calls for clemency for the Sharpeville Six. Here, a meeting in Johannesburg
Picture: AFRAPIX

LATER this year six young people from Sharpeville will be hanged by the neck until they are dead. They will go to the gallows in Pretoria Central for a murder which, in ordinary parlance, they did not commit.

Kuzwayo Jacob Dlamini, the deputy mayor of an impoverished Vaal township, was brutally murdered on September 3 1984.

He was battered with stones, dragged from his property into the street and then set alight with petrol, alive but mercifully unconscious. The police never apprehended the persons who caused his death.

Instead, eight young township residents caught in the explosion of violence and anger which rent the Vaal in September 1984 stood trial for their lives.

The State was unable to show that anything any one of them did actually caused or contributed to Dlamini's death. But the judge sentenced six of them to death nonetheless.

And, in December last year, the Appeal Court in Bloemfontein rejected their appeals. They will meet the executioner in Pretoria Central in a few weeks' time unless President Botha intervenes.

Plight

Their plight was bound to cause political controversy, locally and internationally. Already a campaign is gathering strength, demanding that they be spared the hangman's noose. Already it is being said of them, like others held in martyrdom, that "the tree of liberation is watered by their blood".

But what troubles many lawyers is not so much the political consequences of their fate as the way in which the judicial system treated them.

They are being sent to the scaffold because they associated themselves with a murderous crowd — no more,

Verdict that puts our legal system on trial

by **Edwin Cameron**

no less. The Appeal Court accepted that in the case of all six there was considerable doubt about whether any link could be made between Dlamini's death and their actions.

In the case of some, it found without any doubt that no casual link at all had been proved. Theresa Ramashamola, for instance, will feel the hangman's noose simply because she shouted, when Dlamini emerged brandishing a pistol: "He's shooting at us, let's kill him."

Later, she slapped a woman who shouted the crowd should not burn the injured man.

How can these people be sent to the scaffold?

By a combination of two controversial legal devices. The first is the doctrine of common purpose. If you go out on a bank robbery to keep a lookout for your mate who has a gun, you will almost certainly hang with him if he shoots the teller dead. That is all very well.

But can the doctrine which holds the bank robber's accomplice responsible be applied to a politically motivated crowd of protesters who may number hundreds and even thousands? Should it? Do we ultimately want to solve the problems of township frustration and protest by hanging all participants in political violence where loss of life occurs?

A second and even more troubling feature of these people's fate is the Appeal Court's discovery, after 30 years of judicial dissension and uncertainty, that conduct which does not cause or contribute to a person's death can amount to murder.

Debate

For decades, a debate has raged about this which has split judges and distinguished academic writers here as well as overseas. Many lawyers find it disquieting, if not astonishing, that the Appeal Court should have found itself able to resolve this controversy with such apparent facility in a single judgment.

Many critics of our country's legal system will marvel at the fact that this resolution should have been produced in a case arising from the townships' rebellion.

The case of the Sharpeville Six is an important warning to lawyers and politicians alike.

The law cannot produce answers to the fundamental dislocation of our country's life which the failure of government's reform programme has brought about. When it tries to, queer thinking and strange answers must result.

If the Sharpeville Six meet the hangman in Pretoria Central, it will be a sombre day not only for the country's political future but for its system of justice as well.

● Edwin Cameron is a human-rights lawyer attached to Wits University's Centre for Applied Legal Studies.