

AMERICAN COMMITTEE ON AFRICA
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New York, New York 10017

SOUTH WEST AFRICANS ON TRIAL
FACED WITH POSSIBLE DEATH SENTENCES

SEPTEMBER, 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, which 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. In this paper the background to this trial and the issues involved are briefly outlined. You will note at the end of the memo two distinct ways in which you can give substantial aid to the 37 men now undergoing South African "justice."

On August 7, 1967 the Supreme Court in Pretoria, South Africa convened the trial of 37 South West Africans charged under a new South African law, the Terrorism Act. After a postponement, the trial was reconvened on September 11 and will get under way during this month. 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 even been initially publicized 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 the 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. (It is interesting that although the South African Government has stated its non-recognition of the U.N. resolution, it is trying these South West Africans within South Africa, not in their own country which South Africa likewise administers. This fact may be related to a South African attempt to avoid actually conducting the trial in the territory under international dispute. But the more immediate effect has been to make it extremely difficult for the accused to obtain counsel, witnesses etc., due to their physical separation from their homeland.)

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, as an amendment to the Suppression of Communism Act, 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." 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. Each man is to be tried separately (although the State lumps the accused together for various acts), and the State plans to call about 150-160 witnesses and present 500 or so exhibits, including arms and ammunition. 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 their clients (some of whom speak only the Ovambo language), will attempt to prove that the South African law is invalid for South West as it was passed by the South African Parliament. (In this context it is significant that the South African Government recently announced its intention to assume more control over the white Legisla-

tive Assembly of South West Africa.) If the court allows, the defense will also offer 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. It is unlikely that the court will accept this plea. *

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.

WHAT CAN YOU DO?

1. 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 on 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 Defence and Aid committees were declared illegal ("banned") in March, 1966. Thus outside funds must be found! Your help will literally make the difference between life or death for these men, because with a proper defense their sentences may be reduced. At the very least the presence of a concerned and able defense is the only immediate hope. We call on you to respond with a contribution to the Africa Defense and Aid Fund (of the American Committee on Africa), and please earmark your gift S.W.A. case.

2. You should also write to officials in the United States Government asking them to protest formally to the Pretoria regime. The U.S. voted for the resolution terminating the mandate, and more recently, joined with the majority in the U.N. Special Committee of 24 in condemning the illegality of the arrest of the Africans and calling for their release. But our Government should inform the South African Government of its position. Write to: The Honorable Arthur J. Goldberg, U.S. Mission to the U.N., 799 U.N. Plaza, New York, New York 10017 and the Honorable Dean Rusk, Secretary of State, State Department, Washington, D.C.

Write to ACOA for further information

- * On September 15 the Judge ruled that the Court could try the 37 South West Africans, and thus dismissed the plea by the defense. The State began its testimony on September 18. (New York Times, Sept. 16.)