

# Harry Gwala, Political Militancy and State Trials, 1960-1977

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## Introduction

At its national conference in December 1960, the underground Communist Party reviewed the significance of the events of the State of Emergency earlier that year as well as how the emergency was experienced. Conference delegates remarked that the government had passed from the stage where it was attempting to control and combat the peoples' movement by parliamentary-style rule whenever the government felt itself powerfully challenged.<sup>1</sup> The Party concluded that in the light of such blatant repression, the people's movement could no longer hope to continue along the road of exclusively non-violent forms of political struggle. It decided that the Central Committee should 'take steps to initiate the training and equipping of selected personnel in new methods of struggle.' These steps would thus prepare the nucleus of an adequate apparatus to lead struggles of a more forcible and violent character.<sup>2</sup> This shift towards the ethos of violence was vital to the germination of Harry Gwala's political militancy. This paper examines how the shift in the state's application of physical and psychological violence was applied against Harry Gwala. It further shows how South African courts became a tool to isolate Gwala from the political movement.<sup>3</sup> It argues that proceedings before the South African courts became acts of revenge by the state while political activists such as Gwala used them as theatres of struggle. It demonstrates how the state's continuous attempts to isolate Gwala from his political base were a way of inflicting perpetual pain against him.<sup>4</sup> The paper further points to the extent to which South African courts became forms through which the state attempted to define Gwala as a criminal. In addition, I show how Gwala used the same courts as sites of resistance.

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<sup>1</sup> UWL, HLP, Kasrils Papers, A3345, A6.1.4.1, memorandum, undated. I am grateful to Professor Tom Lodge for sharing this document with me.

<sup>2</sup> UWL, HLP, Kasrils Papers, A3345, A6.1.4.1, memorandum, undated; for an in-depth discussion on role of the Communist Part in the South Africa's armed struggle see, T. Karis, 'Revolution in the Making: Black Politics in South Africa', *Foreign Affairs*, Vol. 62, No. 2, 1983; S. Ellis and T. Sechaba, *Comrades Against Apartheid: The ANC and South African Communist Party in Exile* (Bloomington: Indiana University Press, 1992), 95-102; H. Barrell, 'Turn to the masses: The African National Congress' strategic review of 1978-79', *Journal of Southern African Studies*, Vol.18, No.1 (Special Issue: Social History of Resistance in South Africa), 1992, 64-92.

<sup>3</sup> M. Lobban, *White Man's Justice: South African Political Trials in the Black Consciousness Era* (Oxford: Clarendon Press, 1996), 174.

<sup>4</sup> For a discussion of how the silences in history see D. W. Cohen, *Combing of History* (Chicago: University of Chicago Press, 1994), 54.

This paper locates Gwala's shift towards militancy as a direct response to excessive violence and provocation by the state, having endured a period of systematic disconnection through being banned. Gwala's actions must be understood in the wider political context of the state's approach to the liberation movements from 1960. Furthermore, this paper examines how Gwala strategically used the court's objectification and construction of criminality to reconfigure the identity of the freedom fighter. The paper focuses on three state's trials of Gwala between 1960 and 1977, and places them within the paradigm of a legal heritage of political trials in South Africa. It also seeks a new understanding of political trials as both tools of political exclusion and as theatres of struggle.<sup>5</sup>

### **Political militancy and the shift to armed struggle**

Harry Gwala's life, politics and political trials he endured during the period 1960-1977 require us to appreciate the context that necessitated this shift to violence. This period was marked by a broader shift within both the ANC and Communist Party from non-violent, peaceful, mass-based politics to armed struggle. There were various reasons behind this shift. The state had already demonstrated its willingness to mobilise the law against its opponents with the Suppression of Communism Act of 1950 and other oppressive laws. Raymond Suttner traced the roots of the formal launch of Umkhonto we Sizwe (MK) on 16 December 1960 back to as early as 1953 when the ANC agreed secretly that a 'plan be drawn up to enable the movement to operate underground in the likely event that it would be banned.'<sup>6</sup> Stephen Ellis also argued that the 'viciousness that led to the dissolution of the Communist Party caused many activists of other persuasions to fear that similar draconian measures would soon be used against them.'<sup>7</sup>

Meanwhile, when Walter Sisulu was provided with funds from the World Federation of Democratic Youth, a Soviet organisation, to embark on a trip to Romania, Poland, Russia and China in 1953, Nelson Mandela asked him to 'discuss the possibility of armed struggle with [the] Chinese.'<sup>8</sup> Sisulu duly raised the matter with the Chinese who cautioned that the armed

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<sup>5</sup> P. Lalu, 'SARA's Suicide: History and the representational limit', *Kronos*, No. 26, 2000, 89. Mamdani discusses the question of the perpetuation of subjectivity and domination, see M. Mamdani, *Define and Rule: Native as a Political Identity* (Cambridge: Harvard University Press, 2012); M. Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996).

<sup>6</sup> Suttner, *The ANC Underground in South Africa*, 18.

<sup>7</sup> S. Ellis, 'The Genesis of the ANC's Armed Struggle in South Africa, 1948-1961', *Journal of Southern African Studies*, Vol. 37, No. 4, 2011, 659.

<sup>8</sup> Sisulu, *Walter and Albertina Sisulu*, 164. For a detailed discussion of the armed struggle see, Magubane, 'Introduction: The political context'; B. Magubane, P. Bonner, J. Sithole, P. Delius, J. Cherry, P. Gibbs and T. April, 'Turn to the Armed Struggle', in *SADET, The Road to Democracy in South Africa: Volume 1 (1960-70)*, (Pretoria: Unisa Press, 2004); S. Ellis, 'The Genesis of the ANC's Armed Struggle'; R. Suttner, 'African National Congress (ANC) Underground: From the M-Plan to Rivonia',

struggle should only be undertaken when the conditions were right. Govan Mbeki observed that by the end of the 1950s ‘the rank and file membership of the ANC, especially the youth, were increasingly insisting that the policy of non-violence had had its day and was no longer practicable in the face of the harsh measures which the government was meting out to peaceful African protests.’<sup>9</sup>

Similarly, Harry Gwala remarked that by the end of the 1950s it was clear that the state was ‘not willing to accommodate peaceful means that were put forward by liberation movements and this required that new methods of communicating views of the oppressed classes had to be devised.’<sup>10</sup> Gwala said that the state’s violent reaction to peaceful demonstrations in Sharpeville and Langa on 21 March 1960 was an indication that the ANC had to change the way in which it engaged the apartheid government. The aftermath of the Sharpeville and Langa massacres led to the declaration of the State of Emergency and the subsequent banning of the ANC and Pan-Africanist Congress (PAC).

Gwala’s work in the underground political operations of the ANC, Communist Party and MK enables us to understand his militancy and the state’s continuous attempts to disconnect him from society and mainstream politics. As demonstrated in my other work, from the mid-1940s, as Gwala became a ‘nuisance to the authority of government’, the state began to mobilise its powers to isolate him through public humiliation, exclusion and a banning order in 1952. However, from 1960, the state changed its approach towards Gwala as it began to mobilise its coercive powers and the courts as apparatuses of exclusion. Gwala’s views underwent evolutionary modification as he shifted from being a radical to a militant in his political approach and relationship with the state.<sup>11</sup>

Gwala had been aware of the resuscitation of the Communist Party as early as 1954 but he felt excluded as he had not been given further information other than to start Marxist discussion

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*South African Historical Journal*, Vol. 49, 2003; V. Shubin, *ANC: A View from Moscow* (Johannesburg: Jacana, 2008); N. Mandela, *The Struggle is My Life* (London: International Defence Aid Fund, 1986), B. Turok, *Nothing but the Truth: Behind the ANC’s Struggle Politics* (Cape Town: Jonathan Ball, 2003); T. Lodge, *Mandela: A Critical Life* (Oxford: Oxford University Press, 2006).

<sup>9</sup> G. Mbeki, *The Struggle for Liberation in South Africa: A Short History* (Cape Town: David Philip and Mayibuye Centre, 1992), 90; Mosiuoa Lekota also discusses the complexities of initiating an armed struggle see M. P. Lekota, *Prison Letters to a Daughter* (Johannesburg: Taurus Publishers, 1991), 130.

<sup>10</sup> Thomas Karis interview with Harry Gwala.

<sup>11</sup> Kgalema Motlanthe, address at the inaugural Harry Gwala Memorial Lecture, Bulwer, 30 November 2013 (unpublished). I thank Kgalema Motlanthe for sharing the transcript with me.

groups and a cell in Pietermaritzburg.<sup>12</sup> Gwala was offended by being excluded from the Communist Party and this resulted in the growth of ‘dissatisfaction among other rank-and-file members’ as there had been a clear indication that the Communist Party had been resuscitated.<sup>13</sup> As a result, Gwala speculated about the influence and the role of Bruno Mtolo and Solomon Mbanjwa who had been recruited to the Communist Party in the 1950s. Gwala questioned their legitimacy as he argued that they had no institutional memory or in-depth political knowledge, and he remained very suspicious of them.<sup>14</sup> It was not until 1962 that Gwala re-joined the Communist Party, having only been active in the underground operations of the ANC and trade unions after it was dissolved in 1950. As Brian Bunting has argued, the outlawing of the ANC brought about closer cooperation between the Communist Party and the ANC than had ever previously existed.<sup>15</sup> It was through this renewed cooperation that Gwala was able to play a vital role in the underground operations of MK.

The South African state’s coercive and punitive capacity emerged as greater than that in any African society, even those under colonialism.<sup>16</sup> This situation was worsened by the promulgation of apartheid laws during the 1950s and 1960s that provided a greater range of tools to suppress political opposition and criminalise the state’s opponents. The court was one of these tools of repression and the assertion of apartheid power. The state’s trials against Gwala in 1961, 1964 and 1976 provide an opportunity to understand the extent to which the courts tried to isolate and criminalise Gwala. Nonetheless, these also reveal how Gwala refused to be the victims of the court system and apartheid.<sup>17</sup>

The historiography of political trials in South Africa has focused largely on the 1956 Treason Trial, the 1963 Rivonia trial, the 1985 Delmas trial and the 1986 state trial of Andrew Zondo.<sup>18</sup>

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<sup>12</sup> Members of the Pietermaritzburg cell were: Selby Mazibuko, Bobby Pillay, Moses Mabhida and Golam Rasool, see Sylvia Neame interview with Harry Gwala.

<sup>13</sup> Everatt, *The Origins of Non-racialism*, 81; Magubane, et al., ‘Turn to the Armed Struggle’, 69; B. Bunting, *Moses Kotane, South African Revolutionary: A Political Biography* (Cape Town: Mayibuye Books, 1998), 272.

<sup>14</sup> Sylvia Neame interview with Harry Gwala; Mxolisi Dlamuka, interview with Truman Magubane. Mtolo and Mbanjwa later became the key state witnesses during the Rivonia trial, the State’s sabotage trial against Gwala in 1964, and the Pietermaritzburg treason trial in 1977. In order to ensure that Gwala’s views on Bruno Mtolo during the 1989 interview were not influenced by the fact that Mtolo became the key state witness during the Rivonia trial, I interviewed Truman Magubane who was Gwala’s contemporary date back to the 1960s. Magubane confirmed Gwala’s suspicious of Mtolo during the 1960s prior to the Rivonia trial, see Mxolisi Dlamuka interview with Truman Magubane.

<sup>15</sup> Bunting, *Moses Kotane*, 257.

<sup>16</sup> M. Chanock, *The Making of South African Legal Culture, 1902-1936: Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001), 41; F. Rueedi, ‘Narratives on Trial: Ideology’.

<sup>17</sup> R. L. Abel, *Politics by Other Means: Law in the Struggle against Apartheid, 1980-1994* (New York: Routledge, 1995), 10; P. E. Alexander, *Alan Paton: A Biography* (Cape Town: Oxford University Press, 1995), 330-331.

<sup>18</sup> For a detailed discussion on political trials, see P. Lalu and B. Harris, ‘Journeys from the Horizons of History: Text, Trial and Tales in the Construction of Narratives of Pain’, *Current Writings*, Vol. 8, No. 2, 1996; C. H. Albertyn, ‘A Critical Analysis of Political Trials in South Africa, 1948-1988’, PhD dissertation, University of Cambridge, 1991; P. Lane,

A closer examination of Gwala's trials enables us to understand the complex history of MK operatives in Natal and how the state made collaborators become tools to punish its opponents. The state's political trials against Gwala yield new ways of approaching South African history and enable us to deepen our understanding of connectedness and disconnectedness and the use of the law as sites of repression and struggle.<sup>19</sup>

The state's trials against Gwala fit the argument put forward by Rueedi and Lane that treason trials are a space in which the state legitimised repression while delegitimising extra-parliamentary opposition by defining it as militant and violent.<sup>20</sup> While the use of court proceedings evidentiary records for historic reconstruction has been the subject of a robust debate among academics, these remain important sources, despite their shortcomings. While witnesses were either 'deliberately incriminating the people against whom they testified, or if they were the accused, saving themselves from possible prosecution', they nevertheless are 'invaluable narratives of the time.'<sup>21</sup> Gwala's use of the trials as an arena of communicating his political and class identities to a much wider audience provides an opportunity to understanding the challenges he faced and elements of his political thought.

### **Gwala, political trials and repression**

The 'ferocious security clampdown' that followed the Sharpeville and Langa massacres on 21 March 1960, and the subsequent banning of both the ANC and PAC on 8 April of the same year, meant that the era of extra-parliamentary non-violent protests had ended because many leaders were detained.<sup>22</sup> By the end of April 1961 the *African National Congress Voice*, a bulletin of the ANC, released a statement calling for the release of 'South African men and

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'Heroes as Ordinary People: A Social and Cultural History of Political Imprisonment in South Africa, 1960-92', PhD thesis, University of Essex, 2009; Rueedi, 'Narratives on Trial'. For a discussion on the legal proceedings, evidence and history see C. Ginzburg, 'Checking the Evidence: The Judge and the Historian', *Critical Inquiry*, Vol. 18, No. 1, 199; W. Anderson, 'The Past on Trial: Birmingham, the Bombing, and Restorative Justice', *California Law Review*, Vol. 96, No. 2, 2008; P. Harris, *In a Different Time: The Inside Story of the Delmas Four* (Cape Town: Umuzi Publishers, 2008); J. Dlamini, *Askari: A Story of Collaboration and Betrayal in the Anti-Apartheid Struggle* (Johannesburg: Jacana, 2014); F. Meer, *The Mis/Trial of Andrew Zondo* (Durban: Institute for Black Research, 1998).

<sup>19</sup> K. Mann and R. Roberts, 'Introduction', in K. Mann and R. Roberts (eds.), *Law in Colonial Africa* (Portsmouth NH: Heinemann, 1991), 35.

<sup>20</sup> Rueedi, 'Narratives on Trial'; Lane, 'Heroes as Ordinary People'.

<sup>21</sup> J. Sithole, 'The ANC Underground, Armed Actions and Popular Resistance in Pietermaritzburg and the Surrounding Natal Midlands Townships', in *SADET, The Road to Democracy*, Vol. 4, 225; B. Bozzoli, *Theatres of Struggle and the End of Apartheid* (Johannesburg: Wits University Press, 2004), 18. For a detailed discussion on the use of court records as historical sources see, R. Ross, *Beyond the Pale: Essays on the History of Colonial South Africa* (Johannesburg: Witwatersrand University Press, 1994).

<sup>22</sup> M. Gunther, 'The National Committee of Liberation (NCL)/African Resistance Movement (ARM)', in *SADET, The Road to Democracy*, Vol.1, 193; Fran Buntman interview with Harry Gwala, 20 June 1994, Pietermaritzburg, Robben Island Interview Collection, UWC-Robben Island Mayibuye Archives.

women' who were detained in various prisons in South Africa.<sup>23</sup> Gwala's name was among those listed as having been detained in Pietermaritzburg.<sup>24</sup> As Merrett has argued, the state used detention as a 'tool of political control' and intimidation.<sup>25</sup> Gwala had been politically active after the expiry of his banning order in 1958. He had been involved in re-establishing trade union structures, especially the Howick Rubber Workers' Union and as Secretary of the local Pietermaritzburg committee of SACTU from 1959 until 1962.<sup>26</sup> In addition, he had been assisting to mobilise support for the '£1 a Day campaign' and working closely with the Pietermaritzburg's ANC Women's League. Given his political history, Sarmcol management prohibited him from entering its premises to conduct trade union activities of the Howick Rubber Workers' Union (HRWU). The HRWU had been launched on 8 March 1960 and elected Gwala as its secretary.<sup>27</sup>

As the Special Branch was monitoring Gwala's movements, Constable Bernard Zuma was aware of the establishment of the HRWU and the subsequent election of Gwala as its secretary. Prior to the declaration of the State of Emergency and the banning of the ANC and PAC, the state had already adopted a violent approach to dealing with liberation movements. This resulted in the arrest of Gwala on 18 March 1960 after the Minister of Justice had issued permission. Gwala was kept in detention until July.<sup>28</sup> He was charged for wrongfully and unlawfully failing to comply with requirements by being a member of the Howick Rubber Workers' and Industrial Union and taking part in their activities.<sup>29</sup>

It was during Gwala's detention in Pietermaritzburg that he and other detainees began to discuss seriously the option of the armed struggle before the announcement of the formation of MK as the 'feeling was that there was no way forward without it.'<sup>30</sup> Gwala took advantage of the state's punitive systems that were meant to restrict him and used them as arenas in which to wage a struggle. The charges were eventually dropped at the end of July 1960 as the state

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<sup>23</sup> Document 61: "Congress Fights On...Release the Detainees!!!" Statement in the African National Congress Voice: An Occasional Bulletin, No.1, April 1960, in T. G. Karis and G. M. Gerhart, *From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882-1990: Challenge and Violence, 1953-1964*, Vol.3 (Johannesburg: Jacana, 2013), 531-535.

<sup>24</sup> Other names included: Mr. P. Brown, Dr Chetty, Dr Motala, Mr Meidner, Mr D. March and Dr Omar.

<sup>25</sup> C. Merrett, 'Detention Without Trial in South Africa: The Abuse of Human Rights as State Strategy in the Late 1980s', *Africa Today*, Vol. 31, No. 2, 1990, 60.

<sup>26</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

<sup>27</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Bernard Zuma.

<sup>28</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret correspondence from the Secretary of Justice to the Commissioner of the South African Police, 31 August 1960.

<sup>29</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, indictment by the Attorney-General of Natal.

<sup>30</sup> Thomas Karis interview with Harry Gwala.

had not gathered sufficient evidence to prosecute. Nevertheless, detention provided Gwala with a platform to discuss the armed struggle with other detainees and to define the political path he was to follow after the establishment of MK in December 1961.<sup>31</sup>

The reinstatement of the charges against Gwala in 1961 meant the beginning of the state's use of the courts to isolate him. Between 1960 and 1977, Gwala faced three political trials including the 1976 trial for alleged treason which carried the possibility of being sentenced to death. These trials should be examined within the historical fabric of South African society and be placed alongside other trials that were perceived as political trials. They became a tool to seclude Gwala from his political base and to force behaviour on Gwala that would conform with state regulations and the reproduction of domination in South Africa.<sup>32</sup> In other words, these trials became a direct means of political control and focused mainly on power exercised by the state on its subjects, rather than a legal sphere of rights and protection.

### **Gwala, isolation and the 1961 trial**

On the morning of 28 December 1960, Gwala was arrested while at an 'African restaurant' in Otto Street in Pietermaritzburg as the state had decided to reinstate earlier charges.<sup>33</sup> By this time, the state intelligence agencies had gathered enough evidence through its informers and Special Branch to prosecute Gwala. He appeared at Howick Magistrate Court on the same day and was released on a bail of £25 with conditions, among them having to report to the Pietermaritzburg Central Police Station in Loop Street every day between 9am and 10am.<sup>34</sup> Surviving trial documents reveal that both the state and the defence appeared in the Howick Magistrate's Court on 11 January 1961 to state their cases. The state argued that although Gwala was instructed to resign from being an office bearer of the Howick Rubber Workers' Industrial Union (HRWIU) as part of the conditions of his banning order, he had contravened this condition by participating in the activities of the HRWIU.

The evidence presented by the state was to the effect that Gwala had addressed various meetings with the workers at Howick, with the 8 March and 15 September 1960 meetings

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<sup>31</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret memorandum from the Commissioner of Police to the Minister of Justice, 11 December 1961.

<sup>32</sup> For a detailed discussion, see Albertyn, 'A Critical Analysis of Political Trials', 49.

<sup>33</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Frederick Wilhelm Jansen van Rensburg.

<sup>34</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, report of L. Nel (Magistrate of Howick) on conditions of Gwala's bail, 28 December 1960.

highlighted as critical ones.<sup>35</sup> During the trial, the state's witnesses, many of whom had been part of the Union's executive along with Gwala, had been induced into testifying as a result of intimidation and torture, gave evidence that purported to incriminate Gwala, suggesting that he had been central in organising the emergence of the HRWIU at BTR Sarmcol.<sup>36</sup> The state's key witness, Clemence Gumede, had worked at Sarmcol for 26 years and had been a member of the executive of the 1952 Union.<sup>37</sup> His testimony attempted to reinforce the impression that the 1960 Union was a continuation of the 1952 one since the 'the purpose and ideals of the Howick Rubber Workers Union [were] the same as those of the former Union.'<sup>38</sup> Through Gumede's evidence, the state argued that the HRWU and HRWIU were in fact one union, and that Gwala had therefore breached the condition of his banning order that required him to resign as an office-bearer, officer and member of the HRWIU.

Another key state witness was Frans Ross. Ross had been employed at Sarmcol for 15 years and was an executive member of the 1952 and 1960 unions.<sup>39</sup> In his evidence, Ross referred to Gwala's prohibition from Sarmcol premises and said that the HRWU's meetings were held under the tree outside the factory. Ross said that Gwala had 'addressed meetings of the Union and told workers how to become members of the Union and that if the employer were to be approached everybody must come together and speak as one voice.'<sup>40</sup> The evidence presented by Ross and Gumede highlighted the links between the unions and the broader politics of liberation. It emphasised that Union meetings were sometimes attended and addressed by Jacob Zuma in his capacity as an ANC activist in Natal.<sup>41</sup>

During the trial the state sought to prove that Gwala was linked to the HRWU as he had been responsible for the issuing of membership cards and the collection of monthly subscriptions.<sup>42</sup> Furthermore, the state witnesses linked Gwala with all the Union meetings that had taken place under the tree. As Bernard Zuma, a 'Bantu' Detective Constable, explained:

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<sup>35</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret report of L. C. Hofmeyr, Counsel for the State, to the Secretary of Justice, 30 August 1961.

<sup>36</sup> Dlamini, *Askari*, 171.

<sup>37</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Clemence Gumede; D. Bonnin, 'Two Generations of Worker Leadership: The Histories and Traditions of the Sarmcol Workers', unpublished paper presented to the History Workshop Conference, University of the Witwatersrand, 1987.

<sup>38</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Clemence Gumede.

<sup>39</sup> Other members of the executive in the 'new' Union were Clemence Gumede, Felix Ngcobo, Joseph Nduli and Gwala. All had been members of the previous Union. PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Frans Ross.

<sup>40</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Frans Ross.

<sup>41</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Clemence Gumede.

<sup>42</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Mr. Naidoo.

On the 8<sup>th</sup> March 1960, it was after 6 p.m. There are trees there but there is one particular big tree. The meeting was held just below the big tree. I know where the entrance to the Rubber factory is. The main entrance to the factory is out of sight from the tree. I say accused [Gwala] addressed a meeting.<sup>43</sup>

Constable Zuma further testified:

It was the 15th September 1960. This meeting was after 5 p.m. This meeting was held near the Railway Station, Howick, below the big tree. In relation to the meeting held in March this one (Sept. meeting) was held at the same place. I remember the names of some other people who attended the meeting. They were: the accused [Gwala], Clemence Gumede, Ross, Felix and Shabalala. Accused said people must unite and go to their employers and ask for money £1 a day.<sup>44</sup>

Constable Zuma's testimony illustrated the extent to which the Special Branch had been meticulously following Gwala. Moreover, this evidence was the culmination of the process of criminalising Gwala and imposing a constructed identity upon him as one who failed to abide by the law.

Gwala and his lawyer, M.D. Naidoo, had developed a strategy of 'frustrating the judiciary processes.'<sup>45</sup> Towards the conclusion of the trial, Naidoo applied for the 'discharge of the accused as the state had no case.'<sup>46</sup> Gwala's application was refused by the court, and thus he 'elected to be tried by a Judge' while the state's evidence became a preparatory examination for the Supreme Court case.<sup>47</sup> After extensive consultation between Naidoo and the prosecution, Gwala's bail was extended with the condition that he was not permitted to interfere with witnesses.

The trial, now in the Supreme Court, resumed on 7 August 1961. The state submitted that Gwala had taken part in the activities of the Howick Rubber Workers' Industrial Union. In view of the fact that the 'new' Union did not have the word 'industrial' in its name, Gwala's representative argued that he had not committed any crime since the Howick Rubber Workers' Union was only established in 1960, and he had not been instructed to resign from, or participate in its activities under his 1952 banning order. The court held that the state had not

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<sup>43</sup> PAR, RSC, 1/1/384, CC134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Bernard Zuma.

<sup>44</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, evidence of Bernard Zuma.

<sup>45</sup> Thomas Karis interview with Harry Gwala.

<sup>46</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, report of L. Nel (Magistrate of Howick) on conditions of Gwala's bail, 22 February 1961.

<sup>47</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, report of L. Nel (Magistrate of Howick) on conditions of Gwala's bail, 22 February 1961.

established beyond reasonable doubt that the ‘new’ Union was the same one to which the 1952 banning order referred. Gwala was found not guilty and acquitted.<sup>48</sup>

Harry Gwala’s acquittal embarrassed the state which was determined to disrupt him and stifle his influence on Natal politics. Correspondence between senior officials of the Departments of Police and of Justice suggested that Gwala’s acquittal was a cause of serious concern as the circumstances under which he was exonerated applied to banned individuals in general.<sup>49</sup> It was against this background that the acting Secretary of Justice recommended that ‘when a person is banned from becoming an office bearer, an official or member of any kind of organisation, the nature of this body must not be specified in the notice.’<sup>50</sup>

The Department of Justice’s view was that the problem that had arisen in the court judgement on Gwala could have been avoided if such a general ban were to be imposed. While this view was supported by the Commissioner of the South African Police, the Minister of Justice, Johannes (John) Vorster, was adamant that no changes to the earlier system of banning should be implemented.<sup>51</sup> However, after seeking a legal opinion, Vorster was convinced that a general ban was the only option to avoid the embarrassment similar to the state’s trial on Gwala.<sup>52</sup>

Meanwhile, the Minister of Justice was determined to ban Gwala from participating in the trade union activities, and so he sought the support of the Minister of Labour as required by the Suppression of Communism Act.<sup>53</sup> After securing the support of the Minister of Labour, Vorster approved the condition of Gwala’s banning order which emphasised that he should be prohibited from becoming an ‘office bearer, official or member of a trade union whether registered or not’, and ‘not to participate in its activities.’<sup>54</sup> As a consequence, on 18 December 1961 Gwala was served with a new banning order which prohibited him from participating in

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<sup>48</sup> PAR, RSC, 1/1/384, CC 134/1961, the State vs Themba Harry Gwala, case no. 904/61, report of L. Nel (Magistrate of Howick) on conditions of Gwala’s bail, 22 February 1961; NAR, DOJ papers, file no. 2/50/53, report of L. C. Hofmeyr, Counsel for the State, to the Secretary of Justice, 30 August 1961.

<sup>49</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret correspondence between the Acting Secretary of Justice, JPJ Coetzee, and the Commissioner of the South African Police, indistinct date.

<sup>50</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret correspondence between the Acting Secretary of Justice, JPJ Coetzee, and the Commissioner of the South African Police, indistinct date.

<sup>51</sup> NAR, DOJ papers, file no.2/50/53, declassified secret correspondence from the Minister of Justice to the Secretary of Justice, 10 October 1961.

<sup>52</sup> NAR, DOJ papers, file no.2/50/53, declassified secret correspondence from the Minister of Justice to the Commissioner of Police, 28 October 1961.

<sup>53</sup> NAR, DOJ papers, file no.2/50/53, declassified secret correspondence from the Secretary of Justice to the Secretary of Labour, 20 November 1961.

<sup>54</sup> NAR, DOJ papers, file no.2/50/53, declassified secret correspondence from the Secretary of Labour to the Secretary of Justice, 30 November 1961, declassified secret memorandum from the Secretary of Justice, 2 December 1961, declassified secret memorandum signed by the Secretary of Justice, Private Secretary of the Minister of Justice and the Minister of Justice, 6 December 1961.

any trade union activity. While the Secretary of Justice noted Gwala's 'acquiescence' after he had been banned, he commented:

Since the restriction that is currently in place in respect of Gwala came into effect, it seems he is behaving quietly. He was very active. He has not requested the removal of his name from the list. In our view, this says a lot and this should probably be interpreted as meaning that his sympathy continues to lie with communists and that he will return to his old ways as soon as he is no longer subject to his restriction.<sup>55</sup>

The Minister of Justice, with support from the Commissioner of Police, gave his approval for Gwala's restrictions to be 'replaced with a more severe type of a ban and that an area of restriction with associated bans should be imposed.' These would prohibit him from attending any gathering for a period of five years.<sup>56</sup> Gwala's movements were now restricted to the magisterial area of Pietermaritzburg, and these restrictions set the scenes for tighter measures to isolate Gwala.

### **Rethinking political militancy**

The question of whether it was the Communist Party or the ANC that took the decision to engage in an armed struggle has been a subject of debate among academics. It is not the intention of this paper to engage in this debate. However, the shift to the armed struggle and the formation of MK had a tremendous influence in Gwala's politics of connectedness.<sup>57</sup> The state's use of violence, the banning of the ANC on 8 April 1961 and increasing restrictions of his political mobility provoked Gwala to think that 'there was no way out except meeting force with force.'<sup>58</sup> This shift in the political tactics he adopted marked a more radical and militant attitude towards the state.

After the state had imposed more severe restrictions on Gwala, it was satisfied about his 'acquiescence.' Unknown to the state, Gwala was actively involved in the recruitment of cadres in Pietermaritzburg for training by Bruno Mtolo on how to use explosives and subsequently to

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<sup>55</sup> NAR, DOJ papers, file no.2/50/53, declassified secret memorandum from the Secretary of Justice to the Minister of Justice, 18 March 1963.

<sup>56</sup> NAR, DOJ papers, file no.2/50/53, declassified secret memorandum to the Minister of Justice, 11 December 1961; NAR, DOJ papers, file no. 2/50/53, Temba Harry Gwala's banning order, 8 December 1961; NAR, DOJ papers, file no.2/50/53, declassified top secret memorandum from the Secretary of Justice to the Minister of Justice, 18 March 1963.

<sup>57</sup> For a detailed discussion on the ANC's shift to the armed struggle, see Magubane, 'Introduction: The Political Context'; Magubane et al., 'Turn to the Armed Struggle'; Suttner, 'African National Congress (ANC) Underground: From the M-Plan to Rivonia'; Suttner, *The ANC Underground in South Africa to 1976*; Ellis, 'The Genesis of the ANC's Armed Struggle in South Africa'.

<sup>58</sup> Thomas Karis interview with Harry Gwala.

receive military training outside the country.<sup>59</sup> While I am mindful that Mtolo's narrative can hardly be regarded as a reputable source of scholarly, his evidence enables us to understand the intricacies that underpinned the underground operations in Natal. Mtolo claimed that Gwala was very fond of him during the early 1960s and 'whenever [he] went to Pietermaritzburg [he] slept at his place or called [Gwala] to get few points which he would like to put across to the workers at SACTU meetings.'<sup>60</sup> Anton Xaba confirmed that between 1962 and 1963 Gwala was responsible for the identification and recruitment of cadres in Pietermaritzburg to attend Mtolo's training sessions on the use of explosives and to be sent outside the country to receive military training for MK activities.<sup>61</sup> Eric Mtshali recounts that he and other trade unionists, including Gwala, were well placed to recruit 'the best out of the working class' to MK, and 'therefore people who went out [of the country] for military training during that period of the 1960s were mostly workers.'<sup>62</sup>

While the impact of the police raids on the underground headquarters of MK at Liliesleaf farm on 11 July 1963 has been described as catastrophic to the underground operations at a national level, it was the arrest of Mtolo in Kloof, near Pinetown, on 3 August that enabled the state to crack down on MK operatives in Natal. After some brief interrogation, Mtolo became an informer and disclosed the underground network of MK in Natal. Gwala was among those who were arrested after Mtolo had become a state collaborator. After serving a lengthy period in solitary confinement which was marked by torture, Gwala was charged for contravening the Suppression of Communism Act and the Unlawful Organisations Act for 'aid[ing] the undergoing of training outside the Republic or obtaining information from a source outside the Republic which could be used in furthering the achievement of any of the objects of the African National Congress also known as Mkhonto We Sizwe.'<sup>63</sup> Although Gwala had been a key figure in building underground MK military structures in Pietermaritzburg and recruiting cadres for MK, he denied involvement in MK activities and pleaded not guilty.

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<sup>59</sup> B. Mtolo, *Umkhonto we Sizwe: The Road to the Left* (Durban: Drakensburg Press, 1966), pp. 114-117. Mtolo had been recruited to the ANC in 1957 while working as a generalist and later a chairman of the Hospital Workers' Union at McCord Hospital in Durban. He served on MK's Natal Regional Command with Eric Mtshali, Billy Nair, Curnick Ndlovu, Solomon Mbanjwa, Ronnie Kasrils and Ebrahim Ismail.

<sup>60</sup> Mtolo, 'Umkhonto we Sizwe', 116.

<sup>61</sup> Ruth Lundie interview with Anton Xaba.

<sup>62</sup> *Dawn: Journal of Umkhonto weSizwe*, Souvenir Issue, 25<sup>th</sup> Anniversary of MK, 1986, 21.

<sup>63</sup> RSC, 1/1/471, Vol. 14, The State vs Harry Gwala, criminal case number 76/64, state's indictment of Harry Gwala, 18 April 1964.

Meanwhile, the state was determined to clamp down on anyone involved in MK. It argued that because there was a danger that Gwala would ‘interfere [with] or intimidate witnesses’ he should be tried summarily without a preparatory examination.<sup>64</sup> During the trial, which lasted for three months, Gwala was represented by a certain Mr Wilson. It has not been established who was responsible for paying for Gwala’s defence lawyers. The state’s argument was based on the evidence of Mtololo and Solomon Mbanjwa. Mbanjwa had been arrested and also turned state witness. He testified that William Msimang, William Kanyile, Bernard Mhlongo, Anton Xaba and Samson Nene, who had been arrested in Northern Rhodesia, now Zambia, and handed over to the South African authorities, were people who had been recruited by Gwala.<sup>65</sup> Msimang, Kanyile, Mhlongo, Xaba and Nene had been part of the second group of MK recruits that left the country through Bechuanaland, now Botswana, and were due to travel through Northern Rhodesia on their way to Tanzania. However, travel in Northern Rhodesia was not safe, and the group was arrested by the British colonial authorities and deported to South Africa. There they stood trial and were subsequently imprisoned in Leeuwkop Prison, north of Johannesburg.<sup>66</sup> Meanwhile, on 11 June 1964, on the strength of evidence from Mtololo and Mbanjwa, Judge Kennedy found Gwala guilty and sentenced him to eight years’ imprisonment on Robben Island.<sup>67</sup>

In an act that showed his resilience and his determination to resist prison isolation, Gwala applied for leave to appeal.<sup>68</sup> It appears that Gwala did not have legal representation for his court appearance as he appeared in person in court on 24 June 1964 to apply for leave to appeal. He requested that the matter be adjourned so that he could find satisfactory evidence and legal counsel to represent him in order to present evidence more effectively. In the meantime, his wife Elda had already made contact with A. J. McGibbon and Brokensha attorneys to represent him in this matter.<sup>69</sup>

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<sup>64</sup> PAR, RSC, 1/1/471, Vol. 14, The State vs Harry Gwala, criminal case number 76/74, application by the acting Attorney-General: Natal to the Registrar of the Supreme Court, Pietermaritzburg, 16 April 1964.

<sup>65</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, affidavit of William Msimang, William Kanyile, Bernard Mhlongo, Anthony Xaba and Samson Nene, 10 August 1964; PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, Supreme Court of South Africa (Natal Provincial Division), judgment on Gwala’s application for leave to appeal to the Appellate Division, 17 August 1964; Alan Paton Centre (APC), 95 APB, Ruth Lundie, interview with Anton Xaba.

<sup>66</sup> Shubin, *ANC: A View from Moscow*, 19-20.

<sup>67</sup> Fran Buntman interview with Harry Gwala.

<sup>68</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, Supreme Court of South Africa (Natal Provincial Division), judgment on Gwala’s application for leave to appeal to the Appellate Division, 17 August 1964; PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, letters from T. H. Gwala to the Supreme Court of South Africa-Natal Provincial Division, 15 June 1964.

<sup>69</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, letter from T. H. Gwala to A. J. McGibbon & Brokensha Attorneys, 6 July 1964.

Gwala's appeal was based on a denial that he had been involved in the recruitment of the five imprisoned cadres. In the meantime, Msimang, Kanyile, Mhlongo, Xaba and Nene had been transferred to Pietermaritzburg gaol where they reconnected with Gwala. It appears that they orchestrated a plan to deny that they were recruited by Gwala for the purposes of military training outside South Africa.<sup>70</sup> Their affidavits formed the major part of Gwala's application. They claimed under oath that they 'were pointed out to the police by one Solomon Mbanjwa as being persons recruited by Harry Gwala.'<sup>71</sup> Gwala argued that 'evidence contained in the said affidavits [was] material and adversely [affected] the credibility of both Solomon Mbanjwa and Bruno Mtolo, whilst substantiating [his] own evidence.' He requested that an appeal application be granted as 'another court having such evidence before it might take a different view and so arrive at a different verdict.'<sup>72</sup> Gwala's denial exposed the dangers of relying on court documents as sources of evidence because these may comprise manufactured and rehearsed statements that were devoid of truth. Anton Xaba later admitted that he had in fact been recruited by Gwala in January 1963 and Truman Magubane also admitted that Gwala was actively involved in MK recruitment during the early 1960s.<sup>73</sup>

The judgment of Judge Kennedy on 17 August 1964 to grant Gwala leave to appeal provided Gwala with temporary false relief as the state could not move him to Robben Island as it intended to do.<sup>74</sup> Subsequently, he applied to be granted 'bail pending the hearing of his application', to which the state objected.<sup>75</sup> The court denied bail and he remained in Pietermaritzburg gaol while his attorneys prepared the appeal. The appeal was heard on 10 November 1964 and the judgment delivered on 24 November. Judge J. A. Beyers found the evidence of Mbanjwa and Mtolo was most reliable and conclusive and described Kanyile, Mhlongo, Xaba and Nene as 'wholly unreliable deponents' and not credible.<sup>76</sup> Judge Beyers, with Judge Rumpff and Judge Williamson concurring, dismissed Gwala's appeal. This meant

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<sup>70</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, affidavit of William Msimang, William Kanyile, Bernard Mhlongo, Anthony Xaba and Samson Nene, 10 August 1964.

<sup>71</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, affidavit of William Msimang, William Kanyile, Bernard Mhlongo, Anthony Xaba and Samson Nene, 10 August 1964; PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, Supreme Court of South Africa (Natal Provincial Division), judgment on Gwala's application for leave to appeal to the Appellate Division, 17 August 1964.

<sup>72</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, affidavit of T. H. Gwala, 10 August 1964.

<sup>73</sup> Ruth Lundie interview with Anton Xaba; Mxolisi Dlamuka, interview with Truman Magubane; Sithole, 'The ANC Underground', 225.

<sup>74</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, Order of the Supreme Court of South Africa (Natal Provincial Division), 17 August 1964; PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, correspondence from the Registrar of the Supreme Court to the Registrar of the Supreme of Appeal, 19 August 1964.

<sup>75</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, application for bail by T. H. Gwala, 17 August 1964.

<sup>76</sup> PAR, RSC, 1/1/471, Vol. 14, CC 76/64, The State vs Harry Gwala, judgment of the Supreme Court of South Africa (Appellate Division), 24 November 1964.

that the state's attempts to disconnect Gwala had succeeded and soon it started the process of transferring him to Robben Island. Harry Gwala, prison number 238/65, was admitted to Robben Island on 7 June 1965.<sup>77</sup>

### **Connectedness and Gwala's release from Robben Island**

The 'smashing of the early underground' activities of the MK and the subsequent arrest of some ANC leaders and the escape by others into exile resulted in a lull in activities.<sup>78</sup> After the Rivonia trial, the leadership of the ANC was either in exile or in prison. While on Robben Island, Gwala was able to circumvent harsh conditions in prison and established links with the Rivonia trialists who had assumed leadership of the ANC in prison. Oral sources suggest that although prison conditions were appallingly oppressive, Harry Gwala was able to establish linkages with other political prisoners from various political organisations.<sup>79</sup>

Upon the release of an ANC political prisoner, the leadership of the ANC on Robben Island would instruct a member either to leave country or to wait for further instruction. When Gwala was released from Robben Island, the leadership gave him instructions to remain inside the country and to resuscitate the underground cells in Natal.<sup>80</sup> However, Gwala found the political and security conditions 'extremely precarious' to undertake any political operations. He remarked:

When I was released in [June] 1972 I found that people were scared. There was a lull. SACTU/ANC/SACP leadership has either been jailed or exiled. There were no political structures that existed at a local level.<sup>81</sup>

Correspondence between the Department of Bantu Administration and Development (DBAD) and the Commissioner of the South African Police indicated that preparations for Gwala's further isolation started before his release from prison.<sup>82</sup> The DBAD proposed that while 'strong restrictions be ordered after Gwala's release from prison', it was prepared to 'arrange employment possibilities locally.'<sup>83</sup> When Gwala was released from prison, he was served with a five-year banning order which carried more severe restrictions than previous orders. This

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<sup>77</sup> UWC-RIM Mayibuye Archives, Robben Island prison register, 807/64-118/66.

<sup>78</sup> R. Suttner, *Recovering Democracy in South Africa* (Johannesburg: Jacana, 2015), 195.

<sup>79</sup> Mxolisi Dlamuka interview with Monde Mkhunqwana.

<sup>80</sup> Fran Buntman interview with Harry Gwala.

<sup>81</sup> Brian Bunting interview with Harry Gwala.

<sup>82</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret correspondence from the Secretary of Bantu Administration and Development to the Commissioner of the South African Police, 6 October 1971.

<sup>83</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret correspondence from the Secretary of Bantu Administration and Development to the Commissioner of the South African Police, 6 October 1971.

time Gwala was ordered not to participate in any manner in the preparation, compilation, printing, publication and transmission of any publication.

In an attempt to frustrate Gwala, mindful that he had trained as a teacher, the state prohibited him from ‘giving any educational instruction in any manner or form to any person other than a person of whom [he was] a parent.’<sup>84</sup> Furthermore, he was not allowed to have any visitors other than a medical practitioner, his mother and mother-in-law, Margaret Nettie. Acting on the recommendation of the Commissioner of Police, the Secretary of Justice proposed to the Minister of Justice that Gwala be properly constrained, that restrictions be implemented, and that the Magistrate of Pietermaritzburg be authorised to approve exceptions.<sup>85</sup> In addition, he was ‘banned from leaving his home at any time except between 6 am and 6 pm, [from] entering any Bantu area except Edendale, and [from] entering any factory.’<sup>86</sup>

Gwala viewed the state’s tightening of restrictions and offers of employment by the state as a strategy to pacify him and make him a collaborator.<sup>87</sup> By 1973 the Secretary of Justice was disappointed that Gwala refused to work for the KwaZulu Government because he claimed that state employment would be against his principles.<sup>88</sup> In the meantime, Gwala applied for the relaxation of his restrictions in order to enable him to be away from home until 7 pm, to enter Sobantu, Imbali, Ashdown and Slangspruit, and to enter the premises of Leon’s Dry Cleaners in Pietermaritzburg. The Commissioner of Police recommended to the Minister of Justice that Gwala’s application be declined as it would ‘put him in a position to continue his incitement among the Bantu, with which he has been engaged in for years.’<sup>89</sup>

Although the Minister of Justice did not support the relaxation of Gwala’s restrictions, the Chief Magistrate of Pietermaritzburg granted him permission to enter the premises of Leon’s Dry Cleaners and African townships on conditions that it would be within the timeframes set out in the banning order. The Chief Magistrate did not consider that Gwala would use this time

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<sup>84</sup> NAR, DOJ papers, file no.2/50/53, declassified secret notice of T. H. Gwala’s banning order, 23 May 1972.

<sup>85</sup> NAR, DOJ papers, file no.2/50/53, declassified secret correspondence from the Secretary of Justice to the Minister of Justice, 23 May 1972; NAR, DOJ papers, file no.2/50/53, declassified secret memorandum from the Secretary of Justice to the Magistrate of Pietermaritzburg, 30 May 1972; NAR, DOJ papers, file no.2/50/53, secret memorandum from the Secretary of Justice to the Commissioner of the South African Police, 30 May 1972.

<sup>86</sup> NAR, DOJ papers, file no.2/50/53, declassified secret correspondence from the Secretary of Justice to the Commissioner of the South African Police, 28 May 1973; NAR, DOJ papers, file no.2/50/53, declassified secret memorandum from the Secretary of Justice to the Minister of Justice, 19 July 1973.

<sup>87</sup> Brian Bunting interview with Harry Gwala.

<sup>88</sup> NAR, DOJ papers, file no. 2/50/53, declassified secret memorandum from the Secretary of Justice to the Minister of Justice, 19 July 1973.

<sup>89</sup> NAR, DOJ papers, file no.2/50/53, declassified secret memorandum from the Secretary of Justice to the Minister of Justice, 19 July 1973.

for his political activities. He operated his 'business' using a van which the South African Council of Churches (SACC) Pietermaritzburg had bought for him in January 1973.<sup>90</sup> While Gwala involved himself in numerous activities that were against the conditions of his banning order, in some instances he made the state believe that he was abiding by the conditions of his banning order. He wanted the state to believe that its control mechanisms were effective and he was abiding by them.<sup>91</sup> Despite being closely monitored by the Special Branch, Yunus Mohammed observed that Gwala became increasingly involved in the underground structures of MK.<sup>92</sup> Nevertheless, it was not until early 1974 that Gwala's underground operations began to yield positive results.

### **Building grassroots networks and the resuscitation of the underground activities in Natal**

Kgalema Motlanthe has characterised the resuscitation of the ANC underground structures in Natal during the early 1970s as 'a very crucial moment in the history of the armed struggle.'<sup>93</sup> After the SACTU, ANC, and SACP underground structures inside the country had effectively been wiped out during the 1960s, there were new opportunities in the 1970s as the first group of ANC activists who had been imprisoned at Robben Island were released. This group, including Gwala, had an 'impact on thinking and culture of youth activists' in Natal.<sup>94</sup> It established the Natal-Swaziland network which became an exit route for those who were leaving South Africa to join MK in exile.<sup>95</sup>

Jabulani Sithole, Sifiso Ndlovu, Martin Legassick and Derby Bonnin concur that Gwala's release from prison had a significant impact on workers' political consciousness in the Natal Midlands, especially at Sarmcol, as it reminded them of the old days of struggle and of the

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<sup>90</sup> Mxolisi Dlamuka interview with Lindiwe Gwala; PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 76/74, State vs Harry Gwala and others, evidence of Harry Themba Gwala.

<sup>91</sup> On 21 August 1974 Gwala applied to the Chief Magistrate of Pietermaritzburg to attend his late mother's ritual ceremony which was to be held at Swayimane, in the district of New Hanover. The event was to be held on Saturday, 31 August 1974. He requested to attend the ceremony from Friday, 30 August since the beast was to be slaughtered on that day as per custom. Permission was granted on condition that on his arrival he reported his departure to the Station Commander at Pietermaritzburg Police Station and that on his arrival in the New Hanover district he also reported to the Station Commander. Furthermore, he was instructed not to carry any passenger other than his family and he abide by the conditions of his banning order, see NAR, DOJ papers, file no. 2/1/53, correspondence between Themba Harry Gwala and the Chief Magistrate of Pietermaritzburg, 21 and 29 August 1974.

<sup>92</sup> M. Ntsodi interview with Yunus Mohammed.

<sup>93</sup> Mxolisi Dlamuka interview with Kgalema Motlanthe, 13 February 2013, Highstead (the Deputy President's official residence in Cape Town). Motlanthe served as State President of the Republic of South Africa from September 2008 to May 2009 and later served as Deputy President between 2009 and 2014.

<sup>94</sup> Suttner, 'The Character and Formation of Intellectuals', 138.

<sup>95</sup> Sithole, 'The ANC Underground', 279-311; H. Macmillan, *The Lusaka Years: The ANC in Exile in Zambia, 1963-1994* (Johannesburg: Jacana, 2013), 111.

necessity of worker organisation and unity.<sup>96</sup> Nevertheless, at a broader political level, Gwala remarked that ‘political apathy and consciousness’ made it difficult to re-establish proper underground networks because many people were despondent and scared of the Security Branch.<sup>97</sup> A number of factors led to the improvement in political morale in Natal during the early 1970s. This included the growth of student militancy which was driven by the South African Students’ Organisation (SASO), and the subsequent students’ strike at the University College of Durban-Westville in January 1972, the emergence of the Black Consciousness Movement (BCM), especially the launch of the Black People’s Convention (BPC) in mid-1972 at Edendale, and the 1973 Durban strikes.<sup>98</sup> In addition, the release of Jacob Zuma on 29 December 1973 had a significant impact on the re-establishment of the ANC underground structures in Natal between 1974 and 1975.<sup>99</sup> As Karis and Gerhart have suggested, despite the lull of the mid-1960s, the early 1970s were characterised by the intensification of political conscientisation, and the ‘banned liberation movements with their commitment to armed struggle gained rapidly in appeal.’<sup>100</sup>

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<sup>96</sup> J. Sithole and S. Ndlovu, ‘The Revival of the Workers’ Movement, 1970-1980’, in *SADET, Road to Democracy in South Africa, Volume 2* (Pretoria: Unisa Press, 2004), 187-241; M. Legassick, ‘Debating the Revival of the Workers’ Movement in the 1970s: The South African Democracy Education Trust and Post-Apartheid Patriotic History’, *Kronos*, No. 34, Making Histories, 2008, 240-266; Bonnin, ‘We Went to Arm Ourselves at the Field of Suffering’, 34-69; H. Gwala, ‘The Life and Struggles of Harry Gwala’, *New Era*, Vol. 4, No. 1, 1989, 33; Mxolisi Dlamuka interview with Omar Badsha, 8 October 2015, Cape Town.

<sup>97</sup> Brian Bunting interview with Harry Gwala; Brian Bunting interview with Joe Slovo.

<sup>98</sup> Thomas Karis and Gail Gerhart have described the broader relations between the BCM, ANC and PAC of a ‘troublesome proportion’ that remained unresolved. The question of Gwala’s ‘attraction’ to the militancy of the BCM is a subject of debate as Gwala rebuffed any relationship with the BCM and downplayed being ‘attracted’ to it. Nevertheless, just before his arrest, Gwala had indirect communication with Steve Biko through Malusi Mpumlwana and Mapetla Mohapi and plans to hold a secret unity meeting on Christmas Eve had to be abandoned due to the arrest of Gwala and other Natal underground activists in November 1975, see X. Mangcu, *Biko: A Biography* (Cape Town: Tafelberg, 2012), 244; for detailed analysis of the 1973 Durban riots, see N. T. Sambureni, ‘The Apartheid City and its Labouring Class: African Workers and the Independent Trade Union Movement in Durban, 1959-1985’, PhD dissertation, University of South Africa, 1997; A. Sitas, ‘African Worker Response on the East Rand and Changes in the Metal Industry, 1960-1980’, PhD dissertation, University of the Witwatersrand, 1984; S. Marks, ‘Towards a People’s History of South Africa: Recent Developments in the Historiography of South Africa’, in Samuel, R (ed.), *People’s History and Socialist Theory* (London: Routledge and Kegan Paul, 1981); Karis and Gerhart, ‘From Protest to Challenge’, 123-158; S. M. Ndlovu, ‘Black Youth and Students in Exile: The Revival of the Liberation Movement(s) in the 1970s’, paper presented to the National Research Foundation Programme in Local Histories and Present Realities seminar, 17 February 2016, University of the Witwatersrand; D. Welsh, *The Rise and Fall of Apartheid* (Cape Town: Jonathan Ball, 2009); Brian Bunting interview with Harry Gwala.

<sup>99</sup> Fran Buntman interview with Harry Gwala; Howard Barrell interview with Jacob Zuma; Sisulu, ‘Walter and Albertina Sisulu’, 361. For a discussion on the political impact of Jacob Zuma’s release on the resurgence of underground structures in Natal, see Sithole ‘The ANC Underground’, 225-229; T. Waetjen and G. Maré, ‘Tradition’s Desire: The Politics of Culture in the Rape Trial of Jacob Zuma’, *Theoria: A Journal of Social and Political Theory*, Vol. 56, No. 118 (Democracy, Morality and Punishment), 2009, 63-81; <http://www.sahistory.org.za/people/jacob-gedleyihlekisa-zuma>, accessed 16 March 2016.

<sup>100</sup> Karis and Gerhart, *From Protest to Challenge*, Vol. 5, 122; M. Mzamane, B. Maaba and N. Biko, ‘The Black Consciousness Movement’, *SADET, The Road to Democracy in South Africa, Vol. 2 [1970-1980]* (Pretoria: Unisa Press, 2006); M. Plaut and J. Seekings, ‘Reflections on the South African Revolution: A Discussion between Martin Plaut and Jeremy Seekings’, *History Workshop Journal*, No. 54, 2002, 209-220.

By 1972, SASO leaders had scoured their social surroundings for usable forms of organisational support.<sup>101</sup> The Association for the Educational and Cultural Advancement of the African (ASSECA), headed by M. T. Moerane, also editor of *The World*, a widely read township newspaper, became one of the organisations that SASO targeted. Although Moerane did not allow ASSECA to be reoriented by SASO, he remained supportive of political cooperation with other like-minded organisations.<sup>102</sup> As discussed in my other work, Moerane and Gwala had worked together to establish the Natal CYL during the 1940s. In mid-August 1971, Moerane and William Nkomo had been elected to be part of the team that organised the Edendale consultative meeting to discuss the establishment of the BPC, which comprised over 26 African organisations that were operating outside government-initiated bodies. This position gave him influence over various organisations in Natal.<sup>103</sup> The BPC was formally launched at Edendale in July 1972, a month after Gwala's release from prison, with Reverend Mashwabanda Mayutula as an interim secretary general. Although Gwala did not attend the launch, he was 'properly briefed by Moerane' and welcomed the BPC as an integral role-player in raising the levels of political consciousness.<sup>104</sup>

As Thomas Karis and Gail Gerhart have argued, the BCM, with its appeal for an independent and assertive African culture, aroused enthusiastic support from many people. In Natal, the Theatre Council of Natal (TECON), a politically committed Indian drama group which had tried to cultivate white donors and audiences, decided in 1972 to devote itself exclusively to performing for blacks. Cultural expression became a major political tool for the Black Consciousness Movement to popularise itself and cultivate Africanness.<sup>105</sup> Furthermore, artistic performances that emerged during 1972 and 1973 conveyed a political message, veiled or explicit. For example, *Shanti*, a play by Mthuli Shezi performed in Natal and Transvaal townships in 1973, told an improbable story of an Indian woman whose African lover fled South Africa to join the guerrilla army of the Mozambique Liberation Front, FRELIMO.<sup>106</sup>

These developments created an unprecedented level of political consciousness that presented fertile ground for Gwala to start an internal operation to recruit young people to leave the

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<sup>101</sup> G. M. Gerhart, *Black Power in South Africa: The Evolution of an Ideology* (Berkeley CA: University of California Press, 1978), 288-289.

<sup>102</sup> Karis and Gerhart, *From Protest to Challenge*, Vol.5, 132.

<sup>103</sup> K. Mokoape, T. Mtintso and W. Nhlapo, 'Towards the Armed Struggle', in B. N. Pityana et al. (eds.), *Bounds of Possibility: The Legacy of Steve Biko and Black Consciousness* (Cape Town: David Philip, 1991), 138-139.

<sup>104</sup> Thomas Karis interview with Harry Gwala.

<sup>105</sup> Karis and Gerhart, 'From Protest to Challenge', Vol. 5, 136; Julie Fredrikse interview with Saths Cooper.

<sup>106</sup> Karis and Gerhart, 'From Protest to Challenge', Vol.5, 136.

country for military training with MK.<sup>107</sup> Furthermore, the independence in 1974 of Angola and Mozambique was a major psychological boost for African political conscientisation and removed ‘major portions of the geographical buffer zone that had separated South Africa’ from the independent African countries.<sup>108</sup> By mid-1974, Gwala had made contact with Albert Dlomo who was at that time based in Swaziland and working closely with Moses Mabhida.<sup>109</sup> It was Dlomo who introduced Gwala to Sylvia and Peter Gamedze, Swazi nationals whose business was used as a front for delivering ANC messages between Natal and Swaziland. Between 1974 and 1975, Sylvia Gamedze was a conduit of communication from the Natal ANC underground and the Swaziland-based ANC. Sylvia, born in Pietermaritzburg, was married to Peter Gamedze. Peter had farms in Swaziland, and Sylvia managed her business between Pietermaritzburg and Manzini.<sup>110</sup>

It was through Sylvia Gamedze that Mabhida and Dlomo were able to advise ‘Gwala and Jacob Zuma network to establish units in line with the M-Plan, Mandela Plan.’<sup>111</sup> Furthermore, Sylvia Gamedze also smuggled money from Dlomo and Mabhida to Gwala, which was used to cover the expenses of transporting recruits to the border between Natal and Swaziland.<sup>112</sup> Gwala admitted receiving money from Sylvia Gamedze, but disputed that it was to further the political ends of the ANC. He emphasised that it was ‘used for organising SACTU and also sent to those who were taught trade union work to cover their wages and other activities.’ This concealed the fact that the money covered costs that were associated with the recruitment of MK cadres

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<sup>107</sup> [www.sahistory.org.za/people/jacob-gedleyihlekisa-zuma](http://www.sahistory.org.za/people/jacob-gedleyihlekisa-zuma), accessed, 31 December 2015; Mxolisi Dlamuka, interview with Kgalema Motlanthe. Other key individuals in the unit were Jacob Zuma, Joseph Nduli, affectionately known as Mpisi, and Joseph Mdluli. Nduli played a vital role in establishing links with the Swaziland network of the exiled ANC. He was one of the first generation of MK recruits and was part of the Luthuli Detachment. He was trained in the Soviet Union and lived in Tanzania. Nduli participated in the Wankie operation and was the only one who succeeded in crossing into South Africa, going as far as Natal, thereafter operating underground between Swaziland and South Africa. Joseph Mdluli was together with Gwala, responsible for recruitment mainly from the townships of Umlazi, KwaMashu, Sobantu and Edendale, and organising transportation of recruits to the border between Natal and Swaziland. In many cases Mdluli was personally involved in transporting recruits from Durban and Pietermaritzburg’s townships, see Macmillan, *The Lusaka Years*, 111-126.

<sup>108</sup> Karis and Gerhart, *From Protest to Challenge*, Vol.5, p.144; Howard Barrell interview with Jacob Zuma.

<sup>109</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala. Dlomo, sometimes spelt Dhlomo, had been an active member of the ANC in Chesterville before it was banned in 1960. He then went underground and embarked on a recruitment drive to the movement. In 1963 Dlomo was arrested and detained under the 90-day detention law. He was later charged with furthering the aims of the ANC but acquitted. Shortly after his release he was re-detained and charged with providing assistance to people leaving the country for military training under MK, see, [www.sahistory.org.za/people/albert-dlomo](http://www.sahistory.org.za/people/albert-dlomo), accessed, 31 December 2015.

<sup>110</sup> PAR, RSC, 1/1/993, Vol. 21, Record 4 & 5, CC 108/76, State vs Harry Gwala and others, evidence of Sylvia Gamedze.

<sup>111</sup> PAR, RSC, 1/1/993, Vol. 18, Record 7, CC 108/76, State vs Harry Gwala and 9 others, evidence of Herald Bhekisisa Nxasana. The M-Plan had been conceptualised in the Eastern Cape and was approved secretly by the 1953 ANC conference. For a detailed discussion about the M-Plan, see Suttner, *ANC Underground in South Africa*, 18-25.

<sup>112</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

and their transportation to the Natal-Swaziland border.<sup>113</sup> By October 1974, after having divided Natal into 12 units, Gwala, Anton Xaba, Truman Magubane, Joseph Mdluli and Azaria Ndebele facilitated the transportation of the first group of recruits through Peter and Sylvia Gamedze.<sup>114</sup> This group consisted of 12 cadres who travelled in two groups of six. The groups were to be received by Joseph Nduli and Cleopas Melayibone Ndhlovu on the Swaziland side of the border after which they would be taken to their next destination.<sup>115</sup>

Gwala's network of recruits came mainly from his trade union activities of the 1960s, especially those he had worked closely with at Howick. Among these were Moses Bhengu and Siphon Kubheka. Gwala and Bhengu had been activists of the Rubber Workers' Union in 1960 and, when Gwala was banned, Bhengu became the secretary.<sup>116</sup> In 1974 Gwala and Bhengu reconnected through Truman Magubane. Bhengu became active in recruiting youth to join MK in Sobantu. He occasionally received money from Gwala to cover travelling expenses.<sup>117</sup> Truman Magubane had introduced Kubheka to Gwala when they both worked closely in the Pietermaritzburg local office of SACTU in 1961.<sup>118</sup> Gwala reconnected with Kubheka after his release from prison. By that time Kubheka was working at Edendale Hospital. As discussions about the recruitment for MK intensified Gwala used his laundry business as a front to visit Kubheka more often at the hospital.<sup>119</sup> Gwala remarked that discussions between him, Truman Magubane and Kubheka extended to the broader politics of the 1970s in Natal and KwaZulu. The topics they discussed included the 'unveiling of a memorial or a tombstone to the late Chief Albert Luthuli at Groutville', the establishment of KwaZulu, and the role of Chief Gatsha Buthelezi. While Truman Magubane and Kubheka were against Buthelezi accepting the establishment of the KwaZulu Bantustan, Gwala 'defended him.'<sup>120</sup>

By the end of October 1975, the network of Gwala and Jacob Zuma had played a vital role in facilitating the exit of over fifty recruits from Natal while Sylvia Gamedze ensured that there was an active communication line between Gwala, Dlomo, Mabhida and Joseph Mdluli.<sup>121</sup> In

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<sup>113</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala. Karis and Gerhart do not refute the argument that efforts were made to train worker activists outside the country who could return to revive SACTU, see Karis and Gerhart, *From Protest to Challenge*, Vol. 5, 53-54.

<sup>114</sup> PAR, RSC, 1/1/1004, Vol.32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

<sup>115</sup> Mxolisi Dlamuka interview with Kgalema Motlanthe; PAR, RSC, 1/1/1004, Vol. 21, Record 4 & 5, CC 108/76, State vs Harry Gwala and others, evidence of Sylvia Gamedze.

<sup>116</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

<sup>117</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

<sup>118</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

<sup>119</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

<sup>120</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 11, CC 108/76, State vs Harry Gwala and 9 others, evidence of Harry Themba Gwala.

<sup>121</sup> Mxolisi Dlamuka interview with Kgalema Motlanthe; Howard Barrell interview with Jacob Zuma.

addition, it was this network that organised a student trip to Swaziland in 1975 during which several key SASO activists from Natal University's medical school were recruited to the ANC. Among these were Diliza Mji, Norman Dubazane, Faith Matlaopane and Nkosazana Dlamini. These recruits later became prominent in the leadership of student organisations and clandestine operations of both the ANC and MK in Natal. The recruitment of these student leaders indicated a new strategy, meaning and direction: the steering of the student movement towards identification with the aims, ideology, and leadership of the ANC.<sup>122</sup>

Meanwhile, the Security Branch infiltrated the network and converted Samson Lukele into a collaborator. Lukele was the one who was responsible for driving recruits from Natal to the boarder of Swaziland. The interrogation of Lukele and Joseph Nduli uncovered the network of Gwala and Jacob Zuma.<sup>123</sup> In addition, while under interrogation, Joseph Nduli divulged the names of Kgalema Motlanthe and Stanley Nkosi as those responsible for recruiting in Johannesburg.<sup>124</sup> Subsequently, Motlanthe and Nkosi were interrogated in Johannesburg, arrested in 1976, and sentenced to 10 years' imprisonment on Robben Island.

### **Repression and Gwala's 1976 trial**

On the morning of 30 November 1975 members of the Special Branch arrested Gwala at his house together with his wife, Elda, for 'participating in terrorist activities in contravention of the Terrorism Act of 1967 as amended.'<sup>125</sup> They were taken to the Special Branch section on the second floor of Loop Street Police Station where they were separated, severely tortured, and kept in solitary confinement. Gwala remembered that:

From December 12 to December 14 1975, I was subjected to a continuous questioning without sleep by various members of the Security force. From the type of questioning it became clear to me that the police were only interested in a particular type of answers. On the last day I was threatened that this type of treatment would be imposed again unless I supplied these certain answers.<sup>126</sup>

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<sup>122</sup> Karis and Gerhart, *From Protest to Challenge*, Vol. 5, 144; Mxolisi Dlamuka interview with Sihle Mbongwa, 22 March 2007.

<sup>123</sup> PAR, RSC,1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Joseph Ntuliswe Nduli, 10 July 1976. The correct spelling of 'Ntuliswe' is 'Ntulizwe'.

<sup>124</sup> Mxolisi Dlamuka interview with Kgalema Motlanthe.

<sup>125</sup> PAR, RSC, 1/1/1001, Vol. 29, Record 1, CC 108/76, State v Harry Gwala and 9 others, The Indictment, 14 May 1976; NAR, DOJ papers, file no. 2/1/53, Harry Gwala's statement to the Chief Magistrate, undated.

<sup>126</sup> NAR, DOJ papers, file no. 2/1/53, Harry Gwala's statement to the Chief Magistrate, undated.

Gwala was subsequently moved to the Town Hill Police Station which was mainly for 'cooperative' detainees. However, after it became clear that he was 'not willing to cooperate' with his interrogators, he was sent back to Loop Street. Gwala remarked that:

When I arrived there I had continuous hay fever and tight chest together with wheezing at night. The blankets supplied were not fit for human beings...on January 12, 1976, I acquired a better blanket but it was so infested with lice that in one night I destroyed fifty.<sup>127</sup>

There is no evidence that Gwala divulged any information that related to his underground activities. As a result of his lack of cooperation, his elder daughter, Lulu Gwala, who Gwala defined as 'an acute asthmatic', was also detained on 7 January 1976 for six months.<sup>128</sup> Gwala further believed that:

The reason for my daughter's detention is that (a) in 1974 she sold goods for one Mrs Peter Gamedze of Swaziland (b) In May 1975, I sent her together with one Thuthukile Mabhida to deliver letters to the said Mrs Gamedze at Machibise (c) In June 1975, while she went to Mrs Gamedze's mother's home to give Mrs Gamedze money for the goods she had sold in 1974 I gave her a letter to hand over to Mrs Gamedze (d) That Mrs Gamedze in her statement to police alleges that in November 1975 I sent my daughter either to collect from her a letter or deliver a card with a list of names.<sup>129</sup>

By the end of January 1976, Gwala had been tortured to the extent that he applied to have his 'will drawn up as he feared' for his own health and his life as well as those of his family.<sup>130</sup> The Special Branch inflicted increased levels of torture that attempted to force Gwala and others suspects to cooperate.<sup>131</sup> Anton Xaba, also arrested on 30 November 1975, told the Truth and Reconciliation Commission (TRC) that police surrounded his house, rounded up all six members of his family and took them to Loop Street Police Station. Xaba said he was taken upstairs where he was systematically assaulted, tortured and interrogated for two days. He bled heavily and lost consciousness a number of times. His torture included being dangled out of the window by his feet while the policemen swung him backwards and forwards and banged his head against the wall. His arm was broken in the process. At one point during the torture,

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<sup>127</sup> NAR, DOJ papers, file no. 2/1/53, Harry Gwala's statement to the Chief Magistrate, undated; Colonel Dreyer, who had been the Commander (Inland) Division of the Special Branch since 7 October 1963, admitted to the Court during the trial that Gwala complained to him during his visit on 30 November 1975 about the condition of the cell and that the blankets. With reference to the lice, he also admitted he said 'well, Harry, bite them back', see PAR, RSC, 1/1/1011, Vol. 39, Record 30, CC 108/76, State v Harry Gwala and 9 others, The Judgment.

<sup>128</sup> NAR, DOJ papers, file no. 2/1/53, Harry Gwala's statement to the Chief Magistrate, undated.

<sup>129</sup> NAR, DOJ papers, file no. 2/1/53, Harry Gwala's statement to the Chief Magistrate, undated.

<sup>130</sup> NAR, DOJ papers, file no. 2/1/53, Harry Gwala's statement to the Chief Magistrate, undated.

<sup>131</sup> W. Woodward, P. Hayes and G. Minkley, 'Introduction', in *Deep HiStories: Gender and Colonialism in Southern Africa* (Amsterdam: Rodopi, 2002), p.xxvi.

he said he could hear the screams of his wife in the adjoining room. On his second day of torture, Xaba's hands were cuffed behind his back and he was suspended from the ceiling like 'meat in the butchery.'<sup>132</sup>

From 30 November to 19 December 1975, over 20 people were arrested and placed in solitary confinement in connection with their involvement in the Gwala and Jacob Zuma network.<sup>133</sup> Among the detained were William Fano Khanyile, Anton Ndoda Xaba, John Vusimuzi Nene, Vusimuzi Truman Magubane, Matthews Makholeka Mayewa, Azaria Ndebele, and Zakhele Elphas Mdlalose and they were charged together with Gwala. Also in the net were Herold Bekisisa Nxasana, Abion Alfred Duma, Sylvia Ntombikayise Gamedze, Peter Bhekimpi Gamedze, Moses Bhengu, and Sipho Kubheka, all of whom turned state witness.<sup>134</sup> As the raids continued, the Security Branch detained Joseph Mdluli on 18 March 1976 and proceeded to 'torture him to death within 24 hours.'<sup>135</sup>

The Special Branch had assembled a team of senior officers from Natal and Johannesburg to detain all those suspected of being involved in the Gwala and Jacob Zuma network. Zuma managed to escape the county in December 1975. By end of February 1976, the Security Branch had detained over 50 people it suspected of involvement. Even though Jacob Zuma had left the country, the Special Branch was still determined to detain Joseph Nduli and Cleopas Ndhlovu, even though they were residents of Swaziland, having been given political asylum.<sup>136</sup>

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<sup>132</sup> [www.nelsonmandela.org/omalley/index.php/site/q/031v02167/041v02264/051v02335/061v02357/071v02380/081v02383](http://www.nelsonmandela.org/omalley/index.php/site/q/031v02167/041v02264/051v02335/061v02357/071v02380/081v02383), accessed, 11 January 2016.

<sup>133</sup> The following people were detained: Zakhele Mdlalose, Matthews Meyiwa, Harry Gwala, David Mkhize, Truman Magubane, Harold Nxasana, Russel Maphanga, Leonard Mdingi, Ephraim Mthlane, Hohn Nene, Anton Xaba, Lawrence Ngubane, Hamilton Kubheka, Moses Bhengu, Riot Mkhwanazi, Mentz Kubheka, William Khanyile, Pius Makhoba, Judson Khuzwayo, Alson Nzama, Mazwi Msimang, Gerald Mdlalose, Miss S Mabhida and Azaria Ndebele, see APC, PC16/14/1/2/8, list of the detainees compiled by the Pietermaritzburg Council of Churches. The following were reported to be detained in Pietermaritzburg during and after the trial: Mike Mzileni, Joas Mtakeleng Mogale, Benjamin Ntoele, Joseph Thloloe, Deborah Matshoba, Thamsanqa Mavumengwana, Mzwandile Wotshela, Kenneth Ngoqo, David Makgobu, Ronnie Matabata, David Mamametsi, Kleinboo Maletshe and Nomalizo Judith Kraai, see APC, PC15/14/1/2/41, correspondence from Mr Rayan Moodley to Peter Kerchhoff, 13 October 1977.

<sup>134</sup> Others arrested were: Allison Mduwane Nzama, Stanely Msibi, Frans Mdelwa Kunene, Bhi Michael Gumede, Alfred Thulani Ndawonde, Ascar Sipho Mathonsi, Phillemon Mokwena, Lawrence Mfana Ngubane, Diza Judson Kuzwayo, Leonard Magashu Mdingi, Sazi Ngcobo, Bekizwe Russel Mapanga, Pius Jabulani Makhoba, Mfanyana Bernard Nkozi, Alfred Maphango Duma, Joshua Thembinkosi Zulu, Mdingi David Mkize, Siphiwe Arthur Majola, Gerald Msebenzi Mdlalose, Llewellyn Msimango, Buhle Ephraim Mthlane, Catherine Mkize and Simo Johnson Sishi, see NAR, DOJ papers, file no. 2/1/53, secret correspondence from the Security Branch to the Secretary of Justice, 19 December 1975.

<sup>135</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Joseph Ntulisiwe Nduli, 10 July 1976; Mxolisi Dlamuka interview with Kgalema Motlanthe.

<sup>136</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Philip Lobengula Nsiband, 23 June 1976. Nsiband was an Acting Permanent Secretary in the Ministry of the Deputy Prime Minister of Swaziland.

On 18 March 1976, Jacob Zuma had given R1000 to Samson Lukele which he was supposed to give to Joseph Mdluli.<sup>137</sup> Jacob Zuma was not aware that Lukele had become a state collaborator. Once Joseph Mdluli had been murdered, Lukele made a scam arrangement to give back the money to Joseph Nduli and Cleopas Ndhlovu on 25 March 1976, and hand over another group of recruits from Natal. Joseph Nduli and Cleopas Ndhlovu went to the spot at the border fence where they had agreed to meet. However, because of ‘marshy terrain’, they could ‘not bring the motor vehicle closer to the border fence.’<sup>138</sup> As they walked closer they ‘noticed that a stationary motor vehicle on the Piet Retief-Pongola road was flashing its parking lights on and off.’ Joseph Nduli and Cleopas Ndhlovu ‘flashed twice with the torch’ and the motor vehicle moved closer to the fence.<sup>139</sup> At a closer distance Joseph Nduli and Cleopas Ndhlovu called out “Mbuzi-Mbuzi”, the agreed signal, and a voice answered “Ja”.<sup>140</sup> After a brief discussion, Lukele indicated that they were recruits who had to cross the border. To the astonishment of Joseph Nduli and Cleopas Ndhlovu, ‘people started to emerge from the vehicle’, climbed through onto the Swaziland side of the fence, and apprehended them.<sup>141</sup> After the arrest of Joseph Nduli and Cleopas Ndhlovu, the state consolidated its charged sheet and issued an indictment with Gwala as accused number one.<sup>142</sup>

All ten accused were held incommunicado for the duration of their detention until they were brought before the court on 14 May 1976.<sup>143</sup> By refusing to grant bail, and detaining the accused in various police cells and in police stations far removed from their families, the state was trying to mitigate the risk of the accused presenting a unified, well considered legal defence.<sup>144</sup>

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<sup>137</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Joseph Ntuliswe Nduli, 10 July 1976; Howard Barrell interview with Jacob Zuma.

<sup>138</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Joseph Ntuliswe Nduli, 10 July 1976.

<sup>139</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Joseph Ntuliswe Nduli, 10 July 1976.

<sup>140</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Joseph Ntuliswe Nduli, 10 July 1976.

<sup>141</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Joseph Ntuliswe Nduli, 10 July 1976.

<sup>142</sup> PAR, RSC, 1/1/1001, Vol. 29, Record 1, CC 108/76, State v Harry Gwala and 9 others, memorandum from AJ Krog, Attorney-General for the Province of Natal, 14 May 1976.

<sup>143</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Navanethem Pillay, 12 July 1976.

<sup>144</sup> The accused were kept in the following police stations: Harry Gwala (Townhill Police Station), John Nene (Loop Street Police Station), Anton Xaba (Loop Street Police Station), Truman Magubane (Howick Police Station), William Khanyile (Umbilo Police Station), Azaria Ndebele (Loop Street Police Station), Mathews Meyiwa (Wartburg Police Station), Joseph Nduli (Alexandra Street Police Station), Zakhele Mdlalose (Greytown Police Station), Cleopas Ndhlovu (Alexandra Street Police Station), see, NAR, DOJ papers, file no. 2/1/53, declassified secret correspondence from the Security Branch to the Secretary of Justice, 19 December 1975.

In addition, since the ‘accused had extremely shortened visits from their families, it became difficult for their families to reach consensus’ on who was going to be their attorney.<sup>145</sup>

The state’s trial against Gwala in 1976 must be seen in the context of the political developments that had unfolded between 1975 and 1976. In August 1975, three months before Gwala’s arrest, the state had brought a major political trial against Sathasivan (Saths) Cooper and eight others, also referred to as ‘the SASO Nine.’ The trial became the most publicised legal confrontation since the Rivonia trial whose proceedings had lasted for 16 months.<sup>146</sup> Cooper was found guilty and sentenced to ten years in prison. While the state was preparing for the trial, the student uprising began in Soweto in June 1976 and culminated in countrywide protest and resistance. As these ‘events caught the government off guard’ it was determined to respond in a harsh manner in order to send a strong warning to those disregarding its authority.<sup>147</sup> In addition to the use of violence to suppress the uprising, the state was mindful that the old methods of political control could no longer ensure political stability, so it used the trial of Gwala to reaffirm its authority.<sup>148</sup>

The 1976 trial was important in the state’s attempts to curb political resistance, to reassure its white constituencies of its ‘capacity to maintain law and order and to gain the favour of public opinion.’<sup>149</sup> Paradoxically, Truman Magubane asserts that the ‘1976 trial presented the liberation movement with an opportunity to expose the cruelty of the apartheid system and to defend their human rights and dignity as legitimate citizens of South Africa.’<sup>150</sup>

In order to understand the trial, it is vital that circumstances that predated the modalities of imprisonment and political interrogation and the subjectification of Gwala and nine other co-accused be examined closely. As a trial of such nature required a strong defence, the ANC in exile and families of the accused made arrangements with two legal firms – Navanethem Pillay & Company and A. J. Gumede & Phyllis Naidoo Attorneys – to represent Gwala and his nine co-accused and act as instructing attorneys for the trial.<sup>151</sup> This resulted in a feud between the

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<sup>145</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Navanethem Pillay, 12 July 1976.

<sup>146</sup> Karis and Gerhart, *From Protest to Challenge*, Vol. 5, 148; for detailed coverage of the trial, see RIM.HP/2007/2/5/1-112, CC 5373/76, State vs Sathasivan Cooper and 8 Others, folders 5 & 6.

<sup>147</sup> C. van der Westhuizen, *White Power and the Rise and Fall of the National Party* (Cape Town: Zebra Press, 2007), 109-142.

<sup>148</sup> Albertyn, ‘A Critical Analysis of Political Trials’, 459.

<sup>149</sup> Rueedi, ‘Narratives on Trial’, 338.

<sup>150</sup> Mxolisi Dlamuka interview with Truman Magubane.

<sup>151</sup> Mxolisi Dlamuka interviews with Truman Magubane, Kgalema Motlanthe and Omar Badsha.

two firms which were competing for recognition, resources and political prominence.<sup>152</sup> Gwala was concerned that ‘Phyllis Naidoo had no experience to handle political trials as she had just emerged from house arrest and she impeded [them] from taking a line of defence that [kept] the integrity of the organisation intact.’<sup>153</sup> To resolve the feud, the ANC office in London issued an instruction that Navanethem Pillay & Company be the instructing attorney while Phyllis Naidoo of A. J. Gumede and Phyllis Naidoo Attorneys was assigned to be in charge of administering the welfare arrangements for the detainees and their families.<sup>154</sup> Relations between Navanethem Pillay and Phyllis Naidoo were acrimonious as they continued to disagree how welfare funds were to be handled.<sup>155</sup>

Due to the nature of the trial, it attracted wide publicity in local and international media as trialists were facing the possibility of a death sentence if found guilty. The trial’s complexity, the charges against the accused, and the fact that it was expected to go on for a long time convinced the ANC it was necessary to raise an adequate amount of dedicated funding for it. The ANC approached the International Defence and Aid Fund (IDAF) for financial support.<sup>156</sup>

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<sup>152</sup> UWC- RIM Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, correspondence between Navanethem Pillay & Co and Chocklingum and David (incorporating Phyllis Naidoo and Gumede), 15 August 1977, 29 August 1977, 30 August 1977; Mxolisi Dlamuka interview with Omar Badsha.

<sup>153</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, statement by Harry Gwala to the ANC in London, undated.

<sup>154</sup> Correspondence between Peter Brown and Angela Pringle suggests that not all the families of the detainees received support from the welfare funds that were administered by Phyllis Naidoo. As a result, wives of two other detainees approached Brown for assistance. Brown raised this matter with Pringle, Director of the Dependants Conference of the South African Council of Churches, who raised a concern about ‘rival systems’ that were being set up in Pietermaritzburg as the SACC had already given payment to Phyllis Naidoo, see APC, PC16/14/1/2/9-10, correspondence between Peter Brown and Angela Pringle, 29 January 1976, 6 February 1976, 15 February 1976; Mxolisi Dlamuka, interview with Omar Badsha.

<sup>155</sup> At one stage Navanethem Pillay and Phyllis Naidoo accused each other of being thieves and lodged accusations and counter accusations of misappropriating IDAF funds that were meant to benefit the accused and their families. After an exchange of correspondence with a legal firm, Phyllis Naidoo was forced to issue a public apology and Navanethem Pillay sued her for an amount of R20 000 for damages suffered as a result of wrongful and unlawful defamation. Gwala and other accused also raised their concerns about the amount that Phyllis Naidoo claimed from IDAF. They said she had not attended them and when William Khanyile went to see her at her office he was informed that she was at the hospital. They contested the amount she had claimed in respect of newspapers (R122.75), milk, tea, etc. (R310.36) clothing, shoes and repairs thereto (R399.09), stationary, games, bags, etc. (R205.16) chemist and medical (R485.90) as not justifiable. William Khanyile apologised to Carruthers and Co. for the maladministration of funds. Gwala suggested that William Khanyile should verify the statement that was submitted by Phyllis Naidoo, see UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, correspondence between Chocklingum and David (incorporating Phyllis Naidoo and Gumede) and Navanethem Pillay and Co., 15 August 1977, 30 August 1977, 1 September 1977, 7 September 1977, statements by Harry Gwala and 9 other accused, 11 July 1977, 14 July 1977, 25 July 1977, correspondence from William Khanyile to Carruthers & Co., 1 August 1977.

<sup>156</sup> IDAF was established by Canon L John Collins of St. Paul’s Cathedral in 1956. Its mission was to work towards a peaceful solution to the problems of apartheid through raising and distributing funding to victims of apartheid laws, especially political prisoners and their families. It was in the trials of anti-apartheid activists that the fund’s most significant contribution was made. IDAF paid for the legal defence of people accused of trying to bring down apartheid and also supported families even after some of them were imprisoned, see G. L. Frieslaar, ‘(Re)Collections in the Archive: Making and Remaking the International Defence and Aid Fund (IDAF) Archival Collection’, PhD dissertation, University of the Western Cape, 2016; Speech by Oliver Tambo at the final conference of the International Defence and Aid Fund for Southern Africa, London, 24 May 1991, [www.sahistory.org.za/archives/speech-oliver-tambo-final-conference-international-defence-and-aid-fund-southern-africa-0](http://www.sahistory.org.za/archives/speech-oliver-tambo-final-conference-international-defence-and-aid-fund-southern-africa-0), accessed, 9 January 2016.

IDAF committed itself to cover the legal costs of the defence and to provide for the welfare of the detainees and their families.<sup>157</sup> It appointed Carruthers and Company, a London based legal firm, to administer the funding for the Gwala and Others trial and to liaise with the defence team in South Africa. By the end of the trial IDAF had spent R205 899.44 on welfare and R229 294.40 on legal costs.<sup>158</sup>

The defence counsel was led by advocates G. B. Muller, senior counsel, and C. R. Nicholson, junior counsel. In addition, Mxenge Attorneys, R. I. Arenstein and N. C. Abrahams also assisted the defence team.<sup>159</sup> The defence applied for the postponement of the trial as it notified the court that it intended to initiate a ‘trial within a trial.’<sup>160</sup> At the centre of the defence’s argument was whether the court had jurisdiction to try Joseph Nduli and Cleopas Ndhlovu, accused number 9 and 10 respectively, as it contended that these accused had been ‘illegally kidnapped from Swaziland and arrested unlawfully.’<sup>161</sup> The defence attempted to delegitimise the state’s case and exposed the extent to which it disrespected the human rights of freedom fighters. Despite the confirmation by Swazi authorities that both Joseph Nduli and Cleopas Ndhlovu had been granted political asylum the application was dismissed by the court.<sup>162</sup>

After several postponements due to the reluctance of the Special Branch to provide statements of the accused to the defence team, the trial started in August 1976. Advocate Rossouw, the Deputy Attorney-General of Natal who was highly trusted by A. J. Krog, Natal’s Attorney-General, led the prosecution.<sup>163</sup> The state alleged that the accused had ‘participated in terroristic

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<sup>157</sup> UWC- RIM Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, correspondence from William Khanyile to Carruthers & Co, 1 August 1977.

<sup>158</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, The State and T. H. Gwala and others: Trial costs, 13 June 1978 and 21 June 1978. The following were the breakdown of legal costs: Advocate Muller (R78 000.00), Advocate Nicholson (R36 000.00), N. Pillay and Company (R36 300.00), Mr R. I. Arenstein (R31 500.00), A. J. Gumede and Phyllis Naidoo (R18 300.00), and N. C. Abrahams (R2 000.00).

<sup>159</sup> UWC-RIM Museum Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, correspondence between IDAF and N Pillay & Company, and letter from William Khanyile to Carruthers & Co, 1 August 1977; PAR, RSC, 1/1/1003, Vol. 31 Record 10, CC 108/76, statement by Griffith Mlungisi Mxenge, 19 October 1976. Mxenge had been subpoenaed by the state to testify as its witness but he refused on the grounds that the accused had been his clients, had thus developed a relationship prior to the trial, and this relationship was confidential. After his presentation, the judge ruled that Mxenge should be taken off the witness list.

<sup>160</sup> Mxolisi Dlamuka interview with Truman Magubane.

<sup>161</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Navanethem Pillay, 12 July 1976; Mxolisi Dlamuka interview with Kgalema Motlanthe.

<sup>162</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Philip Lobengula Nsiband, 23 June 1976; ‘Judge refuses terror detainees’, *The Natal Witness*, 10 July 1976. During the TRC former Special Branch member Colonel ARC Taylor stated that Ndhlovu and Nduli were abducted by members of the Security Branch and Riot Unit at the Swaziland border and taken to a base at Island Rock. He confirmed that Ndhlovu and Nduli were assaulted with open hands and fists and one of them was kicked. They were also deprived of sleep, see <https://www.nelsonmandela.org/omalley/index.php/site/q/031v02167/041v02264/051v02335/061v02357/071v02380/081v02383.htm>, accessed, 11 January 2016.

<sup>163</sup> Mxolisi Dlamuka interview with Truman Magubane; PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, correspondence from Radcliffe Caluza, 30 August 1976.

activities in contravention of the Terrorism Act of 1967 as amended.<sup>164</sup> The prosecutor argued that during the period 1 November 1973 to 25 March 1976, Harry Gwala and other accused had been members or active supporters of the ANC. Through their involvement they had ‘sent or received messages to or from representatives of the ANC in Swaziland.’<sup>165</sup> Furthermore, the state argued that they had received ‘subversive literature from members of the ANC in Swaziland’ and they distributed and studied its content.<sup>166</sup> The state’s narrative was centred on the allegation that Gwala and other accused conspired to overthrow the government by ‘procuring people to undergo training outside the borders of the Republic.’<sup>167</sup> As Albertyn has argued the state approached the trial as a punitive measure in response to the political upheavals that had culminated in the 1976 uprising.<sup>168</sup>

The state knitted together various strands of evidence drawn from documents that were obtained during the raids conducted at Gwala’s house and at those of the other accused. The state presented a list of over 80 witnesses it intended calling to testify. The coercive and punitive capacity of the state became evident as its list of state witnesses comprised collaborators, askaris and persons who had been detained in solitary confinement for over three months, and who had been severely tortured, and turned into state witnesses.<sup>169</sup> Among these were Leonard Nkosi, Bruno Mtolo, Kubheka and Frans Kunene.<sup>170</sup> Kubheka had been close to Gwala. During the TRC, Kubheka told the Commission that he was detained and tortured on a number of occasions by the Pietermaritzburg Special Branch during 1975 and 1976. He said he was subjected to severe mental torture and a month in solitary confinement, was stripped naked and assaulted. While being tortured he was told that he had to turn against the ANC and be a state witness in the pending Gwala treason trial. If he refused to cooperate, he would be thrown off a moving train.<sup>171</sup>

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<sup>164</sup> PAR, RSC, 1/1/1001, Vol. 29, Record 1, CC 108/76, State v Harry Gwala and 9 others, The Indictment, 14 May 1976.

<sup>165</sup> PAR, RSC, 1/1/1001, Vol. 29, Record 1, CC 108/76, State v Harry Gwala and 9 others, The Indictment, 14 May 1976.

<sup>166</sup> PAR, RSC, 1/1/1001, Vol. 29, Record 1, CC 108/76, State v Harry Gwala and 9 others, The Indictment, 14 May 1976.

<sup>167</sup> PAR, RSC, 1/1/1001, Vol. 29, Record 1, CC 108/76, State v Harry Gwala and 9 others, The Indictment, 14 May 1976.

<sup>168</sup> Albertyn, ‘A Critical Analysis of Political Trials’, 458.

<sup>169</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Frans Kunene, 8 February 1977; for a detailed discussion on the use of punishment in the South African legal system in the late 1980s, see Merrett, ‘Detention without Trial in South Africa’, 53-66; J. Alexander and G. Kynoch, ‘Introduction: Histories and Legacies of Punishment in Southern Africa’, *Journal of Southern African Studies*, Vol. 37, No. 3 (2011); R Roberts and K Mann (eds.), *Law on Colonial Africa* (Portsmouth NH: Heinemann, 1991).

<sup>170</sup> Leonard Nkosi left South Africa in 1963 to undergo military and political training with MK. He was a leader and allegedly a renowned sniper in the Wankie Campaign. He was captured by the Security Branch in 1967 and it is believed that he worked as an askari and later joined the Security Branch. In his application for amnesty, Jan Daniel Potgieter [AM5418/97], a member of the Security Branch intelligence unit, revealed that Nkosi had been compelled to turn state witness against his former colleagues, on 9 September 1977, shortly after testifying against Gwala and nine others, Nkosi was assassinated, see Report of the Truth and Reconciliation Commission (regional profiles: Natal and KwaZulu), volume 3, 177.

<sup>171</sup> Report of the Truth and Reconciliation Commission (regional profiles: Natal and KwaZulu), Vol. 3, 169.

In an affidavit after the trial, Kunene confessed how, in addition to having been tortured in various police solitary confinement cells in Camperdown, Plessislaer and Hammarsdale Police Stations, the conversion to become a state witness was applied to him:

After about two months at Hammarsdale I was taken to the Howick Police Station. There I was kept in a single cell for solitary confinement. When I first got to Howick I was not given water with which to wash for about a month. The food, although unpleasant, was adequate and I have no real complaints about it. After about five months in prison at Howick, I with four other persons (whom I subsequently discovered were also being held in connection with the Pietermaritzburg Terrorist Trial), was taken to Thornville Police Station. There we met about 25 other Black people. I discovered there that these other people were also being held in connection with the same trial. The others had apparently come from different prisons within the vicinity. At Thornville that night we, the detainees, were treated to a film show by the Police. We saw a film about chimpanzees dressed up in human clothing and performing various antics. After the film show was over we were all given alcohol to drink. There was Zulu beer and Cane Spirits. I had plenty of liquor and became quite intoxicated. All, or most, of other detainees also got drunk. We were each given a pocket of twenty cigarettes of a brand of our choice. After this event which ended at approximately 11 p.m. I together with the other detainees who had been held in Howick was taken back there.<sup>172</sup>

Kubheka and Kunene's experiences suggest that state witnesses were harassed, intimidated and coerced to implicate the accused, and the majority of them were detained by the Special Branch and kept in solitary confinement.<sup>173</sup> Some of the state witnesses had been involved in the underground operations and had participated in Gwala's underground operations. While the motive for collaboration has been unclear for certain other witnesses and later askaris, state witnesses during the Gwala trial 'testified in fear of their own lives.'<sup>174</sup>

The state brought experienced and trained witnesses to court in order to ensure that it was able to link Gwala and the other accused persons with the military activities of the ANC and MK and with the activities of others who were already serving lengthy prison sentences. One such witness was Bruno Mtolo. During the Rivonia trial (1963-64), the state trial of Billy Nair,

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<sup>172</sup> PAR, RSC, 1/1/991, Vol. 19, Record 12, CC 108/76, State v Harry Gwala and 9 others, affidavit of Frans Kunene, 8 February 1977.

<sup>173</sup> PAR, RSC, 1/1/1000, Vol. 28, Record 32, CC 108/76, State v Harry Gwala and 9 others, defence's address on application for the recall of B. H. Nxasana, 3 May 1977. Bhekiziswe Herald Nxasana was a trade unionist and actively involved in the resuscitation of SACTU in Natal during the 1970s. He was arrested in January 1977 and compelled to testify against Gwala and others. During solitary confinement, Nxasana was assaulted and severely tortured even though he denied it in court for fear of being victimised. His wife Clothilde Nxasana, however, told the defence lawyers that Nxasana had visible signs of torture on his body.

<sup>174</sup> Dlamini, *Askari*, 98.

Curnick Ndlovu and 17 others (1964), and the state trial of Gwala (1964) the courts found Mtolo to be a skilled and reliable witness.<sup>175</sup> By bringing a skilled and trained witness, the state wanted to strengthen its case that the accused had been involved in subversive operations. Despite these measures by the state, witness testimonies contained biases, contradictions, and, at times, blatant lies.<sup>176</sup>

The defence presented a list of over 100 witnesses. The defence team adopted the ‘narratives of redemption’ argument which focused on two aspects.<sup>177</sup> Firstly, it sought to divorce Gwala and other accused from involvement in recruitment for MK, thus projecting the most legally benign view possible of the ANC while at the same time making ‘maximum use of the courtroom as a political platform.’<sup>178</sup> The defence countered the state’s argument by attempting to affirm that Gwala and the accused had been involved in the resuscitation of trade unions, especially SACTU.<sup>179</sup> Thus, Gwala asserted that letters between him and Mabhida were mainly centred on trade unions since both had worked together in SACTU in Natal during the 1950s and 1960s. Gwala testified that:

This letter stated that he [Mabhida] had for long time made an effort to contact me but that he had received no reply from me and that Dhlomo had come and told him about the efforts to revive SACTU and.... That he would be glad if there were efforts made to revive SACTU because there was great need for it to be revived.<sup>180</sup>

During the trial, Gwala further argued that his political activities were ‘provoked by the injustices that were imposed on African workers and the state had made it difficult for them to be protected.’<sup>181</sup> Thus, Gwala claimed he had been a victim of an unjust political environment that was created by the apartheid minority government.<sup>182</sup> The defence did not reject the state’s allegation that Gwala had facilitated the transportation of people to cross the border to Swaziland. However, the defence’s constructed narrative was that people who crossed the border were to receive training in trade unionism and attended trade union conferences. It

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<sup>175</sup> Report of the Truth and Reconciliation Commission (regional profiles: Natal and KwaZulu), Vol. 3, 170.

<sup>176</sup> For further discussion on lies and subjectivity, see Ginzburg, ‘Checking the Evidence’; Anderson, ‘The Past on Trial’.

<sup>177</sup> Anderson, ‘The Past on Trial’, 486.

<sup>178</sup> Mxolisi Dlamuka interview with Truman Magubane; Karis and Gerhart, *From Protest to Challenge*, Vol. 5, 148.

<sup>179</sup> PAR, RSC, 1/1/1004, Vol. 23, Record 11-12, CC 108/76, State v Harry Gwala and 9 others, evidence of Themba Harry Gwala.

<sup>180</sup> PAR, RSC, 1/1/1004, Vol. 23, Record 11-12, CC 108/76, State v Harry Gwala and 9 others, evidence of Themba Harry Gwala.

<sup>181</sup> PAR, RSC, 1/1/1004, Vol. 23, Record 11-12, CC 108/76, State v Harry Gwala and 9 others, evidence of Themba Harry Gwala.

<sup>182</sup> Thomas Karis interview with Harry Gwala.

denounced the allegation of their involvement in the political activities of MK. Towards the end of its argument, the defence subpoenaed Selby Msimang, a veteran politician who had been a founder member of the ANC in 1912 but who joined the Liberal Party and then Inkatha Ye Nkululeko YeSizwe, ‘to justify the ANC’s commitment to nonracialism and better South Africa.’ Msimang’s testimony focused mainly on the extent to which the ANC had strived for peaceful means of attaining liberation for Africans, and on the illegitimacy of the apartheid system.<sup>183</sup>

The trial judge admitted that Gwala’s evidence showed that while he communicated with the people he was alleged to have recruited, he claimed to have ‘pursued a noble course and he gave evidence in a bold, often aggressive manner, trying to score points off the prosecutor when the opportunity presented itself.’<sup>184</sup> Furthermore, the judge stated that:

However, apart from the simulation to which we have already referred, his [Gwala’s] demeanour was not such as to indicate that he was an untruthful witness. That does not mean, of course, that he made a favourable impression upon us – he did not.<sup>185</sup>

Secondly, the defence’s strategy was to cast doubt on the legitimacy of the methods the state had used to solicit statements from the accused.<sup>186</sup> The defence argued that the witnesses upon whose evidence the state relied had been forced to testify because their interrogators had applied high levels of torture and intimidation. As Lobban has argued, nearly half of the court’s hearing time was taken up with police torture ‘as witness after witness told of the torture they had suffered at the hands of the police.’<sup>187</sup> Furthermore, the defence argued that the accused had been forced to write ‘a particular version’ of information in their statements as they had been threatened and feared for their own lives.<sup>188</sup> The defence said the accused had been severely tortured while in solitary confinement, and referred to the death of Mdluli in police custody.

The 532-page judgment was eventually delivered on 14 and 15 July 1977. As with Shahid Amin’s argument in relation to the Chauri Chaura incident in India, the judge provided a

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<sup>183</sup> PAR, RSC, 1/1/1004, Vol. 32, Record 12, CC 108/76, State v Harry Gwala and 9 others, evidence of Selby Msimang.

<sup>184</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 30, CC 108/76, State v Harry Gwala and 9 others, The Judgment.

<sup>185</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 30, CC 108/76, State v Harry Gwala and 9 others, The Judgment.

<sup>186</sup> PAR, RSC, 1/1/1004, Vol. 23, Record 11-12, CC 108/76, State v Harry Gwala and 9 others, statement of Adv. Muller.

<sup>187</sup> Lobban, *White Man’s Justice*, 174.

<sup>188</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, affidavit of Harry Gwala, 3 June 1977; PAR, RSC, 1/1/997, Vol. 21 & 22, Record 10, CC 108/76, State v Harry Gwala and 9 others, evidence of Judson Khuzwayo.

harmonious narrative for the discordant accounts by the accused. These became tools of building both political and legal precedent.<sup>189</sup> Despite the defence's argument that Gwala and other accused had not participated in the recruitment of people to undergo military training outside the country, the judge found that 'it had been proven beyond reasonable doubt that Gwala and other accused received subversive literature and letters which referred to the recruitment of youth for training in Mozambique.'<sup>190</sup> Furthermore, the judge found that Gwala had 'committed a conspiracy when he procured Mandla Sikosana, Edgar Zondi, Mtu Khumalo, R. M. Hadebe, Vicky Khumalo, Caiphaz Nene and George Mkhize to undergo military training abroad.'<sup>191</sup> With the exception of William Khanyile, who was acquitted of all the charges, all the other accused were found guilty. Through the trial and the judgment, Gwala was disconnected and criminalised. With the exception of Sipho Kubheka, Philemon Mokoena and Harold Nxasana, the judge discharged all accomplices from liability for the offences mentioned in the indictment.

All the accused appeared briefly on the morning of 25 July 1977 to plead in mitigation of sentence, and the judge handed down the sentences on the same afternoon. The judge argued that when 'deciding upon the sentences to be passed on each accused' he had been guided by the legal precedent that 'punishment should fit the criminal as well as the crime, be fair to society.'<sup>192</sup> The judge said that he had taken into account personal circumstances of each of the accused as well as their family circumstances. At 57, Gwala was the oldest of the accused. It is not clear to what extent the judge took into account his age or the fact that his family depended on him. The judge emphasised that Gwala had 'admitted previous convictions for offences involving subversive activities', thus implying that he was a serial offender.<sup>193</sup> According to the judge, 'in view of the nature of their crimes, they must be sentenced to long terms of imprisonment, but in their cases the punishment must be designed to reform as well as to prevent and deter.'<sup>194</sup> The judge said that he 'had given careful consideration to all that Mr Muller had said on their behalf [the accused], but [thought] that [he] would be failing in

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<sup>189</sup> S. Amin, *Event, Metaphor, Memory: Chauri Chaura, 1922-1992* (Berkeley CA: University of California Press, 1995), 94.

<sup>190</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Judgment.

<sup>191</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Judgment.

<sup>192</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Sentencing.

<sup>193</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Sentencing.

<sup>194</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Sentencing.

[his] duty if [he] was to pass the lenient sentences that he [Muller] suggested.<sup>195</sup> Gwala was sentenced to life imprisonment.<sup>196</sup>

Soon after the sentences were handed down, Gwala and the other accused instructed their attorney to apply for leave to appeal against their convictions and sentences.<sup>197</sup> Advocate Nicholson handled the application as Advocate Muller would not attend to the case because there was a dispute concerning unpaid legal fees for May and July 1977. The matter was referred to the Society of Advocates of Natal which resolved that Advocate Muller was entitled to the full fee due for May, and half his fee for the month of July.<sup>198</sup> The state opposed the application. After hearing the grounds for appeal on 28 July 1977, the judge found that ‘this case rests upon finding of fact and credibility’ of witnesses.<sup>199</sup> The judge was convinced that the accused showed no remorse for their actions and was not persuaded that there had been misdirection in the case. The judge did not accept the defence submission that the sentences were ‘disturbingly inappropriate or severe as to induce a sense of shock.’<sup>200</sup> While he agreed that the sentences indeed severe, he was convinced that the severity was justifiable as they were ‘not imposed in a spirit of anger but only after the most anxious consideration.’<sup>201</sup> The judge dismissed the application for leave to appeal because he did not believe that there was a reasonable prospect of the court of appeal holding that he had ‘exercised [his] discretion unjudicially or improperly in imposing the sentences.’<sup>202</sup>

The state had learned from earlier political trials that high-profile trials had a tendency to draw unwelcome media attention. Gwala and some other accused were well aware of this since they had been on trial before. By the conclusion of the trial in July 1977, Gwala and the other accused had managed to attract considerable publicity. Through their behaviour in court they

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<sup>195</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Sentencing.

<sup>196</sup> The other accused were sentenced as follows: Anton Ndoda Xaba, life imprisonment; John Vusimuzi Nene, life imprisonment; Vusimuzi Truman Magubane, 15 years’ imprisonment; Matthews Makholeka Meyiwa, life imprisonment; Azaria Ndebele, seven years’ imprisonment; Zakhele Elphas Mdlalose, life imprisonment; Joseph Ntuliswe Nduli, 15 years’ imprisonment; and Cleopas Melayibone Ndhlovu, ten years’ imprisonment, see PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Sentencing; *Sechaba: Official Organ of the ANC South Africa*, Vol. 11, First Quarter (1977), ‘Pietermaritzburg Ten on Trial for ANC Activism’, 17-20.

<sup>197</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 4202, aid to victims file, correspondence from William Khanyile to Carruthers and Co., 22 September 1977; PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, Application for leave to appeal.

<sup>198</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 603 (629), legal correspondence, Gwala and others file, correspondence from G. H. Penzhorn (Honorary Secretary of the Society of Advocates in Natal) to Messrs Navanethem Pillay and Company, 22 November 1978.

<sup>199</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, Application for leave to appeal.

<sup>200</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, Application for leave to appeal.

<sup>201</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, Application for leave to appeal.

<sup>202</sup> PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, Application for leave to appeal.

conveyed a potent message of defiance towards white authority.<sup>203</sup> Mindful of the gallery visitors, at times, they emerged from the cells beneath the courtroom robustly singing struggle songs and making the clenched fist salute. On entering the dock, they occasionally bellowed *Amandla!* (power) in unison at the startled spectators in the gallery.<sup>204</sup>

After the appeal was dismissed, the state fast-tracked arrangements to move Gwala and eight others to Robben Island. Gwala and the other accused decided to petition the Chief Justice.<sup>205</sup> Gwala soon instructed Navanethem Pillay and Company to inform the ANC and IDAF about this intention and the consequent need for further funding for legal fees.<sup>206</sup> The petition was based on the ‘severity of the offences and the sentences imposed.’<sup>207</sup> Gwala’s defence argued that the judge was ‘misdirected’, since the defendants’ ‘lack of remorse was taken into account in assessing a proper sentence.’ The petitioners persisted in asserting their innocence. Furthermore, the evidence presented by the state through its witness had been concocted and the ‘police had been allowed to have control over unconvicted prisoners.’<sup>208</sup> Available archival records, though incomplete,<sup>209</sup> suggest that the petition was successful.<sup>210</sup> In a letter of request to the IDAF to fund the legal costs of the appeal, Navanethem Pillay said:

As we have stressed in the past that our clients stand an excellent chance of success on appeal. The fact that the Chief Justice had allowed leave to appeal both on merit and on sentence is a clear indication of our client’s prospects of success. In the nature of this case, clients should have the best available Counsel to argue the appeal.<sup>211</sup>

It is against this background that Navanethem Pillay instructed Messrs. Webber and Newdigate Attorneys of Bloemfontein to be the appellants’ attorneys. The appeal was set for hearing on 18, 19, 21 and 22 February 1980. As a result of the feud between Navanethem Pillay and Phyllis

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<sup>203</sup> Mxolisi Dlamuka interview with Truman Magubane.

<sup>204</sup> Mxolisi Dlamuka interview with Truman Magubane; PAR, RSC, 1/1/1011, Vol. 39, Record 32, CC 108/76, State v Harry Gwala and 9 others, The Sentencing.

<sup>205</sup> Harry Gwala private papers, unsigned and undated affidavit by Harry Gwala. I am grateful to Lindiwe Gwala (Gwala’s daughter) for showing me certain papers that belonged to Harry Gwala.

<sup>206</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 603 (629), legal correspondence, Gwala and others file, correspondence from Harry Gwala to Navanethem Pillay & Co., undated, correspondence from Navanethem Pillay & Co. to Carruthers and Company, 1 August 1979.

<sup>207</sup> Harry Gwala private papers, petition document, undated.

<sup>208</sup> Harry Gwala private papers, petition document appellants’ heads of argument, undated.

<sup>209</sup> The author was unable to find the heads of argument of the prosecution and of the defence.

<sup>210</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 603 (629), legal correspondence, Gwala and others file, correspondence between Navanethem Pillay & Co. and Carruthers & Co., 11 November 1977, 20 December 1977, 15 January 1978; NAR, Department of Prisons Papers, file no. 1238, declassified telegraphy from Navanethem Pillay & Co. to the Commanding Officer of Robben Island, 2 March 1978.

<sup>211</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 603 (629), legal correspondence, Gwala and 9 others file, correspondence from Navanethem Pillay & Co. to Carruthers and Co., 1 August 1979.

Naidoo, raising the funds to finance the appellants' legal team was a challenge.<sup>212</sup> At one point, the IDAF was reluctant to make payments for the outstanding trial and appeal costs because of difficulties with getting the two instructing attorneys' firms to account for funds spent, especially welfare funds. Due to the IDAF's reluctance to cover other costs of the appeal, the services of senior counsel had to be dispensed with since there was no guarantee that the IDAF was going to accept the financial liability.<sup>213</sup>

On 28 March 1980, the Appellate Division delivered the judgment which dismissed the appeal of Gwala and eight others against their conviction and sentences. When Navanethem Pillay visited Gwala to inform him about the outcome of the appeal, she recorded that 'Gwala was tremendously disappointed' as he had hoped that the appeal would be successful.<sup>214</sup> Nevertheless, Gwala asked Pillay to convey his 'appreciation to the IDAF for its financial support throughout the trial including welfare' to their families.

## **Conclusion**

This paper has argued that the evolution of Gwala's politics towards a militant stance was a culmination of the state's provocation and determination to disconnect him from his politics. Gwala's politics cannot be studied in isolation from the historical shifts within the ANC and the manner in which the state handled challenges to its authority, particularly from March 1960. Gwala's militant politics and the state trials are part of the complex narrative of the history of the armed struggle, particularly in Natal. The state's trial of Gwala demonstrates the state's use of 'excessive violence' and the modalities of power and discourse that sustained apartheid.<sup>215</sup> The political circumstances of the period from 1960 to 1977 inevitably made Gwala's political path more militant, with 'historically driven beginnings and a middle.'<sup>216</sup> The trials became a contest of ideas between two cohesive but rival political positions, white assumptions of superiority on the one hand, and the assertion of black resistance on the other, both of which were clear expressions of race and politics.

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<sup>212</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 603 (629), legal correspondence, Gwala and 9 others file, correspondence from Navanethem Pillay & Co. to Carruthers & Co., 5 December 1979.

<sup>213</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 603 (629), legal correspondence, Gwala and 9 others file, correspondence from Navanethem Pillay & Co. to Carruthers & Co., 5 December 1979.

<sup>214</sup> UWC-RIM Mayibuye Archives, MCH 31, IDAF collection, box 603 (629), legal correspondence, Gwala and 9 others file, correspondence from Navanethem Pillay & Co. to Miller & Co., 28 April 1980.

<sup>215</sup> Lalu, 'Sara's suicide', 92.

<sup>216</sup> Lalu and Harris, 'Journeys from the Horizons of History', 28.

The paper has also constructed a historical image of Gwala within the broader political context of the armed struggle and state political trials. The state's trial of Gwala became a site of a countervailing discourse, a site of establishing historical narratives that simultaneously questioned the authority of the apartheid state and legitimised the liberation struggle. The trials present the paradox of the oppressive South African state using the law in politically biased courts to deny justice to the majority. These trials were characterised by state censure intended to disconnect and vilify Gwala, but which instead aided the liberation movement's efforts through providing publicity, thus gaining much-needed public sympathy, international expressions of solidarity, and widespread exposure of the brutality of apartheid.

While the 1960s' state trials of Gwala were crucial in the local struggles of Pietermaritzburg and Natal, their coverage was eclipsed by the Rivonia trial on the one hand, and limited by the state's system for censoring media reporting about political trials on the other.<sup>217</sup> This paper has demonstrated how the political conditions of the 1970s were characterised by the reinvigoration of popular struggles by independent trade unions which led to the 1973 Durban strikes, the release of political prisoners who had been imprisoned, mainly at Robben Island, during the 1960s, and the emergence of radical student movements in the mid-1970s. This suggests that they had a profound influence on the way the state dealt with Gwala's politics of connectedness during his 1976 trial.

This paper has examined how the prosecution's construction of events in court proceedings, its selection of witnesses, many of whom had been subjected to torture and coercion, and the presentation of unreliable evidence interferes with the process of writing history. Gwala's trials show how the courts provided a crucial and uncritical platform for the state to criminalise opposition to its authority. For this reason, the production of historical knowledge obtained through the close examination of court records should be balanced by a clear understanding that evidence presented before the courts in such circumstances served to reproduce a particular political viewpoint.

The paper has constructed narratives that display Gwala as a victim of state torture and disconnectedness. The three trials discussed in this chapter are framed as being parts of a wider system of political control with specific and diverse political and ideological impact on Gwala's

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<sup>217</sup> C. Merrett, *A Culture of Censorship: Secrecy and Intellectual Repression in South Africa* (Cape Town: David Philip, 1994), 55.

life. Gwala's trials became the state's means to eliminate its political foes, and should be understood within a wider battle for political dominance. These and other trials became an expression of power, and a tool of control that reduced the law to being an instrument for the state to exercise political power, and 'getting to know the enemy and rendering him harmless.'<sup>218</sup>

The trials had a different impact on Gwala's political status. The imprisonment provided him with an opportunity to participate in robust political discussions with the ANC leadership and political prisoners at Robben Island about the dialectics of socialism and nationalism within the ANC. Although the state disconnected Gwala by imprisoning him, he gradually gained public sympathy that would later become vital in the process of rebuilding the ANC branches after its unbanning in 1990. This served to re-establish and reconfirm Gwala's identity as a 'lion of Pietermaritzburg, a theme that is explored in detail later.

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<sup>218</sup> B J Vorster, 'Foreword', in L Strydom, *Rivonia Unmasked*, Johannesburg: Voortrekker Press, 1965. Vorster served as Prime Minister of South Africa from 1966 to 1978 and as the fourth State President from 1978 to 1979. Vorster was known for his staunch adherence to apartheid. He was the Minister of Justice during the Rivonia trial in which Nelson Mandela and other were sentenced to life imprisonment for sabotage.