The conundrum of South African democracy and justice
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Sub-Title: All political prisoners must be released in South Africa

“New South Africa” boasts of being a “democracy.” Indeed, in some areas that are not fundamental to democracy such as homosexual marriages, “sex workers,” “abortion on demand,” and an education system that allows a pass mark of 30 percent; this “democracy” is excelling. But on fundamental political issues, that includes equitable redistribution of land and its riches according to population numbers and the treatment of former freedom fighters who gave their lives to destroy apartheid colonialism in South Africa, the “rainbow nation” democracy is an unmitigated disaster.

Through its International Convention on the Suppression and Punishment of the Crime of Apartheid, the United Nations declared apartheid a crime against humanity. The crime of apartheid is akin to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. According to this Convention, genocide is a crime whether committed in time of peace or of war. Article II of this Convention states:

“Genocide means any of the following acts committed to destroy, in whole or in part a national, ethnical, racial or religious group such as:
Killing members of the group;
Causing serious bodily or mental harm calculated to bring about physical destruction in whole or in part....”

During the African liberation struggle against apartheid and colonialism in South Africa, even prominent Christian leaders such as Archbishop Desmond Tutu called apartheid “a theological heresy.” But during the sitting of the Truth and Reconciliation Commission (TRC), young men who fought against this crime and heresy were paraded before this TRC on the same pedestal as the perpetrators of the crime of apartheid, to justify their acts. It was demanded of them to prove that they were “politically motivated” to fight against apartheid. The victims of apartheid, a crime against humanity were sacrificed on the polluted altar of appeasement.

VICTIMS OF APARTHEID RECEIVED A RAW DEAL

The TRC ignored the principles applied at the Nuremberg and Tokyo International Tribunals which tried the Nazis. The TRC did not distinguish those who fought a crime against humanity and those who were its cause and had fought and killed thousands of the victims of apartheid in order to perpetuate this crime against humanity. This was appeasement to the forces of apartheid colonialism backed by certain Western countries to protect their own economic interests in “New South Africa.”

The victims of apartheid, a crime against humanity suffered gross injustice and violations of human rights. They were sacrificed on the polluted altar of false “reconciliation” which was devoid of reciprocity on the part of the perpetrators of the crime of apartheid. The political liberation of the African people that had been recognised internationally as legitimate was criminalised, mutilated and manipulated to suit secret deals, political capitulation and betrayal of land robbed colonised Africans.

Many freedom fighters appeared before the TRC without lawyers as they could not afford legal expenses and many were already in jails. According to the Law of Evidence, especially in criminal cases, the burden of proof lies with the person alleging the offence. At the TRC the burden of proof that the accused had done no wrong was placed squarely on the victims.

It was demanded of them that they must prove that their activities were “politically motivated.” Their activities including “repossession” were dismissed as “armed robbery.” The facts of colonial history in South Africa clearly show that the African people were dispossessed of their land and its resources. That is why the Pan Africanist Congress, in particular, through the Azanian Peoples’ Liberation Army (APLA) included repossession in its military programme.

African Kings of this country who fought the wars of national resistance against European colonial
invasion and aggression implemented the policy of repossessing their land and its resources. King Moshoeshoe of the Basotho Nation articulated this policy of repossession very clearly. He wrote: “When we drive colonialists’ cattle, sheep and horses in war, or before their fearing faces, they call that stealing. When they drive ours, they call it by soft names. They say they...replace their stolen property” [even though though they arrived with property from Europe”].

King Moshoeshoe elaborated, “To us, capturing the enemies’ property in war is one way of self-protection. More than that, by our laws, all property reared and nurtured on stolen land from us remains our property.”

The situation in South Africa is that as a result of Africans fighting the crime of apartheid against humanity; the “Rainbow Nation” has had political prisoners for the last twenty years. They were sentenced to barbaric prison sentences amidst the loud s cheers of “reconciliation.” For example, Kenny Motsamai is serving two life prison sentences plus 19 years, Solomon Malijoana 3 life prison sentences, Petros Tshabalala two prison sentences plus 155 years. This was justice and democracy cruelly crucified in the midst of “rainbow nation” celebrations of the “best constitution” in the world.

What made this situation worse was that a number of perpetrators of the crime of apartheid were pardoned at the “Truth and Reconciliation Commission.” A few examples are Barend Strydom, Craig Wiliams and Dirk Coetzee. Strydom killed eight African people at Pretoria Church Square in 1992. De Wet Krizinger killed three African bus passengers at Mamelodi in January 2000. Three AWB apartheid members planted the Worcester Christmas Eve Bomb in 1996.

What has been even more atrocious is that even before the TRC was established there are reports that the apartheid colonialist regime gave amnesty to more than 3500 of its forces. The regime shredded more than 44 metric tons of documents revealing dark secrets and atrocities committed. They included a programme of developing nuclear technological capacity for military purposes to terrorise African States, it could not win to its apartheid colonial side. The nuclear plant was situated at Vulindaba near Phelandaba.

MATTER OF IMPRISONED FORMER FREEDOM FIGHTERS RAISED IN PARLIAMENT

After I raised the matter of political prisoners in the South African Parliament for many years, where I was then serving, President Thabo Mbeki authorised the matter of pardoning political prisoners to be re-opened. Indeed, it was opened under President Kgalema Motlanthe in 2008. The matter was to be dealt with swiftly. It did not. It dragged on until after President Jacob Zuma’s first term in office.

When the list of pardoned prisoners was released long ago, I wrote to President Jacob Zuma through the Ministry of Justice and Constitutional Affairs.

POLITICAL PARDONS OF AZANIAN PEOPLES LIBERATION (APLA)

“Your Excellency, Presidential Pardons announced by yourself have not cured the defects of the “Truth and Reconciliation Commission” (TRC). A number of APLA former freedom fighters against apartheid, the former military wing of the Pan Africanist Congress are still languishing in the prisons of “New South Africa” under ANC rule – a purported African government.

Only 34 APLA political prisoners have received Presidential Pardons. This is very unfortunate. This process was the last hope for former freedom fighters that the TRC awarded with imprisonment for their anti-apartheid and anti-colonial activities in this country.’

WHY HAVE I WRITTEN THIS ARTICLE?

What has prompted me to write this article is my recent visit to some former members of the Azanian Peoples Liberation Army (APLA) in prisons. The justice system of this country has failed them.

Let me give only two examples to illustrate this point. In a letter to one of these political prisoners Percy Kutu Chepape, dated 2nd February 2012 an official of the Head of the Secretariat: Political
Pardons Special Dispensation Process, wrote:

“Dear Mr. Chepape (97358533 (Groenpunt Prison), The purpose of this letter is to inform you of the current status of your application and the process that will be followed in finalising your application.” As you are probably aware, the Constitutional Court in the case of Rayn Albutt and Others v President of the Republic and Others, CCT54/[2010] ZACC 4, requires that a process of victim participation be instituted before the President makes a final decision....

Upon receipt of the representations from victims and interested parties, their representations will be submitted to the relevant applicants who will have 30 days to submit their replies there to the Secretariat....All applicants will be informed of the decision of the President as soon as it is known. If representations regarding your matter is received from victims and interested parties, a further communication will be addressed to you setting out what is required from you...."

Sipho Banabas Ngomane (97354546) received a similar letter dated 2 February 2012. I visited Chepape and Ngomane in prison on 19th May 2014. They have not heard from the Department of Justice and Constitutional Development since the 2 February 2012.

“The Invitation to victims and interested parties to make representations regarding certain Pardon Matters” was published over two years ago. But Chepape and Ngomane still have not heard about any objections to their release, if any. Is it how the justice system should operate in a democratic country? The legal dictum long declared that “Justice delayed is justice denied.”

These political prisoners are now illegally imprisoned even by the standards of “New South Africa” which in the first place imprisoned freedom fighters who fought against the vile system of apartheid declared a crime against humanity by the United Nations.

How many African families or interested people were consulted over the perpetrators of Sharpeville, Langa, Soweto and numerous other massacres of Africans by the apartheid colonialist regime? For two years some APLA members who were announced as having been pardoned by President Jacob Zuma are still sitting in jails! How long does this consultation take?

APARTHEID PERPETRATORS TREATED BETTER THAN ANTI-APARTHEID FIGHTERS?

Only on 12 June 2014, the STAR newspaper in Johannesburg reported that the Minister of Correctional and Justice Services Michael Masutha was considering to release from prison Clive Derby-Lewis the killer of Chris Hani. Hani’s widow Mrs Limpho Hani had not been informed of this move by the ANC government. She herself angrily complained about this.

The sensitivity to consult families of African victims does not seem to be as meticulously observed as when victims of white families are involved. Justice and democracy in “New South Africa” reveal more appeasement to whites than human rights equality treatment.

Under the ANC government, the apartheid colonial President P.W. Botha who ordered the massacre of Africans not only in South Africa, but in neighbouring countries such as Lesotho, Angola, Mozambique, Botswana, Zimbabwe and Zambia; refused to appear before the Truth and Reconciliation Commission, yet when he died his family was offered a state funeral.

Why is it so easy to forgive those who practised apartheid and so difficult to forgive those who were victims of apartheid and colonialism?

JUSTICE IN A DEMOCRACY IS FOR ALL PERSONS

In a democratic society justice is for all human beings regardless of their colour, political affiliation, class or religion. In passing let me point out that the injustice to political prisoners has spilled over into national honours such as state funerals.

The ANC Government offered state funerals to former apartheid presidents and to many of its members when they died. But recently on 14 June 2014, a great woman political fighter for freedom in South Africa who was one of the early pioneers of liberation struggle in this country was offered a “Provincial state funeral” in the Eastern Cape Province. All others to date were offered state funerals.
in the true sense of this kind of funeral as understood the world over.

This giant woman is Mrs ‘Mamotseki Epainette Mbeki, formerly Moerane. Her husband Govan Mbeki spent eighteen years on Robben Island with Nelson Mandela without compromising the legitimate demands of the African liberation struggle in this country.

Mrs Mbeki in her own right served the liberation struggle of her country with distinction. She was a national freedom fighter, not a provincial or regional fighter. In fact, she is the oldest freedom fighter in South Africa. She died at the age of 98 years still fighting for justice. She was also a shining pioneer of African education. Her being offered a “provincial state funeral” is a conundrum of conundrums.

The time has long come for the ANC leaders to prove that Prof. Edward Feit was WRONG when he wrote, “Reviewing the story of the ANC, it would seem that all the times they were more concerned about non-violence against whites than against their own people.” (The Journal Of Modern African Studies Volume 8 Number One 1970).

AFRICAN FREEDOM FIGHTERS HAD RIGHT TO FIGHT FOR THEIR LAND

Many young freedom fighters languishing in the prisons of “New South Africa” must be released. They were not the cause of the conflict. The cause of the conflict was colonialism and racism called apartheid in South Africa. In their struggle for the liberation of their country, there guided by following principles derived from international law which applied to their struggle such as:

The Declaration on the Granting of Independence to Colonial Countries of December 1960 United Nations General Assembly Resolution 1514, especially paragraph 2.

And Article 1 of this United Nations Resolution which reads: “The subjection of a people to a life of domination, subjugation and exploitation constitutes a denial of fundamental human rights, contrary to the Charter of the United Nations, is an impediment to the promotion of world peace and co-operation.”

A BLIND EYE HAS BEEN TURNED TO CRIMES COMMITTED AGAINST AFRICANS IN SOUTH AFRICA

The “New South Africa” has played a double standard over members of APLA and others that it has imprisoned for fighting against apartheid. The late President Nelson Mandela called for release of political prisoners in Zambia and in Indonesia. He appealed to Zambian President Frederick Chiluba to pardon former President Kenneth Kaunda. He persuaded Indonesia’s President Suharto to release rebel leader Xanana Gusman. He requested Zimbabwe President Robert Mugabe to set free three agents of the ‘dirty tricks’ of the South African apartheid regime.

The “New South African” government took a great deal of interest in crimes against humanity in Yugoslavia, Burundi, Rwanda, Bosnia etc. The ANC government sent judges such as Judge Richard Goldstone to take part in tribunals in these countries.

Charity begins at home. Former freedom fighters that are languishing in the prisons of the “rainbow nation,” must be released forth. Their “crimes” are certainly far less than the apartheid crime which the United Nations declared a crime against humanity.

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Article-Summary:
Few are aware that the rainbow nation of South Africa continues to imprison freedom fighters who fought against apartheid. Many have languished in South Africa’s jails for years and have been sacrificed on an altar of reconciliation in a so-called “new South Africa.” They should be immediately released

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