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Media Contact: Anthea Jeffery

Tel: 011-482-7221

E-mail: [ajj@sairr.org.za](mailto:ajj@sairr.org.za)

## **Deterring lawyers from litigation against the State**

In the early 1960s Nelson Mandela and other Rivonia trialists were defended by a team of first-rate lawyers, led by Bram Fischer. Through cogent evidence and able argument, these lawyers secured the acquittal of one of the accused. Though the rest were convicted, their defence team then helped persuade the court not to sentence them to death but rather to life imprisonment.

In the late 1980s the importance of good legal defence was again apparent when Frank Chikane, Mosiuoa Lekota and 19 other people were accused of treason and brought to trial in Delmas (in the then eastern Transvaal). Led by George Bizos SC, their legal team used their advocacy skills to get the three treason convictions handed down by the trial court set aside on appeal.

Apart from these high-profile cases, the turbulent 1980s saw a ferment of activity from anti-apartheid lawyers seeking legal redress for people who were being detained without trial, or had been assaulted, tortured, or shot at by the police.

However, if the National Party (NP) government had done to the South African legal profession what the minister of justice and constitutional development, Jeff Radebe, now plans to do to it, it is questionable whether so many lawyers would have been willing to step forward, even in the anti-apartheid cause.

For by then the legal profession would have been regulated by a statutory body reporting to an NP justice minister and packed with members of the ruling party. In these circumstances, many lawyers might have thought twice about antagonising their profession's regulatory body – and putting their livelihoods at risk – by defending treason trialists, communists, revolutionaries, activists, and the like.

The NP government in the 1960s saw the practical advantages of bringing the legal profession under state control and planned to adopt legislation to this end. But it drew back in the face of widespread criticism that this would threaten the independence not only of the Side Bar and the Bar, but also of the Bench.

Mr Radebe, however, seems to have no such compunction, for he remains intent on driving the Legal Practice Bill of 2012 through Parliament. If he succeeds in this, the current independent law societies and bar councils will come to an end. Instead, attorneys and advocates will be regulated by a new statutory council reporting to the minister. The minister, in turn, will be empowered to set their legal fees and determine how much 'free' community service they must provide each year.

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If the Bill becomes law, the dependants of Andries Tatane and other victims of unjustified police shootings may find it more difficult to secure lawyers willing to take on their cases. So too may motorists offended by irrational and allegedly corrupt e-tolling, or accused people needing due process in the criminal courts.

All South Africans will be the losers if lawyers become reluctant to take on cases against the State. The rights guaranteed by our Constitution will mean little in practice without independent lawyers willing to act without fear or favour in litigation against unconstitutional conduct, corruption, and other abuses of power.

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