

**ANNEXURE "TN13": IN CAMERA AFFIDAVIT****(SEE ATTACHED FILE)**

**ANNEXURE "TN14": IN CAMERA AFFIDAVIT**

**251**

**(SEE ATTACHED FILE)**

# WAARSKUWINGSVERKLARING DEUR VERDAGTE

Om 14 30 op hierdie 6<sup>de</sup> dag van Julie 19 98  
te Pretoria  
kantoor nommer Kantoor nommer 7, ver ek 'n onderhoud met  
Willem Hertz Johannes Coetzee, hierna die  
verdagte genoem. In my kantoor is daar slegs ek, die verdagte  
en Luip Pretorius, wat as tolk in die  
taal, wat deur die verdagte verstaan  
word, optree en niemand anders nie.  
Die verdagte word meegedeel dat ek 'n Kaptein (rang)  
in die Suid-Afrikaanse Polisie (Diens) is en ampshalwe 'n  
Vrederegter / Vredesbeampte is. Ek toon aan hom / haar my  
aanstellingssertifikaat.  
Sy / Haar reaksie daarop is: Ek verstaan

Ek deel die verdagte nou mee dat ek deel het aan die ondersoek  
van 'n saak van Mense Raaf Moero. Nokuthula Sipele  
wat gepleeg is op die gedurende September 1983  
om ongeveer — te (plek) Carleton Seeburn 418.  
en dat ek oor sekere inligting  
beskik wat daarop dui dat hy / sy in die pleging van die genoemde  
misdryf geïmpliseer is.

VRAAG: Verstaan en begryp u die beweringe teen u?

ANTWOORD: Ja

**DIE VERDAGTE WORD ONVERWYLD SOOS VOLG MET  
BETREKKING TOT DIE BEPALINGS VAN ARTIKEL 35 VAN DIE  
GRONDWET VAN DIE REPUBLIEK VAN SUID-AFRIKA, 1996  
VERWITTIG:**

1. Die rede vir sy/haar arrestasie/aanhouding;
2. Dat hy/sy die reg het om te swyg en dat hy/sy gewaarsku word dat enigiets wat hy/sy sê in 'n gereghof teen hom / haar gebruik mag word; en
3. Dat hy/sy die reg het om met 'n regsvertegenwoordiger van sy/haar keuse te konsulteer en, waar dit andersins tot wesenlike onreg sou lei, om deur die staat van die dienste van 'n regspraktisyn voorsien te word;
4. Dat hy/sy nie verplig word om 'n bekentenis of 'n erkenning te doen wat as getuigenis teen hom/haar gebruik kan word nie.

TP 17

253

- 2 -

VRAAG: Verstaan u dit?

ANTWOORD: Ja.VRAAG: Wil u ☒ u regsverteenwoordiger skakel?ANTWOORD: nee

VRAAG: Verlang u om deur die Staat van die dienste van 'n regsverteenwoordiger voorsien te word?

ANTWOORD: Ja.

Handtekening  
HANDTEKENING/REGTERDUIMAFDRUK  
VAN VERDAGTE

EK GAAN SEKERE VRAE AAN U STEL EN DEUR DIE BEANTWOORDING DAARVAN,  
KAN U SEKERE PUNTE VERDUIDELIK WAARDEUR U MOONTLIK U ONSKULD KAN  
BEWYS:

VRAAG: Wat is u keuse: Wil u 'n verklaring maak, slegs op vrae antwoord of u swygreg uitoefen?

ANTWOORD: Geen verklaring maak nie.

Handtekening  
HANDTEKENING/REGTERDUIMAFDRUK  
VAN VERDAGTE

**VUL DIE VOLGENDE IN SLEGS INDIEN DIE VERDAGTE VERKIES  
OM IETS TE SE:**

VERSOEK DIE VERDAGTE OM OP DIE VOLGENDE VRAE TE ANTWOORD:

1. Is u op enige wyse aangerand of gedreig?

ANTWOORD: \_\_\_\_\_

2. Indien wel, deur wie, wanneer en waar?

ANTWOORD: \_\_\_\_\_

Het die feit dat u aangerand of gedreig is enige invloed op die  
aflegging van hierdie verklaring/beantwoording van vrae?

ANTWOORD: \_\_\_\_\_

3/.....

TP 17

- 3 -

Het u enige beserings?

ANTWOORD: \_\_\_\_\_

Is u op enige wyse beïnvloed om 'n verklaring af te lê en/of vrae te beantwoord?

ANTWOORD: \_\_\_\_\_

Is u tans onder die invloed van enige drank en/of dwelms?

ANTWOORD: \_\_\_\_\_

NA AFLOOP VAN DIE VERKLARING/BEANTWOORDING VAN DIE VRAE WORD DIE VERDAGTE SE VERKLARING/VRAE EN ANTWOORDE AAN HOM/HAAR VOORGELEES EN WEER GETOLK.

DIE VOLGENDE VRAE WORD NOU AAN HOM / HAAR GESTEL:

1. Is u tevrede dat wat u gesê het, korrek genotuleer is?

ANTWOORD: \_\_\_\_\_

2. Is u tevrede dat hierdie verklaring/antwoorde u weergawe van die gebeure noukeurig beskryf?

ANTWOORD: \_\_\_\_\_

3. Het u enige klagtes oor die wyse waarop hierdie verklaring afgeneem/vrae gestel is?

ANTWOORD: \_\_\_\_\_

4. Is u tevrede met die tolk?

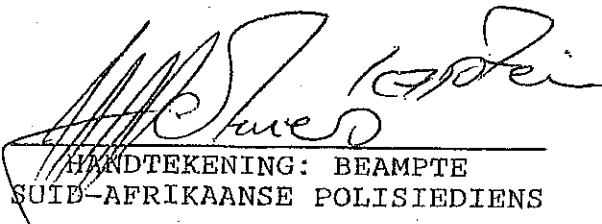
ANTWOORD: \_\_\_\_\_

HANDTEKENING/REGTERDUIMAFDRUK  
VAN VERDAGTE

4/.....

TP 17

BOSTAANDE VERKLARING DEUR MY AFGENEEM:

PLEK: PretoriaDATUM: 98/7/6TYD: 14:32  
HANDTEKENING: BEAMPT  
SUID-AFRIKAANSE POLISIEDIENS

Ek \_\_\_\_\_ (naam), sertifiseer dat  
ek getrou en juis na die beste van my vermoë met betrekking tot  
die inhoud van die bostaande verklaring getolk het.

Naam + van (drukskrif): \_\_\_\_\_

Adres: \_\_\_\_\_

Telefoon: \_\_\_\_\_

HANDTEKENING VAN TOLK

**OPMERKINGS: NOTULEER DIE VOLGENDE: HET DIE  
VERKLAARDER NORMAAL VOORGEKOM? DIE  
RAS, GESLAG, OUDERDOM, KLEREDRAG EN  
VOORKOMS VAN DIE VERKLAARDER.**

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TP 7

TRUTH AND RECONCILIATION COMMISSION

HUMAN RIGHTS VIOLATIONS

SUBMISSIONS - QUESTIONS AND ANSWERS

DATE: 3 JUNE 1997

NAME: MATHEW SIMELANE

CASE: JB0280 - LEANDRA

DAY 1

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CHAIRPERSON: Mr Simelane, can you hear me through your earphones?

MR SIMELANE: Yes, I can.

CHAIRPERSON: And could you please explain to us who is with you.

MR SIMELANE: The one seated by me is my wife.

CHAIRPERSON: Thank you. We would like to welcome you here. Please feel relaxed. Thank you very much for agreeing to come and also agreeing to be the first witness. It is always a difficult thing to do. Before I ask Tom Manthata to lead your evidence could I please ask you to stand and take the oath.

MATHEW SIMELANE: (Duly sworn in, states).

CHAIRPERSON: Thank you very much. Mr Simelane, you are here today to tell us the story of, particularly of your daughter, Nokuthula, and I would ask Tom Manthata, please, to lead your evidence. Thank you.

MR MANTHATA: Mr Simelane and Mrs Simelane, you are welcome and should you at any stage find yourself choked by emotions, please take your time and take your time to relate this story. Mr Simelane, are you working?

MR SIMELANE: Yes, I am working.

MR MANTHATA: You are working. And Mrs Simelane?

MR SIMELANE: We work together.

MR MANTHATA: You are working together as what?

MR SIMELANE: We have a business, we own a business.

MR MANTHATA: You have got a business. And the children, are they still at school?

T.D. 9

MR SIMELANE: Only one is at school.

MR MANTHATA: Only one is at school. Thank you. As it has been said already by the Chairperson, can you please tell us the story of your missing daughter, Nokuthula Simelane.

MR SIMELANE: Nokuthula disappeared in 1983. She was attending at the University of Swaziland. Just when we were preparing to go and attend her graduation, that is when we discovered that she has disappeared and nowhere to be found. We searched all over for Nokuthula and we never found Nokuthula. Even at the border we went to enquire if she has crossed and to no avail. Some in Swaziland said the ANC people sent her to the Republic and we went to the ANC people and they denied any knowledge of Nokuthula. We searched everywhere. Even the neighbouring countries like Botswana, we went to search for Nokuthula. No one came to the surface to tell us about Nokuthula. Even the policemen could not help us in that regard.

In 1985 we decided to approach the press. Her picture appeared in the newspaper and one police contacted us after seeing her picture on the newspaper and said he knew that girl, because he kept guard at that girl in Vlakplaas Police Station and the last time that police saw Nokuthula, Nokuthula was ill and she was severely and brutally tortured. The investigation stated afresh now and the matter was under investigation. The Investigating Officer, Neville Toms, investigated the issue further and until the final part of it, but they still could not give us any sound matter in as far as Nokuthula's issue is concerned. All what we want now are her remains so we could bury Nokuthula in a decent way. In our culture we bury people decently and we would like to do that.

Finally, we found out that the policemen who arrested her, two of them were suspended. That they were suspended because they were investigating this matter. That is Coetzee and Pretorius and the ones that we do not know are the other three, because all of them were five in number. We found out that they have applied for amnesty. Still when I heard about their application, amnesty application I heard that they applied, that they had kidnapped Nokuthula and tortured Nokuthula and that was the end. They never mentioned any other thing beside that. I would like to know even more. What happened to my daughter and after the torture what was done to her.

MR MANTHATA: Yes. Do you mind telling us the name of the police who tipped you after seeing the press coverage about the whereabouts of Nokuthula?

MR SIMELANE: I will not disclose the other name. We called the other one Mr X. The ones that came to my house, the officers, was Neville Toms and Captain Lisk.

MR MANTHATA: Thank you and what was Nokuthula doing at the University of Swaziland, that is study-wise?

MR SIMELANE: She was studying and enrolled for B.Admin.

MR MANTHATA: And you did not know that she could have affiliated to ANC at the time?

MR SIMELANE: I suspected that, but she never made mention of that fact to me.

MR MANTHATA: What did you suspect, Mr Simelane?

TP 7



MR SIMELANE: I suspected that the ANC was using her, because at one stage it was discovered in Swaziland that they were corresponding that were delivered at my brother-in-law's place. Those were in exile and the ANC members were using her to go to the Republic.

MR MANTHATA: When you approached ANC offices did they say they did not know where she had gone to or they said they did not know that she was a member of ANC?

MR SIMELANE: Often times than not it would be my wife going to the ANC offices and what she will tell me is that they will say we do not know, maybe her boyfriends know better. Some said she might be in Germany or West Germany. They never told us the truth.

MR MANTHATA: But finally, have they owned that she was in their camps, that is after all these press disclosures?

MR SIMELANE: After the newspaper issue some approached us and told us that they, she was there and she was being used and a very brave woman, but they never told us before the newspaper article.

MR MANTHATA: So you have said it that the torturers have since applied for amnesty and which means, what we need to know is where she was buried and, of course, how was she killed. Is this what you are saying?

MR SIMELANE: I want to know that.

MR MANTHATA: No further questions, Mr Simelane, back to the Chairperson.

CHAIRPERSON: Thank you, thank you Mr Manthata. I will ask the other Commissioners if they have any questions. Wynand.

MR MALAN: Thank you. Mr Simelane, just really one question and this relates to the suspended people in your statement. You say that two members of the police were suspended. You named them now as Coetzee and Pretorius.

MR SIMELANE: That is correct.

MR MALAN: You also gave us a copy of a news report in The Star of May five 1996 where reference is made to the suspension of these two people. The article quotes a spokesman of NCIS, Reg Crew and he says simply we have to treat them as suspects at this stage, referring to the two suspended people. Now this is a year and a month ago. Have you had any further information relating to developments here?

MR SIMELANE: No, all that I know is that they have applied for amnesty.

MR MALAN: Are you saying your information is that Coetzee and Pretorius applied for amnesty?

MR SIMELANE: Yes, those are the only two, they have applied for amnesty and the other three that I do not know their names.

TP 07

MR MALAN: Were you informed that they applied for amnesty also in relation to Nokuthula's disappearance?

MR SIMELANE: Yes, they did notify me.

MR MALAN: Thank you.

CHAIRPERSON: Joyce. Mr Simelane and Mrs Simelane, I would like to just ask one more question. In the Sowetan story about Nokuthula they describe her as MK's Mata Hari. Do you have any doubts in your own mind that that was a description that fitted her and her activities?

MR SIMELANE: No, I do not have any doubts.

CHAIRPERSON: So that you do not yourself have any doubt as to who might have been responsible for her disappearance?

MR SIMELANE: Will you please repeat your question.

CHAIRPERSON: Do you have any doubt as to who was responsible for her disappearing?

MR SIMELANE: It is a little bit difficult to admit there, because I know she was being used and sent as a courier of ANC and suddenly thereafter she disappeared, but what hurts the most is that they never told me the truth and also that they never sent her, they pretended as if they did not know Nokuthula at all.

CHAIRPERSON: Mr Simelane, I think that we are in the position very much that you are at the moment and that is to watch and wait for the outcome of the amnesty applications which have been made. I understand that there have, as you indicate, that there are, in fact, five applications that have been made and we will hear from that, we hope, considerably more, because we understand very well the pain that you must have had all these years. It is a pain not only that of feeling that your daughter has disappeared and you cannot reach her, but also of not knowing what actually happened to her and finally not being able to know how she died, where she died and where she has been buried. We will certainly follow up, we will keep a very close link, close watch on the amnesty process. We will also see what we can do further about following up with the ANC, because they must have some information about her and then, as you know, there is a programme within the Commission for reburial of loved ones. So we will be in touch with you about all those three major points and I would like to thank you and your wife for having the courage to come today and tell us this story. We sympathise very much with you and we will do what we can to bring you the information that you require. Thank you very much for coming.

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TP (7)

FOUNDATION FOR HUMAN RIGHTS

POLICE DOCKET: PRIORITY INVESTIGATION: JV SQUARE: 1469/02/1996  
COMPLAINANT: SIZAKELE ERNESTINAH SIMELANE

MEMORANDUM

INTRODUCTION

1. Consultant is the Foundation for Human Rights ("FHR").
2. FHR sought a memorandum on the police docket into the abduction, torture and disappearance of Nokhuthula Simelane ("Simelane") for purposes of briefing the Simelane family.
3. FHR seeks to bring justice to those responsible for the abduction, torture and disappearance of Simelane. Certain obstacles however stand in the way of a prosecution of those former South African Police (SAP) Security Branch members alleged to be responsible for these crimes.
- 3.1. All involved in the abduction of Simelane have been granted amnesty by way of a decision (AC/2001/185) of the Amnesty Committee of the Truth and Reconciliation Commission.

TP 9

- 3.2. Prosecutors state that they do not have sufficient evidence to proceed with murder charges against the suspected Security Branch officers. However, prosecutors state that there is ample evidence to proceed against the same officers on charges of assault or assault to do grievous bodily harm.
- 3.3. Prosecutors state however that they are prevented from proceeding with assault prosecutions as the right to prosecute such offences have prescribed by virtue of section 18 of the Criminal Procedure Act 51 of 1977. This law prevents the prosecution of certain offences after 20 years. Assault is not listed as one of the exceptions to the 20 year prescription period. As matters stand, the right to prosecute those responsible for this 1983 offence has lapsed.
4. FHR has requested Wim Trengove SC and myself to prepare an opinion setting out the prospects of success of a constitutional attack on the validity of section 18 of the Criminal Procedure Act 51 of 1977 (brief outstanding).
5. The purpose of this memorandum is to consider whether the police docket discloses sufficient evidence upon which a prosecution could proceed successfully. In my view there is considerable evidence available to support an assault or assault with intent to do grievous bodily harm prosecutions. This evidence will be summarized below.

TP M

6. The memorandum will also highlight other matters of concern arising from the police docket and propose recommendations going forward.

#### **BACKGROUND**

7. On the evidence contained in sworn statements in the police docket the following pertinent facts have been alleged by several deponents:

- 7.1. Nokhuthula Simelane ("Simelane"), a young woman who performed underground activities for the ANC as a courier, was lured into a trap at the Carlton Centre by members of the South African Security Branch in August or September 1983.

- 7.2. She was removed to the police barracks in Norwood where she was interrogated and repeatedly assaulted for one to three weeks.

- 7.3. Simelane was then removed to an isolated farm in Northam near Thabazimbi where her interrogations and torture continued. She was so badly assaulted that Simelane's face was barely recognizable and she could no longer walk.

TPM

- 7.4. Towards the end of the year Simelane was removed from the Northam farm by Security Branch members W H Coetzee, A Pretorius and F B Mong and never seen again. These policemen claimed at the time that they were returning her to Swaziland. Several of the police deponents to statements in the docket however suspect that Coetzee, Pretorius and Mong removed Simelane from the farm in order to murder her.

#### *EVIDENCE OF ASSAULT AND TORTURE*

8. Four Security Branch members stated under oath in their statements that they personally witnessed assaults perpetrated against Simelane or they saw clear evidence of assault marks on her face and body.
9. These four persons were members of the SAP's Security Branch at the time Simelane's ordeal. All worked under the direct command of W H Coetzee and A Pretorius. At the time Coetzee was a warrant officer and Pretorius was a sergeant.

#### Mzimkulu Nimrod Veyi

10. Sergeant MZIMKULU NIMROD VEYI stated that while at the farm in Northam, Simelane was interrogated by Coetzee, Pretorius and Mong. He personally observed the assaults and it seems he took part in the torture of

TP 11

Simelane. According to Veyi, her hands and feet were cuffed. Her sleep was kept to a minimum. She was kicked and slapped. A bag was pulled over her head. At times she could no longer stand. He stated: "I was present and did what was expected of me".

11. The last time Veyi saw Simelane was close to the 4 way stop of Fochville/ Carltonville and the Johannesburg/ Potchefstroom roads. He saw Simelane in the boot of Coetzee's vehicle. Simelane was alive with her hands cuffed behind her back. Her feet were also cuffed. A few days later when he asked Pretorius where Simelane was Pretorius responded: "Moenie baie vrae vag nie". (Don't ask so many questions). Veyi spoke to one of his colleagues, Sergeant Mathibe, who said that Coetzee and Pretorius had shot, killed and buried Simelane near Rustenburg. Mathibe has since died.

#### Mokone Sefuthi

12. MOKONE SEFUTHI, a former policeman, was posted to guard Simelane while she was held in a room on the roof of the Northam police barracks. He stated that one of the residents in the flats, a child,

**"...discovered us detaining her there after she had been screaming from assaults".**

13. While Simelane was held at the farm in Northam she was interrogated by Coetzee, Pretorius and Mong. She was hand and foot cuffed, severely

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beaten and tortured. At one stage she was unrecognizable. According to Sefuthi at one stage she was too badly injured to walk. He stated that Coetzee, Pretorius and Mong continuously threatened her with death during the interrogations.

14. After Simelane had been removed, Sefuthi asked Pretorius what happened to her and he stated that he "would never see her again".

15. At paragraph 44 of Sefuthi's life history which he supplied to police investigators he explained how an attempt had been made on his life by white security policemen. Following an investigation he states that he was summoned by a state advocate to the office of the Attorney General in Johannesburg. He was advised by this advocate that there was "a strong case" but he could not allow it to proceed as the "attackers were state members acting under cover and he cannot hamper the image of the state." This anecdote tends to support the notion that apartheid era prosecutors were unlikely to proceed with politically sensitive prosecutions against persons aligned with the State.

Moleke Peter Lengene

16. Sergeant MOLEKE PETER LENGENE was forced under duress to make a false statement to the police. At the time of the police investigation in 1996 he was still under the direct command of Coetzee.

TP 17



17. However, even in his statement in which he concealed the full truth he conceded that Simelane "did have some bruises on her face". He said he also notice bruises on her hands. He claimed that Simelane explained to that this was because of the handcuffs.

18. In a subsequent interview with the investigating officer Lengene admitted that his "original statement was not the whole truth." Before making his statement he met with Coetzee and Pretorius who advised him that they would receive a copy of his statement and they told him:

"... that the case could not be proved because there is no proof."

19. Lengene stated that he feared Coetzee and Pretorius very much and "at no cost must they become aware of my statement ...." He was sent to guard her at the Norwood Police Barracks. The first time he saw her "she was already beaten up." She had bruises on her face, hands and feet. Her hands and legs were cuffed. He claimed that he was never present when she was interrogated at the police barracks.

20. It appears that Simelane was permanently handcuffed, and possibly foot cuffed as well. This appears from the statement of Lengene where he states that at the Northam farm Sergeant Sefuthi

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"... was in possession of the keys for the cuffs. This was so he could untie her if she wished to relieve herself."

21. Lengene stated that on his arrival at the farm he found that "this lady was in a bad condition." Lengene said that Simelane told him that she was very afraid of Coetzee as he was "very hard on her during interrogation."

Mohapi Lazarus Selhmolela

22. Inspector MOHAPI LAZARUS SELHMOLELA stated that he was one Simelane's guards at the Norwood Police Barracks. He said that while in his presence nobody assaulted her at the barracks, but:

"... it was however clear to me that she had been assaulted. Her face was badly swollen."

23. Selhmolela stated that the interrogation at the farm was carried out by Coetzee, Pretorius and Mong. He said that Mathiba was also present. He stated that Simelane was assaulted by use of a bag over her head and the use of electrical shocks. According to Selhmolela:

"She became very weak and could no longer walk. Us black members always tried our best to nurse her but had to be careful not to be caught by our superiors."

24. He said that the assaults were the cause of her changing her physical appearance. He continued:

TPM

"She was treated very badly for a woman. ... One night this same lady was taken to the zinc dam where Radebe threw her in. She was thrown into the dam after interrogation bouts."

#### OTHER MATTERS ARISING FROM THE DOCKET

25. On 19 February 1996 the Head of Priority Crimes, Gauteng addressed a letter to the Secretariat of Safety and Security and the National Head of Priority Crimes. In this letter, which summed up the investigations to date, it was stated *inter alia*:

25.1. That Simelane was detained and tortured at the married quarters of the SAPS Norwood for about 2 weeks. She was then taken to a farm at Northham where she was further detained, tortured and interrogated. This lasted till the festive season, December 1983. This was the last time she was seen by the witnesses.

25.2. The actual interrogators were alleged to be Coetzee, Pretorius, Mong, Lengene and Radebe. Deceased witnesses or suspects are Sergeant Mathuba and Frank Langa "Big Boy".

25.3. On 17 February 1996 Sergeant Lengene was re-interviewed at his request. He said his first statement was not truthful. Lengene explained that Pretorius told him that "it was up to him and Norman "Scotch" to save

TP 17

their skins"; that Director Thoms (Head of Priority Crimes, Gauteng) would reveal all that he said in his statement; and that Captain Leask (the investigating officer) would not be able to prove any charges as "he had no proof of a body." After the first interview Lengene was taken to Coetzee who wanted to know what had been said in the interview. He was told to rewrite a statement which Pretorius okayed and told him to keep it in a safe place so that it could later be handed to their attorney as they were busy arranging this through the police.

25.4. On 10 February 1996 Pretorius and Coetzee secretly met with Scotch and coached him into what his version should be if Captain Leask approached him. This discussion was secretly taped by the investigation team.

25.5. It has become "very clear" from the meeting with Sergeant Lengene on 17 February 1996 that the Simelane incident was: "

**"not a one off event but part of an extensive programme involving bombings, kidnapping and murder of numerous persons."**

25.6. Lengene confessed his own part in a murder in which he shot someone with an AK47 given to him by Pretorius and Coetzee.

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25.7. It was of great concern that Coetzee and Pretorius were still in positions in the police where they could easily continue with intimidation and defeating the ends of justice because of their contacts with the CIS and its members. This could lead to the elimination of members. It was suggested that they be transferred to the Uniform pro-active division.

26. On 26 February 1996 the investigating officer requested the Electronics Unit of the Forensic Lab to "diminish the background noise" on the micro cassette tape which recorded the conversation between Coetzee, Pretorius and Scotch on 10 February 1996. It is not clear from the police docket whether the Electronics Unit was successful in this endeavour. A document titled "RESULT OF TRIAL: INVESTIGATION BY FORENSIC SCIENCE LAB. REF NO: 8625/96 (T1759)" was returned to Captain Leask but nothing was stated in the document.

27. According to the investigation diary the case was discussed with Deputy Attorney General Kevin Attwell and Advocate De Vries on 23 February 1996. They recommended that the matter be discussed with Dr De Oliveira of the Third Force Investigations. A discussion was held with Dr de Oliveira. At this meeting it was decided that all possible evidence must be gathered and the investigation must proceed.

TP

28. On 6 March 1996, the Assistant Commissioner NCIS, L Van der Westhuizen, sent a letter to all Provincial Commissioners calling on SAPS mortuaries to supply lists of all unidentified bodies removed by the SAPS between 1980 and 1996, including setting out race and sex, place of discovery and cause of death, case or inquest number, fingerprints or photos on record. No responses were recorded in the police docket.

29. On 22 October 1996 the following entry was made in the investigation diary:

"Saak word vir afwagting van PG terruggehou. Adv Ebrahim lees die stukke. Open n Onderzoek dag we..ous (?) boek - NW Thoms"

The matter was to be held back pending the instructions of the Attorney General. Advocate Ebrahim was reading the statements and exhibits. Captain Leask then filed the investigation notes in the "respective files". No instructions from Advocate Ebrahim were recorded in the investigation diary.

30. The final entry in the investigation diary was dated 10 February 1998 which stated: "amnesty hearings o/s". O/s presumably means "outstanding".

31. On 6 July 1998, Willem Coetzee was warned of his rights in terms of section 35 of the Constitution in respect of the "murder" of Nokuthula Simelane. He declined to make a statement.

TP

## CONCLUSIONS AND RECOMMENDATIONS

32. There is more than sufficient evidence on hand to proceed with assault and assault with intent to do grievous bodily harm charges against Coetzee, Pretorius and Mong. This much has also been confirmed by the state advocate handling this matter. It should be noted that in the amnesty hearing, Coetzee, Pretorius and Mong conceded that on the "odd occasion" Simelane would be given "a slap or a punch in order to secure her co-operation".<sup>1</sup> (Another consultant is conducting a review of the Amnesty hearing).

33. FHR should proceed with its endeavours to challenge section 18 of Act 51 of 1977 which is preventing a prosecution of the perpetrators in this matter.

33.1. Counsel should also be requested to give an opinion on whether potential assault charges in this matter may be considered as crimes against humanity as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002. Crimes against humanity are listed as one of the exceptions to the 20 year prescription provision contained in section 18 of Act 51 of 1977.

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<sup>1</sup> Page 3 of the Amnesty Decision, AC/2001/185

TP ⑦

33.2. Counsel should also be requested to provide an opinion on whether the Amnesty Committee misdirected itself in granting amnesty to Coetzee, Pretorius and Mong on the abduction of Ms Simelane. The Amnesty Committee rejected the evidence of Coetzee, Pretorius and Mong on several aspects, including in relation to the circumstances of Simelane's captivity. The Committee stated:

**"... we have no doubt that the versions of Coetzee, Pretorius and Mong are untruthful where they conflict with those of Veyi and Selamolela on the issues of dispute"<sup>2</sup>**

Notwithstanding the manifest failure of Coetzee, Pretorius and Mong to disclose in full, the Amnesty Committee granted them indemnity against prosecution in respect of the abduction.<sup>3</sup> Counsel should be required to give an opinion as to the prospects of success of setting aside this decision before the High Court.

34. In terms of matters arising from the review of the police docket I would suggest that FHR meet with the investigation team to discuss the following aspects:

34.1. The bringing of defeating the ends of justice charges against Coetzee and Pretorius for intimidating Sergeant Lengene into making a false statement

---

<sup>2</sup> Page 6 of the Amnesty Decision, AC/2001/185

<sup>3</sup> Section 20(1)(c) of Act 34 of 1995 stipulated that amnesty may only be granted in respect of an act, omission of offence if "the applicant has made a full disclosure of all relevant facts."

TP 9



and for attempting to coach Norman Mkhonza (Scotch) into making a false statement.

274

- 34.2. The investigation of numerous acts of sabotage, murder and other false flag type operations carried out by the Security Branch as referred to by Sergeant Lengene. These include the booby trapping of limpet mines and the provision of such mines to unsuspecting recruits; the shooting of recruits; attacks on houses of councilors and other prominent persons; and the bombing of municipal offices and hostels.
- 34.3. The following up on the results of the examination of the micro cassette tape containing the conversation between Scotch, Pretorius and Coetzee; and the following up on the request for lists of unidentified bodies received by police mortuaries between 1980 and 1996.
- 34.4. Detective Inspector Msebenzi Timothy Radebe's sworn statement is inconsistent with the statements made by his colleagues in several respects. His statement is in all likelihood untruthful. He admits his participation in the removal of Simelane from the Carlton Centre to the SAP married quarters in Norwood. Other witnesses also place him at the farm in Northam. In particular, Inspector Selhmolela alleges that Radebe threw Simelane into the zinc dam. Radebe was not an applicant in the amnesty application in the matter of AC/2001/185 and accordingly he did

TP 11

not receive indemnity against prosecution in respect of the abduction or kidnapping of Simelane.

34.5. Kidnapping is listed as one of the exceptions to the 20 year prescription rule in section 18 of Act 51 of 1977. While Radebe claims in his statement that he "arrested" Simelane it is clear from the facts that this was no arrest but rather a kidnapping or abduction. Simelane was not taken to a police station or ever brought before a Court. The facts accord with the essential elements of the crime of kidnapping, which are the unlawful and intentional depriving of a person of liberty of movement.<sup>4</sup> There appears to be nothing in the way of a kidnapping prosecution being brought against Detective Inspector Radebe. Prosecutors should be urged to prosecute him without delay.

---

HOWARD VARNEY

CHAMBERS  
SANDTON  
18 AUGUST 2005

---

<sup>4</sup> J Burchell & J Milton, *Principles of Criminal Law*, 3<sup>rd</sup> ed, Juta & Co., 2005 at 758.

TP



TN 18

18

276

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MANDATE OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

REFERENCE:

G/SO 217/1/South Africa

24 July 2014

Dear Mr. William Kerfoot,

I have the honour to write to you on behalf of the Working Group on Enforced or Involuntary Disappearances, which held its 103rd session from 7 to 16 May 2014, in Geneva, Switzerland. I would like to refer to the reported disappearance in South Africa which your organisation submitted regarding Ms. Nokulthula Aurelia Simelane (case No. 10004285).

The Working Group considered this case and transmitted it to the Government of South Africa in 13 June 2014. In transmitting this case, the Chair-Rapporteur of the Working Group expressed his hope that appropriate investigations would be carried out in order to clarify the fate and whereabouts of the disappeared person and to protect her rights. Any information received from the Government of South Africa concerning this case will be transmitted to you in due course. I wish to emphasize that, in view of the purely humanitarian character of the Working Group's action, any information given to you on this matter is exclusively destined for the relatives of the disappeared person.

I would like to take this opportunity to inform you that the Working Group shall hold its 104th session in Geneva from 15 to 19 September 2014. The Working Group would be grateful if any written information which your organisation wishes to submit for the Working Group's consideration at its 104th session could be received by 22 August 2014. I would like to bring to your attention that, however, information may be submitted at any time of the year and it will be reviewed by the Working Group during its forthcoming sessions as soon as it can be processed.

In conformity with its usual practice, the Working Group receives representatives of interested organizations and families of the persons reported disappeared during its sessions. Should your organisation wish to request a meeting with the experts of the Working Group at the 104th session, please contact the Secretariat at the United Nations Office of the High Commissioner for Human Rights in Geneva (tel: 0041 (0)22 917 9286; fax: 0041 (0)22 917 9006; e-mail: [wgeid@ohchr.org](mailto:wgeid@ohchr.org)) by 22 August 2014, to

.../2

Mr. William Kerfoot  
The Legal Resource Centre  
3rd floor Greenmarket Place, 54 Shortmarket Street, Cape Town 8001, South Africa  
Tel.: 2721 481 3000. Fax: 272121 423 0935  
[william@lrc.org.za](mailto:william@lrc.org.za)

TP 9



schedule an appointment or for any additional information. Please note that unfortunately the Working Group will not be able to provide any financial assistance.

Ariel Dulitzky  
Chair-Rapporteur  
Working Group on Enforced  
or Involuntary Disappearances

TP 17

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## COLUMNISTS

### My sister's heart

Thembi Nkadameng @City\_Press

26 December 2013 16:00

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Thembi Nkadameng, Nokuthula Simelane's sister, at her home in Wingate Park, Pretoria East. Picture: Bram Lammers

On the 30th anniversary of her sister's disappearance, **Thembi Nkadameng** writes about the MK envoy who refused to turn her back on the cause.

The story of my sister, Nokuthula Simelane, is about freedom and betrayal. My sister believed in freedom with

every fibre of her being.

It was her unshakeable dedication to freedom that took her to the Carlton Centre in Johannesburg on the morning of September 8 1983.

## TALKING POINT



### Oscar Pistorius sobs as he is found not guilty of murder

Paralympian Oscar Pistorius is not guilty of murder but can still be found guilty of culpable homicide, Judge Thokozile Masipa said in the North Gauteng High Court in Pretoria today.

## MORE TALKING POINTS

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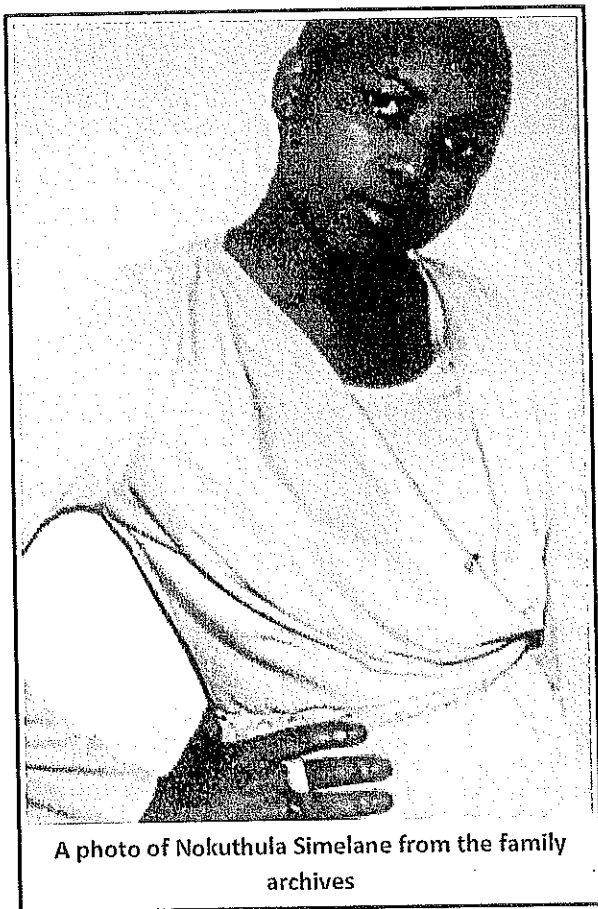
TP 7

This year marks the 30th anniversary of her disappearance.

A 23-year-old university graduate at the time, she was a courier for Umkhonto weSizwe (MK), the ANC's armed wing, moving between Swaziland and South Africa. She was betrayed by one of her own.

Instead of a scheduled rendezvous with a comrade, she was met by members of South Africa's hated security police, who shoved her into the boot of a vehicle.

This betrayal was to condemn Nokuthula to a choice between life and death. An informant's life – a betrayal that would crush her spirit – or death with her dignity intact. In reality, there was no real choice for Nokuthula.



A photo of Nokuthula Simelane from the family archives

Her commitment to what she loved most dearly made the first option unthinkable.

My sister's death was not swift and it was not painless. The security police drove her to the police barracks in Johannesburg.

There, they tortured her.

After several days, she was moved to an isolated farm in the

<http://www.citypress.co.za/columnists/sisters-heart/>

without white people –  
Julius Malema

2 Watch – Judge  
Masipa: 'No proof of  
premeditated murder'

3 SIU keeps Nkandla  
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4 Oscar Pistorius trial  
in quotes

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for draw with Nigeria

## VOTE

Bafana Bafana settled for  
a goalless draw with  
Nigeria in their Afcon  
qualifier. I think ...

- ☐ Well done to Bafana. It was a good performance
- ☐ It's disappointing. They should have won
- ☐ It's a good sign. Bafana are improving under Shakes Mashaba
- ☐ As always, Bafana's major problem is a lack of goals

VOTE

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north of the then Transvaal, where her abuse intensified. It lasted for some three weeks.

Her torturers were convinced that with enough force this young, inexperienced woman would break and become an informant.

They believed that it was just a question of more violence and more fear: a few more vicious blows to her head, to her face and her body, or perhaps a few more near-drownings in an icy dam.

Maybe more days of solitary confinement shackled in handcuffs and leg irons in filthy conditions would push her over the edge.

The black police officers who testified before the Amnesty Committee of the Truth and Reconciliation Commission (TRC) reported that after weeks of torture, my sister was unrecognisable. H

er face was an appalling mess of bruises and swelling. She was too weak to walk.

The last time they saw her was when she was being pushed into the boot of one of the white officer's vehicles.

My family and I have not rested since we learnt that my sister went missing. We know the most terrible things about what she suffered. But we don't know how she died and where her body is today. We have spent three decades looking for Nokuthula.

We even appointed private detectives to assist us. Until we find her remains, or get answers about what really happened to her, we remain trapped in the past.

We did not expect the former South African Police to investigate themselves. However, we firmly believed that the new democratic South Africa would take the necessary steps.

We were wrong. This was the second betrayal of Nokuthula and everything she stood for.

This betrayal cut the deepest. My father went to his grave without knowing what happened to Nokuthula. My mother, now sick and old, fears that she will die without knowing – and without burying Nokuthula's remains with the dignity she deserves.

The Amnesty Committee of the TRC concluded that the white officers had lied to the commission about the degree of

TP

9/11/2014

My sister's heart - City Press

torture as well as her ultimate fate. They, nevertheless, granted amnesty to those officers for Nokuthula's kidnapping.

Nobody applied for amnesty for her murder. The committee betrayed its own law, which states that amnesty can only be granted in exchange for the truth and full disclosure.

How could they grant amnesty when they knew that the white officers had lied about what they did to Nokuthula during and after her kidnapping? The Amnesty Committee betrayed our faith in them and in the truth and reconciliation process.

The police and the prosecutors could have taken up the matter. However, they chose not to, though a police docket was opened in 1996.

After the amnesty decision in 2001, the matter was referred to the National Prosecuting Authority.

When I approached them, they advised me that their hands were tied as they were waiting for a new policy to deal with the so-called political cases. When the new prosecution policy emerged in late 2005, it essentially created a backdoor amnesty.

It gave perpetrators, like my sister's killers, a second opportunity to escape justice.

Together with the widows of the Cradock Four, the young freedom fighters murdered by a police hit squad in 1985, I went to court to challenge the policy. In 2008 a Pretoria High Court judge struck down the policy, declaring it to be absurd and unconstitutional.

We thought this meant that the path was eventually cleared for justice to take its course. Again, we were wrong.

This time the prosecutors claimed that the police were refusing to provide investigators. It took a high-level intervention for an investigating officer to eventually be appointed to the case in 2010 – but apparently the docket had gone “missing”.

Three years later, even after finding the docket, there was no progress. It was clear to me that the authorities were not going to investigate the case seriously, let alone prosecute anyone.

They even refused to charge those police officers involved in the kidnapping who did not apply for amnesty. At the beginning of 2013, I instructed my lawyers to demand the

TP 17



holding of a judicial inquest into her death.

This request was refused. After 17 years of idleness, the prosecutors advised us that their investigations were still not yet complete. We do not believe them.

We have lost all faith in the prosecutors and police. They have betrayed our trust.

They now claim that they are occupied with inquiries, which could conceivably drag on indefinitely while witnesses and suspects grow old and die. We do not know why the authorities in the new South Africa would turn their backs on one of their own.

Nokuthula's ultimate sacrifice helped to pave the way for the freedom and democracy we now enjoy.

We cannot bury her and we can find no peace. The betrayal of my sister, and what she stood for, is almost complete.

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One day freedom will reign not this rainbow nation facade we are currently under

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**Umlilo** → **Jungle Jazz** • 8 months ago

Really sad.....and to think that this is what we were in the struggle for; not only the corruption and self-entitlement, but also the marginalisation of struggle comrades/cadres, many of whom made the supreme sacrifice.

In time, when the poor mother passes on, and Thembi too, Nokuthula will cease to exist. In African custom, however, the spirit will never rest and the curse of the ancestors will be on us all!

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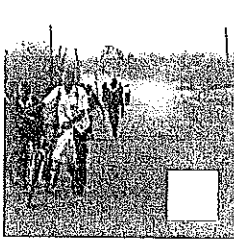
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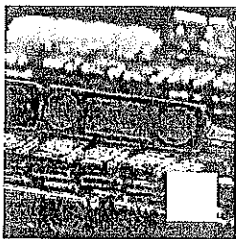


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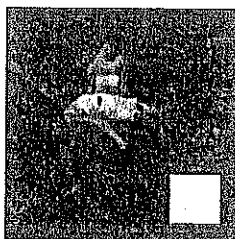


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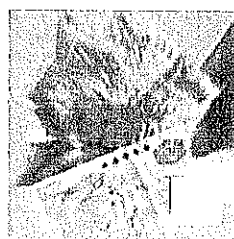
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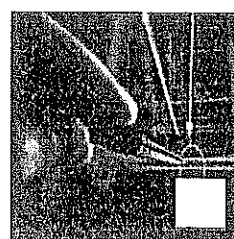
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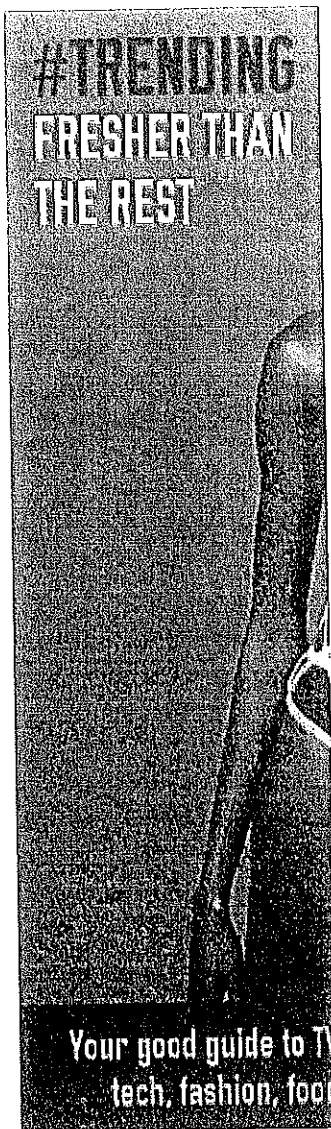
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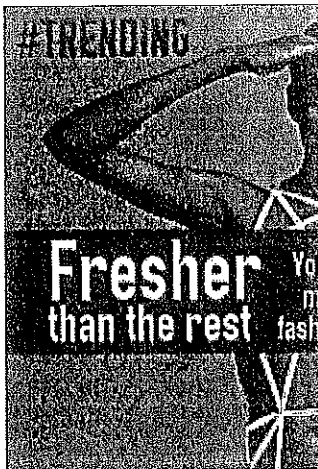
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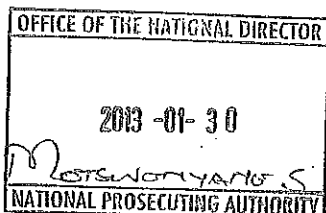
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Email: nkadimeng.thembi@gmail.com

29 January 2013

The Acting National Director of Public Prosecutions  
National Prosecuting Authority  
Private Bag X752  
Pretoria  
0001

Fax: (012) 845 6337

BY HAND

Dear Dr Silas Ramaile,

**REQUEST FOR THE HOLDING OF A FORMAL INQUEST IN TERMS OF SECTION 5 OF THE INQUESTS ACT 58 OF 1959 IN RESPECT OF THE KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

I am the sister of Nokuthula Aurelia Simelane ("Nokuthula"). My identity number is 730210 0329 088. On behalf of my family, I seek the holding of a formal inquest in terms of Act 58 of 1959 in respect of the circumstances surrounding the murder and other offences perpetrated by members of the former South African Police Security Branch against Nokuthula.

Background

Nokuthula was the first child of Ernestina and the late Matthews Simelane. She was a member of Umkhonto we Sizwe (MK), the military wing of the African National Congress (ANC). My sister was a student at the University of Swaziland in the early 1980s. During this time, she acted as a go-between for the ANC and exiled leaders in

TP



Swaziland. In September 1983 shortly after completing her university studies, and whilst on an MK mission to South Africa, she was kidnapped by the Security Branch from the Carlton Centre in Johannesburg. She was then brutally tortured over a period of several weeks and then disappeared.

Most of the policemen who kidnapped and tortured her and then caused her disappearance applied to the TRC for amnesty. They received amnesty for her kidnapping even though they were found to have been untruthful about their treatment of my sister.<sup>1</sup> The senior officers were denied amnesty for her vicious assault. None of the police officers applied for amnesty for the murder of Nokuthula. The senior police officers, in whose presence she was last seen, have refused to disclose the whereabouts of the remains of Nokuthula. To this day her remains have not been found for a burial with dignity.

My family and I have constantly searched for the truth about what happened to my sister. Shortly after her disappearance we spoke with ANC members. We enquired at the South Africa / Swaziland border whether she had crossed into South Africa, but there was no record of her. We even made inquiries in neighbouring countries such as Botswana. Nokuthula's disappearance was reported to the police, both in Swaziland and, subsequently, in South Africa.

All these efforts proved fruitless until early 1996 when the Sowetan newspaper published a story about Nokuthula's disappearance. The newspaper article appeared to finally spur the police<sup>2</sup> into action. A police investigation under case number CAS1469/02/1996 was opened under the auspices of the Priority Crimes Unit based at John Vorster Square (now Johannesburg Central Police Station). The investigating officer was Captain Leask. During July 1998 one of the senior officers was warned of his rights in terms of section 35 of the Constitution in respect of the "murder" of Nokuthula Simelane. He declined to make a statement.

<sup>1</sup> Decision (AC/2001/185) of the Amnesty Committee of the Truth and Reconciliation Commission.

TP 07

We raised her disappearance with the TRC. We have pleaded with prosecutors to take the case forward. I have even appointed private detectives. A documentary was made and screened on TV ("Betrayal", 2006). A statue was erected in her memory in Bethal. However we are still without answers.

We know from the TRC hearings that my sister suffered terribly at the hands of the South African security branch. We know that she refused to collaborate with the forces of Apartheid. For this she paid the ultimate price. My father died in 2001, without knowing what happened to his daughter. I refuse to give up the search for the truth and justice.

Attempts to seek justice

I have met police officers as well as prosecutors from the Priority Crimes Litigation Unit (PCLU) of the National Prosecuting Authority (NPA) on a few occasions. On each occasion various excuses were provided as to why this case could not go forward.

Initially the PCLU advised that there was sufficient evidence to proceed against certain of the officers on charges of assault to do grievous bodily harm in respect of the physical torture of Nokuthula. However, they advised us that they were prevented from proceeding with assault prosecutions as the right to prosecute such offences had prescribed by virtue of section 18 of the Criminal Procedure Act 51 of 1977.

The PCLU also advised that their hands were, in any event, tied by an effective moratorium against the prosecution of the so-called political cases of the past. They were not permitted to proceed until a standardized policy had been put in place to deal with such cases. Towards the end of 2005 the Prosecution Policy was duly amended. It provided for an effective back-door amnesty for those responsible for so-called political crimes and who had not previously applied for amnesty. Together with the wives of the Cradock 4 I applied to court to have this policy set aside as unconstitutional. The Pretoria High Court struck down the policy in the case of *Nkadameng & Others v The National Director of Public Prosecutions & Others* (TPD

TP ⑦

case no 32709/07). In this matter the NPA had argued that the amended policy survived constitutional scrutiny as families could still bring private prosecutions in matters where the NDPP declined to prosecute. The court rejected this contention stating that it was the primary responsibility of the NPA to prosecute. The NPA was denied leave to appeal.

Following the striking down of the amendments to the prosecution policy I was advised that the PCLU was still unable to take this matter forward because they lacked police detectives to carry out the necessary investigations.

During the course of 2006 one of my legal representatives presented the PCLU with a legal opinion in which it was concluded that the physical and mental abuse perpetrated against Nokhuthula constituted the international crime of torture. Torture was, by 1983, a prohibited and unlawful act in terms of customary international law. South Africa was obliged to investigate and prosecute transgressions of customary international law as well as violations of the Geneva Conventions. While the PCLU did not dispute the conclusions of this opinion they did not take the matter forward.

My legal representatives also proposed that those suspects who did not apply for amnesty be prosecuted for kidnapping. I am advised that kidnapping is listed as one of the exceptions to the 20 year prescription rule in section 18 of Act 51 of 1977. Notwithstanding that there was no legal impediment to the preferring of such charges this proposal was rejected. My legal representatives also proposed that charges of defeating the ends of justice be brought against two of the senior officers for intimidating a junior officer into making a false statement and for attempting to coach a witness into making a false statement. The PCLU declined to pursue such charges.

Other excuses include an apparent lack of evidence. In particular it has been claimed that none of the evidence that was led before the Truth and Reconciliation Commission (TRC) may be used in subsequent legal proceedings. I am advised that this view is without merit. It is based on an erroneous reading of section 31 of the Promotion of

TP ①

National Unity and Reconciliation Act 34 of 1995 which, in any event, was not invoked in these particular proceedings before the TRC.

The need for a formal inquest

This matter is now urgent. Nearly 30 years has passed since Nokuthula's disappearance. Some 17 years has lapsed since the more recent police docket was opened. My mother is now elderly and sickly. Witnesses are also getting old. Some have died in suspicious circumstances.

The PCLU had previously suggested that an inquest be held in this matter. At that time my family and I preferred to see a prosecution taking place. Indeed we have been trying to launch a private prosecution, but we have been unable to raise sufficient funds to pay the security for costs, which we are advised will be a substantial sum of money. In the circumstances we now wish to have formal inquest held as speedily as possible.

If the authorities were going to prosecute this matter such prosecution would have taken place many years ago. This case has dragged on for way too long, and such delay has undermined the prospects for justice and played into the hands of the perpetrators. With every day that goes by without action being taken, the interests of justice are severely eroded. Moreover, and most regrettably, we have lost complete faith in the PCLU to run a successful prosecution.

Last week I met with the investigating officer, Captain Masehela. He advised me that he submitted his report to Advocate Chris Macadam at the PCLU during July 2011. In this report he proposed that this matter be dealt with in an inquest. I assume that this report was submitted in compliance with section 4 of the Inquest Act. I then spoke with Advocate Macadam who advised me to approach Madeleine Fullard, the Head of the Missing Persons Task Team at the National Prosecuting Authority of South Africa.

I met with Ms Fullard who advised that her Task Team had not been able to locate the remains of Nokuthula. She suggested that I approach the suspects and offer not to

TP 17


prosecute them if they disclose the location of Nokuthula's remains. I have discussed this suggestion with my family and we have decided not to do a deal with the suspects. The suspects have had more than ample time to come forward and disclose the whereabouts of the remains. They have chosen rather to cause me and my family untold pain and anguish by maintaining a wall of lies and deceit.

Please advise me per return whether the statements and relevant documents have been submitted to a magistrate or judicial officer in terms of section 5 of the Inquest Act. If not, please advise why not. If the documents have been submitted, please advise which magistrate or judicial officer is dealing with this matter. I am advised that I am entitled to be given reasonable notice of the holding of an inquest in terms of section 7 of the Inquest Act. I further request that steps be taken to ensure that the inquest is a formal public inquest which includes the giving of oral evidence. Given the sensitivities of this matter I request that this inquest be held in the High Court of South Africa.

Should you at any point choose to institute criminal proceedings in this matter I request that you appoint a special prosecutor to lead the prosecution, in consultation with me and my family.

I accordingly ask that you treat this request with great urgency and advise me at your earliest convenience.

Yours sincerely,

  
T P NKADIMENG

Copy to: Advocate Chris Macadam, Priority Crimes Litigation Unit

TP

**ANNEXURE "TN 21": IN CAMERA AFFIDAVIT**

**(SEE ATTACHED FILE)**

ON RESUMPTION ON 20 MAY 1999 - DAY 12

296

CHAIRPERSON: For the record, it is Thursday the 20th of May 1999, we are continuing with the amnesty applications of Coetzee & Others in respect of the Simelane matter.

Mr Lamey, you hadn't completed your evidence-in-chief?

MR LAMEY: Yes Mr Chairman.

CHAIRPERSON: Mr Veyi I remind you that you are still under oath.

NIMROD VEYI: (s.u.o)

EXAMINATION BY MR LAMEY: (cont)

Sorry Mr Chairman, my client just points out to me that he wants to change his headphones. Thank you Mr Chairman.

Mr Veyi, I just want to come back on one aspect, can you hear me, during the times that you were present during interrogation sessions at the farm in Northum, can you comment about, can you give any comment about the question whether the lady Simelane, about whether she was allowed to sleep and if so, how did it happen?

MR VEYI: As I have already said, she would sleep maybe for 30 minutes or an hour and then she would be woken up and questioned again.

MR LAMEY: Okay, now you say in your supplemented application in paragraph 9(a)(i) that you apply for amnesty for your involvement, participation and the kidnapping of this person and the assaults on her during interrogation, is that correct?

MR VEYI: That is correct.

MR LAMEY: So you also apply for amnesty for every other offence or delict which may be inferred from the facts of your participation and involvement, is that correct?

MR VEYI: That is correct.

MR LAMEY: Further you state that in so far as you have been informed by the late Sergeant Mothiba, this lady was shot and her body buried at Rustenburg, you also apply for amnesty for your omission to report this or for the possible offence of being an accessory after the fact, is that correct?

MR VEYI: That is correct.

MR LAMEY: In this regard, when Sergeant Mothiba told you this that she was shot and killed and buried at Rustenburg, can you comment as to why you did not report this to any authority?

MR VEYI: After I met with Mkhize at the four way stop ...

MR LAMEY: Is that now Coetzee, Mkhize? Who is Mkhize?

MR VEYI: It is Coetzee. At the four way stop I saw Nokuthula in the car boot, I didn't tell anybody, but I kept that to myself.

MR LAMEY: Right, perhaps can I just get back, when you saw her in the car boot, she was still alive,

TP

is that correct?

297

MR VEYI: Yes, she was still alive. She was swollen, her face was swollen.

MR LAMEY: I am asking when Sergeant Mothiba told you that she was shot and killed and buried at Rustenburg, you didn't report that, or you didn't report this to any authorities?

MR VEYI: Yes, that is correct, I didn't report it.

MR LAMEY: Can you explain perhaps why you did not do that?

MR VEYI: I didn't report it because the situation at those times, it did not allow me to report it. If I would have reported this, I would be regarded, I don't know how to put this, I would be regarded as a sell-out, as somebody that cannot keep the government secrets.

MR LAMEY: And if you were being regarded as a sell-out, what in your mind, could something happen to you?

MR VEYI: Yes, I would be charged for revealing that sensitive information.

ADV GCABASHE: Explain that, you would be charged for revealing that information, just explain that?

MR VEYI: Everything that we did at those times, those things were secrets. If you joined the Police, you take an oath, especially at the Security Branch, that everything that would be said there, you won't reveal it to anybody. Everything that took place, you won't tell anybody. If it happened that they found out that you are selling out the information, you would be charged.

MR LAMEY: Now the secrecy aspect, what was the reason behind the secrecy aspect and the way the Security Police worked at that stage? The secrecy, you say that you worked under secret conditions during those times, is that correct?

MR VEYI: Yes.

MR LAMEY: In your mind, what was the reason behind all this secrecy among the Security Police members and their activities?

MR VEYI: I can put it this way, because at those times it was during the struggle, if the information, if I would give out the information, it might be possible that the enemy would get that kind of information.

MR LAMEY: Would the enemy then use that information to their advantage against the Security Police and the government at that stage?

MR VEYI: Yes, that is correct.

MR LAMEY: So in other words it was, the reason behind the secrecy if I may make an assumption from what you are saying, it was in order to protect the workings and activities of the Security Branch who actually had to combat the ANC and MK during the struggle and also to protect the government at large, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: Now further on on this paragraph 9(a)(iii) you say, you refer also to the places is that correct, the Carlton Centre, Northum and so forth?

TP 17



MR VEYI: Yes, that is correct.

MR LAMEY: You explained that she was seriously assaulted as to the nature of her injuries and she suffered injuries on her body, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: And further on, if we get to the political objective, Mr Chairman, can I proceed just to lead the witness on this and to read it out to him and ask his confirmation on this?

CHAIRPERSON: Yes.

MR LAMEY: Thank you. The witness is saying he cannot hear me. Can you hear the Interpreter?

MR VEYI: No, I can't.

MR LAMEY: Which channel? 3? Can you hear me now, can you hear the interpretation?

MR VEYI: Yes.

MR LAMEY: You say under the paragraph, it is Exhibit S, page 8, yes, thank you.

MR VISSER: Paragraph 1.

MR LAMEY: Paragraph 1, you say one of the main tasks of the Security Police was to combat the armed struggle led by Umkhonto weSizwe, MK, being the military wing of the ANC, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: And you were part of that Security Police, is that correct?

MR VEYI: That is correct.

MR LAMEY: You say further that this armed struggle posed a serious threat to the existence of the previous government, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: "As a member of the Security Police at that stage, I

regarded it as my duty to follow orders in combating the activities of the ANC and in particular the armed struggle?"

MR VEYI: Yes, that is correct.

MR LAMEY: You say further that -

"... this particular lady was a member of MK who was intercepted as a result of the undercover work done by Norman Scotch Mkhonza and she was detained for the purposes of interrogation in order to obtain information from her."

MR VEYI: That is correct.

MR LAMEY: You say that the information which was mainly sought as far as you know, was the presence of other MK members or terrorists in the RSA, particularly in Johannesburg, Soweto area?

TP

MR VEYI: That is correct.

MR LAMEY: Further on, particulars on planned attacks or infiltration of MK insurgents from Swaziland, armed caches and the like information, is that correct?

MR VEYI: That is correct.

MR LAMEY: Further on in paragraph 3, page 9 you say the impression that you gained during the interrogation that she was not co-operative and refused to divulge information?

MR VEYI: Yes, that is correct.

MR LAMEY: She was assaulted in order to force her to divulge information which the Security Branch was interested in which you believed that she had?

MR VEYI: Yes, that is correct.

MR LAMEY: From your political own motivation, paragraph 10(b) you say your participation is motivated by the fact that you were at that stage a member of the Security Branch at Soweto and that you strongly believed that the armed struggle of the ANC in collaboration with the South African Communist Party, posed a serious revolutionary threat to the previous government and population, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: You also followed orders from your superiors, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: You also say that you kept quiet after you heard from the late Sergeant Mothiba that this lady was shot and killed by Coetzee and Pretorius as the disclosure or report would have placed your own life in danger?

MR VEYI: Yes, that is correct.

MR LAMEY: You worked as a Security Policemen under highly secret conditions? You have already actually said that, I am just reading this to you out.

MR VEYI: Yes, that is correct.

MR LAMEY: Such a report would have been regarded as a serious breach of the secrecy, as a result you would have been regarded as a similar threat to the Security Police and be viewed in the same category as the enemy, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: You referred previously also as a sell-out, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: You received no any other remuneration as a result of your participation here, except that you received your normal salary?

MR VEYI: Yes, that is correct.

TP 11

MR LAMEY: Mr Chairman, that is the evidence in chief.

NO FURTHER QUESTIONS BY MR LAMEY

CHAIRPERSON: Thank you Mr Lamey. Mr Visser, any questions?

CROSS-EXAMINATION BY MR VISSER: Thank you Mr Chairman. Mr Veyi, I understand that you are still a member of the South African Police Service, is that correct?

MR VEYI: Yes, that is correct.

MR VISSER: What is your rank at the moment?

MR VEYI: I am a Sergeant.

MR VISSER: Did you attend Police College and pass out from the Police College?

MR VEYI: Yes, I attended.

MR VISSER: I want to read something to you Mr Veyi, Chairperson, I will refer to Exhibit T, specifically to the newspaper reports, in my order it is the first ...

ADV DE JAGER: I don't know what is wrong with our system. There seems to be something wrong with the system, we receive constantly other noises on the system.

CHAIRPERSON: Yes, I know sometimes if people touch this when it is on, then of course it produces a disturbance, but I don't know ...

MR VISSER: (Microphone not on) Yes Chairperson, I am referring to the newspaper reports and unfortunately we did not paginate it, we should do that, Chairperson it is the one with the heading "Burden of Guilt lifted off Mr X", it is about the sixth page I think, from the front yes. It is dated February, 15, 1995, I just want to read something to the witness. Mr Veyi, would you please listen to what I read to you and I will ask you some questions about that. Under the heading "Time for Truth" it states, this newspaper report states "he knew" and that he refers to Mr X and we have heard that Mr X was you, is that correct?

MR VEYI: Yes, that is correct.

MR VISSER: "He knew it was time to reveal the truth, the evil deeds of his Intelligence Unit and especially those of his white Commanders had remained hidden for long enough. Mr X thinks it is time they were brought out into the open, his conscience demanded that he do something about it." I skip a sentence and then the next paragraph "besides his getting on years and after almost two decades of serving in the Police Force, he remains a lowly Constable. His white bosses have climbed the ranks to Colonel and General." Now is that information which you gave the reporter?

MR VEYI: The information I gave was about the shooting of Nokuthula because after it appeared in the Sowetan ...

MR VISSER: ... can help you?

MR VEYI: The article that appeared in the Sowetan was this photo. The heading said "Missing in Action". This is what made me to go to the Sowetan and tell them about my story.

MR VISSER: My question to you is this, did you in fact give the information to the reporter, which I have just read to you?

TP 07

MR VEYI: Yes.

ADV GCABASHE: Can I just get clarity on that Mr Veyi, you are saying that you told the reporter that these evil deeds had to be divulged essentially and that your bosses had moved, climbed the ranks from Colonel to General, while you are still a lowly Constable, that is what Mr Visser read to you in essence, you say you gave that information to the Sowetan?

MR VEYI: I apologise, I didn't understand the question, I didn't say anything about the ranks, but what happened is after I saw this heading in the Sowetan, "Missing in Action" and this photo that I have already showed you, I then went to the Sowetan and then I told Sharon Chetty that I know about this story. She then made a follow up and she wanted to know what happened and then I told her from Carlton Centre, I told her what happened.

ADV GCABASHE: Mr Visser's question is specific, he actually read that passage to you in full and that is what he wants a comment on, not generally what you said to whom, he actually asked you a specific question.

MR VEYI: I didn't say that, I don't know anything about that.

MR VISSER: Are you saying that which I read to you is something which the reporter came up with and it is not based on anything you told her?

MR VEYI: Maybe she just wrote that, but what I told her is about the missing of Nokuthula.

MR VISSER: Yes, and that was after you saw her photograph in the Sowetan, is that right?

MR VEYI: Yes, it was after I saw the photo and then read the story.

MR VISSER: And you indicated, you showed the Committee members the photo that you were referring to, isn't that right?

MR VEYI: Yes, that is correct.

MR VISSER: Is this the one that I am holding in my hand at the moment?

MR VEYI: Yes, that is correct.

MR VISSER: Are you sure of that?

MR VEYI: Yes, I am sure.

MR VISSER: It is not true and I will tell you why not, because the article that I read to you from, is dated February, the 15th 1995 and the one that you showed the Committee is dated two years later, in May on the 22nd of May 1997. What you say, can't be true.

MR VEYI: The photo appeared in the Sowetan and the story you are referring to, I don't know anything about that. I saw this photo and the heading of that story was "Missing in Action".

MR VISSER: But would you agree with me that the reader of the portion which I read to you, might come to the conclusion that you resented your white co-Policemen? Would you agree with that? There is a resentment towards white Policemen that emanates from what I read to you, do you agree with that?

MR VEYI: It is the first time that I hear that I resented them, I don't agree with that.

MR VISSER: You don't agree with that, all right, now you told this Committee that Mkhonza came

TP 8

back from Swaziland and you said "we had a meeting". Do you remember saying that?

MR VEYI: I said there was a meeting. I know about the meeting but I don't remember whether I was present at that meeting.

MR VISSER: Try to listen to the questions and answer them instead of trying to find out where we are going.

MR LAMEY: I don't think that is a reasonable conclusion to make by my learned friend.

MR VISSER: Chairperson, can he just answer the questions. Where was this meeting held?

MR VEYI: I have already said that I don't remember about the meeting, but I knew that we were supposed to go to the Carlton Centre.

MR VISSER: Mr Veyi, let's start again, you said "when Mr Mkhonza came back from Swaziland, we had a meeting", did you say that?

MR VEYI: I said there was a meeting but I don't remember whether I was present in that meeting, but I knew that there was, people were going to go to Carlton Centre.

MR VISSER: Are you saying you attended a meeting where it was said that people would go to Carlton Centre, is that what you are saying?

MR VEYI: I am saying because this happened at that time, I don't remember whether I was present in the meeting or not but I knew about what was going to happen.

MR VISSER: How did you know what was going to happen?

MR VEYI: First of all in the Unit, we were working like this, even if you were not present at the meeting, if there was going to be a meeting, we as members of the Unit, especially black members, if Lazarus attended the meeting, he would then report back to me about the discussion. Even if I attended the meeting, I would tell him. That is how we were working.

MR VISSER: Well, all right, we heard that there was a meeting and within an hour or two after that, the arrest was apparently carried out. Do you know anything about that space of time between the meeting and the arrest?

MR VEYI: Yes, I have already said that I knew that a lady from Swaziland was going to be arrested in Carlton Centre.

MR VISSER: I just want to put it to you that I am going to argue that you were present at the meeting which Coetzee and Pretorius and Mong and Williams and Ross testified about and that this was the meeting where you heard what the plan was in regard to the arrest of this lady. Do you want to make any comment on that?

MR VEYI: I have already said that I can't say I was there or not, but I knew about it.

MR VISSER: You see Mr Veyi, I want to put a few things to you and I want to suggest to you that what has happened here with what was put on your behalf to the witnesses which I have just mentioned, creates the impression that you opposed what they said basically just in principle, and let me tell you what I am talking about. You see on your behalf it was put by Mr Lamey to those applicants which I have just referred to that you did not attend the meeting where Coetzee informed those present, that the intention was to kidnap Simelane in order to recruit her as an informer. That was put, now ...

MR LAMEY: Mr Chairman, if I remember correctly it was put specifically about a meeting about a "kop draai aksie", that he did not attend such a meeting where there was a specific discussion about the purpose of kidnapping for a "kop draai aksie."

MR VISSER: Mr Chairperson, I put it exactly correctly as I wrote it down, and I don't withdraw that question. I will repeat it then.

CHAIRPERSON: In whose cross-examination was that put Mr Visser?

MR VISSER: That was put to both Coetzee as well as Pretorius as well as to Mong that when Mong gave evidence Chairperson, I am not quite sure but I think in Mong's cross-examination it was conceded that he might have been there. To Coetzee and Pretorius it was specifically denied that he was present at any such meeting.

MR LAMEY: Mr Chairman, if I may come in here, in Exhibit T there is specific reference, I don't have it now in front of me Exhibit T, by Coetzee and also repeated by the other members about the meeting of the "kop draai aksie" and it was about the way in which they put it in a "kop draai aksie", in a meeting where that was specifically spelt out to the members present, but it was put to the witness, as far as I recall that he was not present at a meeting where specifically a "kop draai aksie", or - my learned friend put it in the way of recruitment, that is just perhaps another way of saying it, but that was the gist of I think if I remember correctly, what was put.

CHAIRPERSON: Just remind me Mr Lamey, is there a reference in the statements of Coetzee & Others to the effect that, or to the allegation that your client was present at a meeting where a "kop draai" was discussed, I don't want to search for that here, I am trying to look at Coetzee's ...

MR VISSER: Mr Chairman, page 5 of Exhibit T Chairperson, from paragraph 10 onwards.

CHAIRPERSON: (Microphone not on), paragraph 10 was about a "kop draai".

MR VISSER: Well, that was the evidence Chairperson, there was only one meeting at which all of this was discussed.

CHAIRPERSON: According to my colleague, drew my attention to paragraph 15 on page 7 of Exhibit T, the last sentence, it says -

"... that a kidnapping would take place."

And then paragraph 12, yes, this is Muller all right, then paragraph 13 says -

"... Muller decided on the second option 'ontvoering en kopdraai' ..."

so that seems to be what Exhibit T says.

MR VISSER: That is what those witnesses stated Chairperson and what was put to them was that Mr Veyi will say that he was not present at that meeting. That is what I am putting to him now. The record will speak for itself.

MR LAMEY: Mr Chairman, may I just come in here, in Exhibit W it could be that this was, I can't remember exactly to which witness it was put, but in paragraph 5 of Exhibit W Ross states that, paragraph 5 onwards, page 3 of Exhibit W Ross states that he was told beforehand that it was decided by Brigadier Muller to give approval for this turning action and that certain members were informed as such. Yes, he just makes mention of certain members ...

MR VISSER: No, no, he mentions them, he lists them Chairperson. My learned friend can't just say that he just makes mention of certain members.

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MR LAMEY: Sorry then, I was looking actually for that whether he was mentioning it specifically, but it could be that it was then specifically put to this witness, but I remember putting it in the context of a meeting where there was mention specifically made of a decision of kidnapping for purposes of the "kop draai aksie". 304

MR VISSER: That is what I was referring to. I don't understand the objection Chairperson.

MR LAMEY: Perhaps we are speaking then on cross purposes here, Mr Chairman.

CHAIRPERSON: Yes, the objection seems to be that Mr Lamey is of the view that what he had put to your witnesses, to your clients was that Mr Veyi was not present at a meeting where the "kop draai" of this intended arrestee or abductee was discussed, so it is in that context that he had put that Mr Veyi wasn't there. From there I understand, from that submission I understand that he is disputing that he had put on behalf of Mr Veyi that he was not present at a meeting in the sense that you have referred to in your cross-examination, a meeting where there was discussion about arresting and so on. This witness' position seems to be that he could have been there, I can't remember but he could have been there.

MR VISSER: Chairperson, I don't want to make this more involved than what it is, because really it is quite simple. The applicants whom you have heard up to now, have given you evidence about a meeting that was held where it was discussed that this person had come into the Republic, that she was going to meet Mkhonza, that she was an MK agent, that she was going to be grabbed and the purpose would be that she would be recruited to become an informer. Mr Lamey quite explicitly put that Mr Veyi wasn't present at that meeting and the only point that I am making now, is only when Mr Mong gave evidence did Mr Veyi concede that he might have been present at that meeting. That is as simple as that.

CHAIRPERSON: Yes, but except that on what Mr Lamey says, there seems to have been a lack of common ground as to what was discussed at this particular meeting. Mr Lamey says that what he had put to your clients was focused on the question of whether a "kop draai" was discussed beforehand or not. He says his client wasn't present at a meeting where that was discussed. His client seems to say that he knew about the arrest, he could possibly have been present at a meeting where that was discussed, he can't remember and he can't dispute it, so it seems to be that that is where you part company, you and Mr Lamey.

MR VISSER: I will put the question on this basis if I may then Chairperson, I put to you Mr Veyi, that on your behalf if was put that you did not attend any meeting at which the kidnapping of Simelane was discussed. I put to you that the evidence of Mr Mong, it was conceded on your behalf that you might have been present, but you had forgotten about it. In fact it was in your own evidence yesterday, you said that you might have been present, but you might had forgotten about that, is that correct?

MR VEYI: What I am saying is, it might be possible that I was there or not, but I knew that people would go to Carlton Centre.

MR VISSER: I am sorry, I didn't have my, I am sorry, could you just repeat for my benefit the answer, please.

MR VEYI: What I am saying is, it is possible that I was present or not, but I knew that people would go to Carlton Centre and arrest a lady from Swaziland.

MR VISSER: All right. Let's go on to the next thing. Do you agree that it was put on your behalf that your Unit, the Intelligence Unit, in 1983 had safe houses available which they used?

MR VEYI: Yes, that is correct.

MR VISSER: Did I understand you correctly when you gave evidence yesterday to say that they came later than 1982?

MR VEYI: No.

MR VISSER: I see. Let's go on to the next point. You, it was put on your behalf, consistently, that you never knew that Simelane was being recruited while she was in your detention, is that correct?

MR VEYI: There is a question that I didn't answer, I thought that we were still continuing about the safe houses. Yesterday I said there were safe houses before 1983, at the time when Simelane was kidnapped, there were safe houses and I quoted about Peter Lengene. After Peter Lengene was kidnapped in Botswana, he was taken to Klipspruit. We then sometimes would be in Rustenburg.

MR VISSER: I am sorry, you know Mr Veyi, if you want to discuss that, we can do so, I have already stepped off that point, but let's discuss that. Were you involved in the kidnapping of Mr Lengene?

MR VEYI: No, I was not involved.

MR VISSER: Yes, so how do you know anything about it?

MR VEYI: But I was working in that Unit.

MR VISSER: How do you know where he was kept and where he was questioned?

MR VEYI: I was working with that Unit even though I didn't go when they went to kidnap him.

MR VISSER: So are you saying that you told the Committee something which you heard from someone else, is that what you are saying?

MR VEYI: When there would be an operation, for example, maybe there would be eight of us in the Unit and then six of us would go outside and there would be those who are left inside the country, those who would handle the sources inside the country and collect reports. In Lengene's case, that is what happened. Others went outside to kidnap and I was inside the country. That is why I didn't go, but when they brought him here, I was present. When we were recruiting him and turning him, convincing him to join us, I was there. I was one of the members who took part, we tried to turn him.

MR VISSER: ... while he was being assaulted?

MR VEYI: Yes, that is correct, he was assaulted and that didn't take a long time like in Nokuthula's case. It only took a short period and then after that he agreed to cooperate with us until he became a full member of the South African Police Force.

MR VISSER: And exactly where was he assaulted where you were present? In which place were you?

MR VEYI: In Klipspruit, as I have already said we had three safe houses and then we abandoned the two, we used one. It is where we were interrogating people in Klipspruit West.

MR VISSER: Yes, right, now let me tell you something which may come as a surprise to you. In Bundle 2 at page 382 and following the late Mr Lengene's application form for amnesty can be found. From page 395 onwards, from paragraph 22, he describes in great detail in the minutest detail in fact, how he was kidnapped and how the next day in paragraph 23, he regained consciousness while he was sprawling on a garage floor. If you turn to page 396 you will see at the bottom of paragraph 24, the names which he mentioned of the people who kidnapped him, Willem Coetzee, Anton Pretorius, Jan Martins(?) and in paragraph 26 he mentions Sergeant Mothiba. Coming back to the garage he says in paragraph 28 at page 397 that he later realised that that garage was in a house in Rustenburg, okay. He then goes on to say that he was assaulted, he was interrogated and he was brutally treated until

TP01



suddenly on a specific day, there was a message over the radio he says in paragraph 30, there was an announcement over the radio about himself and the allegation was that he had been kidnapped by the South African Police and from there onwards, his treatment changed and a Major Schoeman came to see him, he says in paragraph 32 apparently only after he had agreed to work with the Police, that they brought him to Johannesburg, in paragraph 33 you see that. The evidence of Mr Coetzee before this hearing was that it was only after he was recruited, "sy kop gedraai gewees het", that he was brought to Klipspruit West where he was given a house in which to stay, where other Policemen also stayed. What do you say of what I have just put to you? First of all, you are not even mentioned sir, and secondly his version is in direct conflict with what you have just told us? 306

MR VEYI: I would like to tell this Committee that the way that the Internal Intelligence of the SA Police was working, you wouldn't understand how it was working. The story that you are reading to me, sometimes what you are reading, might not be what happened. I think that the people who are mentioned, you are saying that they kidnapped Peter, I would like to ask whether you have referred to David Djane and George Putukezi.

MR VISSER: Are you saying that Mr Lengene is not telling the truth in his affidavit, in his application for amnesty, is that what you are saying?

MR VEYI: I would like to know whether George and David Djane are written in that list of names that kidnapped him?

MR VISSER: Can you just answer my question please, are you saying that Mr Lengene is not telling the truth in what I have just put to you, he says?

MR VEYI: Before answering that question, I would like to ask about David Djane and George, whether their names are in that list?

CHAIRPERSON: No, their names are not. Yes Mr Visser, I don't know where it is going to take us.

MR VISSER: I am not going to waste time, I am merely recording that the witness is either unable or unwilling to answer the question. May I refer you to page 400 Chairperson, paragraph 36, just to - I wasn't even going to cross-examine him on this, but he brought it on. The last, second last sentence, he says - actually he refers to him being taken to Benoni after having been taken to Johannesburg and Protea Police station and Benoni, I don't want to go into detail, but he says he was then guarded by three people who were changing days, they were Sergeant Mothiba, Lazarus Selamolela and Manuel Oliphant. I just want to point out that this witness' name doesn't feature anywhere.

MR LAMEY: Mr Chairman, may I just come in here, I think in all fairness, the witness should be asked - I don't want to be prescriptive to Mr Visser, but I think the question should be asked first whether he had an opportunity to read the statement in total of Mr Lengene, in order to enable him to reply to the question whether he - the general question - whether what Mr Lengene is telling, is not the truth. It is a very general question and there is a whole lot of detailed facts, as Mr Visser has put it, in very detailed information. I mean it is such a general question and perhaps the witness should be asked whether he had an opportunity to read this, in order to comment where he agrees and where he does not agree, as it pleases you.

CHAIRPERSON: Yes, I think Mr Visser has indicated he has stepped off this. It is up to you if you want to deal with it in re-examination.

MR LAMEY: Thank you Mr Chairman.

MR VISSER: Let's come back to the question where we were, I put it to you that it was put on your behalf to the previous witnesses that you never knew that Simelane was being recruited "kop gedraai", if you want to use the word, as an informer of the Police. Do you agree with that?

MR VEYI: What I am saying is that I knew that people were going to go to Carlton Centre and arrest Nokuthula. What I was expecting to happen after her arrest, I expected her to be detained. The fact about "kop draai" and all that, I didn't know about that.

307

MR VISSER: You never knew about that until the last time you saw her, is that what you are saying?

MR VEYI: This happened when we were in Northum, that is where she was recruited. We were also present, but when initially she was going to be kidnapped in Carlton Centre, the idea was to arrest her.

MR VISSER: I am not talking about the Carlton Centre, I am talking about the farm, it was put on your behalf that you never realised that she was being recruited. Do you agree with that, on the farm?

MR VEYI: When we were with her at the farm, when she was interviewed, we would tell her about the advantages when she would agree being a Police, that was the way we were using to recruit her, that happened at the farm.

MR VISSER: I just want to put it to you your evidence is crystal clear that you knew very well that she was being recruited, even though there was an attempt made to hide that fact from the black members, you knew very well and that is very clear from your own evidence, because you told this Committee yesterday she was told "we will do this and that for you", those were your words and you said "I got the impression that we were trying to recruit her, but she would not cooperate" and statements such as that, but let's step off that. The fourth issue which I want to raise with you is it was specifically denied on your behalf that any toiletries were provided for Simelane from the beginning on the farm. Do you agree with that statement?

MR VEYI: I don't remember seeing toiletries.

MR VISSER: Yesterday you conceded that it may have happened. Do you agree with that?

MR VEYI: I don't remember yesterday toiletries being referred to.

MR VISSER: All right. You, it was denied on your behalf that Coetzee is truthful when he says that his *modus operandi* when he turns a person to an informer, was to use the method of assaulting, that person. That was for some reason or other, denied by you, do you remember that? It was put on your behalf?

MR VEYI: Coetzee would assault a person if he was trying to recruit that person, that was the way he used.

MR VISSER: Yes, well that is exactly the point, because that was his evidence, and that was denied through Mr Lamey when Mr Coetzee was cross-examined? Do you have any explanation for all of this? All right, you see, I am going to argue that you placed these matters in dispute because you have a resentment against the white Officers that gave evidence here, and it was for the mere sake of denying whatever they were asserting, that is what I am going to argue, if you want to make any comment on that, please do. If you don't, then perhaps we can go onto the next one. You said something strange yesterday ...

MR VEYI: It is the first time that I hear that I resented them.

MR VISSER: All right, you said something strange yesterday, you were asked about what you knew about Simelane and you said and I wrote it down "she could possibly be an MK member", did I hear you correctly or is that not what you intended to say?

MR VEYI: Can you please repeat your question?

MR VISSER: You said "she could possibly be an MK member", that is what you heard about

Simelane, perhaps if one of the members would check my note, but I wrote it down exactly like that.

ADV GCABASHE: What were they discussing?

MR VISSER: The evidence, it was right in the beginning, Mkhonza came back from Swaziland and he told them about somebody that was coming in and then he said "she could possibly be an MK member" and because we haven't got a record, I want to be quite careful with my notes, they are notoriously bad. I am sorry for asking you to check for me, but that is what I wrote down.

ADV DE JAGER: In his evidence in chief?

MR VISSER: His evidence in chief, it was right at the beginning.

CHAIRPERSON: Yes, he said that he understood that this lady would be arrested, trapped and arrested because she might be a member of MK.

MR VISSER: Words to that effect yes, she might be, yes. That is the only point I want to raise with the witness now. Mr Veyi, could there have been any doubt in your mind at the time, that she was in fact an MK member?

MR VEYI: Because Scotch, Mr Mkhonza, in Swaziland, his contacts were MK members, so I took it for granted that this person who was coming this side, was also a member of MK.

MR VISSER: Yes. Just press your button, can you just keep your hands away from that then please, thank you. In other words you did not intend to convey to the Committee yesterday that you were uncertain about the fact that she was an MK member?

MR VEYI: At the time when she was coming to this country, I was not certain, but the way Mr Mkhonza was operating, I knew that he was operating with MK members, so I just assumed that she was also a member of MK.

MR VISSER: You know Mr Veyi, let me just tell you what you say in your own application, Exhibit S page 3, paragraph 3, you say

- "... Scotch reported to his handler, Warrant Officer Coetzee, that there was an MK woman on her way from Swaziland to Johannesburg ..."

is that right or is that wrong?

MR VEYI: As I have said, Scotch was dealing with MK in Swaziland, so it was possible that this one was also a member of MK, that was what I was trying to say.

MR VISSER: Look at page 8, paragraph 2 -

"... this particular lady was a member of MK ..."

Why suddenly the doubt in your mind?

ADV GCABASHE: Page what was the last reference?

MR VISSER: I am sorry, page 8, paragraph 2 the first sentence. In any event, perhaps if we can try to cut this short, are you conceding today she was an MK member or are you saying you are still doubtful?

MR VEYI: I would like to look at my statement first that I made.

MR VISSER: Are you saying you cannot say today in your own mind as you sit there, whether Simelane was an MK member or not, is that what you are saying, without looking at your statement?

MR VEYI: At the time when I was making the statement, I knew that she was a member of MK, but when she was arrested, I didn't know.

ADV GCABASHE: And today, the question is today, what do you think today?

MR VEYI: She was a member of MK.

CHAIRPERSON: On what information do you base that? Why do you say that?

MR VEYI: When we were in Northum, when she was tortured, interviewed and all these things, it is where we got the information that she was trained and she was an MK member.

CHAIRPERSON: Is that what she told you under torture?

MR VEYI: Yes, that is correct.

CHAIRPERSON: Have you confirmed that independently?

MR VEYI: According to the reports that Coetzee found and the contacts in Swaziland, confirmed that she was a member.

CHAIRPERSON: So Coetzee confirmed this you say, independently from what she was saying under torture?

MR VEYI: Yes, that is correct.

CHAIRPERSON: Mr Visser?

MR VISSER: Thank you Mr Chairman. You went to visit Simelane's parents not too long ago, is that correct?

MR VEYI: Yes, that is correct.

MR VISSER: Did you find out whether they did anything in the struggle?

MR VEYI: I was not interested of what they did in the struggle, I was concerned only about the child that was missing, the child that I knew about.

MR VISSER: You say that Simelane was kept at the Norwood flats for approximately a week, is that correct?

MR VEYI: That is correct.

MR VISSER: Are you quite sure of that, you are absolutely certain that it was a week, not one or two days?

MR VEYI: I can say it is a week because after she was taken to Norwood, I went there and I stayed something like three days guarding her and then I went back. I didn't know when she had arrived.

MR VISSER: I am sorry, I am not sure that you understood my question. My question to you is, how long was Simelane kept at the flats at Norwood?

MR VEYI: I think it was about a week.

MR VISSER: When you made your statement, Exhibit S, did you - I am sorry - when was Exhibit S dated? I don't have a date on mine, the 7th of May 1999? When you made your statement on the 7th of May 1999, which was just the other day, did you say at page 4, in paragraph 5, with reference to the words -

"...the day after her arrest, I was also posted to go to the farm to guard her"?

You made a footnote and in the footnote you say -

"... the preceding two sentences appear in my initial statement which I made. After I had made the statement I remembered the lady was not taken immediately the day after her arrest, to the farm at Northum. She was first detained at Norwood Police quarters in Johannesburg for approximately a week where I also had to guard her with other members."

What this means in brief is in your original amnesty application you said she was taken to Northum the day after her arrest, do you agree with that?

MR VEYI: Yes, I agree with that.

MR VISSER: And this year, in May 1999, you changed that to a week, is that correct?

MR VEYI: There is nothing that I changed, I only added to what my initial statement was.

MR VISSER: Well, all right. Did you read Mr Selamolela's application at the time when you made your, when you completed your application, the first one?

MR VEYI: I don't remember reading it.

MR VISSER: Did you read it after you completed your original application form?

MR VEYI: No, I don't remember.

MR VISSER: Well, I want to suggest to you - well, did you speak to Mr Selamolela about the time that this lady was kept at Norwood?

MR VEYI: What I did when I was with Mr Lamey, he told me that Selamolela was also present, after taking my statement he would take Mr Selamolela's statement. Selamolela then came and I greeted him and we haven't been seeing each other for more than five years. We didn't discuss about Simelane's case.

MR VISSER: Did you listen while Mr Selamolela was telling Mr Lamey what he remembered about this incident?

MR VEYI: I was present, I was there.

MR VISSER: Yes, and you heard him say that Simelane was kept at Norwood for approximately a week, page 567 Chairperson, Bundle 3. Bundle 3, 567.

MR VEYI: Mr Lamey only wanted to know whether I know the story of Simelane and Selamolela, whether I was present in this case and I then agreed that I was present during the Nokuthula incident. Then I don't remember anything else.

MR VISSER: You are avoiding the question, did you hear Mr Selamolela tell Mr Lamey that this lady was kept at Norwood for approximately a week, it is a simple question?

MR VEYI: No, I didn't hear him.

MR VISSER: Well, I suggest to you that that is exactly where you heard about the week and that is the reason why you changed your original statement from the - more or less the correct situation of one day, it was in fact two days, but one day after her arrest, to a week after her arrest. That is the reason why you changed it. I put it to you, what do you say to that?

MR VEYI: What I am saying is, I didn't change, I just added to what I have forgotten after I consulted with Mr Lamey.

MR VISSER: Did you tell this Committee yesterday that you visited Simelane twice during the time that she was at Norwood, did I hear you correctly?

MR VEYI: Yes, that is correct.

MR VISSER: And on each occasion for how long did you spend time in her presence?

MR VEYI: When she was in Northum ...

MR VISSER: I am talking about Norwood, at the flats, I am not talking about the farm. I am not talking about the farm, at the flats in Norwood, in Custodum Flats, at the office.

MR VEYI: In Norwood I went there twice if I still remember well.

MR VISSER: Yes, all right, the next question is, on each occasion, how long time did you spend with her?

MR VEYI: I would sleep there, spend the night there or spend two days there and then you would go back.

MR VISSER: All right, so while she was at the flats in Norwood, you spent two nights there with her, guarding her I take it and you say that you also spent two days with her, is that what you are saying?

MR VEYI: Please repeat your question?

MR VISSER: Perhaps you must tell us, how long on each occasion did you spend with Simelane while she was at the flats at Norwood.

MR VEYI: I went there twice, I would go this day. In a week I would go twice.

ADV GCABASHE: Now come back to the first time you went to see Simelane at Norwood, how long did you spend with her that first time, then you went away. Then tell us about the second time, how long did you spend with her that second time, that is the gist of the question. Break it down for us, thank you.

MR VEYI: I can say that when I first saw her, I stayed for two days and then I went again after two days, for another two days.

ADV GCABASHE: And on these two days each time, you would spend one night or two nights at the flats, just break it down for us again.

MR VEYI: If I would go to Norwood, I would arrive maybe today, let's say on Monday and I would spend the night, Monday night and I would spend Tuesday night and then I would go back, and maybe a day would pass, after a day I would then go back, spend two days and then I would go back again.

MR VISSER: During the time that you spent with Simelane at the flats at Norwood, were you alone

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with her or was there another black Policeman with you?

MR VEYI: I was not alone, in most cases I was with Selamolela.

MR VISSER: Well, we only know of two cases, was Selamolela with you on both those occasions that you have told us about?

MR VEYI: I don't remember whether the first day I went, I went with Selamolela the first day or the second day, I don't remember, I can't remember that.

MR VISSER: All right, are you saying you were not with him there on both occasions?

MR VEYI: I would not dispute the fact that I went with him the first time or the first day or second day, but I was there with him sometime.

MR VISSER: Are you saying you were not with him on both occasions, please it is a simple question? Is there a problem with the microphones again?

MR VEYI: The first, firstly I used to work with Selamolela and with Sefuti sometimes, I don't know whether the first time I went with Selamolela or Sefuti and I don't know the second occasion whether I went with either of them, which one of them I went with.

MR VISSER: All right. Let's come to the assaults of Ms Simelane. Why do you say at Norwood, I am just talking about Norwood at the flats, why do you say was she assaulted?

MR VEYI: She was assaulted because we wanted her to reveal about her activities and the contacts in South Africa and her mission in South Africa and the targets that were attacked during her presence in South Africa and the countries where she was trained and the people that she was trained with. That was the information that was needed from her. The reason that made her to be assaulted was because she was not willing to talk.

MR VISSER: Right. Coetzee and Pretorius said and Mong stated that they assaulted her by slapping her with the open hands, hitting her with the fists at Norwood in her back and in her ribs apparently, do you agree with that?

MR VEYI: Coetzee and Mong and Pretorius are not telling the truth, are not relating properly as to what happened. Some of the things did happen, but some of the things that they are saying are not true.

MR VISSER: What is not true about them saying that they slapped her and hit her with a fist on the body?

MR VEYI: First of all, if an MK member was caught or captured, an MK member used to be regarded as a most dangerous person, more than a criminal. The treatment would not be assaulted with open hand, the others would kick him, the others would strangle him or her, the others would even walk over his body or try to trample her body, something like that. The treatment was not soft at all.

MR VISSER: Okay, let's take that in turn. Did either Coetzee, Pretorius or Mong kick Simelane?

MR VEYI: They were kicking her, they were doing anything that you do to a person if she is captured, she was pulled roughly and hit against the wall and she would scream, that is why when she was in Norwood, she was later taken to Northum. It is because people were suspecting that something was going on at the penthouse.

MR VISSER: Mr Veyi, did Mr Coetzee kick Simelane?

MR VEYI: The way he was kicking her, he even told her or he would tell her that he himself was more dangerous than ANC, and if she was not willing to talk, he would kill her.

MR VISSER: I am sorry. Did Mr Coetzee kick Simelane?

MR VEYI: Yes, he was kicking her and doing everything and smacking her face and he would do anything.

MR VISSER: Thank you. Mr Veyi, do you have a problem with the Translator?

MR VEYI: No, I don't have a problem at all.

MR VISSER: Did Mr Pretorius kick Simelane, at Norwood at the flats?

MR VEYI: The two of them were doing that and even though we were there ourselves, we wouldn't stand up and fold our arms, we would try and do something, though we knew very well deep down from our hearts, that what was happening was not acceptable.

MR VISSER: I don't know what that means really. The question was whether Pretorius kicked Simelane, that was the question.

MR VEYI: They were having turns, if Pretorius was hitting her and the others would be standing there and push her to the other side and the other person would take a turn also.

MR VISSER: Mr Veyi, I think we must sort out the problem that we have, I asked you whether Pretorius kicked Simelane and you talk about others standing around and pushing and - don't you understand ...

ADV GCABASHE: I was going to say it is a language issue. It is expression because what they were doing, he also is agreeing with you as I understand Zulu, Xhosa, they were in fact doing exactly that, but they were actually exchanging, he is adding to what you are saying, so he is agreeing and adds, he agrees and adds. Maybe you need to agree one way or the other that he is either going to be more specific and not expansive in language or something, but that is what I think the problem is Mr Visser.

MR VISSER: Here I was thinking that he has a disagreeable way of agreeing with me. All right, Mr Veyi, I just want to put to you that - let me ask you this, did Mr Mong kick Simelane at Norwood at the flats?

MR VEYI: I cannot say, as I was saying the other members were also participating whenever she was beaten up. Maybe if she happened to run towards your direction, you would try and push her and say go away and the room was so small.

ADV DE JAGER: Can you perhaps try and take it step by step? I suppose Mr Visser would come to the slapping and the pushing, but at first can we only deal with kicking? Who did the kicking?

MR VEYI: I don't know how to explain this. I think Mr Visser does not understand the way that the Police were working. If the suspect is captured by five Policemen and the suspect is there in front of the Police, there would be no time to check or monitor who is doing what. All the people who are there in front of the suspect, if perhaps I smack her across the face, the other one is kicking and the other one is punching her, such things used to happen. That was happening, that is what was happening there, I can not say that so and so did this and that, but it is something that would happen there.

CHAIRPERSON: Would you just all attack this lady? You would smack, you would kick, you would push, you would strangle, you would step on her body, all those things that you described to us that would happen to people in your care at that time?



MR VEYI: Yes, that is correct.

CHAIRPERSON: So it wasn't a nice thing where you

would not all kick for five minutes and then you would slap for five minutes and then you would strangle for five minutes?

MR VEYI: No, that was not the case.

CHAIRPERSON: Was that what happened there?

MR VEYI: Yes.

CHAIRPERSON: Yes Mr Visser?

MR VISSER: Are you saying that for the time that you were in the presence of Simelane, four or five people assaulted her continuously together, is that what you are saying?

MR VEYI: Yes, that is what I am trying to explain. This is exactly why I say the way she was assaulted, she didn't look the same, her appearance changed. Her physical condition had changed completely.

MR VISSER: I just want to put it to you that it is most unlikely that that could have happened. I put it to you that what you are telling this Committee about strangulations, about trampling on her body, was never put to Coetzee or Pretorius or Mong in regard to Norwood, nor was it ever put to them that any of them ever kicked Simelane and that means only one thing and that is that you never told Mr Lamey that.

MR LAMEY: I think it was conceded by the clients of Mr Visser that they each participated in one way or the other in the assault by hitting with fists, slapping and also possibly kicking, they also conceded in their own evidence.

MR VISSER: That is just not so.

MR VAN DEN BERG: I have a note in which Mr Coetzee conceded that it is possible that he might well have kicked the deceased, Simelane, it happened I think on the morning, the second morning whilst he was being asked questions by members of the panel. I have a note specifically to that effect.

CHAIRPERSON: Yes, well I think the record will eventually bear out what was the position. Mr Visser, you had put your recollection to him.

MR VISSER: Chairperson, then obviously I can't take it any further.

CHAIRPERSON: Yes.

MR VISSER: The record will speak for itself. I also want to put it to you that you never, it was never put to Pretorius that he would push Simelane against another person who would slap her, that made her fall to the ground. That is evidence which we only heard for the first time when you gave evidence.

MR VEYI: It is, you are supposed to hear that for the first time from me, because I mentioned it for the first time.

MR VISSER: Yes, but you were supposed to make a full disclosure in your application, you know, Mr Veyi. All right.

MR VEYI: Even if you are in court, if you give evidence in court, you do make your statement, but when you are in the dock or if you are in the podium there, you start revealing, you get into details and the things, some of the things that you mention in court, are the things that you did not write down. That is what I am saying that even if I did not write some other things in my statement, right now I am having an opportunity to spell it out in details.

MR VISSER: Fair enough. Fair enough, this is after all your application, I accept that. Let's talk about your participation in the assaults. Did you slap Simelane, listen carefully, did you slap Simelane with the open hand at Norwood?

MR VEYI: I said as you are working together, all of us, I was not supposed to stand there and fold my arms if the other people are busy, because if I would do that, I was going to be perceived the other way.

MR VISSER: About not just saying "yes I slapped her", if that is your evidence, or no, I didn't slap her.

MR LAMEY: I think Mr Chairman ...

MR VISSER: Is it a language problem again?

CHAIRPERSON: Mr Visser, it might very well just be a cultural issue here. Let's try, Mr Lamey?

MR LAMEY: I don't want to be at all - interrupt my learned friend's cross-examination, but I get the impression that he answers it by implication, what he is saying, it is a way of expression.

CHAIRPERSON: Well, that seems to be the position Mr Lamey. Counsel is trying to find out exactly what you did, if you can tell us, if you can remember exactly what you did to Ms Simelane, exactly what you did, if you can help us. The first question was did you slap her with an open hand, can you remember whether you slapped her?

MR VEYI: Yes, I did.

CHAIRPERSON: You slapped her. Mr Visser, what is the next...

MR VISSER: I must come for lessons from you Mr Chairman. Did you slap her in her face?

MR VEYI: Yes, that is correct.

MR VISSER: Was it a hard slap?

MR VEYI: Yes, that is correct.

MR VISSER: Did you slap her more than once?

MR VEYI: Yes, that is correct, I was participating, I was smacking her as she was being assaulted.

MR VISSER: Yes, all right. Did you slap her many times, let me ask you that, did you slap her in the face many times?

MR VEYI: I did, but when we realised that she was

changing, her physical condition was changing, we withdrew, we did not participate.

MR VISSER: That is my next question, because of *inter alia* your slapping of her, did her face swell up and did she change her appearance? Is that what happened?

MR VEYI: As she was still in Norwood, she was better there, the condition deteriorated when she was in Northum. 316

MR VISSER: Did you hit Simelane with your fist?

MR VEYI: I cannot remember, I can only remember me slapping her.

MR VISSER: Did you kick Simelane at Norwood at the flats?

MR VEYI: Yes, I did kick her, but I was not kicking her because I wanted to kick her.

MR VISSER: Yes. Where did you kick her on her body?

MR VEYI: Just on her body.

MR VISSER: Where on her body? On her head, on her foot, on her stomach, where?

MR VEYI: I don't know how to explain that, according to us the body is from the waist up to the shoulders. We don't regard the head as the body and even the foot, we refer to them as feet. I was kicking her on her body.

MR VISSER: That means then from the waist to below the head, that is where you were kicking her, is that what you are saying?

MR VEYI: Yes, that is correct. It is not because I am the one who was kicking her, but because people were kicking her, I was not alone in kicking her, this was happening in Coetzee's presence only. During their absence, that is Coetzee and the others, nothing would happen.

MR VISSER: Now you said yesterday, you kept on referring to "we assaulted her", now what I want to ask you is this, did you participate in assaults on Ms Simelane on both the occasions when you say you spent time in her presence, on both those occasions at Norwood, I am just talking about Norwood?

MR VEYI: When she was assaulted at Norwood during my presence, I would participate during those two times.

MR VISSER: So, at least on one occasions Mr Selamolela was present while she was being assaulted by you at Norwood?

MR VEYI: As I have already said all the members including the black members, they would do what the others were doing, they were participating though we knew very well that what was happening was not acceptable, but we were forced by the situation prevailing at the time.

MR VISSER: Did you see Mr Selamolela assault Simelane?

MR VEYI: I am going to repeat this, I explained this, if a person is a captive and the people who are present there, they are hitting him or her, you don't watch what the others are doing, as she was there, everyone was taking part in assaulting her.

MR VISSER: I take that to be a "yes" to my question.

MR LAMEY: I take that not necessarily as a "yes".

ADV DE JAGER: He is saying everyone was taking part, he didn't say everyone was kicking, it was about an assault. Could you then perhaps tell us whether Mr Selamolela, whether he in fact kicked or slapped or pushed her, what did he do?

MR VEYI: He was also assisting in assaulting her, but I cannot remember exactly what he did, because assaulting refers to various things or methods. If you are kicking or punching or slapping a person, that is assault. 317

MR VISSER: Do you know what he says, in Bundle 3 page 567, let me tell you, he says, he refers to the Norwood flats as the married quarters and he says "whilst in my presence at the married quarters, nobody assaulted her." What do you think of that?

MR VEYI: I am saying she was assaulted.

MR VISSER: And in fact you say he also helped assaulting her?

MR VEYI: Yes, that is what I am saying.

MR VISSER: All right, I am going to go over to the farm now Chairperson, might this be a convenient time to take the adjournment?

CHAIRPERSON: Yes, we will adjourn for 15 minutes.

#### COMMITTEE ADJOURNS

#### ON RESUMPTION

NIMROD VEYI: (s.u.o)

#### CROSS-EXAMINATION BY MR VISSER: (cont)

Thank you Mr Chairman. Mr Veyi, (can we come to what transpired on the farm in Northum and may I say that all the questions that I am going to ask you now, will only relate to what happened on the farm, do you understand that?

MR VEYI: Yes, I do understand.

MR VISSER: To cut a long story short, were the assaults on Simelane on the farm the same as those at Norwood perpetrated by the same people that you testified to this morning?

MR VEYI: Yes, that is correct.

MR VISSER: Except that on the farm, if I may remind you, there was evidence that a sack was also used to draw over Simelane's head to prevent her from breathing, is that correct?

MR VEYI: Yes, that is correct and when she was being put into the dam.

MR VISSER: All right, let's talk about the dam. What do you make of this, or what do you want us to understand about the putting into the dam of Simelane, what are you saying to us?

MR VEYI: As she was being put into the dam, she would be assaulted and later be put into the dam, I think that was part of the torture.

MR VISSER: That is not the impression that one gets when one looks at Bundle 3, page 567 of the evidence of Mr Selamolela, page 567. In paragraph 7 he says in the third sentence, "at night this same lady was taken to the zinc dam where Radebe threw her in, but hold her so that she could not drown." If I may stop there, do you agree with that?

MR VEYI: Yes, that is correct. When she was put into the dam, she would be put in there and be taken out, that was the procedure.

MR VISSER: Right. And it was only done by Radebe?

MR VEYI: Yes, that was Radebe.

ADV GCABASHE: No the question was only done by Radebe? Only?

MR VEYI: Yes, it was himself and the others, Coetzee were present and that was an instruction from Coetzee.

MR VISSER: Well that was never put to Coetzee, I put it to you that he instructed Simelane to be put in the dam. That is a question for argument. I just want to continue reading to you - no, let me just make absolutely certain, you now say that putting her in the dam was part of her torture, is that what you are saying?

MR VEYI: Yes, that is correct.

MR VISSER: And that was in order to obtain information from her?

MR VEYI: Yes, that is correct.

MR VISSER: The next sentence of Mr Selamolela says this -

"... she was thrown into the dam after interrogation bouts ..."

and that seems to suggest that it was not part of her interrogation, but it came after that. Do you agree with my interpretation?

MR VEYI: Perhaps that was not his perception, but I maintain that it was part of interrogation.

MR VISSER: You disagree with him, all right.

CHAIRPERSON: You in fact say you think it was part of the torture? That is what you said?

MR VEYI: Yes, that is correct.

CHAIRPERSON: As he refers to interrogation?

MR VEYI: I am saying it was torture.

CHAIRPERSON: Okay.

MR VISSER: But you also say it was part of the interrogation, to elicit information, Mr Veyi, you just said so just now.

MR VEYI: I said she would be interrogated and be tortured at the same time.

MR VISSER: And putting her into the dam was part of her interrogation?

MR VEYI: Maybe I made a mistake there.

MR VISSER: What is the mistake you made?

MR VEYI: I am saying torture and interrogation were all happening all at once and by her being put into the dam, it was part of torture while she was being interrogated.

MR VISSER: Thank you, that is what I understood you to say. When - first of all, I am not certain how long you visited the farm, can you remember today on how many occasions did you go to the

farm, two or three or four or six, can you perhaps remember?

MR VEYI: I think I would go there twice a week, twice or thrice a week, up to four weeks.

MR VISSER: Okay. So you would have gone then roughly eight times to the farm?

MR VEYI: Yes, that could be the case.

MR VISSER: And on those occasions, how long would you stay on the farm?

MR VEYI: If I go there let's say the distance between Johannesburg and Northum, it is about plus minus 300 kilometres, if I plan to go there, I know that I will be there for two days and after two days, I would come back again.

MR VISSER: Yes, but would it be two days and two nights or just two days and one night or what was your shift?

MR VEYI: I am going to calculate it like this, say for instance if I am there on a Friday, I would spend a night there, Friday and Saturday night and Sunday evening or during the day, I would go back to my place.

MR VISSER: So you would spend two nights there on each occasion?

MR VEYI: Yes, that is correct.

MR VISSER: Did you always go to the farm in the company of another black Policeman?

MR VEYI: Yes, we were changing shifts. When I arrived there with someone else, we would find the others there and we would release them, they would go back and we would stay over.

MR VISSER: I don't think you understood, would you always go to the farm in the company of another black Policeman?

MR VEYI: Yes, that is correct.

MR VISSER: And who would that have been?

MR VEYI: A person who used to be in my company was Selamolela or Sefuti.

MR VISSER: All right. I am sorry to ask you this but it is important, did you go there half the time with Selamolela and half the time with Sefuti or did you go to the farm with Sefuti more often than with Selamolela or the other way around?

MR VEYI: I cannot be certain about that.

MR VISSER: Were you used on the farm sometimes as an Interpreter?

MR VEYI: Yes, that is correct.

MR VISSER: And I want to ask you just to explain again about this question of sleep.

ADV DE JAGER: What language was Simelane actually speaking?

MR VEYI: She was speaking in Zulu.

MR VISSER: I understood your evidence yesterday and stop me if I am wrong, that Coetzee would arrive during the day and he would start interrogating Simelane until late at night, ten o'clock at night?

TP 17

Is that what you said?

MR VEYI: Yes, that is correct.

MR VISSER: And I understood you to say that if she became tired or sleepy, he would let her go to sleep?

MR VEYI: When she was getting sleepy, she would look tired, he would let her relax for something like an hour or 30 minutes and then he would later start questioning her thereafter.

MR VISSER: That is what I understood you to say, all right. So in other words, your evidence is when she got tired, she was allowed to sleep for a while, if I may sum it up.

MR VEYI: As I am saying her sleeping time was limited, she wouldn't sleep normally, her sleeping time was limited, she wouldn't sleep perhaps from eight o'clock and wake up the following day, that was not the case.

MR VISSER: Yes, I understand. Now was it only Coetzee when he was there, that would interrogate her? Let's try to role a few questions into one, when the white Officers came there, did they interrogate her together, whoever was there?

MR VEYI: Yes, that is correct.

MR VISSER: They didn't take turns among themselves to interrogate her through the night for example?

MR VEYI: If it would be Pretorius and Coetzee, Pretorius would ask questions and then he would hand over to Coetzee to say something, that is what was happening.

MR VISSER: While they were both interrogating her?

MR VEYI: This is what they were doing there, this is what they would go there for.

MR VISSER: Now, in regard to the assaults on the farm, if I may refer to Exhibit S page 5, perhaps in fairness to you, I should read to you what you said so that you can remember, paragraph 6 at page 4, the sentence starting with the following:

"... Nokuthula was interrogated by Coetzee, Pretorius, Mong ..."

and over the page -

"... she was kept at the place for more than a month, she was both hand- and footcuffed, her sleep was kept to a minimum, she was kicked and slapped. A bag was pulled over her head ..."

and then the footnote says this -

"... at times during her interrogation, I also participated by slapping the lady. If I remember correctly almost every one at a certain stage participated in one way or the other in the interrogation or assault."

Would that still be correct, is that still your evidence?

MR VEYI: Yes.

MR VISSER: Would Selamolela have assaulted her on the farm as far as you can remember?

MR VEYI: At some stage it says if I remember correctly, it might happen that Selamolela did take part, that is why I have mentioned there that if I remembered very well, because we wouldn't go there, we wouldn't be there at the same time, we were changing shifts. I would be present and he would be absent or things would happen *vice versa*.

MR VISSER: I am not quite sure, is it your recollection that Selamolela also assaulted Simelane on the farm, yes or no?

MR VEYI: Yes.

MR VISSER: There weren't any luxuries on this farm if I understand it correctly, do you agree? There was a toilet?

MR VEYI: It was a back room at the main house.

MR VISSER: Did you hear the evidence that this room was quite a distance away from the main house?

MR VEYI: Yes, I heard that.

MR VISSER: Do you agree with that evidence?

MR VEYI: No, I disagree with him.

MR VISSER: Mr Mong said you couldn't see the one building when you were standing at the other because of the bush? Did you hear him say that?

MR VEYI: This incident took place some time ago and Mong was still new there, it might happen that he cannot remember or perhaps he was not there, the distance from the main house to that back room, is from this wall that I am facing to the other wall that is behind me, you could see the main house. Mong, if my memory serves me well, mentioned something like 100 meters.

MR VISSER: Yes, did you tell your Attorney that Mr Mong is mistaken in that evidence?

MR VEYI: I did not tell him because he did not ask me.

MR VISSER: I see. Do you agree or disagree that there was a washbasin, a blue washbasin in which water was poured for Simelane to wash with?

MR VEYI: I just heard that for the first time, there was no washing basin there.

MR VISSER: All right. Did you wash on the farm?

MR VEYI: No.

MR VISSER: You stayed there for two nights and two days and you didn't wash, is that what you are saying?

MR VEYI: Yes, that is correct.

MR VISSER: Why didn't you wash on the farm?

MR VEYI: There were no facilities, there was no water, there was no time to wash.

MR VISSER: But there was a dam, I thought there was a dam with water in it?



MR VEYI: The water was dirty and we wouldn't wash ourselves in dirty water or filthy water.

MR VISSER: I see. What was the purpose do you think, why Simelane was hand- and footcuffed?

MR VEYI: In those time's language, Simelane was referred to as a terrorist and a terrorist was a person who was regarded as a dangerous person, that is why she was cuffed because it was possible for her to escape any time.

MR VISSER: Yes, of course. And the whole point about foot or ankle cuffs is that one walks with difficulty when your feet are cuffed, isn't that correct?

MR VEYI: Yes, that is correct.

MR VISSER: Did you sometimes help her when she had to go to the bush, to the toilet, help her to walk?

MR VEYI: She, as I have already explained that her physical condition had completely changed, she could barely walk, we were assisting her.

MR VISSER: Are you saying that she was unable to walk properly because she was injured, is that what you are saying?

MR VEYI: Yes, that is correct.

MR VISSER: Where was she injured?

MR VEYI: She would be kicked on her body, I think that was a result, her condition was a result of her assault of her being assaulted.

MR VISSER: I am asking you the question Mr Veyi, can you tell us of any particular injury that caused her to walk with difficulty?

CHAIRPERSON: He seems to suggest that it was the condition, it was a result of the assaults Mr Visser. Does it help to take it any further than that?

MR VISSER: As it pleases you Mr Chairman. So this physical condition that you talk about, would that have been the result of the assault by all the people that you mentioned, on her?

MR VEYI: Yes, that is correct.

MR VISSER: Mr Veyi, I want to refer you again to the newspaper reports, this time Mr Chairman, let me count the pages again, we really must paginate these now ...

ADV DE JAGER: If you could just continue, I think the last page is the typed page 15.

MR VISSER: I am referring to the newspaper clippings that were attached to Exhibit T, is that what you are also referring to?

ADV DE JAGER: (Microphone not on)

MR VISSER: Mine consists of 60, don't ask me how that happened. There may have been a page duplicated, but I am suggesting that we should mark them 15(a), etc.

ADV DE JAGER: 16, 17, carry on.

MR VISSER: Mr Chairman ...

CHAIRPERSON: Mr Visser, do we have the same sequence of articles? Won't you just refer to them as ...

MR VISSER: Chairperson, yes, I will do so. The first one, page 16 will be "Families plead with TRC", 17 will be "MK Agent's Death", 18 will be "Mother's Agony", 19 will be "Hope for Daughter Lingers", 20 will be "NCIS Suspense to Officials", 21 "MK Heroes Are Forgotten", 22 "SAP Informers Spied on ANC", 23 "Burden of Guilt Lifted", 24 "Cops Trapped and Killed MK Cadre", 25 "Police Strike Hard at ANC", 26 is a follow up page on that, I think Chairperson, it just says "motivated and protection", 27 "18 Trained Terrorists Apprehended", 28 will be - oh no, that is it, that is it Chairperson. Thank you I am sorry about that, we should have done that before, it kept on slipping our minds. Mr Chairman, I just want to refer now to page 24 of Exhibit T, there is a heading in the middle of the page "she was very beautiful" and just to place you in the picture here, Mr Veyi, I want to start reading directly under the heading "Constable X, that is you who prefers not to be named at this stage, said the black members of the Unit, guarded Simelane while the white members tortured her." Do you understand what I have just read to you?

MR VEYI: Yes.

MR VISSER: Did you tell the reporter that?

MR VEYI: Yes, that is correct.

MR VISSER: Why didn't you tell her the truth that all of you assaulted her?

MR VEYI: I am saying that today that all of us, we took part in assaulting her.

MR VISSER: But why didn't you tell the reporter that, this is a dishonest statement as it stands here, isn't it?

MR VEYI: I said when you are making a statement, you make a statement, but when the time to testify comes, that is where you get into the details of everything.

MR VISSER: And then the next paragraph appears to be a quotation of your own words which you told the reporter, it says-

"... she was very beautiful, but by the time they (the white Officers) were finished with her, she could not be recognised ..."

he said, did you tell the reporter that?

MR VEYI: Yes, that is correct.

MR VISSER: But why did you lie to her?

MR VEYI: I want you to explain where did I lie, how did I lie?

MR VISSER: Because you did not tell her that all of you assaulted her.

MR VEYI: As I am here in front of this Committee, that is the reason that made me to be here, is to come here and tell exactly what happened. This is what I am telling today.

MR VISSER: Yes, I just want to put to you what I put to you right in the beginning, it is because you resented your white Officers and you wanted to get back at them, and that is why you told the reporter that, isn't that so?

MR VEYI: Please explain how did I resent them.

TP

MR VISSER: Because you implicated them in this assault which you describe here, without telling her that you were also involved in it.

324

MR VEYI: I am telling about my role, I am saying that I also played a role in that.

MR VISSER: I am not talking about now, I am talking about then, what you told her, and this is something that went into the world Mr Veyi, this is a newspaper that is circulated. It is circulated in the country.

MR VEYI: I think as I am here before this Committee, saying what I am saying now, it can be published, because I know that there are media people around, they can also publish this and tell the people that this is the truth.

MR VISSER: Yes Mr Veyi, I think you are far cleverer than you pretend, you understand exactly what I am asking you, let's step off that. When the white Officers were away, Coetzee, Pretorius and Mong, from the farm, did Coetzee order you to interrogate Simelane?

MR VEYI: No, during their absence nothing was going on, except for her paging the album, photo album because she would be given the album and she would be given instructions to identify the people in the photo album and they would tell her that they will be coming back the following day to get the identity of the people who were in the photo album.

MR VISSER: But you say Coetzee never ordered you to interrogate Simelane to get information from her?

MR VEYI: I said she studied during his absence, we would stay there with her and she would page the album and she would tell us that she doesn't know anything and when they come, they would tell her that she was lying and they would assault her.

MR VISSER: Mr Veyi, I cannot believe that it is a language problem, that you can't understand a simple question or that you are quite incapable of giving a simple answer. Did Coetzee order you to extract information from Simelane while he was away from the farm?

MR VEYI: What he would tell us during his absence was that he would tell us to talk to her and tell her about the disadvantages and advantages of being a Policeman and let her page the photo album and try to identify the people.

MR VISSER: Forget about what Coetzee told you to do, did you ever interrogate Simelane when the whites were not there?

MR VEYI: No.

MR VISSER: Did you ever assault her while they were away?

MR VEYI: No.

MR VISSER: Now when - you told this Committee that after some time, you decided that what you were doing was wrong and you felt sorry for her, is that right?

MR VEYI: Yes, that is correct.

MR VISSER: When did this happen, in the first week, second week, third week or fourth week or the fifth week while you were on the farm?

MR VEYI: I cannot remember clearly but during the first days, when she came, she started, she was assaulted first at Norwood and she came there after a week or two and her condition had changed.

TP 7

That is when we got this feeling.

325

MR VISSER: Somewhere in the middle perhaps, while she was being kept there?

MR VEYI: There were only white Officers who were assaulting her, and we just told ourselves that we are going to back off, we were not prepared to take part in assaulting her.

MR VISSER: You, please stop me if I am wrong, but didn't you say in your evidence that it took place in the latter part of her detention at the farm, in the fourth week, thereabouts?

MR VEYI: Maybe I made a mistake, I cannot say I did not say that, or I cannot say I said so.

MR VISSER: That is not the point, the point that I want to ask you is this, after you came to the conclusion that what you were doing, was wrong and you felt sorry for her, and the white Officers left, did you take off her shackles, her cuffs from her arms and from her legs to allow her to move freely because you felt sorry for her?

MR VEYI: We would take the cuffs off.

MR VISSER: Both the arms and the legs?

MR VEYI: Yes, that is correct.

MR VISSER: Did you ever tell anybody that you did that? Did you tell your Attorney that you did that?

MR VEYI: I did not tell him because he did not ask me.

MR VISSER: You see, what surprises one with respect to you Mr Veyi, is at page 5 of Exhibit S, you dealt with this whole question of the cuffs and there you never made the qualification. You were addressing yourself to that and you never made the qualification to say that when the white people were not there, the cuffs were removed. At page 5 the top of the page, you simply say this -

"... she was kept at this place for more than a month, she was both hand- and footcuffed."

That is it. Now I am putting it to you that if it were true that you decided and in fact did remove her cuffs, then it was the easiest thing in the world just to say so. Don't you agree?

MR VEYI: I can see that I did not write that, but I am saying it now. I don't know where the difference is.

MR VISSER: You don't see it, all right. Were the white people still interrogating Simelane at the last week, during the last week when you were there?

MR VEYI: Yes, that is correct.

MR VISSER: Now at that stage, according to your evidence, she had now been interrogated for a month, a week in Norwood and three weeks on the farm, is that correct?

MR VEYI: That is correct, yes.

MR VISSER: And in all this time, she refused to cooperate?

MR VEYI: Yes, that is correct.

TP 11

MR VISSER: But what could possibly have been the point of continuing to interrogate a person who clearly doesn't want to cooperate and doing it for a month? What is the purpose of that, I mean it is rather stupid, isn't it? 326

MR VEYI: Mr Visser or Mr Venter is going to see this thing with his own eye because he doesn't understand the way the Police were operating, this was possible that this process could go on for more than a month because they would be hoping that this person might end up co-operating. That is the motivation behind that.

MR VISSER: Give us an example of another person that was interrogated for more than a month, who refused to participate right from the word go?

MR VEYI: As I am saying Nokuthula's case was different from the other cases because Joe who was from Angola, who was trained in Angola as an MK member, took two weeks and he co-operated. Peter Lengene who was from Botswana, he didn't take much, it was only less than a month and then he co-operated. During his first week of interrogation, he agreed immediately. The interrogation discontinued. With Nokuthula's case, she was totally refusing, it was something that was unusual to exceed two to three weeks, trying to turn a person without success. That is the reason why it took more than a month in her case.

MR VISSER: What you have just told us about Peter Lengene, is something that somebody else told you, is that right?

MR VEYI: I did not hear it from somebody else, I know him, I was in the Unit. When he was kidnapped, I was not present, but as part of my duty was to recruit the people, informers, giving them training, Peter Lengene was one of those people. I did not hear it from anyone else, I was working in that particular Unit.

MR VISSER: Mr Veyi, we have gone through this before, you were not present, you had nothing to do with the kidnapping and turning of Mr Peter Lengene, I put it to you before?

MR VEYI: Yes, I was not present during the kidnapping, but during the process of orientating him, telling him about the advantages and disadvantages of being a Policeman, not disadvantages, this is when he was staying at a safe house that was in Klipspruit and sometimes he would be at Mr Coetzee's in-laws in Rustenburg, he was staying there in a garage.

MR VISSER: Did you participate in the attacks on the power stations of either Bryanston or Fairlands or both?

MR VEYI: Yes, I was present at Fairlands and Bryanston.

MR VISSER: What was that about, why did you do that?

MR VEYI: It was part of my duties as a member of the Security Police.

MR VISSER: Mr Selamolela says that it was done to preserve the credibility of SAP agents in Swaziland, page 571 of Bundle 3 Chairperson, paragraph 2.

MR VEYI: Yes, I agree with you.

MR VISSER: You don't have to agree with me, do you agree with him that that was the purpose?

MR VEYI: Yes, that is correct.

MR VISSER: It was a false flag operation?

MR VEYI: Yes, that is correct.

MR VISSER: Do you know about the fact that a certain MK Mpho, was arrested while Simelane was held on the farm?

MR VEYI: I think Mpho's case is different to Simelane's case. Mpho's case is different from Nokuthula's case.

MR VISSER: Why don't you just answer the question?

MR VEYI: Will you please repeat your question?

MR VISSER: Please listen to the question then. Do you know about the fact that Mpho was arrested while Simelane was on the farm?

MR VEYI: He was not arrested because of Nokuthula.

ADV GCABASHE: The question was do you know of his arrest at the time that Nokuthula Simelane was at the farm, at that time?

MR VEYI: That was not the time of his arrest when Nokuthula was on the farm.

MR VISSER: Did you hear that Coetzee and Pretorius and Mong gave that evidence?

MR VEYI: Yes I heard so.

MR VISSER: Did you tell your Attorney that you disagree with them?

MR VEYI: He did not ask me about that.

MR VISSER: I didn't ask you whether he asked you, I asked you whether you told him.

MR VEYI: I did not tell him.

MR VISSER: Do you know about the arrest of some 17 other ANC members later?

MR VEYI: I was surprised to hear about the 17 people who were arrested.

MR VISSER: Do you find it impossible to answer a question? Did you hear of 17 people who were arrested later?

MR LAMEY: Later here at the proceedings or when exactly, can we just get clarity on that.

MR VISSER: They were arrested not at the proceedings Chairperson, my learned friend couldn't possibly think that I am saying that.

MR LAMEY: No, at the moment when he heard it. At the moment when he heard that.

CHAIRPERSON: Yes, will you try to specify Mr Visser.

MR VISSER: Do you know or did you hear that some 17 ANC or MK members were arrested towards the end of 1983 and in 1984?

MR VEYI: The people who were arrested were arrested in the beginning of 1984 if my memory serves me well, it was from 1984 upwards. They were not 18.

MR VISSER: All right. You see that is the point I tried to make right at the beginning, anything that is

TP 17

put to you on behalf of the white Officers in principle, you will oppose, but let's go on. Can you deny that those arrests were made possible from what was either directly or indirectly, learned from Simelane? 328

MR VEYI: I dispute that. The people who were arrested were not arrested because of Nokuthula, they were arrested by SWT66, that is Nompumelelo. They were arrested because of SWT66. There was Cheeche among them, Justice Ngedi.

MR VISSER: Yes, all right. Did you concede yesterday, did I hear you correctly to say that Simelane wrote down stuff on paper?

MR VEYI: I said I did not remember her writing down, but she was paging the photo album.

MR VISSER: Did you ever see her write anything on paper?

MR VEYI: No, I do not remember that.

MR VISSER: Can you deny that she wrote things down on paper when she was requested to do so by Coetzee?

MR VEYI: I cannot dispute that, perhaps she did during my absence, but I do not remember seeing her doing that.

MR VISSER: Do you recall Pretorius giving evidence that when they left, Coetzee told the black members who stayed behind with her to see to it that she writes down things on paper?

MR VEYI: Yes, I remember hearing that from him.

MR VISSER: Do you agree that that was correct? Is that evidence correct?

MR VEYI: I am saying during my presence, I do not remember that. Perhaps if he is referring to black members, he is also referring to the other people excluding myself. I was not the only black member there.

MR VISSER: Yes, we all know that. You stated in Exhibit S page 7, paragraph 9(b) right at the bottom of the page, you say -

"... she was seriously assaulted and as a result suffered injuries on her body  
..."

Now, we know what you are talking about when you refer to body, but later on and I am not quite sure where it was, but later on you stated that she was swollen, swollen over her whole body, did I hear you correctly, swollen all over I think you said? That was yesterday afternoon.

MR VEYI: I said her face was swollen, her body and she couldn't walk. I think the reason for that was because she was being kicked, but her face was swollen.

MR VISSER: And I think you also added her wrists I think Mr Chairperson, you pointed that out to me when I didn't hear the answer. I just wanted to make sure of that. What would have happened to you Mr Veyi, in 1983 if the ANC had suspected that you were a sell-out?

MR VEYI: If it happened that the ANC learned that I was a sell-out, the MK and the SAP Intelligence were working almost the same, but what was going to happen, the ANC would try to recruit me and let me go back to them and work there, work for them there and work here in South Africa.

MR VISSER: And are you naive enough to believe what you have just said?

INTERPRETER: Will the speaker please repeat the question.

MR VISSER: Let me rephrase the question. Were sell-outs not a legitimate target of MK?

MR LAMEY: Could we just get clarity, sell-outs as sell-outs from the Security Force's side, namely people that turned against the Security Force or sell-outs that turned against MK? From what area are we talking about? I think that is where the ...

CHAIRPERSON: Or was your client a Security Policeman?

MR LAMEY: Yes.

CHAIRPERSON: Your client was a Security Policeman all along?

MR LAMEY: Yes, I believe so.

CHAIRPERSON: Do you mean in that sense Mr Visser, what would happen to a Security Policeman?

MR VISSER: No, I mean sell-out in the sense that the ANC means it in their target selection. They talk about sell-outs, government stooges, meaning people whom they suspected of working with the system, with the government. Obviously Policemen fell under that.

CHAIRPERSON: They were the system, the Police were the system, people who worked with the system.

MR VISSER: They were the system, yes.

CHAIRPERSON: People who worked with the system, as I understood it, were members of the community who were assisting the system. So what is the ...

MR VISSER: Well, I understood this witness to be an undercover agent.

CHAIRPERSON: No, not him.

MR LAMEY: No.

MR VISSER: Oh well, all right, well then I can understand my learned friend's objection, all right, fair enough, I am sorry, then I withdraw that. I am sorry, then I withdraw that. Let me ask you this, if the ANC came to know that the Police had arrested Simelane and kept her on a farm for five weeks in seclusion, what do you think would their reaction have been if she were to be released thereafter?

MR VEYI: First of all Nokuthula Simelane was an MK member. Coetzee wouldn't take that risk of taking Nokuthula back to Swaziland knowing very well that he had kept her for that time. The ANC would know obviously that that person was sent, was on a mission. That was not possible.

MR VISSER: Why wouldn't Coetzee take her back to Swaziland after five weeks, what would happen to Simelane do you think?

MR VEYI: He wouldn't do that, first of all I do not remember since I started working for the Security Branch, I do not remember an MK member after being turned to work for the Police, and be taken back again. What used to happen was if the person works for the Police and if Coetzee does not want that person to work with him in the Unit, he would be taken, he or she would be taken to Pretoria, not for that person to be taken back again. That never happened, more especially with an MK member. If she did go back, she would go back there and there would be people who would be monitoring her movements in Swaziland, if she had co-operated with the system this side and she goes back to Swaziland, Coetzee would get a report that this person has changed her mind.



MR VISSER: Bluntly Mr Veyi, I really don't know what your answer has to do with my question, but wouldn't she be killed in all probability by the ANC, if they suspected that she had become an informer? 330

MR VEYI: Because she was trained, it would be impossible for Coetzee to take her back. There was never a case like that before, a case whereby an MK member is taken back after being turned to work for the system and then be taken back again to Swaziland.

ADV GCABASHE: Mr Veyi, Mr Visser is asking you to speculate because you were part of the Security Branch. He is asking you to speculate on what you think might have happened to Nokuthula if indeed she had been put back, speculate, he wants your opinion?

MR VEYI: As a person who was working for the ANC, Nokuthula that is, I think the ANC would tell her that they were having suspicions about her and they would tell her to go back to South Africa as if she was there to give a report, and then she would be a person, she would pretend as if she was working for the Police, therefore she would be working for the ANC and for the Security Police at the same time.

CHAIRPERSON: Do you mean they would turn her into a double agent?

MR VEYI: Yes, that is correct.

CHAIRPERSON: And use her in turn against the Security Police?

MR VEYI: Yes.

CHAIRPERSON: Yes Mr Visser.

MR VISSER: And is that what you think would probably have happened?

MR VEYI: Yes, that is correct.

MR VISSER: Yes. Can you deny that Simelane was in fact recruited as an informer? Can you deny that?

MR VEYI: What I didn't understand, if Nokuthula was recruited Selamolela and myself were working with those people, we knew about her and if she was recruited, we would know that she was recruited and she was working. Coetzee would tell us, that is why I was surprised when I heard him saying that she was already working.

MR VISSER: I understand that you are drawing inferences from what you know, but I ask you this, can you deny that in fact without you knowing it, Simelane had become an informer, can you deny that?

MR VEYI: Yes, I dispute that on the basis that during the last weeks of her being kept on the farm, she was still swollen and her condition was not changed and if she was really recruited and sent back to Swaziland with swollen face like that, what story would she give to the people in Swaziland.

MR VISSER: Yes, well of course, there is a conflict of the evidence you see, because the applicants whom I represent, disagree with you. They say that the assaults took place during the first week and thereafter only occasionally, you have a different story about that. Can you deny that she was registered as an informer in Soweto?

MR VEYI: I heard Superintendent Coetzee saying that. What my Attorney asked me or the family Attorney asked was the number, her number, but Coetzee could not tell her number. That is impossible for a person who is recruited, and I know Mr Coetzee is very, very brilliant, he will never

ever forget that number.

MR VISSER: Can you deny it or can't you deny it, are you speculating that it didn't happen because he cannot remember the number?

MR VEYI: I dispute that, because he could not tell the Committee about her number.

MR VISSER: Is that the only reason why you deny it? I am sorry, that is an unfair question, I withdraw that. You - I want to come to the meeting at the Fochville/Potchefstroom roads. Was Selamolela present?

MR VEYI: I was with him.

ADV DE JAGER: I am not sure whether it was, whether the road the four way cross-roads was identified as the Fochville/Potchefstroom road.

MR VISSER: (Microphone not on)

ADV DE JAGER: Oh, was Fochville mentioned? I know Carltonville was mentioned.

MR VISSER: (Microphone not on), page 5, paragraph 7 of Exhibit S. Nothing turns on it, I just want to identify where I am going to now, nothing turns on Fochville or any of the other names. The day where you met Coetzee on his own with his blue XR6, Ford motor car on the road at the crossing, where you saw according to you, Simelane in the boot of the car, that is the incident I am referring to, do you understand?

MR VEYI: Yes.

MR VISSER: Thank you. Was Selamolela present?

MR VEYI: I was with Selamolela if my memory serves me well.

MR VISSER: Yes, you said it all over, you said it in your statements, etc, etc, you said it in your evidence. So he also saw Simelane in the boot of the car?

MR VEYI: Yes, that is correct.

MR VISSER: And if he is talking the truth, he will come and confirm that as far as you are concerned?

MR VEYI: Yes, that is correct.

MR VISSER: And when you saw Simelane in the car, the boot was closed and Coetzee told you to go back to Soweto?

MR VEYI: Coetzee opened the boot, when I saw him there, I want to explain this so that you know what happened, what led to those circumstances.

MR VISSER: I am sorry, you lost me completely. Would you please explain that.

MR VEYI: We were now at the office, there were guards that were at Northum.

MR VISSER: Mr Veyi, I am sorry ...

MR VEYI: We were to go back to Northum to guard her, but before going to Northum, we would stop at the office and get instructions because we would go to the office and get instructions, because Mr

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Coetzee was not in the office, he was on the farm at the time, because when we saw him before that day, he had told us to go to the farm, but when we arrived at the office, the plan had changed. He said we should meet with him at Potchefstroom at the Security Branch office where Colonel Loots or Colonel Steyn was, who was involved with the Western Transvaal Security Branch. We drove to Potchefstroom to meet him in those offices. On our way on this Fochville crossing Carltonville, we saw an XR6 car approaching and then he flashed the lights, it was during the day, he stopped and we realised that that was him, Mr Coetzee that is. We went to his car and he got out of his car and he told us not to go to Northum because the guards were withdrawn. He instructed us to go back and then he said here is the lady, he opened the boot and then he told us that he was taking her back home. After that he closed the boot and then we went back. When I looked at her, she was cuffed on foot and her hands were at the back and they were also tied and then he closed the boot and then we went back to the office.

MR VISSER: I don't know how that is an answer to my question but you said something interesting, he opened the boot to show you the lady and he told you he was taking her home? That is what you have just said.

MR VEYI: That is correct.

MR VISSER: What did you understand by that?

MR VEYI: There was nothing else that I could think about because I was listening to what he was saying, he said he was taking her home.

MR VISSER: What did that mean to you, was he going to release her?

MR VEYI: Yes, I thought so because he was taking her home, it means he was releasing her.

MR VISSER: Now let's come back to my question, according to you, after you and Selamolela saw Simelane in the boot, Coetzee closed the boot and he told you to go back to Soweto?

MR VEYI: Yes, that is correct.

MR VISSER: That is the question I asked. My question to you is on your evidence, why do you think did Coetzee let you come down to Potchefstroom to do what he did?

MR VEYI: This meeting here on the way, we were on our way to Potchefstroom but when we met her on the way, stopping us, we did not know why did he leave Potchefstroom because when we moved from the office, we were going to Potchefstroom but we met with him on the way to Potchefstroom.

MR VISSER: But he said nothing to you, he told you nothing, he gave you no orders, he just showed you Simelane in the boot and he told you to go back to Soweto?

MR VEYI: That is correct, yes.

MR VISSER: Do you have any idea why he would have done that?

MR VEYI: I don't know.

MR VISSER: Well, neither do I. I want to put it to you that this meeting where Simelane would have been shown to you, is a figment of your imagination. It never happened, there was no reason for it and you can't even give any kind of explanation of why it should have happened.

MR VEYI: It happened.

MR VISSER: And lastly, your version is not supported by Mr Selamolela.

ADV DE JAGER: Mr Veyi, did you have radio's at that time in the motor cars, the Poliee vehieles?

333

MR VEYI: The way we were operating, we were working like underground Polieemen and our identity was not to be revealed because we were working with sensitive information and the informers were not supposed to know anything. Therefore we did not have radio communication.

ADV DE JAGER: Thank you.

MR VISSER: Mr Chairman, I see it is close to one o'clock, can I go on a little while longer. I want to refer you again to Exhibit S, page 6, paragraph 8 where you said that a few days later, that is now a few days after you saw her in the boot of the car, you spoke to Sergeant Mothiba who told you that Coetzee and Pretorius had shot, killed and buried Simelane at Rustenburg, is that still your evidence?

MR VEYI: Before talking to Sergeant Mothiba, I asked Mr Pretorius as to what happened to Nokuthula, and he said to me I must stop asking a lot of questions. I kept quiet. After a few days, after a day or two, as we were chatting in the office with Sergeant Mothiba, Mothiba told me and said to me Mchana, I am scared of these white men. I asked him why and then he said that they are very cruel. Then he said they shot her, killed her and buried her in Rustenburg.

MR VISSER: Yes. And if you have resentment for white Officers, that is a very nice story to tell, particularly because Mr Mothiba is dead and he can't come and tell what he says about this?

MR VEYI: It is the same, Mr Coetzee and Sergeant Mong's evidence, in their evidence they did not mention myself and Selamolela who are still alive, they were talking about SRA to Fred Langa who is no more and Sergeant Mothiba and I want to know, I am talking about Sergeant Mothiba who is no more and they mentioned Sergeant Mothiba who is no more, where is the difference now?

MR VISSER: Why would you think if Coetzee and Pretorius wanted to kill Simelane, why would you think would they tell Mothiba about it? One wouldn't expect that, would one?

MR VEYI: Will you please repeat your question?

MR VISSER: One wouldn't expect the murderers to spread the story around, would one, that they killed someone?

MR VEYI: The way he was telling me this, Sergeant Mothiba, it looked like he witnessed this incident.

MR VISSER: Oh, I see, so he was actually part of the killing of Simelane, as a witness or as an accomplice or whatever? Is that what you are saying?

MR VEYI: I think so because when he told me, it was not a hearsay, it is something that he was present when it was being done.

MR VISSER: Why would he have told you about this do you think? Is there any reason why you could think why he should come and tell you about that if he was involved?

MR VEYI: Perhaps he was not feeling good about it, so he decided to tell someone about it.

MR VISSER: Yes. Now when you spoke to the newspaper reporters about this alleged killing of Simelane, did you tell them that Mothiba told me this or did you state it as a fact that she was killed by Coetzee and Pretorius?

MR VEYI: I told them that Mothiba told me that Pretorius and Coetzee killed her.

MR VISSER: Well that takes care of that question Chairperson, it has just landed on the floor, all my

TP

papers. I see it is one o'clock, so the clock has come to my assistance.

CHAIRPERSON: Yes, we will take the lunch adjournment, and we will reconvene in 30 minutes' time.

MR VISSER: (Microphone not on)

CHAIRPERSON: We will meet you, yes.

COMMITTEE ADJOURNS

ON RESUMPTION:

NIMROD VFYI: (s.u.o)

CROSS-EXAMINATION BY MR VISSER: (cont)

Thank you Mr Chairman. Mr Chairman, as promised, I did draft a new list of Exhibit to bring it up to date, I think it has been handed to you, it should have been handed to you. It now goes to AA2 and I am going to hand up an Exhibit straight away within a moment or so, which will be Exhibit BB. Thank you Mr Chair. Mr Veyi, I better get my headset on, just before we adjourned, I asked you whether you had told the reporters that you heard from Mr Mothiba that Simelane was killed by Coetzee and Pretorius, do you remember that?

MR VEYI: Yes, I do remember that.

MR VISSER: What was your answer, I don't remember your answer?

MR VEYI: I said I told the reporters that Coetzee and Pretorius killed Simelane and I was told by Sergeant Mothiba.

MR VISSER: Page 17 of Exhibit T, Chairperson, in the right hand column, the third paragraph I just want to read that -

"... the Policeman, that is you, told the Sowetan that Simelane had been held captive by his Unit and tortured so badly her body was unrecognisable. He also claimed that Coetzee and Pretorius were responsible for Simelane's death."

Would that have been what you told the reporter Sharon Chetty?

MR LAMEY: Sorry, may I just give the article to him? Is it on page 17? Which column?

MR VISSER: My question is, is that a correct reflection of what you told the reporter?

MR VEYI: The heading about "MK agent/cop seeks amnesty", I would like you to go back to the one with the heading "Cops trapped and killed MK", that is what I said. I think this is a story that followed up from what I said.

MR VISSER: Which is this page?

MR LAMEY: It is pointed out, there are some loose leaflet pages that have also been distributed about articles in the Sowetan, there is a number 3, I don't know they are marked Exhibits, I know that they were distributed to the legal representatives. I think that is repeated in the Exhibit T, although the copy that we have before us on Exhibit T is not a good copy, the loose leaf copy in front of the witness is a better copy. I think he refers to what is on page 24.

MR VISSER: What on page 24 are you referring to?

335

ADV DE JAGER: (Microphone not on)

MR VISSER: He was told by Sergeant - yes thank you Chairperson, thank you Mr Veyi, I missed that, I am indebted to you. The other reference which I could find was at page, yes, that is page 17 and then at page 18, just a short sentence in the right hand column, first, second, third paragraph, "he claimed that she was killed after held for about two months", but you have also pointed out the other one where reference is made to the Sergeant, yes. Thank you. Now, in Exhibit S, at page 4, you listed the names of those people that you could remember, who came to the farm at Northum, is that correct? Is that correct?

MR VEYI: That is correct.

MR VISSER: All right, then at page 6 in paragraph 8, the second last sentence, you stated -

"... I just wish to mention that I had forgotten to mention that Constable Patrick Kobe was also used as a guard."

We are talking about the farm, is that evidence correct?

MR VEYI: No, I made a mistake here.

MR VISSER: Yes.

MR VEYI: After we discussed, the first heading of City Press, I made a mistake.

MR VISSER: Yes, and Mr Kobe was informed about what you said and he made a statement, Chairperson that was a statement that was handed to me by the Evidence Leader, it professes to be a statement under oath, but mine is not attested to, oh, I see, it is a retyped version of, yes, in fact, it is an affidavit, it is in fact an affidavit, and Chairperson, as I want to refer to one sentence of that, perhaps it should go in as Exhibit BB? BB1 and BB2? I remember it was placed on your table yesterday.

CHAIRPERSON: Yes, we have a hand-written statement by a Mr Kobe, yes and then somebody had retyped it for us, a typed version where he is referred to as Robe?

MR VISSER: Yes. Perhaps if you want to mark the manuscript BB1 and the typed version BB2. Thank you Chairperson. Now you say you made a mistake, all right. He says and I am referring to the last paragraph of BB2, the third last sentence, he says -

"... I also said, it should read he also said, that is you, also said he once heard from the late Mothiba that Warrant Officer Coetzee and his team once arrested a lady ..."

I am not so sure whether this should be, perhaps I should refer to the hand-written portion Chairperson, it doesn't make sense, yes, it should be he.

ADV GCABASHE: Second last line.

MR VAN DEN BERG: "I also said I once heard from the late...",

so it is "I".

Thank you, I will read it again -

TP

"... I also said I once heard from the late Mothiba that Warrant Officer Coetzee and his team once arrested a lady whom he never mentioned the name to me and said the lady disappeared and was killed by his team."

It must clearly refer to the witness or Mothiba? I also said I once heard ...

ADV GCABASHE: He heard from Mothiba Mr Visser.

MR VISSER: He, being Kobe?

ADV GCABASHE: Yes.

MR VISSER: Chairperson, yes, then it doesn't make sense at all, because it starts off by saying "he told me that he knew about the lady, he explained to me that the lady was being arrested by our Branch. I also said I once heard ..."

MR LAMEY: In the context it would appear a conversation between him and Veyi.

MR VISSER: Arrested the lady, well, then there is no point to be made out of this and I leave it Chairperson. I just want to put it to you or let me rather ask you, Exhibits AA1 and AA2 do I understand correctly that that is a statement you made to the South African Police, Mr Veyi?

MR LAMEY: May we just have an opportunity just to get that portion.

MR VISSER: Don't you recognise the statement?

MR LAMEY: It has just been placed before the witness, I was trying to find it.

MR VISSER: I thought he handed it in.

MR LAMEY: Yes, he did hand it in but when the question was asked, I took it out from my pile here and just placed it before him.

CHAIRPERSON: Is Mr Veyi looking at Exhibit AA1?

MR LAMEY: Yes.

CHAIRPERSON: All right Mr Visser?

MR VISSER: Mr Veyi, is that the statement that you made to the Police?

MR VEYI: I haven't read the whole statement but this is my signature.

MR VISSER: Did the police give you indemnity against prosecution, Mr Veyi? - the Attorney-General.

MR LAMEY: Mr Chairman, I don't know whether the Attorney-Attorney can as a matter of law, give indemnity to any witness.

MR VISSER: Well, what is the purpose of Section 24?

MR LAMEY: It's for the court, as I understand, to give indemnity.

MR VISSER: Yes.

MR LAMEY: You asked about the Attorney-General.

MR VISSER: Perhaps I should choose my words better then. Were you promised indemnity by anyone, Mr Veyi? 337

MR VEYI: I can't remember.

MR VISSER: I see. You can't remember whether you were promised indemnity in case you gave satisfactory evidence against someone else in a case, in this particular case of Simelane?

MR VEYI: No, I don't remember, I can't remember.

MR VISSER: Thank you, Mr Chairman, I have no further questions.

NO FURTHER QUESTIONS BY MR VISSER

CHAIRPERSON: It looks like that kind of indemnity doesn't bear very much weight nowadays, Mr Visser.

MR VISSER: ...(indistinct)

CHAIRPERSON: Yes, Advocate Gcabashe?

ADV GCABASHE: Is it Gobe or Kobe?

MR VEYI: Kobe.

ADV GCABASHE: K-O, Kobe, thank you.

CHAIRPERSON: Yes, Mr van den Berg?

MR VAN DEN BERG: Mr Chairperson, I have a logistical difficulty at the moment. There is a person who might be a potential witness, but he has time constraints and he needs to leave fairly soon. Could I have a short adjournment, no more than five minutes, just to make those logistical arrangements? I apologise for the inconvenience. I know that we're running well behind schedule and at the rate we're going, it looks like we will battle to finish by the close of business tomorrow. So I apologise for that.

CHAIRPERSON: Yes.

MR VAN DEN BERG: Thank you, Mr Chairperson, I'm indebted.

CHAIRPERSON: Yes, we'll stand down for a few moments.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Mr Veyi, you're still under oath. Mr van den Berg?

NIMROD VEYI: (s.u.o.)

CROSS-EXAMINATION BY MR VAN DEN BERG:

Mr Chairperson, I'm indebted for the short adjournment. I have been able to make other arrangements in respect of this particular witness.

Mr Veyi, can we just start with your relationship with the other members of the unit that you were part of. If we can just take them one by one. Sergeant Mothiba, what was your relationship with him? How long had you worked with him? That's the kind of information I'm looking for.



MR VEYI: Sergeant Mothiba, I knew him very well. I started working with him when I joined the Police Force in 1978. He was stationed in Meadowlands. I met him in Meadowlands in 1978, and then in 1981 I joined the Security Branch in Protea when I again met him. We then worked in the same unit until he died. I can't remember when he died, but it was the mid-'80s.

MR VAN DEN BERG: And this work that you did as a member of the Security Branch, this was fairly dangerous work, you were involved with the tracking down of information relating to MK cadres and to other members of the liberation movement. Would you agree with that assessment?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: And it would be necessary that the people that you worked with were people that you trusted?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: If we can move on. Sergeant Langa, RS269 I believe his code was, is that correct?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: When did you first meet him?

MR VEYI: I can't remember well when he joined but when he joined the Police Force, I met him then for the first time. It was the early '80's. I think it was '81 or '82, I'm not sure, but it was the early 1980's. We were the people who were training him when he started at the police, until he died.

MR VAN DEN BERG: And what was his role in your unit?

MR VEYI: Langa was an undercover police. He was playing the same role as Mr Mkhonza's role.

MR VAN DEN BERG: Was he a person who reported to the same office as you did or was he a person who - ja, let me ask you that way, was he a person who reported to the same office as you did?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: And he would report for duty regularly at Protea?

MR VEYI: No, those who were working undercover were not doing the same job as ours, they were not reporting at the office.

MR VAN DEN BERG: So where and when did he report?

MR VEYI: He would phone and then he would tell where he was and Mkhize would send Lazarus or myself to pick him up. We'd meet in a certain place and then he would interview him..

MR VAN DEN BERG: So your unit was the way in which both Langa and Mkhonza reported to the police, their reporting would be through your unit, is that correct? Do I understand you correctly?

MR VEYI: They were the police, but they were working undercover. They were reporting to Coetzee. Each and every report was reported to Coetzee.

MR VAN DEN BERG: Now what was the position in respect of Peter Lengene, when did you first meet him?

MR VEYI: I met Peter Lengene, if I still remember well, in 1982.

MR VAN DEN BERG: And from the evidence we'd heard earlier today, this was after he had been abducted in Botswana and he had agreed to work for the South African Police, is that correct?

MR VEYI: That is correct.

MR VAN DEN BERG: What was your relationship like with him?

MR VEYI: I ...(indistinct) were working together with Peter Lengene after he was turned to be a police official. He worked the same way as us, together with Lazarus.

MR VAN DEN BERG: There's a policeman referred to in these papers, by the name of Sefuti. I understand he was a member of your unit, is that correct?

MR VEYI: That is correct.

MR VAN DEN BERG: What was his role in the unit?

MR VEYI: Sefuti was from the Police College. We were doing the same job, the normal police duties.

MR VAN DEN BERG: And then I presume the same goes for Radebe?

MR VEYI: Yes.

MR VAN DEN BERG: How did the RS programme work? What I'm really interested in is who reported to who? To whom did informers report, to whom did the undercover policemen report?

MR VEYI: RS programmes was operating this way; in Protea there was an office, a recruiting office where everybody who was joining the Police Force would be at that office. We would go to that office and then observe these people and if we could see that a particular person can be able to work with us, we would take that particular person to our office. And in our office that person would tell us whether he wants to be a police, and then after that, because there were a lot of them, there was a group of people, we would recruit that particular person and then Coetzee would tell him that there's a short way that he would use to help him to be a police, he won't take six weeks to be a police. We would then take his papers, his particulars and fill in the papers.

He would then give out a story at home to the people who saw him, that he's a police. He would say that he doesn't want to be a police anymore, he stopped being a police, he found a job somewhere else. And then after that he would be trained and we would tell him and explain all the ways of infiltration and then he would be sent to that particular organisation to infiltrate.

MR VAN DEN BERG: Is this - are we talking her about people like Mkhonza and Langa, is that who you referred to now? Are they examples of what you referred to?

MR VEYI: Yes, all those who were RS were police.

MR VAN DEN BERG: Now the informer network, to whom did the informers report? For example, SWT66? And I don't want you to mention her name.

MR VEYI: All of them they were reporting to Coetzee.

MR VAN DEN BERG: Did they report directly to an officer like Coetzee, or were there instances where they might report to somebody like Langa or Mkhonza?

MR VEYI: They were reporting directly to Coetzee.

MR VAN DEN BERG: Was there ever a situation where an informer would report to an uncover policeman? - just by way of general.

MR VEYI: No, that didn't happen. I don't remember something like that happening.

340

MR VAN DEN BERG: Would there have been a reason why that didn't happen, or are you saying it simply didn't happen?

MR VEYI: I don't remember it happening.

MR VAN DEN BERG: When you last saw Nokuthula Simelane, your version is that she was in the boot of Coetzee's car. You remember giving that evidence?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: Can you describe her condition at that time, what was she wearing and what did she look like?

MR VEYI: As I've already said, the last time I saw her at the farm when I was going back, she was swollen. The condition had not changed. Her face was swollen and she was wearing a brown overall, police overall.

MR VAN DEN BERG: Do you know a policeman by the name of Garibe? Does the name mean anything to you?

MR VEYI: Radebe we're talking about here?

MR VAN DEN BERG: Not Radebe, Garibe; G-A-R-I-B-E. Does that name mean anything to you?

MR VEYI: Yes, I do remember Garibe.

MR VAN DEN BERG: Was he involved in this incident at all?

MR VEYI: There were different units in Protea. We were in the Intelligence Unit and Garibe, if I remember well, was in the group that was under Captain Grobbelaar. When there was an information that there's a terrorist somewhere, that particular group would go there and arrest the terrorist.

MR VAN DEN BERG: So if I understand you correctly, this person was not involved in this incident at all? He was not involved in either guarding or the interrogation of Nokuthula Simelane?

MR VEYI: No, I don't remember him there, he was not there.

MR VAN DEN BERG: I want to show you a photograph. This is the photograph that was given to me, or put in my possession by Mr Wagener and Mr Visser, the photograph of what is described here as MK Mpho. Do you recognise this person at all?

I'm afraid, Mr Chairperson, there aren't copies of it, but I'll hand it up once he's had a look at it.

You will see that there is a person crouching, wearing dungarees. Do you recognise that person at all?

MR VEYI: I can't see this person clearly. I don't know him.

MR VAN DEN BERG: Sorry, I wasn't listening to the interpretation, what was the answer?

MR VEYI: I don't know him.

TP 11

ADV DE JAGER: Sorry, are there two people on the photo?

MR VAN DEN BERG: Mr Chairperson, the photo contains three individuals, two white persons who from the look of the photograph, appear to be policemen and then a person with his hands cuffed behind his back, kneeling. And then the designation on the back of the photograph is "MK Mpho", with the date "1983". Can I hand the photograph back to the Panel, Mr Chairperson?

CHAIRPERSON: Yes, it was handed to us at some stage and it drifted back to Mr Wagener. I'm not sure if that was handed in as an exhibit, not really.

MR VAN DEN BERG: My recollection is that it wasn't handed in as an exhibit and I don't think that anything particularly turns on it. It's certainly different from the Mpho who was the handler of Nokuthula Simelane, the person known as Gilbert Twala.

CHAIRPERSON: The Swaziland one, okay. Yes, no, we've got enough documents.

MR VISSER: We make no point that it's the same person as my learned friend's witness, not at all.

MR VAN DEN BERG: Thank you, Mr Chairperson. I'm indebted to Mr Wagener for the loan of his photograph, or his client's photograph.

The group of 18 ANC members who were arrested, reference is made to it in pages 25, 26 and 27 of Exhibit T, and from what I understand from the evidence of Messrs Coetzee and Pretorius, included the arrest of Cheche. What is your recollection as to when that occurred? Was it at the same time as the arrest or the detention of Simelane, was it before, was it after?

MR VEYI: I think it was the following year when Cheche was arrested. If I still remember well it's either 1984 or 1985, but it was after Nokuthula's arrest.

MR VAN DEN BERG: Now I put it to both Coetzee, and I think I put it to Pretorius as well, that Cheche is a person known as Justice Ngedi and that he was arrested on the 25th of May 1984. Can you confirm or deny that?

MR VEYI: That might be so.

MR VAN DEN BERG: In your opinion, what led to the arrest of Ngedi and the 18 other, or the 17 other people?

MR VEYI: I can't remember the 17 people, but Ngedi's arrest was after Frank and Scotch used to frequent in Swaziland, and they would come with the report and there was RS SWT66 was also in Swaziland, in Manzini. He was from Swaziland. He brought a report to Coetzee and then RS SWT66 was close to Cheche, he knew him.

According to the information I got, he had to recruit a person here in South Africa and take that person to Swaziland. So he told Coetzee, he gave this report to Coetzee and then he took Selamolela and said that he was the one who was supposed to be introduced to Cheche because Cheche was the one who was supposed to come to South Africa. Selamolela then went, they went to the border post in Oshoek. That is where Cheche was arrested.

They were together with Nompumelelo, and the three of them with Lazarus were arrested there. I still remember that when Coetzee came back, it was during the night. He came with Cheche because when he went to Swaziland, Nompumelelo phoned and said that they were on the way, together with Cheche and then Coetzee drove to the border post where he was arrested, where Cheche was arrested.

MR VAN DEN BERG: When you say "they" were on their way to the border post, you refer to Cheche and to - was it RS269, to Langa? Do I understand you correctly, that he was one of those

TP 01

people?

MR VEYI: SWT66 and Selamolela and Cheche. There were three of them. SWT66 phoned, confirming that they found Cheche and they were on the way out.

MR VAN DEN BERG: Sorry, I misunderstood you. Thank you for correcting me.

ADV GCABASHE: Sorry, just for some clarity. All you are really - not all, but one of the things you are saying is that SWT66 was instrumental in Cheche's arrest?

MR VEYI: That is correct.

ADV GCABASHE: Thank you.

MR VAN DEN BERG: Did you have any dealings with SWT66? Did she pass information on to you? Did you handle her at all?

MR VEYI: As I've already said, SWT66 I knew her. According to the information she was from Swaziland, staying in Manzini. Most of the MK cadres that were in Swaziland would go and hide weapons in her home.

I remember one time when Coetzee sent us together with Selamolela to Swaziland, that SWT66 said that there were weapons. Her boyfriend was a cadre. We went there and then she gave us those weapons. We brought them back to the office, explosives and AKs.

MR VAN DEN BERG: I don't want to revisit the aspects of the interrogation which you testified to at some length during your cross-examination by Mr Visser, and I think that we have sufficient evidence insofar as that is concerned. I just want to ask you about the participation of Strongman, the Mozambican. Was he also involved in both the interrogations and the assaults?

MR VEYI: Strongman was working, was doing the same job as I was. He took part in interrogations, because sometimes when an informer was to be fetched or an RS, Coetzee would send him to go and pick up that particular person, together with Malung(?).

MR VAN DEN BERG: Sorry, I want to return to the aspect of SWT66.

ADV DE JAGER: Could we just have clearance here. Did Strongman participate in this interrogation?

MR VEYI: Yes, that is correct, he took part, he participated. As I've already said, the black members also took part. The fact that he was guarding the farm is not true.

ADV DE JAGER: But what language did he speak, what did he ask her? Do you remember anything about what his role was in the interrogation?

MR VEYI: For example, if she was assaulted he would take part as any other person who was there, and he was speaking English and Zulu. He knew Zulu, a little bit of Zulu.

CHAIRPERSON: Yes, carry on, Mr van den Berg.

MR VAN DEN BERG: Sorry, I want to return to the, one or two further aspects surrounding SWT66. Do you know if she was ever withdrawn from Swaziland?

MR VEYI: I can't remember that. When I was still working at the Security Branch - I left there in 1986 and I was ...(indistinct) to the CIDs in Cape Town, when I left she was still working.

MR VAN DEN BERG: And do you know if she had any contact with the person who has been

referred to in these proceedings as Mpho, the handler of Nokuthula Simelane?

MR VEYI: No, I can't remember. If I still remember well, I can connect Mpho and Cheche's case. I can connect her with Mpho and Cheche's case. After Cheche was arrested he came to South Africa and then when he arrived here in South Africa, he was together with the Investigation Team of Protea. They were taking him to John Vorster. On the way to John Vorster -they took him to John Vorster and then they brought him back. On the way, under the chair the police had placed weapons and then on the way he took one firearm and he pointed them and they jumped out of the car, they ran away, and then he drove the car and he abandoned the car in Diepkloof. That's when he managed to escape the first time.

After his escape, Mkhize sent Nompumelelo back to Swaziland to report because according to my understanding they were working under the command of Gabuza Sephiwe Nyanda. He was sent to tell him that this person had not escaped, he was working together with the police. And then if I still remember well he got a lift from Swaziland back to South Africa. On the way she arrived back here and then she was together with an informer. After some time he was then arrested again. Then she went back to Swaziland and Nompumelelo reported again.

MR VAN DEN BERG: If I understand - I could extract from what you've told us, the aspects which I believe are relevant, it would seem that this SWT66 was well placed and that she had access even to a person like Gabuza, who is, that was the MK name for Sephiwe Nyanda. Did I understand that correctly?

MR VEYI: Yes, that is correct. As I've already said, most of the MK cadres that were in Swaziland, they trusted her. Everything that she said they were listening to it, because when Cheche escaped Gabuza took Nompumelelo's story as the truth. He then sent her again so that she could be ... (indistinct) the second time.

To add on that, on the case of the 18 cadres who were arrested, after Cheche was arrested I remember we were going to Dube to SWT66's uncle. We were with her and we told her to call, to phone Swaziland because there were people who were supposed to pick her up, and we told her to tell them that everything was okay, she arrived and she is fine. Then Cheche would phone and the people would come to South Africa and then they would be arrested. There was nothing else you could do because we were there with him and then he was phoning.

MR VAN DEN BERG: This discussion that you had with Sergeant Mothiba, during which he apparently said that he was afraid of these white men and that they were very cruel. Can you just give us a bit more information about that? You said to us in-chief and in cross-examination, that this took place some few days after you last saw Nokuthula Simelane. Can you remember where the discussion took place, were at the offices, were you out on an assignment? Can you give us that sort of information?

MR VEYI: If we would be in the office we would just chat generally about the work and I think it was about a week when we had come back from Northum.

Usually what used to happen is Coetzee and them would then give us the feedback about what happened, but in this case we did not get any feedback, they kept quiet. It is when I then decided to ask Pretorius where this girl was, what happened to her. He then told me not to ask a lot of questions. Two days after that, after asking that question we were, I was together with Sergeant Mothiba and then he said to me: "Mchana, I'm very scared of these white policemen". I ask him why, he said: "They are very cruel", and I asked why, he said: "They shot her and they killed her, they buried her in Rustenburg". That was the end of the story.

MR VAN DEN BERG: Where did this discussion take place, in the office?

MR VEYI: We were on the premises, Protea premises.

MR VAN DEN BERG: Was anybody else present when this discussion took place?

MR VEYI: At the Security Branch you would not just talk anything, sensitive things, you would tell a person that you trusted, that you knew that he would keep the secret, because if that kind of information can be revealed, if it could be found out that you knew something that you were not supposed to know, that would place you in a dangerous situation.

MR VAN DEN BERG: I accept that it wouldn't have been discussed with other members of the police, would it have been discussed with other members of the unit, were there other members of your unit present when Mothiba, when you had this discussion with Mothiba or was it just the two of you?

MR VEYI: It was just the two of us.

MR VAN DEN BERG: Did you repeat the story that Mothiba had told you, to any of your other colleagues?

MR VEYI: No, I didn't repeat it to other colleagues, I first started talking about this, I think it was in 1995.

MR VAN DEN BERG: That was when you saw the newspaper story.

MR VEYI: That is correct.

MR VAN DEN BERG: Mr Chairperson, the original or the newspaper clipping which gave rise to this whole thing is not before you, so I'd like to hand it up to through this witness. I have made copies available to my learned friends, I think that only the Panel are not in possession of this. It's a series of three photostat copies. If I could hand a copy to the witness and then hand up copies to yourselves and I'll get him to identify it and to sort it out.

Mr Veyi, if you have a look - can we mark that, Mr Chairperson? There is some duplication between this and what is contained in the other bundles, but if perhaps we could mark it CC 1, 2 and 3. There should be a single copy of each page, 3 pages.

MR LAMEY: Which one will be 1, 2 and 3?

MR VAN DEN BERG: The first page ...(indistinct) - sorry, my microphone, I apologise, is a copy from the Sowetan and headed:

"Missing in Action"

... with a poor photograph on the left-hand side.

CHAIRPERSON: Is that with the 2 written on it, and "perpetrator"? Switch on, switch on your mike.

MR VAN DEN BERG: With the 2 at the top, yes.

CHAIRPERSON: Is that the first one?

MR VAN DEN BERG: That's the first one.

CHAIRPERSON: Is it a single page?

MR VAN DEN BERG: It's a single page and then later from the same edition of the Sowetan, a page

headed:

345

"Mom's question: Where is my ehild?"

CHAIRPERSON: Alright, so that's the second article?

MR VAN DEN BERG: That's the second article.

CHAIRPERSON: Now let's start marking them. The first one will be CC1, the one that you've just identified. And the second article in that same edition of the Sowetan, dated January 27, 1995, will be CC2. Which is the next article, Mr van den Berg?

MR VAN DEN BERG: The next article is, there's already a copy of this before you in Exhibit T, but that's the Sowetan of the 6th of February, Monday the 6th of February, headed:

"Cops trapped and killed MK cadre"

CHAIRPERSON: Yes, so you want that ...

MR VAN DEN BERG: As CC3.

CHAIRPERSON: Marked Exhibit CC3. Yes? What is the next one?

MR VAN DEN BERG: Those are the three that I handed up.

CHAIRPERSON: Oh, then this is just simply duplicates, extra copies.

MR VAN DEN BERG: Well, if I could retrieve those from you at the end of the hearing.

CHAIRPERSON: Yes, very well.

MR VAN DEN BERG: Thank you, Mr Chairperson.

CHAIRPERSON: Yes, I think we're now on board. Mr van den Berg?

MR VAN DEN BERG: Mr Veyi, can I refer you to CC1? Do you recognise that?

MR VEYI: Yes.

MR VAN DEN BERG: Is it correct that this is the article which caused you to go to the Sowetan to speak to the reporter, Sharon Chetty?

MR VEYI: That is correct.

MR VAN DEN BERG: And this is an article dated 27th of January 1995?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: And then what you told the Sowetan is recorded in CC3, the article dated the 6th of February 1995, is that correct?

MR VEYI: That is correct.

MR VAN DEN BERG: And that's the article on which you've been cross-examined by Mr Visser earlier on today?

MR VEYI: Yes, that is correct.

TP



MR VAN DEN BERG: Now at a stage you were referred to Exhibit T and page 17 thereof, do you have that exhibit in front of you? Do you have it in front of you, Mr Veyi? 346

MR VEYI: Yes.

MR VAN DEN BERG: Would you agree with me that that photograph is the same photograph which appears on CC1?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: And the newspaper seems to have used the same photograph continually throughout its reporting of this matter?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: Obviously this is an article of a much later date, the 22nd of May 1997?

MR VEYI: Yes, that is correct.

MR VAN DEN BERG: No further questions, Mr Chairperson.

NO FURTHER QUESTIONS BY MR VAN DEN BERG

CHAIRPERSON: Thank you very much, Mr van den Berg. Ms Thabethe?

MS THABETHE: No questions, Mr Chair.

NO QUESTIONS BY MS THABETHE

ADV GCABASHE: I'm going back to the very beginning of the evidence-in-chief. You were talking about knowing that somebody was going to come to the Carlton Centre and meet Mr Mkhonza. Did you know it was a woman? That's the note I have here. It wasn't clear to me.

MR VEYI: I knew that there was a person who was going to come there. I didn't know what kind of a person.

ADV GCABASHE: Then my next note is about your role in the interrogation of Nokuthula. You said she was questioned about whether she was trained etc., etc., what answers did she give you? Just give us examples of the answers she gave you.

MR VEYI: I think that she did say that she was trained. I don't know where Coetzee got it, but we heard that this lady was trained. That is when we made a follow-up, asking her where she was trained and who were other people that she knew.

ADV GCABASHE: Now assist me, I just want you to tell us about what you heard, what you heard from Nokuthula herself, not what you might have heard from Coetzee or Pretorius, just what you yourself heard during that interrogation. Did you hear her say that?

MR VEYI: I don't remember hearing her saying that.

ADV GCABASHE: You then talked about going up to the farm, you were picked up at the police station. Who did you find on the farm the first time you went there?

MR VEYI: I can't - I don't remember clearly who we found there in the farm, but there were people that were there.

TP 61

ADV GCABASHE: White officers, black officers or just civilians?

MR VEYI: There were police. I think there were both black and white police. I can't remember clearly.

ADV GCABASHE: We have heard evidence about Mr Mothiba's involvement in recruiting Nokuthula, do you know anything at all about that, that he was this father figure and he would be explaining certain things to her? Do you know anything at all about that?

MR VEYI: No, I don't know anything about that.

ADV GCABASHE: Ah, you know when you were being cross-examined by Mr Visser I think it was, you were asked about Nokuthula's stay at the Norwood flats, and essentially what you were being asked about was that you said she had been there for a week before she was taken to the farm, alright? And then you were asked if you were sure and you said "yes", and my note may be incorrect, but what I've got here is:

"Yes, because after she was taken to Norwood, I stayed three days at Norwood guarding her. I didn't know when she had arrived."

Now the "I didn't know when she had arrived", lost me a bit. Just help me through that one, - unless I recorded it incorrectly.

MR VEYI: I said I didn't know when she arrived there because that was my first time to go there after she was taken in Carlton Centre. I don't know whether she was taken from Carlton Centre to Norwood, but I first guarded her in Norwood. That is what I meant.

ADV GCABASHE: So you are simply explaining that you don't know if she went directly from Carlton Centre to Norwood? You went there three days after Saturday, is that correct? - three days after Saturday.

MR VEYI: That is correct.

ADV GCABASHE: Then you were asked about where you washed when you were at the farm, and you said you wouldn't wash in that dirty water in the tank, in the dam, remember that?

MR VEYI: Yes, we didn't wash.

ADV GCABASHE: Nokuthula, how did she wash? I mean you were there when she went to wash, what happened?

MR VEYI: I don't remember seeing her washing herself.

ADV GCABASHE: Nothing was made available for her to wash herself?

MR VEYI: I don't remember anything like that.

ADV GCABASHE: And on the occasions that she was thrown into the dam, she was thrown in fully clothed in that brown attire that she was wearing?

MR VEYI: Every time that she was there she was wearing that brown overall.

ADV GCABASHE: I understand that. So when Radebe threw her into the dam she was still in that brown overall?

MR VEYI: Yes, that is correct.

ADV GCABASHE: And she would keep it on wet as it is, she wouldn't get a change of clothing or anything like that?

MR VEYI: It would dry, she would not change it.

ADV GCABASHE: Is Radebe still alive?

MR VEYI: Yes, I think he is in the Fraud Unit here in Johannesburg.

ADV GCABASHE: Do you have any idea why he hasn't applied for amnesty in this matter?

MR VEYI: I don't know.

ADV GCABASHE: Ah, my last question. SWT66, did she know Nokuthula, or did Nokuthula indicate that she knew SWT66, or both ways?

MR VEYI: No, they didn't know each other according to my knowledge.

ADV GCABASHE: Thank you. Thank you, Chair.

CHAIRPERSON: Mr Veyi, where did the white officers wash?

MR VEYI: I can't remember, I don't know where they will wash.

CHAIRPERSON: Now what kind of water was it in this tank? You say it was dirty water, but what was it, what was in the water?

MR VEYI: I don't know whether it was water that was used to, that was drunk by the cows because that was a farm.

CHAIRPERSON: Was it just an open dam, the top was open?

MR VEYI: It was a sink and then water inside.

CHAIRPERSON: And it was standing high on the ground, it wasn't sunk into the ground, it was on top?

MR VEYI: It was high.

CHAIRPERSON: If you stand on the ground outside, can you look into the dam or is it too high for you to look in? Must you get on or what?

MR VEYI: Yes, you were able to see inside.

CHAIRPERSON: But on what level would it be, would it be, would you have to stand on your toes for example or would you stand normally and be able to look over the top? What did you have to do to be able to look inside?

MR VEYI: If you just standing up normally you were able to see.

CHAIRPERSON: Over the top?

MR VEYI: Yes.

CHAIRPERSON: Now when Ms Simelane was taken to that dam, did she still have the foot-cuffs on?

MR VEYI: She was always foot-cuffed, there was no time when she was not cuffed. So yes, she was

TP 9

foot-cuffed.

349

CHAIRPERSON: We don't have an idea as to how tall she was, now if she had to stand up straight outside the dam, would she be able to look inside?

MR VEYI: Yes, she was able to see.

CHAIRPERSON: If you had to go and wash in the dam, what would you have to do to be able to wash in the dam?

MR VEYI: You wouldn't be able to wash there because the water was dirty, there was fungus there. So you wouldn't be able to wash there.

CHAIRPERSON: Would you - assume the water was clean in the dam and you wanted to wash in the dam, what would you have to do?

MR VEYI: You were to jump inside the dam, to the dam.

CHAIRPERSON: So you'll have to - you must get over the side and into the water inside the dam?

MR VEYI: Yes, that is correct.

CHAIRPERSON: And you'd have to stand up there or whatever?

MR VEYI: Yes, that is correct.

CHAIRPERSON: Now you say that when Radebe put Ms Simelane into the dam he had to help her not to drown, did I understand that correctly or what?

MR VEYI: What I'm saying is, this dam was used when she was tortured. He would put her in and then take her out of the dam.

CHAIRPERSON: Would he hold onto her, put her in the water and hold onto her or what would he do?

MR VEYI: Yes, that is so.

CHAIRPERSON: Now if he left her, if he didn't hold onto her what would have happened to her?

MR VEYI: Maybe she would drown because she was hopeless.

ADV GCABASHE: Helpless or hopeless?

MR VEYI: She was cuffed.

ADV GCABASHE: Oh.

CHAIRPERSON: Yes, that's fine. Did you see the white policemen giving Ms Simelane painkillers?

MR VEYI: I don't remember seeing that when I was present.

CHAIRPERSON: Did you see anybody giving her medicine, medication?

MR VEYI: I didn't see anybody doing that.

CHAIRPERSON: Did she complain about pains or any discomfort or anything in that nature?

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MR VEYI: Yes, when she was with us she would complain.

CHAIRPERSON: About what?

MR VEYI: About pain and the fact that she wanted to go home.

CHAIRPERSON: And I assume you had nothing to give her, no medication to give her?

MR VEYI: No, we had nothing to give her.

CHAIRPERSON: Did you see any - inside this room, did you see any toiletries?

MR VEYI: No, there were not, I didn't see them. They're not there.

CHAIRPERSON: Did you ever see Ms Simelane using any toiletries?

MR VEYI: I don't remember seeing her.

CHAIRPERSON: No I think Mr Visser asked you about this and I wasn't sure what you were explaining. Was there a place where one could put toiletries or anything like that into a cupboard or /hatever? Was there anything like that in the room?

MR VEYI: No, there was nothing like that.

CHAIRPERSON: Yes, thank you.

ADV DE JAGER: When she complained about pain and having nothing to take for the pain, didn't you think you should buy some disprins or aspros or whatever and take it with you next time you got to the farm?

MR VEYI: No, that did not occur to us.

ADV DE JAGER: Well you were - she complained and you said you were worried because she wasn't treated well, why didn't you do something about it?

MR VEYI: We did not think about it.

ADV DE JAGER: You said in answer to a question, that she was always foot-cuffed, is that correct?

MR VEYI: Yes, that is correct.

ADV DE JAGER: Didn't you tell us that when the whites left you took off her cuffs?

MR VEYI: Yes, we used to do that when they were not present.

ADV DE JAGER: Yes, so she wasn't - you answered here:

"She was always foot-cuffed. At no time was she not cuffed."

So that wasn't correct?

MR VEYI: When the whites were present she would be cuffed but when the whites were not there we would remove the cuffs.

ADV DE JAGER: So at times the whites weren't there, not one of them, is that correct?

MR VEYI: Yes, sometimes they would go and leave the black officers behind.

TP

ADV DE JAGER: For how long would they leave?

MR VEYI: They would be away, sometimes they would leave in the morning and come back late.

ADV DE JAGER: Yes, and sometimes did they stay away for a few nights?

MR VEYI: I do not remember them staying away for the night, but they used to leave the farm and come back again.

ADV DE JAGER: When these explosions at Bryanston, or is it Roodepoort, took place, Sandton, were they away or were they on the farm?

MR VEYI: The Bryanston incident had long passed. It's a different incident from this one.

ADV DE JAGER: Because I don't know whether I'm wrong, perhaps somebody could correct me, but I believe the bombing was round about the 9th and the 10th of September.

MR VEYI: It had nothing to do with this incident. Those are two different incidents.

ADV DE JAGER: Weren't those incidents while she was still on the farm?

MR VEYI: No, they did not take place when she was still on the farm.

ADV DE JAGER: Right. So for the whole four or five weeks while she was on the farm, did they whites return every day and were they present at night? - for the full period. Did they sleep there very night?

MR VEYI: Yes, I can say so, but the person who did not sleep there every day was Sergeant Mong, but Coetzee and Pretorius, even if they leave during the day or in the morning, they used to come late, even it's about eleven, the time is about eleven, but they used to spend all the nights there.

ADV DE JAGER: For the full four/five weeks, or at least when you were there?

MR VEYI: Yes, during my presence I used to see them spending nights there. I don't know during my absence, but when I was there they would be there also.

ADV DE JAGER: So did Simelane ever sleep without foot-cuffs or handcuffs?

MR VEYI: She was always cuffed.

ADV DE JAGER: And you people ...(intervention)

MR VEYI: If the handcuffs were removed, the foot-cuffs would remain.

ADV DE JAGER: Yes. So when did you take of the cuffs when they weren't there, only during daytime?

MR VEYI: Yes, we would remove them when they were not there.

ADV DE JAGER: And weren't you afraid they would come back and find that she's not cuffed?

MR VEYI: We knew that we would hear the car when they were coming and then we would put back the cuffs.

ADV DE JAGER: And at a stage you were told to tell her of the advantages that could come her way if she would join the police, is that correct?

MR VEYI: Yes, that is correct.

ADV DE JAGER: Who did that, who told her about that? Who was her spokesman?

MR VEYI: Sometimes it would be myself, sometimes I would interpret or Sergeant Mothiba and Lazarus would do the job.

ADV DE JAGER: What language did Sergeant Mothiba speak?

MR VEYI: He was a Sotho-speaking person.

ADV DE JAGER: So he couldn't speak directly to her in Zulu?

MR VEYI: He was able to speak Zulu.

ADV DE JAGER: Now why did you have to interpret for him?

MR VEYI: We would only interpret from Afrikaans into Zulu.

ADV DE JAGER: No, but when he spoke to her and he told her about the advantages, why should you interpret between the two of them?

MR VEYI: There would be an interpreter if Pretorius or Coetzee were there.

ADV DE JAGER: And if they weren't there, there wasn't an interpreter?

MR VEYI: There would be no interpreter.

ADV DE JAGER: Now didn't Mr Mothiba speak to her about the advantages in the police and she should rather co-operate and so on, then she would be treated better when the police weren't there, the white people?

MR VEYI: We would talk to her, all of us, telling her as to what to do and what were the advantages.

ADV DE JAGER: Yes. And Sergeant Mothiba was the father figure, wasn't he? You addressed him as, what was it, Malume?

MR VEYI: Yes, he was older than us, that is correct.

ADV DE JAGER: And was he a fatherly figure? - the old man.

MR VEYI: Yes, that is correct, we used to respect him.

ADV DE JAGER: And how did he treat Ms Simelane?

MR VEYI: We were - he was treating her the same as we were treating her.

ADV DE JAGER: So if the whites weren't there he was treating her nicely?

MR VEYI: Yes, that is correct.

ADV DE JAGER: Did you any soap there to wash with or any toiletries?

MR VEYI: No, we did not have that.

ADV DE JAGER: Did anybody have toiletries there, soap and...?

MR VEYI: We did not wash ourselves, we would only go and wash ourselves at home. The same 353  
used to apply with him.

ADV DE JAGER: So do you say Ms Simelane never washed during the whole period of four/five weeks?

MR VEYI: I can say that is so.

ADV DE JAGER: And you told us that she even soiled herself.

MR VEYI: Yes, that is correct.

ADV DE JAGER: And there was no washing thereafter?

MR VEYI: No, there was no time to wash. He would perhaps during their absence, if we were there she would try and clean herself. We used to do anything secretly. We used to, we tried to organise some water but we did not want the people to see us doing that.

ADV DE JAGER: Yes, okay you tried to organise the water, did you manage to organise water?

MR VEYI: That was done secretly when the whites were not there.

ADV DE JAGER: So secretly you organised water and she was able to wash herself, is that correct?

MR VEYI: Yes, that is correct.

ADV DE JAGER: Now can you give me one single reason why you denied all the time that she washed herself?

MR VEYI: What made me to say that is because it's something that was no allowed, we were doing it out of our own and we were doing it secretly.

ADV DE JAGER: Yes, and did you secretly give her medicine?

MR VEYI: No.

ADV DE JAGER: Why not?

MR VEYI: I do not have a reason for that.

ADV DE JAGER: Because according to you she was in need of medicine.

MR VEYI: Yes, that is correct.

CHAIRPERSON: Just one other thing, what did she have to eat?

MR VEYI: There were takeaways that we would buy whenever we go outside. Sometimes we would buy food for her at the shop in Northum.

CHAIRPERSON: What kind of food did you buy?

MR VEYI: Fish and chips and some bread.

CHAIRPERSON: And did she eat that?

MR VEYI: Yes, she did.



CHAIRPERSON: Yes. Mr Lamey, re-examination?

RE-EXAMINATION BY MR LAMEY: Thank you, Mr Chairman.

Just on the last question, the question was asked of you; "Did she get food to eat?", what do you understand by food in this regard?

MR VEYI: I'm talking about something that you eat.

MR LAMEY: Alright. You say that you, when the whites were not there you used to buy food for her at Northum, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: Mr Coetzee testified, perhaps also Pretorius, I can't remember, they made mention of "rat-packs" that was given to her. Do you know anything about that?

MR VEYI: Yes. She used to rat-packs but if you eat that for a long time, it's not very nice. It's not nice at all.

MR LAMEY: I just want to clarify this, when the question was asked about the food you did not mention the rat-pack. Do you draw a distinction about a rat-pack and the food that is referred to?

INTERPRETER: Excuse me, Chairperson, the mistake was coming from the side of interpreter. I interpreted them as takeaways. He did mention the rat-pack.

CHAIRPERSON: ...(inaudible)

MR LAMEY: I hear the English and the interpreter apparently says now that she's made a mistake, she interpreted it as takeaways, but he in fact said rat-packs.

CHAIRPERSON: Yes, that's what I wanted to hear from you, whether you heard the explanation that the interpreter gave.

MR LAMEY: Yes.

CHAIRPERSON: Alright.

MR LAMEY: Okay, so what you mean is, to sum it up, she was given rat-packs as food, but at the times when the white policemen were not there and you also used to buy additional food at ... (intervention)

MR VISSER: That's not what he said, Chairperson. When did he ever say it was only at times when the white people were not there? He didn't say that.

CHAIRPERSON: Yes, just ask him, Mr Lamey.

MR LAMEY: Perhaps I made a wrong assumption, I thought that is what he said. I merely wanted to sum it up.

CHAIRPERSON: ...(indistinct)

MR LAMEY: At what times did you buy the food at Northum, the so-called takeaways?

MR VEYI: We would buy them when the whites were not there.

MR LAMEY: Alright. And at the times - did she get food in any form when the whites were there?

MR VEYI: She would eat those rat-packs.

MR LAMEY: Okay.

CHAIRPERSON: I'm sorry to intervene. What is a rat-pack?

MR VEYI: It is a package of food in the box, soldiers' food in a box where you get a tin, tinned stuff, baked beans with biscuits in. The tin in the box with baked beans and biscuits and something called post toasties.

CHAIRPERSON: Is it a sort of a thing that you can, a provision that you can carry around with you and if you're on the move you can use it to eat, to feed yourself, like a soldier? I think you said "like a soldier".

MR VEYI: Yes, it was used by police and soldiers who were on border, who were performing border duties.

CHAIRPERSON: Alright.

MR LAMEY: Can I just ask you this, Mr Veyi ...(intervention)

ADV DE JAGER: So it was bully beef and post toasties and beans and biscuits and tinned mielies, that kind of thing?

MR VEYI: Yes.

MR LAMEY: Mr Veyi, from my own experience in the army, a rat-pack was not a thing that the Force members were very fond of, what was the situation in your case?

MR VEYI: I said it's not a very nice package, more especially if you eat for a very long time.

MR LAMEY: Now at the times when you went away to buy takeaways, food at Northum, was it for your, did you also buy food for yourself and for Simelane, or did you give some of your food to Simelane, or did you only buy food for Simelane or what was the situation?

MR VEYI: We used to buy food for ourselves and we would buy something for her and eat, all of us.

MR LAMEY: Okay. You testified that at times during interrogation she was also thrown into the dam, is that correct? - or put into the dam by Radebe.

MR VEYI: Yes, that is correct.

MR LAMEY: Were the white police officers present during those stages?

MR VEYI: That was done per their instructions.

MR LAMEY: Now you also testified that she soiled herself during interrogation sessions, is that correct?

MR VEYI: Yes, that is correct.

MR LAMEY: Now the stages when she was thrown into the dam, was the throwing into the dam connected with the fact that she soiled herself or wet herself, or was it not connected with that?

MR VEYI: Sometimes he would put ... into the dam without being soiled and that would take place as a result of being thrown into the dam. That used to be the case sometimes.

MR LAMEY: Do you say that as a result of the throwing into the dam she would soil, also soil herself? I don't really understand what you are saying there.

MR VEYI: Yes, that is correct.

MR LAMEY: If she soiled herself during interrogation -well did it happen during interrogation that she soiled herself, but not at the stage when she was put into the dam?

MR VEYI: Yes, that used to happen also.

MR LAMEY: And when that happened was she put into the dam? - when she soiled herself.

MR VEYI: No.

MR LAMEY: So what you're saying is she was put into the dam at stages when it had nothing to do with the soiling of herself?

MR VEYI: Yes, that is correct.

MR LAMEY: But then she would sometimes perhaps soil her in the dam?

MR VEYI: Yes, that is correct.

MR LAMEY: Now you were asked questions by Mr Visser, and it was put to you that you resented the white policemen and he referred particularly to your white superiors in the police at that stage. What prompted you, what led you to make this statement or speak to the reporter of the Sowetan?

MR VEYI: I would like to rectify something first. This newspaper article that was shown to me, that was quoted, the one that he quoted, that I resented my superiors, I don't know where that comes from because it's not what I said in the report. I think he showed me the different newspaper.

MR LAMEY: Ja, initially Mr Visser showed you page 17 of Exhibit T. That is a report dated the 22nd of May 1997, was that report made as a result, well was that the report which was made, which you made to the Sowetan, which was published in the Sowetan, dated the 22nd of May 1997?

MR VEYI: No, I know nothing about that report, the one that he had.

MR LAMEY: Now I just want to bring you back. What caused you to report, to speak to the reporter of the Sowetan and to report what you know about the missing lady? What caused you to do that, why did you do it?

MR VEYI: After reading the article, the newspaper article something came to my mind. I remember that I know what happened and my conscience was bothering me and that made me to go to the newspaper.

MR LAMEY: Now the article that you have read, we have articles before us, could you point out the article which placed a burden on your conscience and which led you to speak to the reporter?

MR VEYI: It is the one that is referred to as CC1.

MR LAMEY: It's called:

"Missing in action"

TP 11

... with the photograph of Simelane, is that correct?

357

MR VEYI: Yes, that is correct.

MR LAMEY: Now before you were asked by Mr Visser about what you have purportedly stated to this reporter, Sharon Chetty, in the report published on Monday, February the 6th, which is marked Exhibit CC3, did you have an opportunity to look at that carefully before the questions were asked?

MR VEYI: Will you please repeat your question, it's not clear to me.

MR LAMEY: When Mr Visser asked you questions he quoted from the report published in the Sowetan, Monday, February 1996 and he put it to you that you have said that to the reporter, prior to this question coming up during cross-examination, did you have prior to that a careful look at the contents of that report in the newspaper?

MR VEYI: No, I did not get that opportunity.

MR LAMEY: Now I want to get back to this aspect which Mr Visser has pointed out. The report states here:

"Constable X, who prefers not to be named at this stage ..."

Let us just stop there. Is it correct that you preferred not to be named at that stage?

MR VEYI: Yes, that is correct.

MR LAMEY: Now further reports said:

"Constable X, who prefers ... said the black members of the unit guarded Simelane, while the white members tortured her."

Is that the totality of what you told her? In other words, that the black members merely guarded her - will you refer now, the report doesn't specify Norwood or Northum, it's general.

"... said the black members of the unit guarded Simelane, while the white members tortured her."

Is that the totality of the involvement of the members of the unit, that you conveyed to her there?

MR VEYI: Yes, that is correct.

MR LAMEY: Okay. So what you hear at that time when she says that the black members of the unit guarded Simelane, while the white members tortured her, you say that is, you told her that, but that is not correct. Do I understand you correctly?

MR VEYI: Yes, that is correct.

MR LAMEY: What is the correct version?

MR VEYI: Something that I did not mention here is this. Even us black officials we did play a role when she was being guarded. That is what I told the Committee here. That is what I did not mention initially.

MR LAMEY: So you didn't explain the participation of the black members in the assault to the reporter, is that correct?

MR VEYI: Yes, I did not mention anything about the role that we played.

MR LAMEY: Now at that stage why did you not mention it to her?

MR VEYI: I do not have a reason.

MR LAMEY: Do you say you have not reason? But there must have been a reason in your mind. Can you just explain what your thinking was at that stage?

MR VEYI: There was no reason.

MR LAMEY: What was your rank at the stage of the abduction of Nokuthula Simelane?

MR VEYI: I was a Constable.

MR LAMEY: And at the stage when you, in 1995, when you made this report to the reporter of the Sowetan, what was your rank then?

MR VEYI: I was still a Constable.

MR LAMEY: Were you still a Constable?

MR VEYI: Yes.

MR LAMEY: When did you become a Sergeant?

MR VEYI: In September 1995.

MR LAMEY: Now if you say you had no reason why you said that to her, do I take it that it was not a result of resentment to the white members that you said that? You know that when you referred only to the white members involved in the torture and not the black members.

MR VEYI: No, that is not correct.

ADV GCABASHE: I'm sorry, Mr Lamey, I missed the question. I heard the answer but I actually missed the question.

MR LAMEY: Let me just repeat that. You said, at the time when you made the statement to the Sowetan, that while the white members tortured her, and you said only the black members guarded her and you did not make mention of the involvement in the assaults and so on of the black members, you said that you can't think of a reason why you told her that. But my question is, did you specifically mention the involvement of the white members, relating to the torture, because of resentment against the white members?

MR VEYI: No, that is not true.

MR LAMEY: Now you were also asked about your involvement in the Lengene incident, who was abducted. Did I understand your evidence correctly that you, the kidnapping part you were not involved in?

MR VEYI: Yes, that is what I said.

MR LAMEY: At what stage, where was Lengene or where was he at the time when you - let me ask you this first, what was your involvement during his, after he was abducted?

MR VEYI: I only interfered when we were recruiting him, as we wanted him to be a member of the

Police Force.

MR LAMEY: Was it during the stage when the recruitment exercise was applied?

MR VEYI: Yes, that is correct.

MR LAMEY: Now where was he at that stage? - that is now Lengene.

MR VEYI: He was in Rustenburg with Superintendent Coetzee's in-laws. Sometimes he would be in Klipspruit West.

MR LAMEY: Were you also at Rustenburg?

MR VEYI: Yes, I used to go there.

MR LAMEY: Were you at Klipspruit?

MR VEYI: Yes, I would visit Klipspruit. There was a safe-house there.

MR LAMEY: This place in Rustenburg, what place was that?

MR VEYI: That was Mr Superintendent wife's home. Mr Superintendent - Mr Coetzee's wife's home.

MR LAMEY: Was that - did you regard that as, what you call a safe-house?

MR VEYI: No, that was not a safe-house, it was just a place because sometimes Coetzee, if he was leaving, if he wanted to go to his in-laws and work from there he would take people with him because he was working all the time. He was always working.

MR LAMEY: Now the place at Klipspruit, what was that? - when he was recruited or interrogated there?

MR VEYI: It was a safe-house where we used to - it was a safe-house where the informers, informants used to be interviewed.

MR LAMEY: What is a safe-house?

MR VEYI: If you work with an informant, he or she must not be seen by people. There should be a house that is secluded or a house that would be used secretly so that their identities could not be revealed.

MR LAMEY: Mr Chairman, I just want to point out that in the statement of Lengene, for what it may be worth, there is reference made to Rustenburg, and then in paragraph 34 thereof, page 339, there's also reference made that he was taken to a certain house, driven to a certain house in Klipspruit West.

MR VISSER: Well will my learned friend just tell you whether he thinks it was before or after he had been recruited, Chairperson. Let's get the correct facts on record.

MR LAMEY: Well perhaps Mr Veyi could comment on that. When he was taken to Klipspruit, how far was the development in this interrogation and recruitment process?

MR VEYI: It was still in process when he was taken to Klipspruit.

MR LAMEY: By that time was he already recruited? In other words, already turned or not yet?

MR VEYI: We were still busy with the process.

TP

MR LAMEY: Are you saying that it did not happen yet?

MR VEYI: Yes, it was not yet over, we were still busy with it. We were not trusting him yet. Sometimes he would be on leg-irons.

MR LAMEY: Now in paragraph 36, Lengene stated that he was, after that, after being at Klipspruit ... (intervention)

ADV DE JAGER: This last answer:

"We were still not trusting him".

So did you already recruit him, but you wanted to keep an eye on him, you were not trusting him, or why did you add "we were not trusting him yet"?

MR VEYI: We were still busy with the process of recruiting him. You won't just trust a person completely during that process. That is why I said so.

MR LAMEY: Perhaps I should ask you this, at that stage at Klipspruit was there positive signs about his recruitment, from his side? In other words, that is was different from the situation at Rustenburg.

MR VEYI: There were positive signs that he will change and he eventually changed and we could trust him.

MR LAMEY: Okay. When did he eventually change and when was the situation that you could trust him?

MR VEYI: After he had changed he used to be in the company of one person and if you happen to be with him, you even monitor his behaviour and you would even detect from what he says, whether he can escape or not and then you would go back to Coetzee and give a report. At some stage he would be sent, he would be given a mandate alone and then he would come back alone.

MR LAMEY: Ja, but what I want to ask specifically, that situation at the stage, when it reached the stage that he could be trusted, was that still while he was at Klipspruit or was he then somewhere else?

MR VEYI: He was in Klipspruit.

MR LAMEY: So when he was taken to Klipspruit he hadn't reached that stage, but during the time at Klipspruit the recruitment of him improved, is that what you're saying?

MR VEYI: Yes, that is correct.

MR LAMEY: Then in paragraph 36 he has stated that he was also taken to Benoni, do you know of that? Do you know anything about that?

MR VEYI: I do not remember anything about Benoni.

MR LAMEY: I want to take you back to the situation at Norwood. Perhaps I should just ask you in general, and I'm referring now to the situation at Norwood as well as at Northum. Let me rather leave that, I'll bring you back to Norwood. When you were - you testified that the first time that you got to Norwood was - in examination by the Commissioner Gcabashe, three days after the Saturday, in other words the third day after the Saturday that she was abducted you got to Norwood first, is that correct?

MR VEYI: Yes, that is correct.

ADV DE JAGER: So that would be the Tuesday?

MR VEYI: I think that is so.

MR LAMEY: Okay. How long - did you stay there at Norwood, when you were there, continuously, in other words, the whole day or did you also come and go from there?

MR VEYI: I would spend a night there and I would go and spend two nights there and leave perhaps on the third day and we would change shifts.

MR LAMEY: How many nights in total did you spend at Norwood? Can you remember?

MR VEYI: I'm not certain about that, but I can say that maybe I spent four nights there.

MR LAMEY: When you spent nights there, did you only spend nights there or were you there also during daytime?

MR VEYI: If you arrive there during the day you wait and you spend the night there and you wake up there the following day.

MR LAMEY: Were you there - during the time that you were there, were you there 24 hours out of 24 hours of the day?

MR VEYI: Yes, that is correct.

MR LAMEY: Now, and the white policemen?

MR VEYI: Yes, they would be there for the whole day and go away and come back late in the evening because they were staying there.

MR LAMEY: Who also stayed at those quarters, if you talk about them or "they"?

MR VEYI: If I remember very well in those quarters, Block A and Block B, Coetzee was staying at another block and Pretorius was at the other block and even Pretorius was there. I think even Ross was staying there, if my memory serves me well. It was a place that was occupied by police.

MR LAMEY: Now the - during the interrogation sessions and the assaults during those interrogation sessions, did that happen at day, during day time or night time or both?

MR VISSER: Mr Chairman, I have been sitting here very patiently, listening to my learned friend starting a whole new case in re-examination, because that's what it boils down to. My learned friend is entitled, if this were a court of law, to deal with matters of clarification arising out of that which was asked of his witness by either the judge or other people. We know this is not a court of law and we know that we're here to try and establish the truth, but at some stage or other there's got to be some semblance of discipline, Chairperson.

I already find myself in a situation here where I'm now going to have to start asking you to recall my witnesses, to deal with matters which have not been raised, which we hadn't been aware of, which were never put to your witnesses. And Chairman, I don't want to restrict my learned friend unnecessarily, but there is a limit. My learned can't just now start leading evidence-in-chief afresh while he's in re-examination. And I would submit to you, Chairperson, he's exceeding the bound of what is reasonably permissible by way of re-examination.

CHAIRPERSON: Mr Lamey?

MR LAMEY: I'm not exactly clear. My learned friend's objection in very general terms. I don't know whether he's objecting to my questioning about the Norwood aspect only or whether he refers to the other aspects as well.



MR VISSER: It's a general objection and it's just getting to the point now where it's becoming absurd. "Who lived in the flats?", etc., etc.

CHAIRPERSON: That's common cause, Mr Visser. In fact Coetzee and your people already told us who lived there, so it's really just, it's common cause. So I don't know where ...(intervention)

MR LAMEY: Can I just take ...(intervention)

CHAIRPERSON: Now the Norwood flats issue was part of what you cross-examined on and I assume that Mr Lamey is dealing with that.

MR LAMEY: Well my learned friend has said it's in general. What he's in fact saying to the Committee is, I am exceeding the bounds of re-examination in total, from the outset. Now if I need to take the time, I can take the Committee back step by step on each and every aspect which I started on re-examination. I started with the dam - well I mentioned the dam incident. That was clearly arising from questioning from the Committee. I also went further with the newspaper report. I went -I mean it is clear, I know that I, on this particular aspect about Norwood, it goes a bit slow at this stage, but I really want to get at an aspect which is important but also to clarify aspects regarding my position. And I must get to that and I must be very clear about this.

CHAIRPERSON: That's what I assumed.

ADV DE JAGER: But is it really of importance whether they stayed in Block A or Block B at Norwood? Could that assist us in coming to a finding in this thing?

MR LAMEY: That was perhaps a side issue that came unnecessarily in, Mr Chairman, but what I'm really aiming at is to get clarity on what really transpired at Norwood, as far as this witness is concerned, the involvement of other members etc., and it also ...(intervention)

CHAIRPERSON: Yes, I understand, I know exactly what you're saying and that's what I thought you were getting at. Unfortunately your client did refer to things which are already on the record, Block A and Block B. We know exactly where the people lived. So go ahead, please just ...(intervention)

MR VISSER: Mr Chairman, ...(intervention)

MR LAMEY: I see it's 4 o'clock.

MR VISSER: It's 4 o'clock. Can we be excused, unfortunately I've had to make certain arrangements and we had to assume that we could leave at 4 o'clock.

CHAIRPERSON: I assume you still have some way to go, Mr Lamey.

MR LAMEY: I'll have to unfortunately clarify certain aspects. It's for various reasons important.

CHAIRPERSON: Yes, yes. No, you must deal with the matter as you're instructed to. Now we're going to adjourn at this stage, but we have another matter on the role and that's the Mbali matter, where an interested party and the applicant, one of the applicants had to travel over some distance and had to go to some expense in order to attend.

This particular matter that we're bearing now is taking much, much longer than we had anticipated. We had worked on the assumption that we would be able to deal with the Mbali matter. We intend to do that in fact. We have one of the applicants who came up from Cape Town, we've got an interested party who came from Umtata.

We would like to deal with that matter tomorrow, as soon as it's convenient to do so. We have been informed that it is something that we in all likelihood would be able to dispose of in the course of the

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day tomorrow, and we would like to accommodate those parties in regard to that particular matter.

We will adjourn at this stage and we'll reconvene at 09H30 tomorrow morning.

COMMITTEE ADJOURNS

## Report for the Office of the National Director of Public Prosecutions

Since the meeting with the above office in early February 1999, the Commission has begun a process of establishing mechanisms for identifying potential cases. The following is a report on progress thus far.

### A: Categories of violations

In discussing possible prosecutions, we have identified a range of categories and/or issues around which we believe prosecutions can be considered. We would recommend that there be some discussion around these categories to determine viability as well as prioritisation.

#### 1. Torture:

Much of the Commission's data on torture is to be found in HRV statements. However, the 'private' nature of torture and absence of witnesses frequently makes corroboration difficult. Bearing this in mind, the Commission has begun to draw up an initial list of all security force members implicated in torturing more than three victims. This list is extensive and includes many rural cases.

Another possible approach is to look at amnesty applications and hearings where torture was conceded and to identify the names of co-perpetrators who have not applied for amnesty. Such a list could then be checked against our HRV statements for further evidence. This figure would considerably reduce the potential number of cases. It would however be more difficult to extract as few security force members applied specifically for torture. Rather, evidence of torture often only emerges during amnesty hearings and is thus embedded in transcripts rather than on the TRC database.

#### 2. Post-Capriivi hitsquads:

The Commission has a fairly rich seam of data and information on this category. It is also one which we believe would be relatively easy to proceed on immediately given that at least one case was previously prepared by the ITU but not prosecuted [also see KZN report].

#### 3. Cases involving a cover-up by the security forces:

There are a number of potential cases in KZN including the cover-up by senior policemen of the Trust Feeds massacre. Another potential case would be the cover up of the Ribeiro killings by senior military personnel, but this may already be an AG case.

#### 4. Destruction of Documents

The Commission conducted a lengthy enquiry and investigation, assisted by the National Archives and the Human Rights Commission, into the destruction of literally scores of tons of documentation relating to state security in the early 1990s. Much of this destruction, authorised by the former government and overseen by the National Intelligence Service, clearly constituted unlawful destruction. In the course of this investigation, much documentation was collected and an overall report was drawn up, as well as comprehensive reports dealing with the SAP, the SADF and the NIS. Verne

Harris of the National Archives was centrally involved in this investigation and would be prepared to provide assistance.

**5. Gun-running**

The Commission conducted an investigation into gun-running and received several amnesty applications in this regard. While the investigation was inconclusive, a comprehensive report and other documentation is available. This area is seen to be significant in its capacity to begin to unravel networks involved in fomenting violence in the 1990s.

**6. Assassinations**

The Commission has received amnesty applications in respect of several of the high profile assassinations. Not all implicated persons applied in all of these cases and thus possible prosecutions could arise. In other cases such as the assassination of Joe Gqabi in Zimbabwe and Victoria Mxenge, no amnesty applications were received. We are currently assembling information on the Gqabi case.

**7. Winnie Madikizela-Mandela**

Extensive documentation has been collected around Mrs Madikizela-Mandela and the MUFC and a comprehensive investigative report was compiled. [We need to establish whether this is currently being pursued by the AG's office]

**8. Samora Machel**

Also a possible AG matter.

**9. Target identification**

The Commission investigated the process whereby the security forces identified targets the purpose of which included, inter alia, physical elimination. This included a range of structures, sometimes involving more than one arm of the security forces/ intelligence structures. Such evidence is primarily contained in amnesty applications and section 29 hearings. While there was insufficient time to conclude this investigation, there is evidence regarding the establishment in the mid-1980s of a target identification centre within, firstly military intelligence and subsequently the project section of Special Forces.

However, much of the evidence given to the TRC, while acknowledging the existence and purpose of such target identification groups, refers to planned but subsequently cancelled operations. In other words the gaps in our evidence are in directly linking specific processes of target identification with specific killings. One possible exception would be cross-border raids which are discussed below.

**10. Cross-border raids**

While difficulties clearly exist in bringing charges for the execution of cross-border activities, there are no doubt possibilities of conspiracy to murder charges relating to the planning of such operations, which invariably took place on SA soil.

The Commission did receive several amnesty applications relating to cross border activities from former Security Branch members, but virtually none from the SADF, although SADF members are cited in a number of the Security Branch applications.

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Clearly, the possibilities of extradition to a large degree influenced the willingness to disclose involvement in such activities and would presumably be a factor to be considered.

## **B: Other Regional Cases**

In addition to the above, we have asked personnel in regions to identify possible cases for prosecution. This process is logistically difficult owing to the fact that regional offices have closed and documentation has been transferred to the national office in Cape Town. Further, regional staff except for those servicing the Amnesty Committee are no longer in the employ of the Commission. Despite this, we have received some feedback:

### **1. KZN**

The KZN region has begun to identify cases where people who did not apply for amnesty have been implicated. The KZN region also has a number of HRV statements implicating perpetrators where such information was not previously disclosed during investigations due to perceived police partiality.

This is a mammoth task and needs to be weighed up in relation to:

- The likely unwillingness, given the current climate in KZN, of amnesty applicants to testify against their leadership
- The capacity of Chris McAdam's office to deal with new cases considering his involvement in Richmond;
- The mooted Commission of Inquiry into political violence in KZN.

Nonetheless, some preliminary work has been done and a report is attached.

### **2. Eastern Cape**

A former researcher in this region has been approached to identify potential cases. Her report is attached and deals primarily with cases in East London and the western part of the Eastern Cape. A further report is awaited dealing with the eastern side of the Eastern Cape (primarily Ciskei and Transkei regions).

It should be noted that the list of cases drawn up here differs from the KZN one in the sense that it takes as its starting point HRV statements where specific concerns were raised by deponents regarding the failure of the criminal justice system in investigating and successfully prosecuting such cases. Given pressure on resources, a policy of low level corroboration was adopted for most HRV cases and thus most of such cases were not comprehensively investigated by the Commission. This would mean that such cases would still require extensive ground work and investigation. However, such cases may well be important in ensuring that justice is seen to be done in cases that are not well known and do not involve profiled people.

There is a need for some discussion around such issues before proceeding as a different and lengthier modus operandi is required to identify such cases more broadly.

### **3. Western Cape**

A very preliminary list is attached.

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#### 4. Gauteng

Former and current investigators have similarly been approached and a report is awaited.

#### 5. Free State

The former Orange Free State fell under the Commission's KZN office. There are a number of potential cases here, but given the pressure on time, KZN personnel have requested assurance that some capacity exists (or will be established) to deal with such cases before they proceed.

### C: Section 30 notices and S29 investigative enquiries

A preliminary spreadsheet of section 30 notices sent out is available. This list only reflects Section 30 notices sent out during the preparation of the TRC Report and does not include all S30 notices arising from individual HRV statements or those sent out by the Amnesty Committee following an amnesty hearing.

Also available is a table of all Section 29 investigative enquiries that were held, reflecting person, issue and whether amnesty applications were received.

### D: Analysis of indemnity and amnesty applicants

We are also currently engaged in a process of identifying whether perpetrators implicated either via HRV statements or in amnesty applications previously applied for indemnity. In this regard our IT department has devised a programme whereby lists of those on the various indemnity lists in the 1990 to 1994 period have been correlated with amnesty data. This spreadsheet is currently being analysed. The IT department are engaged in a similar exercise in relation to HRV data.

### E: Further issues

1. It needs to be emphasised that the Commission has very limited resources at present. The Commission itself is in suspension; the remaining HRV component consists of one Commissioner and one researcher; regional offices have closed and documentation transferred to the national office; and the Amnesty Committee is hard-pressed to complete the amnesty process on schedule.

Further, it needs to be understood that our HRV material is currently archived according to victims and not perpetrators. Similarly, amnesty material is filed according to applicant and information regarding co-perpetrators is thus potentially scattered across numerous files or embedded in transcripts of amnesty hearings. While our database provides an initial tool for identifying cases to which individual perpetrators may be linked, the task of retrieving all statements and documentation is a lengthy and painstaking one.

Given this, it is suggested that a fairly limited focus is worked out that would enable existing staff to begin feeding cases/ material through, without engaging in what would virtually mean copying the entire TRC archive.

We further propose that in determining a more limited focus, the resources of the TRC Task of the NDPP is taken into consideration. Thus, for example, if the current capacity in KZN is already stretched, it is questionable as to how productive it would be to involve

TP9

already over-burdened TRC staff in assembling numerous dossiers around KZN cases.

*We recommend that a draft plan or framework that prioritises specific categories or regions is drawn up.*

2. In view of the extremely limited resources, a line of communication needs to be developed that prevents potential duplication of tasks. Thus for instance, the request forwarded to Advocate Coetzee on 4 March 1999 in many respects duplicates work arising from the meeting in Cape Town.
3. We still urgently require a list of cases already being pursued by the various AG offices.

**7 March 1999**

TP 11

VOLUME TWO

**Truth and  
Reconciliation  
Commission  
of South Africa  
Report**





- 285 Other amnesty applicants disputed this version of events. The Port Elizabeth Security Branch applicants stated that Kondile was transferred to their region after interrogation in the Orange Free State. After two weeks of interrogation with assault at the Jeffrey's Bay police station, Kondile agreed to act as an informer. However, Major Du Plessis [AM4384/96] alleges that he then personally discovered a concealed note from Kondile to the ANC. Du Plessis realised that Kondile had deceived him. Kondile had been briefed about Du Plessis's informer network (including a person in the UNHCR who provided photographs of refugee applicants to the police) which would now be compromised. After discussions with his immediate superior Nick Janse van Rensburg and the Divisional Commander, then Colonel Gerrit Erasmus [AM4134/96], it was decided that Kondile should be killed.
- 286 Kondile was taken near Komatipoort where they met with Captain Dirk Coetzee. He was tied to a tree and shackled, given some food and cold drinks, after which he became unconscious. Sergeant Roy Otto (now deceased) then shot him through the head, after which his body was placed on a wood fire and burnt until morning.

***Nokuthula Simelane***

- 287 According to amnesty applicant Lieutenant-Colonel Anton Pretorius [AM4389/96], the Soweto Intelligence Unit (SIU) had in 1983 succeeded in penetrating and infiltrating MK structures in Swaziland. Deep-cover agents RS269 and RS243 had succeeded in gaining information about arms caches, infiltration routes, lines of command and so on. Through a Soweto-based source, SWT 66, they had managed to establish the linkages between the Swaziland structures and MK's Transvaal military structures.
- 288 During 1983, they received information that a courier from Swaziland was expected in Johannesburg. The courier, Ms Nokuthula Aurelia Simelane (aka MK Sibongile), arrived in Johannesburg in September 1983 and was abducted by the SIU from the parking lot outside the Carlton Hotel where she had planned to meet her contact. She was initially taken to the Custodum police flats in Norwood and kept for several days in a tenth-floor storeroom. During this time she was intensively interrogated and, according to an amnesty applicant, badly beaten.
- 289 From Norwood, Simelane was taken to a farm near Thabazimbi, where she was apparently kept in an outbuilding for a month, possibly two.
- 290 According to amnesty applicants Anton Pretorius and Lieutenant Colonel Willem 'Timol' Coetzee, [AM4032/96] then head of the SIU, she agreed during her initial

TP 17

interrogation and torture to become an agent for the Security Branch and her removal to the farm had been organised to facilitate the necessary training. Coetzee claims that the arrangements surrounding this recruitment were discussed with his superior officer as well as with Section C at Security Branch headquarters. Pretorius and Coetzee said that, after three weeks, Simelane returned to Swaziland but that all subsequent pre-arranged contact and communication with her failed. These applicants said they believe that her defection was discovered by MK and that she was killed as a consequence.

- 291 A number of other members of the unit involved in her abduction also applied for amnesty. At least one of these, however, disputes the Coetzee/Pretorius version. According to this applicant, Simelane continued to be tortured at the farm in Thabazimbi. After about two months, she was put in the boot of the car, handcuffed and in leg-irons, and driven away. This was the last that black members of the unit saw of her. Her physical state at the time was such that returning her to Swaziland would not have been possible. "She was very beautiful. But by the time they were finished with her, she could not be recognised."
- 292 The applicant indicated that, after he was back in Soweto, he asked one of his superiors about Simelane and was told not to ask questions. He subsequently heard that she had been shot and buried in Rustenburg.

### **Japie Maponya**

- 293 Mr Japie Maponya [JB02090/03WR] was abducted by Vlakplaas *askaris*, interrogated and subsequently killed. Amnesty applicants included General JH le Roux [AM4148/96]; Colonel Eugene de Kock [AM0066/96] head of C1/Vlakplaas, Warrant Officer Willie A Nortjé [AM3764/96]; Constable TJ Mbelo [AM3785/96] and Sergeant DJ van der Walt [AM3769/96].
- 294 According to applicants, a request for assistance was submitted to security headquarters by Colonel Johan le Roux, head of the Krugersdorp Security Branch (later a general who commanded the Security Branch). On instructions from Security Branch headquarters, a team under Warrant Officer Willie Nortjé, with which De Kock later linked up, was deployed to Krugersdorp. Japie Maponya, a security guard, was abducted from Krugersdorp by Mbelo and two other *askaris* and taken to Vlakplaas for questioning about the activities of his brother, MK operative Odirile Maponya (MK Mainstay), who was suspected of involvement in the death of an SAP member, Warrant Officer Tswane.

TP 17

# TRC Final Report

372

Page Number (Original) 234

Paragraph Numbers 278 to 292

Volume 2

Chapter 3

Subsection 31

Previous Subsection

Next Subsection

## **Abduction, interrogation and killing**

278 This section deals with a different category of killings – where the primary purpose was to obtain information, and death followed, apparently in order to protect the information received. Victims in almost all of these cases were suspected of having links with underground military structures or with networks that provided support for such structures. The purpose of interrogation was to gather intelligence on issues such as modi operandi, guerrilla infiltration routes and possible planned operations. This information was considered vital, not only to enable countermeasures to be taken, but for the ongoing and effective penetration of such structures by agents or askaris.

279 Amnesty applicants suggested that such intelligence had value only for as long as the 'enemy' was not aware that the information had been uncovered. Detainees – even those kept in solitary confinement – sometimes managed to smuggle out information about their detention and interrogation. Moreover, in the nature of clandestine work, once a detention was known about, old routines, codes and meeting places would be regarded as compromised and therefore changed. It was for this reason, the Security Branch argued, that it was preferable to abduct rather than officially detain, and to kill the abductee once information had been extracted. In some instances, the Security Branch attempted to 'turn' (recruit) the individual; where this proved unsuccessful, killing was regarded as necessary.

280 This modus operandi allowed for greater freedom to torture without fear of consequences. It should also be noted, as is evident in some of the cases below, that confessions and admissions were sometimes obtained only after brutal torture. The possibility that a number of people so targeted had no real link to underground military structures cannot be excluded.

### **Gcinisizwe Kondile**

281 Eastern Cape political activist Gcinisizwe Kondile [EC0021/96STK] was killed by the security police in August 1981. Mr Kondile was first detained by the security police in 1980 while a student at Fort Hare University. After his release, he fled to Lesotho where he continued to be politically active. In June 1981, he was apprehended by the security police after entering the country in a car owned by Chris Hani.

TP 7

282 Amnesty applicants have presented two different versions of the circumstances leading to Kondile's death. Captain Dirk Coetzee [AM0063196] says that Kondile was transferred to Jeffrey's Bay in the eastern Cape where he was held for two months and severely tortured. So serious was his condition that the police feared he would die. Deciding they could not afford "another Biko", the upper management of the Security Branch decided he should be killed and all evidence of his existence destroyed. This version is confirmed by a Sergeant Danster who guarded Kondile at the Jeffrey's Bay police station. Danster referred to the use of torture, including 'tubing', electric shock and assault.

283 To cover their tracks, the security police officially released Kondile from custody on 11 August 1981 and then immediately re-arrested and held him secretly in the 'white' quarters of the Jeffrey's Bay police station.

284 C section head, Brigadier W Schoon, ordered Dirk Coetzee to meet with Major Archie Flemington from the local security police office at Komatipoort. The Port Elizabeth Security Branch arrived at Komatipoort with Kondile, who was then taken by a group of security police members – including Coetzee, Flemington, Nick Janse van Rensburg, Sergeant JG Raath [AM4397/96], Captain Paul van Dyk and two others from Ermelo – to an isolated spot near Komatipoort. Here he was drugged with "knoek-out" drops acquired from General Lothar Neethling's police forensic laboratory, shot and cremated over a log fire for seven hours until all traces of his body had been destroyed. During the cremation, the group drank and cooked meat at a separate 'braai'. Coetzee related:

The burning of a body to ashes takes about seven hours, and whilst that happened we were drinking and even having a braai next to the fire. Now, I don't say that to show our braveness, I just tell it to the Commission to show our callousness and to what extremes we have gone in those days ... the chunks of meat, and especially the buttocks and the upper part of the legs, had to be turned frequently during the night to make sure that everything burnt to ashes. And the next morning, after raking through the rubble to make sure that there were no pieces of meat or bone left at all, we departed and all went our own way.

285 Other amnesty applicants disputed this version of events. The Port Elizabeth Security Branch applicants stated that Kondile was transferred to their region after interrogation in the Orange Free State. After two weeks of interrogation with assault at the Jeffrey's Bay police station, Kondile agreed to act as an informer. However, Major Du Plessis [AM4384/96] alleges that he then personally discovered a concealed note from Kondile to the ANC. Du Plessis realised that Kondile had deceived him. Kondile had been briefed about Du Plessis's informer network (including a person in the UNHCR who provided photographs of refugee applicants to the police) which would now be compromised. After discussions with his immediate superior Nick Janse van Rensburg and the Divisional Commander, then Colonel Gerrit Erasmus [AM4134/96], it was decided that Kondile should be killed.

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291 A number of other members of the unit involved in her abduction also applied for amnesty. At least one of these, however, disputes the Coetzee/Pretorius version. According to this applicant, **Simelane** continued to be tortured at the farm in Thabazimbi. After about two months, she was put in the boot of the car, handcuffed and in leg-irons, and driven away. This was the last that black members of the unit saw of her. Her physical state at the time was such that returning her to Swaziland would not have been possible. "She was very beautiful. But by the time they were finished with her, she could not be recognised."

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TP 7

# TRC Final Report

Page Number (Original) 224

Paragraph Numbers 194 to 208

Volume 6

Section 3

Chapter 1

Subsection 19

Previous Subsection

Next Subsection

## Soweto Security Branch

194. A key component of the Soweto Security Branch was the SIU<sup>75</sup>, which ran a number of covert agents and sources both inside and outside the country.

195. Twenty-two members of the Soweto Security Branch, including three divisional commanders and at least eleven members of the SIU, applied for amnesty for twenty-nine incidents committed between 1980 and 1992. These incidents involved at least twenty-two killings, two abductions/torture and approximately fourteen sabotage and/or credibility operations.

196. Four of the killings resulted from Soweto Security Branch operations. Soweto Security Branch members either provided intelligence for or participated directly in the other operations.

197. Most of the incidents applied for were so-called 'credibility operations', conducted by members of the SIU in order to build up the credibility of sources or to facilitate infiltration by deep-cover agents. These operations covered a range of activities such as the establishment of arms caches, the sabotage of offices and installations and attacks on homes and hostels.

*74 With regard to target identification for the Gaborone Raid, applicants were granted amnesty for the targets in respect of which they specifically remembered supplying information. 75 Soweto Intelligence Unit.*

198. Amnesty was granted in seventy-six instances, refused in four, conditionally granted in five and granted/refused in three. No decision was handed down in one instance, in which the applicant had died.

199. During the hearing concerning the abduction of Ms **Nokuthula Simelane**, aka Sibongile, a 23-year-old University of Swaziland student and member of MK's Transvaal Urban Machinery, sharp differences emerged between the various applicants as black members of the SIU challenged the version of white applicants.

TP 17

200. The Amnesty Committee heard evidence that, in the early 1980s, two deep cover agents of the SIU, RS269 (Sergeant Langa, aka Frank or Big) and RS243 (Sergeant 'Terror' Mkhonza, aka Scotch) infiltrated MK's Transvaal machinery with the help of an informer, SWT66 (Nompumelelo).

201. Early in September 1983, Mkhonza was instructed by his MK contact to meet Sibongile (Ms **Nokuthula Simelane**) at the Carlton Centre, Johannesburg. After the meeting, Mkhonza led her to the basement parking area where they were seized by waiting SIU members and bundled into the boot of a car. Ms **Simelane** was, according to all applicants, severely assaulted and brutally beaten.

202. She was subsequently transferred to a farm near Northam in the current North West. Here she was held in a room in an outside building for a period of approximately four to five weeks. Lieutenant Willem 'Timol' Coetzee, Warrant Officer Anton Pretorius and Sergeant Frederick Barnard Mong were tasked with interrogating and recruiting Ms **Simelane**. When she was not being interrogated, Ms **Simelane** was under constant guard by black members of the SIU. At night, she was cuffed and chained to her bed with leg irons. The black members, who were responsible for guarding her, slept either in or outside her room.

203. Black SIU applicants, Constables Veyi and Selamolela, testified that she was repeatedly and brutally tortured throughout her stay on the farm, finally becoming 'unrecognisable'. The white applicants denied this vehemently.

204. According to their evidence, the victim had been severely assaulted during the first week and had, on more than one occasion, been put in a dam after soiling herself while being tortured. However, they alleged that, after the first week, she agreed to work for them and that they spent the remaining weeks of her 'detention' preparing her for her work as an agent. Thereafter, they claimed that they returned her to Swaziland with the help of Sergeants Mothiba and Langa, both since deceased. After that they lost contact with her.

205. This testimony was challenged by Veyi and Selamolela, who testified that the victim's physical state made it extremely unlikely that she could have been in a fit state to be returned to Swaziland. Constable Veyi testified that he had last seen Ms **Simelane** bound and in the boot of Lieutenant Coetzee's car and that Sergeant Mothiba had told him that she had been killed.

206. In refusing amnesty to applicants Coetzee, Pretorius and Mong, the Amnesty Committee said of Ms **Simelane**:

During her detention for a period of approximately five weeks, she was continuously and very seriously assaulted by the group of Security Police, under the command of Coetzee, who held her captive. All attempts to extract information concerning MK or its operations as well as attempts to recruit her to become a Security Police informer, were fruitless. Due to the prolonged and sustained assaults, Ms **Simelane**'s physical condition deteriorated to the extent that she was hardly recognisable and could barely walk. Ms **Simelane** was last seen where she was lying with her hands and feet cuffed in the boot of Coetzee's vehicle. She never returned to her familiar environment in Swaziland ... and has disappeared since. It is not necessary for the purpose of this matter to make a definitive finding on the eventual fate of Ms **Simelane**. [AC/2001/185.]

TP ①

# TRC Final Report

377

Page Number (Original) 623

Paragraph Numbers 50 to 71

Volume 6

Section 5

Chapter 2

Subsection 5

Previous Subsection

Next Subsection

## Abductions

50. The Commission received fifty-seven amnesty applications for eighty incidents of abduction. The fifty-seven applications included the abduction of thirty-five Umkhonto we Sizwe (MK) operatives, eighteen of whom were abducted inside the country and seventeen outside South Africa.

51. Of the fifty-seven abductions, more than twenty-seven resulted in the death of the victim. This raises the possibility that targeted assassinations may have been the perpetrators' intention from the outset.

52. The Commission also received more than 1500 statements dealing with disappearances, including enforced disappearances.

53. The Commission stated in its Final Report that the former state's primary purpose in carrying out abductions was to obtain information. Abductees were often killed in a bid to protect the information that had been received.

54. The victims of these abductions either belonged to MK or supported the movement internally. Amnesty applicants testified that they found it preferable to abduct rather than detain officially. Once the information was obtained, the abducted person would be killed. In many other instances, applicants testified that they attempted to 'turn' or 'recruit' individuals into working for the state. The Commission also learnt that, where the attempt to turn the abductee failed, killing the individual became necessary – although many amnesty applicants denied this. However, in terms of international law, families merely have to prove that the abductee was last seen alive in the hands of an agent of the state for the obligation or onus to explain the deceased's whereabouts to fall on the state.

55. The Commission also stated in its Final Report that this modus operandi allowed for greater freedom to torture without fear of consequences. The testimony of many askaris at amnesty hearings was at odds with that of white members in their particular units. In their testimony, askaris highlighted the brutality of the torture and abuse that many abductees were

TP 17



subjected to. The cases of **Nokuthula Simelane**<sup>32</sup> and **Moses Morodu**<sup>33</sup> offer examples of this.

56. It is also possible that operatives lost all sense of reality when dealing with abductees and became totally enmeshed in the brutality of the moment. Had the abductee been released or the body found, the heinous behaviour of the abductors and torturers would have been revealed. This was possibly an even more powerful motive to conceal the truth.

57. In its findings on extrajudicial killings, the Commission noted that a particular pattern was established: that is, political opponents were abducted, interrogated and then killed. In evidence that emerged through the amnesty process, another pattern emerged: that of abduction followed by torture or undue pressure to inform and/or become an informer or askaris. Those who did not succumb in this way were killed. Information was then leaked to MK that those who had been captured had been turned and had become askaris. The most devastating effect of this practice was that those who were abducted did not come home and that families had to live with the political stigma that their loved ones were perceived to be traitors.

58. These abductions must be distinguished from those incidents where the intention of the perpetrators at the outset was to assassinate political opponents. In such operations, the abduction itself was merely a means to capturing the person, and the interrogation and torture that followed were secondary to the intention to kill.

59. Thus the cases of Griffiths Mxenge, Topsy Madaka and Siphwe Mthimkulu, the 'Pebco Three', the 'Cradock Four' and the Ribeiros should be classified as political assassinations rather than abductions. Here the intention of the perpetrators was to eliminate the individuals concerned and to silence them forever.

60. In the KwaNdebele group of cases, abduction was followed by interrogation, torture and beatings and the abductee was then returned. The intention of these abductions was to intimidate and silence opposition.

61. The principle of customary international law is to hold the state responsible in instances such as these on a strict liability basis. Thus, the former state must be held strictly responsible for the abductions, disappearances and deaths of the abductees. The state is held responsible even in those instances where the perpetrator may not have intended that the final consequence of the abduction would be the death of the abductee. The intention of the perpetrator is irrelevant; the fact of the matter is that death ensued.

62. In those instances where the purpose of the abduction was killing, the state incurs responsibility for both the killing and the abduction. In terms of the accepted principle, even where the perpetrator responsible for the abduction or the disappearance has not been identified, it simply needs to be established that forced disappearance was committed by a police agent. In such an instance, the state is held responsible for accounting for the disappearance.

63. International human rights law places the burden on the state to account for the actions of its agents. Thus it is not sufficient for the state to allege (as it did in the cases of **Nokuthula Simelane**<sup>34</sup> and the four MK members abducted from Lesotho (namely Nomasonto Masbiya,

TP (1)

Joyce Keokanyetswe 'Betty' Boom, Tax Sejamane and Mbulelo Ngono)<sup>35</sup> that they recruited or turned these agents and that were returned to exile in order to infiltrate the movement.

64. In all of these cases, using the strict liability test, it is likely that the state would be held criminally liable for their disappearances. In the case of *Kurt v Turkey*, the European court of human rights held that, once the applicant was in the custody of the security forces, the responsibility to account for the victim's subsequent fate shifted to the authorities.

65. In terms of international law and a state's responsibility to guarantee human rights, a state can be held responsible for failing to prevent or respond to a violation. As early as the 1980s, the former state was aware of the fact that disappearances were taking place. Allegations were mounting against the security forces as being responsible.

66. The question is: what did the state do to investigate the allegations being made or what action did the state take against those alleged to be involved in such practices?

67. Although it has been shown that agents in the employ of the state were responsible for the abductions of many political activists, that a pattern had been established and that this had become part of an orchestrated grand plan, the leadership of the former state continued to deny its responsibility for these gross human rights violations. Indeed, in the light of the above, Mr de Klerk might want to reconsider his theory of 'bad apples and mavericks'<sup>36</sup>. There is no doubt that the apartheid state must be held responsible for the actions and deeds of its agents and that the state's failure to investigate or to take action created a climate of impunity and criminality in the security forces.

68. A key factor when deciding whether a state is responsible is whether the violation has taken place with the support or tolerance of the authority or the state has allowed the violation to go unpunished. In this instance, the state allowed the death squads to act with impunity and abduct, interrogate, torture and kill. Nothing was done to stop them, even when the disappearances became public.

69. Instead the state continued to claim innocence and chose rather to sully the reputations of those who had been abducted and killed. As a result, the minds and memories of family members and loved ones have been haunted by uncertainty, suspicion and mistrust as they continue to wonder whether the loved one was a spy and why the loved one has not returned home.

70. The amnesty cases and the evidence of the victims before the Commission have been sufficient to establish a pattern and an assumption that these victims must have died at the hands of the forces that abducted them. In this regard, efforts must be made to restore their dignity and true reputations as patriots who paid the price and were killed in the violence of the past.

71. The law must also take its course in dealing with those who came forward with half-truths and lies. Efforts must be made to integrate and ease the lot of those who became askaris. In most instances, their testimony was at considerable variance with that of their white colleagues and superiors. We may never know what pressure was placed on them to 'turn'. What we do know is that, in those instances where they did not succumb or refused to do so, they were killed horribly. The cases of **Simelane** and Masiya are examples of this.

TP

32 Amnesty hearings, Pretoria, 28–30 June 1999 and 29–30 May 2000; AC/2001/185. 33 Amnesty hearing, 26 October 1999; AC/2000/010. 34 Amnesty hearings, Pretoria, 28–30 June 1999 and 29–30 May 2000. See also AC/2001/185. 35 See amnesty hearings, Johannesburg, 10–13 October 2000 and Bloemfontein 13–15 November 2000. 36 Evidence by Mr FW de Klerk on behalf of the National Party to the TRC, 14 May 1997.

TP ①

**SIMAYILE, Coda** (46), was detained in Sasolburg, OFS, on 11 July 1986 and held for six months under emergency regulations. In detention, he was severely assaulted and tortured by members of the SAP. Mr Simayile had been involved in a protracted strike at Karbochem in Sasolburg, and police accused him of politicising a labour dispute.

**SIMAYILE, David Nkosiwumile** (25), an ANC supporter, was shot and fatally wounded in the chest by KwaZulu Police members and Inkatha supporters in Durban North on 9 February 1986, allegedly in a targeted killing.

**SIMBINE, Jeronimo V icente** (22), a Mozambican citizen, was abducted from his home in Namaacha, Mozambique, by SADF Special Forces members on 23 August 1982. He was taken to Phalaborwa army base where, after severe interrogation and torture, he agreed to become a member of the SADF. Prior to this abduction, the SADF had raided and bombed Namaacha because they suspected the village of housing ANC members in transit. During this raid, two Mozambican and one Portuguese citizen were killed. Mr Simbine escaped after three years and, upon his return home, was detained by the Mozambican authorities for six months.

**SIMELA, Namkoni Selinah** (47), had her home burnt down on 16 June 1986 in Mathyzensloop, KwaNdebele, during a night vigil for 'comrades' killed by IMBOKODO vigilantes and KwaNdebele Defence Force members. Mathyzensloop residents reportedly fled to the hills to escape the violence.

**SIMELANE Shusiso Carol** (19), an ANC supporter, was stabbed and axed to death by unidentified people at a taxi rank in Pietermaritzburg during ongoing conflict between ANC and IFP supporters on 3 February 1993. Three others were killed; he was the only survivor.

**SIMELANE, Allison Msvukela** (42), an IFP supporter, was shot dead in an attack on his home in Ondondolo, KwaZulu, near Empangeni, Natal, on 10 July 1992, in ongoing conflict between ANC and IFP supporters. The attackers reportedly wanted guns, which they believed the family had received from Ulundi. His wife was severely beaten during the attack.

**SIMELANE, Bheki** (19), was shot dead in Katlehong, Tvl, on 2 February 1992 during conflict between hostel-dwellers and residents. Hostel-dwellers were allegedly coerced into IFP membership, and relations between residents and hostel-dwellers became increasingly strained.

**SIMELANE, Bheluyise Simon** (29), an ANC supporter, was stoned and stabbed to death by IFP supporters in Ezakheni, KwaZulu, near Ladysmith, Natal, on 13 March 1994, in the run-up to the APRIL 1994 ELECTIONS.

**SIMELANE, Buti Peter**, was stabbed and shot to death by IFP supporters in Dube, Soweto, Johannesburg, on 8 September 1991. The perpetrators were returning from a funeral at the Jabulani stadium in Soweto.

**SIMELANE, Eunice** (53), an IFP supporter, was severely beaten in an attack on her home in Ondondolo, KwaZulu, near Empangeni, Natal, on 10 July 1992, in ongoing conflict between the ANC and IFP. The attackers reportedly wanted guns, which they believed

the family had received from Ulundi. Her husband was killed in the attack.

**SIMELANE, Gcinwayinkosi Petrus** (27), an ANC supporter, was tortured, stabbed and shot dead by members of an ANC-aligned self-defence unit on 30 August 1993 in Katlehong, Tvl, because he refused to patrol with them.

**SIMELANE, Gwete Enock** (52), was shot and severely injured while travelling in a taxi in Meadowlands, Soweto, Johannesburg, on 3 June 1992 during conflict between IFP-aligned Mzimhlophe hostel-dwellers and residents.

**SIMELANE, Jabulani Kom** (42), lost his house in an arson attack in Ondondolo, KwaZulu, near Empangeni, Natal, on 6 August 1993 in continuing conflict between IFP and ANC supporters in the area.

**SIMELANE, Joe Johannes** (23), was shot and arrested by members of the SAP in May 1985 in Tsakane, Brakpan, Tvl, after he attended the funeral of someone killed by hostel-dwellers. A group of mourners attempted to storm the hostel and police intervened.

**SIMELANE, Johannes Meleni** (23), an ANC supporter, died after he was stabbed and shot by members of the IFP-aligned KHUMALO GANG on 4 August 1993 in Tokoza, Alberton, Tvl.

**SIMELANE, Johannes Zwelibanzi** (24), a member of the SAP, was injured in a limpet mine explosion at the Newcastle magistrate's court, Natal, on 23 November 1986. Two MK operatives were granted amnesty (AC/2001/139).

**SIMELANE, Linah Silukazi** (24), had her home damaged in an arson attack by IMBOKODO vigilantes in Mathyzensloop, KwaNdebele, on 27 June 1986 during violent conflict over KwaNdebele independence.

**SIMELANE, Miles Simon**, an IFP supporter, was killed by members of an ANC self-defence unit (SDU) in Katlehong, Tvl, on 7 December 1993. Eleven people were killed, nine execution-style, during conflict between the local ANCYL and SDU members. Thirteen SDU members were refused amnesty (AC/1998/0013).

**SIMELANE, Mpembe Amos** (45), an IFP supporter, had his home in Inanda, near KwaMashu, Durban, destroyed in an arson attack by ANC supporters on 19 June 1991.

**SIMELANE, Nokuthula Aurelia (aka 'Sibongile')** (23), a courier for MK from Bethal, Tvl, was abducted from the Carlton Centre in Johannesburg by members of the Soweto Security Branch on 8 September 1983 and held initially at the Norwood Police flats. She was later taken to a farm near Thabazimbi, Tvl, and held for several weeks, during which time she was severely tortured. She subsequently disappeared and is presumed dead. Eight Soweto Security Branch operatives applied for amnesty for the detention and torture only. Three applications were refused and five were granted (AC/2001/185).

**SIMELANE, Nonozana Anna** (53), an ANC supporter, had her house burnt down by IFP supporters in Sonkombo, Ndwedwe, KwaZulu, near Durban, on 16 March 1994. See SONKOMBO ARSON ATTACKS.

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MINISTRY OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT CAPE TOWN
2003-03-25
KAAPSTAD MINISTERIE VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

PROCLAMATION  
BY THE  
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

No. ...., 2003

NATIONAL PROSECUTING AUTHORITY ACT, 1998

Determination of Powers, Duties and Functions of a Special Director of Public Prosecutions

Under section 13(1)(c) of the National Prosecuting Authority Act, 1998(Act No. 32 of 1998), I, hereby confer, impose and assign the following powers, duties and functions on or to Advocate ANTON ROSSOUW ACKERMAN SC, a Special Director of Public Prosecutions, appointed in terms of the said provisions:

To exercise the powers, carry out the duties and perform the functions necessary, within the Office of the National Director of Public Prosecutions as directed by the National Director and—

- in particular, to head the Priority Crimes Litigation Unit and to manage and direct the investigation and prosecution of crimes contemplated in the Implementation of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), and serious national and international crimes, which include acts of terrorism and sabotage committed under the Internal Security Act, 1982(Act No. 74 of 1982), high treason, sedition, foreign military crimes committed by mercenaries, or such other priority crimes to be determined by the National Director; and
- generally, giving such advice or rendering such assistance to the National Director as may be required to exercise the powers, carry out the duties and perform the functions which are conferred or imposed on or assigned to him by the Constitution or any other law.

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA on this 24th day of MARCH Two Thousand and Three.

*T. M. Mbeki*  
T. M. MBEKI  
President

*P. M. Maduna*  
P. M. MADUNA  
Minister of the Cabinet

TP 17

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PRIORITY CRIMES LITIGATION UNIT (PCLU)

1. INTRODUCTION

The Priority Crimes Litigation Unit (PCLU) was created by Presidential proclamation<sup>1</sup> on 23 March 2003 and is located in the office of the National Director of Public Prosecutions. This unit has no investigative capacity and is reliant on SAPS and the DSO in this regard.

Mandate:

To manage and direct investigations and prosecutions relating to the following matters:

- ***Criminal prosecutions arising from the Rome Statute;*** [Implementation of the Rome Statute of the International Criminal Court Act, Act No 27 Of 2002] This relates to the serious crimes of:
  - a. Genocide,
  - b. Crimes against humanity and
  - c. War crimes.
- ***Crimes against the State, including national and international terrorism;*** [Inter alia prosecutions under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No 33 of 2004 - the POCDATARA Act]
- Contraventions of:
  - ***The Regulation of Foreign Military Assistance Act;*** [Act No 15 of 1998]
  - ***Non-Proliferation of Weapons of Mass Destruction Act*** (nuclear, chemical and biological warfare proliferation); [Act No 87 of 1993]
  - ***The National Conventional Arms Control Act;*** [Act No 41 of 2002]
  - ***The Nuclear Energy Act*** [Act No 46 of 1999]
  - ***The Intelligence Services Act*** [Act No 65 of 2002]
- Matters emanating from the TRC process:
  - Prosecutions
  - Missing persons
- Any other priority crimes as determined by the National Director.

<sup>1</sup> Cf attached copy of Presidential Mandate.  
[http://www.npa.gov.za/UploadedFiles/About\\_PCLU\\_signedoff.doc](http://www.npa.gov.za/UploadedFiles/About_PCLU_signedoff.doc)

TP 7

## 2. FOCUS AREAS

The unit's focus areas are:

- (i) NUCLEAR NON-PROLIFERATION
- (ii) NON-PROLIFERATION OF CHEMICAL AND BIOLOGICAL WARFARE AGENTS

The PCLU instituted a prosecution for this category of offence. The matter was finalized with a plea of guilty and a fine of R100 000 was imposed on the corporate entity prosecuted. Further dockets relating to controlled chemicals of Crest and Amla were decided by this Unit.

- (iii) FOREIGN MILITARY ASSISTANCE

- In response to the arrest of South African citizens in Zimbabwe and Equatorial Guinea, the PCLU managed and directed an investigation into the involvement of other role players. This led to the arrest of three South African citizens and a UK citizen (Mark Thatcher). All four pleaded guilty in terms of section 105A of the Criminal Procedure Act.
- Following the release of the South African citizens detained in Zimbabwe in connection with the *coup* in Equatorial Guinea, eleven of them were arrested in South Africa and charged with contravention of section 3(b) of the Regulation of Foreign Military Assistance Act, No 15 of 1988. Two of the said accused pleaded guilty and were sentenced. The trial of the remaining nine accused is due to proceed in February 2007. It is anticipated that the outstanding prosecutions relating to the Equatorial Guinea attempted *coup d'etat* will be finalized in 2007.
- A matter of concern to Government was the participation of South African citizens acting as security guards in the conflict in Iraq. A number of enquiries conducted by SAPS were evaluated by the PCLU, but it was found that such conduct did not fall within the ambit of the existing FMA legislation. The PCLU prepared a detailed opinion recommending an amendment of the Act, which was submitted to all relevant role players.

TP 7

- Government accepted the need to amend the Foreign Military Assistance legislation in order to take effective action in Iraq. A revised Act was placed before the Defence Portfolio Committee. However, the Minister of Defence recognized that the Act still contained several shortcomings.
- It is hoped that the revised legislation will shortly come into effect, since the PCLU would like to address Government's concerns relating to the number of South Africans performing security services in Iraq.

(iv) NATIONAL AND INTERNATIONAL TERRORISM

The PCLU closely interacted with State departments having an interest in such affairs. In several matters, the PCLU furnished opinions to SAPS, NIA and DFA. Although no prosecutions arose from such interventions, the PCLU's involvement meant that the matters were properly attended to.

(v) STATUTE OF ROME

A number of enquiries were carried out at the request of the International Criminal Court and a complaint relating to the seizure of farms in Zimbabwe was investigated. No prosecutions arising from the Statute of Rome were instituted.

(vi) CONVENTIONAL ARMS

- After a lengthy trial in the Regional Court, Germiston, a former employee of an arms manufacturer was acquitted on charges of supplying his company's technology to a foreign state's military structure. The charges related to highly technical contraventions of the Armscor Act, the Protection of Information Act, the Copyright Act and theft. The court found that the instrumentation that was built, did not comply with a specific military standard (as required by the Act) and that the accused did not have the required knowledge of unlawfulness relating to these specialized legislation.
- A number of complex and intricate dockets pertaining to alleged irregularities committed at Armscor and the Directorate of Conventional Arms Control Committee were submitted to the unit for decision. A number of these matters are under investigation.

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(vii) MATTERS IMPACTING ON STATE SECURITY

- The PCLU offers opinions and other advice to various State departments on matters impacting on State security and other sensitive matters. The PCLU also addressed a standing committee of the United Nations' Security Council as far as the country's capacity to prosecute international terrorism.

(viii) TRC PROSECUTIONS

- The PCLU conducted an audit of around 300 cases which had been submitted by the DSO, DPP's and SAPS in 1999 in terms of a direction by the then NDPP. 167 of these cases were finalized on the basis that no prosecutions could be instituted.
- As a result of various representations received, the PCLU has identified five cases, which potentially can be prosecuted, as well as approximately 10 other cases warranting investigation. The following steps must be taken:
  - (i) The representatives of the State departments which are required to assist the PCLU in the execution of its duties must be identified and involve themselves in the process;
  - (ii) The issue of the investigations must be resolved with SAPS and the DSO and thereafter the necessary investigations completed;
  - (iii) The close involvement of the process by Justice is necessary in cases where prosecutions are instituted where amnesty was refused, since the applicants may take the validity of the refusal to grant amnesty on review to the High Court;

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### 3. MISSING PERSONS

Due to the fact that the President had in 2003 directed the NDPP to give attention to the cases of some 500 persons who had been reported missing by the TRC, a small Task Team was established to evaluate the TRC report and to identify cases for investigation. Approximately 150 cases were identified for immediate investigation.

#### ➤ Investigations and Exhumations

Investigations commenced into 150 missing persons that were identified as priority cases in an audit, with the aim of obtaining (a) information as to the fate of the missing person and (b) locating, exhuming and identifying human remains where possible.

Thus far the burial sites of thirty-two persons were located and these human remains were exhumed. Forensic analysis was conducted and identities confirmed in twelve cases. The remaining twenty are still undergoing DNA testing.

#### ➤ Handover of remains and reburials

Five identified remains were handed to the affected families at a special national ceremony in July 2005 at Freedom Park. Reburials have taken place in all of these cases, with these families receiving assistance from the Department of Justice and Constitutional Development towards reburial costs. Further handovers will take place during 2006.

#### ➤ Memorialisation

A key component of the work on Missing Persons is ensuring the necessary connection with existing structures engaged in memorialisation processes. Liaison with structures such as the South African Heritage Resource Agency (SAHRA), Freedom Park, and the SANDF was established to address matters such as tombstones for those exhumed and reburied. The outcome of Missing Persons investigations will be closely coordinated with other related bodies working on memorialisation, monuments and tombstones.

#### ➤ International expertise

A partnership was built with the Argentine Forensic Anthropology Team (EAAF), the world leaders in this work, in order to ensure that missing persons' work in South Africa is in line with best international practices as developed by *inter alia* the UN and International Committee of the Red Cross (ICRC) in such human rights cases.

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➤ Local capacity building

Local South African experts and several post-graduate students in the fields of archaeology, anthropology and anatomy were also drawn into the work on a collaborative basis with the Argentine team, building local capacity.

➤ DNA analysis

A partnership was established with the Human Identification Laboratory (HID) at the University of the Western Cape (UWC) for DNA analysis work. This lab is developing specialization in "ancient DNA" work, which works with difficult cases of old and damaged bone material, as is the norm in missing persons' exhumations. The development of the capacity to conduct mitochondrial DNA tests (as opposed to only nuclear DNA tests) will be an important contribution to capacity building in Africa.

➤ Partnerships with civil society

The Missing Persons Task Team developed excellent working relationships with civil society groups and NGO's working in the field of missing persons and disappearances, including the Center for the Study of Violence and Reconciliation (CSV) and Khulumani Support Group (KSG).

➤ Namibia

After the November 2005 discoveries of mass graves in Namibia, the Namibian President requested the assistance of South African expertise. The Missing Persons Task Team sent a delegation to review the situation and make recommendations accordingly. The Namibian authorities warmly received the delegation's report and recommendations. The report included the offer of assistance to Namibia in the form of establishing a national co-ordination structure, as well as research, investigation and DNA analysis support. As a key role player in the past Namibian conflict, South Africa has a particular historical responsibility in this regard:

Assistance to the Namibian authorities will form a key component of the work of the Missing Persons Task Team in future. This will take the form of research, investigation and co-ordination assistance, pending the approval of the relevant South African government structures.

➤ Cases outside the South African borders

While thus far investigations and exhumations have focused on cases inside South Africa's borders, groundwork will be laid for the examining of cases of South African persons missing outside the countries borders.

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➤ Integration with the new TRC Unit established in the Department of Justice and Constitutional Development

As these missing persons investigations are the result of the TRC's recommendations, the Missing Persons' Task Team serves on the Steering committee of this new TRC Unit.

➤ Co-operation with other Government Departments

Missing Persons investigations require the co-operation of other Departments such as Home Affairs, Foreign Affairs and Health. Protocols with these Departments will be required via the Minister of Justice and Constitutional Development. In particular, the initial collaboration with certain SAPS investigations will be strengthened and formalized.

The PCLU strives to maintain a high standard of efficiency in dealing with complex matters emanating from its mandate and which impact on the Rome Statute and State security.

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APPENDIX APROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994A. INTRODUCTION

1. In his statement to the National Houses of Parliament and the Nation, on 15 April 2003, President Thabo Mbeki, among others, gave Government's response to the final report of the Truth and Reconciliation Commission (TRC). The essential features of the response for the purpose of this new policy, are the following:
  - (a) It was recognized that not all persons who qualified for amnesty availed themselves of the TRC process, for a variety of reasons, ranging from incorrect advice (legally or politically) or undue influence to a deliberate rejection of the process.
  - (b) A continuation of the amnesty process of the TRC cannot be considered as this would constitute an infringement of the Constitution, especially as it would amount to a suspension of victims' rights and would fly in the face of the objectives of the TRC process. The question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.
  - (c) As part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearthing the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.
  - (d) Therefore, persons who had committed crimes, before 11 May 1994, which emanate from conflicts of the past, could enter into agreements with the prosecuting authority in accordance with existing legislation. This was stated in the context of the recognition of the need to gain a full understanding of the networks which operated at the relevant time since, in certain instances, these networks still operated and posed a threat to current security. Particular reference was made to un-recovered arms caches.
2. In view of the above, prosecuting policy, directives and guidelines are required to reflect and attach due weight to the following:
  - (a) The Human Rights culture which underscores the Constitution and the status accorded to victims in terms of the TRC and other legislation.
  - (h) The constitutional right to life.

TP 7

## 8A. PROSECUTORIAL POLICY AND DIRECTIVES RELATING TO SPECIFIED MATTERS

The National Director may supplement or amend this Policy to determine prosecutorial policy and directives in respect of specific matters, for example, in respect of new legislation and matters of national interest.

The Prosecutorial Policy and Directives, in Appendix A, relating to the prosecution of cases arising from conflicts of the past and which were committed before 11 May 1994, are hereby determined in terms of section 179(5) of the Constitution, with effect from 1 December 2005.

## 9. CONCLUSION

The Prosecuting Authority is a public, representative service, which should be effective and respected. Prosecutors should adhere to the highest ethical and professional standards in prosecuting crime and should conduct themselves in a manner which will maintain, promote and defend the interests of justice.

This Prosecution Policy is designed to make sure that everyone knows the principles that prosecutors apply when they do their work.

Applying these principles consistently will help those involved in the criminal justice system to treat victims fairly and prosecute offenders effectively.

The Prosecution Policy is not an end in itself.

The challenge which faces the Prosecuting Authority is to implement this Policy in a manner that will increase the sense of security of all people in South Africa.

TP 17

- (c) The non-prescriptivity of the crime of murder.
  - (d) The recognition that the process of transformation to democracy recognized the need to create a mechanism where persons who had committed politically motivated crimes, linked to the conflicts of the past, could receive indemnity or amnesty from prosecution.
  - (e) The dicta of the Constitutional Court justifying the constitutionality of the above process, inter alia, on the basis that it did not absolutely deprive victims of the right to prosecution in cases where amnesty had been refused. (See *Azanian Peoples Organisation v The President of the RSA, 1996 (8) BCLR 1015 CC*).
  - (f) The recommendation by the TRC that the NPA should consider prosecutions for persons who failed to apply for amnesty or who were refused amnesty.
  - (g) Government's response to the final Report of the TRC as set out in paragraphs 1(a) to (d) above.
  - (h) The dicta of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid. (See *The State v Wouter Basson CCT 30/03*).
  - (i) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).
  - (j) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.
  - (k) The existing prosecuting policy and general directives or guidelines issued by the National Director of Public Prosecutions (NDPP) to assist prosecutors in arriving at a decision to prosecute or not.
  - (l) The terms and conditions under which the Amnesty Committee of the TRC could consider applications for amnesty and the criteria for granting of amnesty for gross violation of human rights.
3. Government did not intend to mandate the NDPP to, under the auspice of his or her own office, perpetuate the TRC amnesty process. The existing legislation and normal process referred to by the President, include the following:
- (a) Section 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which provides that a person who is guilty of criminal conduct may testify on behalf of the State against his or her co-conspirators and if the Court

TP 9

trying the matter finds that he or she testified in a satisfactory manner, grant him or her indemnity from prosecution.

- (b) Section 105A of the Criminal Procedure Act, 1977, which makes provision for a person who has committed a criminal offence to enter into a mutually acceptable guilty plea and sentence agreement with the NPA.
- (c) Section 179(5) of the Constitution in terms of which the NDPP, among others—
  - (i) must determine, in consultation with the Minister and after consultation with the Directors of Public Prosecutions, prosecution policy to be observed in the prosecution process;
  - (ii) must issue policy directives to be observed in the prosecution process; and
  - (iii) may review a decision to prosecute or not to prosecute.
- (d) The above process would not indemnify such a person from private prosecution or civil liability.

4. The NPA has a general discretion not to prosecute in cases where a *prima facie* case has been established and where it is of the view that such a prosecution would not be in the public interest. The factors to be considered include the following:

- (a) The fact that the victim does not desire prosecution.
- (b) The severity of the crime in question.
- (c) The strength of the case.
- (d) The cost of the prosecution weighed against the sentence likely to be imposed.
- (e) The interests of the community and the public interest.

In the event of the NPA declining to prosecute in such an instance, such a person is not protected against a private prosecution.

5. Therefore, following Government's response, and the equality provisions in our Constitution and the equality legislation, and taking into account the above factors regarding the handling of cases arising from conflicts of the past, which were committed prior to 11 May 1994, it is important to deal with these matters on a rational, uniform, effective and reconciliatory basis in terms of specifically defined prosecutorial policies, directives and guidelines.

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B. PROCEDURAL ARRANGEMENTS WHICH MUST BE ADHERED TO IN THE PROSECUTION PROCESS IN RESPECT OF CRIMES ARISING FROM CONFLICTS OF THE PAST

The following procedure must be strictly adhered to in respect of persons wanting to make representations to the NDPP, and in respect of those cases already received by the Office of the NDPP, relating to alleged offences arising from conflicts of the past and which were committed before 11 May 1994:

1. A person who faces possible prosecution and who wishes to enter into arrangements with the NPA, as contemplated in paragraph A1 above (the Applicant), must submit a written sworn affidavit or solemn affirmation to the NDPP containing such representations.
2. The NDPP must confirm receipt of the affidavit or affirmation and may request further particulars by way of a written sworn affidavit or solemn affirmation from the Applicant. The Applicant may also *mero moto* submit a further written sworn affidavit or solemn affirmation to the NDPP containing representations.
3. All such representations must contain a full disclosure of all the facts, factors or circumstances surrounding the commission of the alleged offence, including all information which may uncover any network, person or thing, which posed a threat to our security at any stage or may pose a threat to our current security.
4. The Priority Crimes Litigation Unit (PCLU) in the Office of the NDPP shall be responsible for overseeing investigations and instituting prosecutions in all such matters.
5. The regional Directors of Public Prosecutions must refer all prosecutions arising from the conflicts of the past, which were committed before 11 May 1994, and with which they are or may be seized, immediately to the Office of the NDPP.
6. The PCLU shall be assisted in the execution of its duties by a senior designated official from the following State departments or other components of the NPA:
  - (a) The National Intelligence Agency.
  - (b) The Detective Division of the South African Police Service.
  - (c) The Department of Justice & Constitutional Development.
  - (d) The Directorate of Special Operations.
7. The NDPP must approve all decisions to continue an investigation or prosecution or not, or to prosecute or not to prosecute.

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8. The NDPP must also be consulted in respect of and approve any offer to a perpetrator relating to the bestowing of the status of a section 204 witness and all section 105A plea and sentence agreements.
9. The NDPP may obtain the views of any private or public person or institution, our intelligence agencies and the Commissioner of the South African Police Service, and must obtain the views of any victims, as far as is reasonably possible, before arriving at a decision.
10. A decision of the NDPP not to prosecute and the reasons for that decision must be made public.
11. In accordance with section 179 (6) of the Constitution, the NDPP must inform the Minister for Justice & Constitutional Development of all decisions taken or intended to be taken in respect of this prosecuting policy relating to conflicts of the past.
12. The NDPP may make public statements on any matter arising from this policy relating to conflicts of the past, where such statements are necessary in the interests of good governance and transparency, but only after informing the Minister for Justice and Constitutional Development thereof.
13. The institution of any prosecution in terms of this policy relating to conflicts of the past would not deprive the accused from making further representations to the NDPP requesting the NDPP to withdraw the charges against him or her. These representations would be considered according to the NPA prosecuting policy, directives, guidelines and established practice. The victims must, as far as reasonably possible, be consulted in any such further process and be informed, should the accused's representations be successful.
14. The NDPP may provide for any additional procedures.
15. All state agencies, in particular those dealing with the prosecution of alleged offenders and those responsible for the investigation of offences, must be requested not to use any information obtained from an alleged accused person during this process in any subsequent criminal trial against such a person. Whatever the response of such agencies may be to this request, the NPA records that its policy in this regard is not to make use of such information at any stage of the prosecuting process, especially not to present it in evidence in any subsequent criminal trial against such person.

TP 9

C. CRITERIA GOVERNING THE DECISION TO PROSECUTE OR NOT TO PROSECUTE IN CASES RELATING TO CONFLICTS OF THE PAST

Apart from the general criteria set out in paragraph 4 of the Prosecuting Policy of the NPA, the following criteria are determined for the prosecution of cases arising from conflicts of the past:

1. The alleged offence must have been committed on or before 11 May 1994.
2. Whether a prosecution can be instituted on the strength of adequate evidence after applying the general criteria set out in paragraph 4 of the said Prosecuting Policy of the NPA.
3. If the answers to paragraphs 1 and 2 above are in the affirmative, then the further criteria in paragraphs (a) to (j) hereunder, must, in a balanced way, be applied by the NDPP before reaching a decision whether to prosecute or not:
  - (a) Whether the alleged offender has made a full disclosure of all relevant facts, factors or circumstances to the alleged act, omission or offence.
  - (b) Whether the alleged act, omission or offence is an act associated with a political objective committed in the course of conflicts of the past. In reaching a decision in this regard the following factors must be considered:
    - (i) The motive of the person who committed the act, commission or offence.
    - (ii) The object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals.
    - (iii) Whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, agent or a supporter.
    - (iv) The relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued, but does not include any act, omission or offence committed—
      - (aa) for personal gain; or
      - (bb) out of personal malice, ill-will or spite, directed against the victim of the act or offence committed.

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- (c) The degree of co-operation on the part of the alleged offender, including the alleged offenders endeavours to expose—
- (i) the truth of the conflicts of the past, including the location of the remains of victims; or
  - (ii) possible clandestine operations during the past years of conflict, including exposure of networks that operated or are operating against the people, especially if such networks still pose a real or latent danger against our democracy.
- (d) The personal circumstances of the alleged offender, in particular—
- (i) whether the ill-health of or other humanitarian consideration relating to the alleged offender may justify the non-prosecution of the case;
  - (ii) the credibility of the alleged offender;
  - (iii) the alleged offender's sensitivity to the need for restitution;
  - (iv) the degree of remorse shown by the alleged offender and his or her attitude towards reconciliation;
  - (v) renunciation of violence and willingness to abide by the Constitution on the part of the alleged offender; and
  - (vi) the degree of indoctrination to which the alleged offender was subjected.
- (e) Whether the offence in question is serious.
- (f) The extent to which the prosecution or non-prosecution of the alleged offender may contribute, facilitate or undermine our national project of nation-building through transformation, reconciliation, development and reconstruction within and of our society.
- (g) Whether the prosecution may lead to the further or renewed traumatising of victims and conflicts in areas where reconciliation has already taken place.
- (h) If relevant, the alleged offender's role during the TRC process, namely, in respect of co-operation, full disclosure and assisting the process in general.
- (i) Consideration of any views obtained for purposes of reaching a decision.
- (j) Any further criteria, which might be deemed necessary by the prosecuting authority for reaching a decision.

Your Ref:

Our Ref: B Sibiya

The Acting National Director of Public Prosecutions  
National Prosecuting Authority  
Private Bag X752  
Pretoria  
0001

By fax: 012 845 7291; and  
By hand

31 July 2013

Dear Advocate Nomgcobo Jiba,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We act for Thembisile Phumelele Nkadimeng, the sister of the late Nokuthula Aurelia Simelane (Simelane), who was kidnapped and tortured by the former Security Police of the South African Police in 1983 and disappeared while in their hands.
2. We refer to the earlier correspondence in this matter between our client and your office. We also refer to the various communications and meetings held with your Advocate Chris Macadam from the Priority Crimes Litigation Unit (PCLU) earlier this year and in previous years. We attach for your easy reference a copy of our client's letter dated 29 January 2013 addressed to your colleague, Dr Silas Ramaite, the then Acting National Director of Public Prosecutions. This letter sets out the background to the case of our client's late sister.
3. Our client and her family have been seeking justice, truth and accountability for nearly 30 years. September this year will be the 30<sup>th</sup> anniversary of the disappearance of Simelane. It has been some 17 years since an investigation docket was opened into her disappearance. Simelane's case was one of the cases referred to National Prosecuting Authority (NPA) by the erstwhile Truth and Reconciliation Commission (TRC) in 2001 and was in turn referred to the PCLU

TP 7

in 2003. This matter has been in the hands of the NPA for 13 years and has been with the PCLU for more than 10 years.

4. Most of the responsible perpetrators have received amnesty for the kidnapping of Simelane, while some also received amnesty for her torture. The crimes of assault and assault GBH have prescribed in terms of section 18 of Act 51 of 1977. No explanation has been provided for the failure to charge those perpetrators who were denied amnesty for the brutal torture of Simelane. None of the perpetrators applied for amnesty for her murder and some did not even apply for her kidnapping, even though the evidence firmly implicates them. In terms of section 18 of the said Act the crimes of kidnapping and murder never prescribe.
5. As appears from the correspondence, my client has engaged in extensive and strenuous endeavours to persuade the authorities to take action over many years. Her pleas have fallen on deaf ears. Ultimately an undertaking was provided by your Adv Macadam to make a final decision on whether to prosecute or refer this matter to an inquest by no later than the end of May 2013. At the end of May no such decision was taken and Adv Macadam advised that he required more time to finalize his investigations. Towards the end of June the said Macadam indicated that he could provide no date on when the investigations would be completed.
6. Our client has understandably lost all faith in the ability and/ or willingness of the NPA to ever conclude its investigations. Our client is of the view that if the suspects in this matter could not be prosecuted, it should have been referred to a judicial inquest years ago, if not decades ago.
7. Should your Adv Macadam be of the view that there are still outstanding lines of investigation that are critical and necessary for purposes of making a decision whether to prosecute or refer to an inquest, and that such investigation cannot be completed within the month of August he is invited to advise us per return. Should no such advice be forthcoming we will assume that there is no further inquiry that cannot be concluded within the next four weeks for purposes

TPD

of making the said decision and we will act in accordance with our instructions as set out below.

8. Our instructions are as follows:

8.1 The National Prosecuting Authority (NPA) has had more than sufficient time to complete its investigations;

8.2 There is more than sufficient evidence upon which to take a decision to prosecute or to refer to an inquest;

8.3 Even if there are unresolved lines of inquiry, the nature thereof are unlikely to be resolved by further investigation; and can in any event be concluded prior to the launch of a prosecution; or prior to, or during the course of an inquest;

8.4 The excessive delay in finalizing this investigation has severely prejudiced the right of my client and her family to justice and violated their constitutional right to human dignity; and

8.5 The prolonged delay constitutes disgraceful neglect by the criminal justice system; is deeply offensive to the rule of law and is contemptuous of the sacrifices made by Simelane in her struggle for the freedom of South Africa.

9. We are accordingly instructed to demand that you make a decision to charge the perpetrators responsible for Ms Simelane's kidnapping and / or murder and / or other offences by no later than close of business on Friday, 30 August 2013, alternatively; should you decline to prosecute anyone that you refer this matter to a formal judicial inquest. Should you decline or fail to make such a decision our instructions are to apply to the High Court for an order that the matter be referred to a judicial inquest.

TPD

Yours sincerely

PP M. Mowee

Legal Resources Centre, Constitutional Litigation Unit, Johannesburg  
Bongumusa Sibiya

**COPY TO:** Minister for Justice and Constitutional Development  
By fax: 012 406 4680

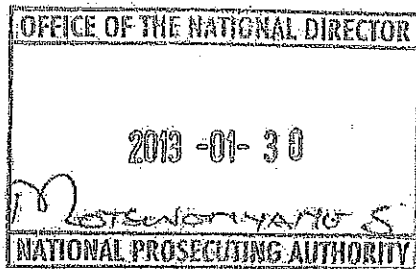
**AND TO:** Advocate Chris Macadam  
Priority Crimes Litigation Unit  
By fax: 012 845 6337; and  
By email: cmacadam@npa.gov.za or hzwart@npa.gov.za

**AND TO:** Captain Masegela,  
South African Police Service  
By hand

TP 1



THEMBISILE PHUMELELE NKADIMENG



698 Umhlanga Street  
Wingate Park  
PRETORIA 0181

Tel: 012 421 3500  
Fax: 012 421 3516  
Cell: 082 553 6680

Email: nkadimeng.thembi@gmail.com

29 January 2013

The Acting National Director of Public Prosecutions  
National Prosecuting Authority  
Private Bag X752  
Pretoria  
0001

BY HAND

Fax: (012) 845 6337

Dear Dr Silas Ramafe,

**REQUEST FOR THE HOLDING OF A FORMAL INQUEST IN TERMS OF SECTION 5 OF THE INQUESTS ACT 58 OF 1959 IN RESPECT OF THE KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

I am the sister of Nokuthula Aurelia Simelane ("Nokuthula"). My identity number is 730210 0329 088. On behalf of my family, I seek the holding of a formal inquest in terms of Act 58 of 1959 in respect of the circumstances surrounding the murder and other offences perpetrated by members of the former South African Police Security Branch against Nokuthula.

Background

Nokuthula was the first child of Ernestina and the late Matthews Simelane. She was a member of Umkhonto we Sizwe (MK), the military wing of the African National Congress (ANC). My sister was a student at the University of Swaziland in the early 1980s. During this time, she acted as a go-between for the ANC and exiled leaders in

TPN

Swaziland. In September 1983 shortly after completing her university studies, and whilst on an MK mission to South Africa, she was kidnapped by the Security Branch from the Carlton Centre in Johannesburg. She was then brutally tortured over a period of several weeks and then disappeared.

Most of the policemen who kidnapped and tortured her and then caused her disappearance applied to the TRC for amnesty. They received amnesty for her kidnapping even though they were found to have been untruthful about their treatment of my sister.<sup>1</sup> The senior officers were denied amnesty for her vicious assault. None of the police officers applied for amnesty for the murder of Nokuthula. The senior police officers, in whose presence she was last seen, have refused to disclose the whereabouts of the remains of Nokuthula. To this day her remains have not been found for a burial with dignity.

My family and I have constantly searched for the truth about what happened to my sister. Shortly after her disappearance we spoke with ANC members. We enquired at the South Africa / Swaziland border whether she had crossed into South Africa, but there was no record of her. We even made inquiries in neighbouring countries such as Botswana. Nokuthula's disappearance was reported to the police, both in Swaziland and, subsequently, in South Africa.

All these efforts proved fruitless until early 1996 when the Sowetan newspaper published a story about Nokuthula's disappearance. The newspaper article appeared to finally spur the police into action. A police investigation under case number GAS1469/02/1996 was opened under the auspices of the Priority Crimes Unit based at John Vorster Square (now Johannesburg Central Police Station). The investigating officer was Captain Leask. During July 1998 one of the senior officers was warned of his rights in terms of section 35 of the Constitution in respect of the "murder" of Nokuthula Simelane. He declined to make a statement.

<sup>1</sup> Decision (AC/2001/185) of the Amnesty Committee of the Truth and Reconciliation Commission.

TP N

We raised her disappearance with the TRC. We have pleaded with prosecutors to take the case forward. I have even appointed private detectives. A documentary was made and screened on TV ("Betrayal", 2006). A statue was erected in her memory in Bethal. However we are still without answers.

We know from the TRC hearings that my sister suffered terribly at the hands of the South African security branch. We know that she refused to collaborate with the forces of Apartheid. For this she paid the ultimate price. My father died in 2001, without knowing what happened to his daughter. I refuse to give up the search for the truth and justice.

#### Attempts to seek justice

I have met police officers as well as prosecutors from the Priority Crimes Litigation Unit (PCLU) of the National Prosecuting Authority (NPA) on a few occasions. On each occasion various excuses were provided as to why this case could not go forward.

Initially the PCLU advised that there was sufficient evidence to proceed against certain of the officers on charges of assault to do grievous bodily harm in respect of the physical torture of Nokuthula. However, they advised us that they were prevented from proceeding with assault prosecutions as the right to prosecute such offences had prescribed by virtue of section 18 of the Criminal Procedure Act 51 of 1977.

The PCLU also advised that their hands were, in any event, tied by an effective moratorium against the prosecution of the so-called political cases of the past. They were not permitted to proceed until a standardized policy had been put in place to deal with such cases. Towards the end of 2005 the Prosecution Policy was duly amended. It provided for an effective back-door amnesty for those responsible for so-called political crimes and who had not previously applied for amnesty. Together with the wives of the Cradock 4 I applied to court to have this policy set aside as unconstitutional. The Pretoria High Court struck down the policy in the case of *Nkadimeng & Others v The National Director of Public Prosecutions & Others (TPD*

TP 07

case no 32709/07). In this matter the NPA had argued that the amended policy survived constitutional scrutiny as families could still bring private prosecutions in matters where the NDPP declined to prosecute. The court rejected this contention stating that it was the primary responsibility of the NPA to prosecute. The NPA was denied leave to appeal.

Following the striking down of the amendments to the prosecution policy I was advised that the PCLU was still unable to take this matter forward because they lacked police detectives to carry out the necessary investigations.

During the course of 2006 one of my legal representatives presented the PCLU with a legal opinion in which it was concluded that the physical and mental abuse perpetrated against Nokhuthula constituted the international crime of torture. Torture was, by 1983, a prohibited and unlawful act in terms of customary international law. South Africa was obliged to investigate and prosecute transgressions of customary international law as well as violations of the Geneva Conventions. While the PCLU did not dispute the conclusions of this opinion they did not take the matter forward.

My legal representatives also proposed that those suspects who did not apply for amnesty be prosecuted for kidnapping. I am advised that kidnapping is listed as one of the exceptions to the 20 year prescription rule in section 18 of Act 51 of 1977. Notwithstanding that there was no legal impediment to the preferring of such charges this proposal was rejected. My legal representatives also proposed that charges of defeating the ends of justice be brought against two of the senior officers for intimidating a junior officer into making a false statement and for attempting to coach a witness into making a false statement. The PCLU declined to pursue such charges.

Other excuses include an apparent lack of evidence. In particular it has been claimed that none of the evidence that was led before the Truth and Reconciliation Commission (TRC) may be used in subsequent legal proceedings. I am advised that this view is without merit. It is based on an erroneous reading of section 31 of the Promotion of

TPN

National Unity and Reconciliation Act 34 of 1995 which, in any event, was not invoked in these particular proceedings before the TRC.

The need for a formal inquest

This matter is now urgent. Nearly 30 years has passed since Nokuthula's disappearance. Some 17 years has lapsed since the more recent police docket was opened. My mother is now elderly and sickly. Witnesses are also getting old. Some have died in suspicious circumstances.

The PCLU had previously suggested that an inquest be held in this matter. At that time my family and I preferred to see a prosecution taking place. Indeed we have been trying to launch a private prosecution, but we have been unable to raise sufficient funds to pay the security for costs, which we are advised will be a substantial sum of money. In the circumstances we now wish to have formal inquest held as speedily as possible.

If the authorities were going to prosecute this matter such prosecution would have taken place many years ago. This case has dragged on for way too long, and such delay has undermined the prospects for justice and played into the hands of the perpetrators. With every day that goes by without action being taken, the interests of justice are severely eroded. Moreover, and most regrettably, we have lost complete faith in the PCLU to run a successful prosecution.

Last week I met with the investigating officer, Captain Masehela. He advised me that he submitted his report to Advocate Chris Macadam at the PCLU during July 2011. In this report he proposed that this matter be dealt with in an inquest. I assume that this report was submitted in compliance with section 4 of the Inquest Act. I then spoke with Advocate Macadam who advised me to approach Madeleine Fullard, the Head of the Missing Persons Task Team at the National Prosecuting Authority of South Africa.

I met with Ms Fullard who advised that her Task Team had not been able to locate the remains of Nokuthula. She suggested that I approach the suspects and offer not to

TP 17

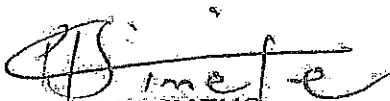
prosecute them if they disclose the location of Nokuthula's remains. I have discussed this suggestion with my family and we have decided not to do a deal with the suspects. The suspects have had more than ample time to come forward and disclose the whereabouts of the remains. They have chosen rather to cause me and my family untold pain and anguish by maintaining a wall of lies and deceit.

Please advise me per return whether the statements and relevant documents have been submitted to a magistrate or judicial officer in terms of section 5 of the Inquest Act. If not, please advise why not. If the documents have been submitted, please advise which magistrate or judicial officer is dealing with this matter. I am advised that I am entitled to be given reasonable notice of the holding of an inquest in terms of section 7 of the Inquest Act. I further request that steps be taken to ensure that the inquest is a formal public inquest which includes the giving of oral evidence. Given the sensitivities of this matter I request that this inquest be held in the High Court of South Africa.

Should you at any point choose to institute criminal proceedings in this matter I request that you appoint a special prosecutor to lead the prosecution, in consultation with me and my family.

I accordingly ask that you treat this request with great urgency and advise me at your earliest convenience.

Yours sincerely,

  
T P NKADIMENG

Copy to: Advocate Chris Macadam, Priority Crimes Litigation Unit

TP 17



LEGAL RESOURCES CENTRE

PBO No. 930003292

Constitutional Litigation Unit • 16<sup>th</sup> Floor Bram Fischer Towers • 20 Albert Street • Marshalltown, Johannesburg 2001 • South Africa • [www.lro.org.za](http://www.lro.org.za)

PO Box 9495 • Johannesburg 2000 • South Africa • Tel: (011) 836 9831 • Fax: (011) 834 4273

Your Ref:

Our Ref: B Sibiya

The Acting National Director of Public Prosecutions  
National Prosecuting Authority  
Private Bag X752  
Pretoria  
0001

By fax: 012 845 7291; and  
By hand

5 August 2013

Dear Advocate Nomgcobo Jiba,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We refer to your Advocate Macadam's email dated 31 July 2013.
2. Our letter invited Advocate Macadam to identify lines of inquiry that he believed could not be completed during the next 4 weeks. In the abovementioned email, besides a general claim that he has further lines of inquiry he did not identify any specific outstanding investigations nor did he state that these are unlikely to be finalized during August. We again invite Advocate Macadam to indicate what the outstanding investigations are and why he is of the view that 4 weeks is insufficient. Should such an explanation be forthcoming our client is prepared to review her instructions.
3. We note that Advocate Macadam advised our Adv Palmer during April this year that a number of key aspects had been dealt with and that the remaining investigations would be "finalised within a reasonable period of time." We are of the respectful view that an end of August deadline, which amounts to an additional 4 months, constitutes more than a reasonable period of time. This is particularly so when seen in the light of the fact that the docket has been open for some 17 years and has been in the hands of the PCLU for more than 10 years.

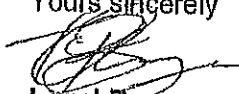
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Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance)  
S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudankwa, HD Smith  
MR Chetty (Director), EJ Broster, FB Mahomed, AJ Richard  
S Sephton (Director), C McConnachie  
N Fakir (Director), T Mbhense, Y van Leeuw  
T Ngcuka (Head of CLU), M Bishop, G Bizos SC, J Brickhill, S Nindi, B Sibiya, W Wicomb

TPM

4. In respect of the alleged communications between Advocate Macadam and members of our team we note that this amounted to a meeting held on 18 February 2013, three or four subsequent telephone discussions and a few email exchanges. We are advised that virtually all these communications were initiated by our client's representatives. This is notwithstanding his undertaking made at the 18 February meeting to provide our client's representatives with regular updates following his weekly updates from the investigation team. We are further advised that in none of these communications was any indication provided; approximate or otherwise, as to when the investigations would be concluded.
5. Our client declined the proposal for a meeting towards the end of August, which she viewed as further delaying the finalizing of the investigation. In the circumstances if there are matters for Advocate Macadam to report we request that he does so now.
6. Our client was advised not to take any action when the agreed deadline for completing the investigation at the end of May expired. Two more months have now passed since that deadline. We are now providing Advocate Macadam with a further month to finalize his inquiries. We are instructed to advise that a general and vague claim as to why Advocate Macadam cannot complete his investigation by the end of August will not suffice. Unless he provide specifics, as referred to above, we must assume that there is no reasonable explanation for this untenable delay.

Yours sincerely



Legal Resources Centre, Constitutional Litigation Unit, Johannesburg  
Bongumusa Sibiya

**COPY TO:** Advocate Chris Macadam  
Priority Crimes Litigation Unit  
By fax: 012 845 6337; and  
By email: cmacadam@npa.gov.za or hzwart@npa.gov.za

TP 1



Date/Time: 5. Aug. 2013 18:23

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E. 2) Busy  
E. 4) No facsimile connection

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National Office  
 Cape Town  
 District  
 Subdivisions  
 Not accounting  
 District Board / Provincial Office

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 1145 9/24/2014 1/20/2014 1/20/2014 1/20/2014  
 1146 9/24/2014 1/20/2014 1/20/2014 1/20/2014  
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 1149 9/24/2014 1/20/2014 1/20/2014 1/20/2014  
 1150 9/24/2014 1/20/2014 1/20/2014 1/20/2014

TP

Johannesburg Office

15<sup>th</sup> Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa  
PO Box 9495 • Johannesburg 2000 • South Africa  
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PBO No. 930003292  
NPO No. 023-004

TN 33  
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33  
LRC

Legal Resources Centre

10 July 2014

The National Director of Public Prosecutions  
National Prosecuting Authority  
Private Bag X752  
Pretoria  
0001

By Fax: (012) 845-7291

Dear Mr. Nxasana,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We refer to our letter to you dated 14 January 2014, which was copied to Adv. S K Abrahams. Acting Director of the Priority Crimes Litigation Unit (PCLU) and Adv C Macadam.
2. We have received no response to this letter. After a lapse of some 6 months we must assume that you have no response to the contents of the aforesaid letter and that you are not willing to meet with our client and her legal representatives.
3. Contrary to earlier promises made by the PCLU we have received no monthly reports on progress, or the lack thereof. In the circumstances we must assume that no progress has been made.
4. Our client has only been contacted once by the investigating officer during the past 6 months. During the month of May, Captain Masegela phoned our client and indicated that she would soon be advised of the DNA test results. She then expected to hear from him or the PCLU but has regrettably been kept in the dark.

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FB Mahomed (Acting Director), A Turpin  
S Sephton (Director), C McConnachie  
N Fakir (Director), T Mhense, C van der Linde,  
J Brickhill (Head of CLU), M Bishop, G Bzoz SC, T Ngcukaitobi, S Nindi, M Wheelodon, W Wicomb

TP

5. In the light of the continued inaction in this matter we must assume that there is no real intention to make a decision to prosecute or not; and moreover that there is no intention to refer this case to an inquest.
6. Our client's rights are accordingly reserved.

Yours faithfully,



LEGAL RESOURCES CENTRE  
Per: CARIEN VAN DER LINDE

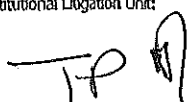
**CC TO:** Adv S K Abrahams, Acting Head: Priority  
Crimes Litigation Unit --  
Adv. C Macadam, Priority Crimes  
Litigation Unit:

Fax: (012) 845 6337;

Fax: (012) 845 6337  
cmacadam@npa.gov.za /  
hzwart@npa.gov.za

National Office:  
Cape Town:  
Durban:  
Grahamstown:  
Johannesburg:  
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S Sepitlon (Director), C McConnachie  
N Fakir (Director), T Mbhense, C van der Linde,  
J Brickhill (Head of C.L.U.), M Bishop, G Blzos SC, T Ngcukaiboli, S Nindi, M Wheeldon, W Wicomb



FAX HEADER: LEGAL RESOURCES CENTRE

TRANSMITTED/STORED : 11. JUL. 2014 14:48

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E-2) BUSY  
E-4) NO FACSIMILE CONNECTION

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15<sup>th</sup> Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa  
PO Box 9489 • Johannesburg 2000 • South Africa  
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NPO No. 023-004

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LEGAL RESOURCES CENTRE

10 July 2014

The National Director of Public Prosecutions  
National Prosecuting Authority  
Private Bag X752  
Pretoria  
0001

By Fax: (012) 845-7291

Dear Mr. Nxasana,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We refer to our letter to you dated 14 January 2014, which was copied to Adv. S K Abrahams, Acting Director of the Priority Crimes Litigation Unit (PCLU) and Adv G Macadam.
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3. Contrary to earlier promises made by the PCLU we have received no monthly reports on progress, or the lack thereof. In the circumstances we must assume that no progress has been made.
4. Our client has only been contacted once by the Investigating officer during the past 6 months. During the month of May, Captain Masegela phoned our client and indicated that she would soon be advised of the DNA test results. She then expected to hear from him or the PCLU but has regrettably been kept in the dark.

National Office  
Cape Town  
Pretoria  
Grahamstown  
Johannesburg  
Constitutional Litigation Unit

J Love (National Director), K Reinecke (Director: Finance), EJ Broster  
S Magardie (Director), A Andriyev, S Kahanovitz, WR Kerfoot, C May, M Nudariyava, HJ Smith  
PB Mahomed (Acting Director), A Turpin  
S Bapton (Director), C McCormack  
N Fakir (Director), T Mkhense, C van der Lede,  
J Brinkli (Head of CLU), M Bishop, G Bross SC, T Ngculuboti, S Nindli, M Winkendon, W Wicomb

TPA

Carlen van der Linde

---


**From:** Carlen van der Linde <carlen@lrc.org.za>  
**Sent:** 11 July 2014 03:06 PM  
**To:** 'cmacadam@npa.gov.za'; 'hzwart@npa.gov.za'  
**Subject:** KIDNAPPING TORTURE DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE / PRIORITY INVESTIGATION JV PLEIN 1469/1996  
**Attachments:** LETTER TO NPA 10 JULY 2014.pdf

Herewith correspondence for your kind further attention.

Carlen van der Linde  
Attorney

| Tel: 011 836 9831 | Fax: 011 836 0680 | Email: [carlen@lrc.org.za](mailto:carlen@lrc.org.za) |  
| Mobile: 060 346 9577 |  
| Physical : 15<sup>th</sup> Floor | Bram Fischer Towers | 20 Albert street | Marshalltown  
|  
| Johannesburg | South Africa |  
| Postal: P.O Box 9495 | Johannesburg 2000 |  
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**Johannesburg Office**

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PBO No. 930003292  
NPO No. 023-004

TIN 34  
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**LRC**

Legal Resources Centre

Your ref: JB/ CAS:1469/02/1996

Our ref:

10 July 2014

**Lieutenant-General A Dramat**  
**National Head: Directorate for Priority Crimes Investigation**  
Private Bag X1500  
SILVERTON  
0127

**Attention: Brigadier Kadwa**  
**By Fax: (012) 846-4400**  
**Email: kadwaE@saps.gov.za**

Dear General Dramat,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We refer to our letter to you dated 24 February 2014.
2. We have received no response to this letter. After a lapse of some 5 months we must assume that you have no response to the contents of the aforesaid letter. In the circumstances, we must also assume also that no real progress has been made in this investigation.
3. Our client has only been contacted once by the investigating officer during the past 6 months. During the month of May, Captain Masegela phoned our client and indicated that she would soon be advised of the DNA test results. She has since then been kept in the dark.
4. If the DNA tests are available please advise when the test results were supplied. Please provide us with a copy of the said results and advise us what the test results reveal.

National Office:  
Cape Town:  
Durban:  
Grahamstown:  
Johannesburg:  
Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance), EJ Broster  
S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikwa, HJ Smith  
FB Mahomed (Acting Director), A Turpin  
S Sephton (Director), C McConnachie  
N Faldt (Director), T Mhense, C van der Linde,  
J Brickhill (Head of CLU), M Bishop, G Bizos SC, T Ngcuka, S Nindi, M Wheeldon, W Wicomb

TP 11

5. In the light of the continued inaction in this matter we must assume that there is no real intention to finalise this matter expeditiously, or at all.
6. Our client's rights are accordingly reserved.

Yours faithfully,



**LEGAL RESOURCES CENTRE**

**Per: CARIEN VAN DER LINDE**

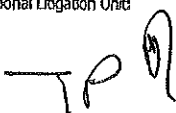
**CC TO:** Adv S K Abrahams, Acting Head: Priority  
Crimes Litigation Unit --  
Adv. C Macadam, Priority Crimes  
Litigation Unit:

**Fax: (012) 845 6337;**

**Fax: (012) 845 6337**  
**cmacadam@npa.gov.za /**  
**hzwart@npa.gov.za**

National Office:  
Cape Town:  
Durban:  
Grahamstown:  
Johannesburg:  
Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance), EJ Broster  
S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikwa, HJ Smith  
FB Mahomed (Acting Director), A Turpin  
S Sepitson (Director), C McConnachie  
N Fakir (Director), T Mbhense, C van der Linde,  
J Brickhill (Head of CLU), M Bishop, G Bizos SC, T Ngcukaitobi, S Nindl, M Wheelodon, W Wilcomb



FAX HEADER: LEGAL RESOURCES CENTRE

TRANSMITTED/STORED : 11. JUL. 2014 14:42

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REASON FOR ERROR  
E-1) HANG UP OR LINE FAIL  
E-3) NO ANSWER

E-2) BUSY  
E-4) NO FACSIMILE CONNECTION

**Johannesburg Office**

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PO Box 9493 • Johannesburg 2000 • South Africa  
Tel: (011) 838 9931 • Fax: (011) 838 8680 • Website [www.lrc.org.za](http://www.lrc.org.za)  
PBO No. 930003292  
NPO No. 023-004

**LRC**

LEGAL RESOURCES CENTRE

Your ref: JB/ CAS:1469/02/1996

Our ref:

10 July 2014

Lieutenant-General A Dramat  
National Head Directorate for Priority Crimes Investigation  
Private Bag X1500  
SILVERTON  
0127

Attention: Brigadier Kadwa  
By Fax: (012) 846-4400  
Email: [kadwa@saps.gov.za](mailto:kadwa@saps.gov.za)

Dear General Dramat,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We refer to our letter to you dated 24 February 2014.
2. We have received no response to this letter. After a lapse of some 5 months we must assume that you have no response to the contents of the aforesaid letter. In the circumstances, we must also assume also that no real progress has been made in this investigation.
3. Our client has only been contacted once by the investigating officer during the past 6 months. During the month of May, Captain Masegela phoned our client and indicated that she would soon be advised of the DNA test results. She has since then been kept in the dark.
4. If the DNA tests are available please advise when the test results were supplied. Please provide us with a copy of the said results and advise us what the test results reveal.

National Office  
Cape Town  
Durban  
Grahamstown  
Johannesburg  
Constitutional Litigation Unit

J Lova (National Director), K Retsebe (Director Finance), EJ Bröster  
S Nagerdie (Director), A Andrews, S Kabanovitz, WR Kellfoot, G May, M Mudarikwa, HJ Smith  
FB Ndlovu (Acting Director), A Turpin  
S Sephton (Director), C McCormack  
N Fakir (Director), T Mbiense, C van der Linde  
J Bickhill (Head of CLU), M Bishop, S Bloua AC, T Ngcutakoti, S Ntsho, M Wheelton, W Wicomb

TP 17



FAX HEADER: LEGAL RESOURCES CENTRE

TRANSMITTED/STORED : 11. JUL. 2014 14:43  
FILE MODE OPTION

ADDRESS

RESULT

PAGE

045 MEMORY TX

0128456337

OK

2/2

REASON FOR ERROR  
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E-3) NO ANSWERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION

## Johannesburg Office

15<sup>th</sup> Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa  
PO Box 9499 • Johannesburg 2000 • South Africa  
Tel: (011) 836 9831 • Fax: (011) 836 8680 • Website: [www.lrc.org.za](http://www.lrc.org.za)  
PBO No. 930003292  
NPO No. 023-004

LRC

LEGAL RESOURCES CENTRE

Your ref: JB/ CAS:1469/02/1996

Our ref:

10 July 2014

Lieutenant General A Dramat  
National Head: Directorate for Priority Crimes Investigation  
Private Bag X1500  
SILVERTON  
0127Attention: Brigadier Kadwa  
By Fax: (012) 846-4400  
Email: [kadwaE@saps.gov.za](mailto:kadwaE@saps.gov.za)

Dear General Dramat,

KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)

1. We refer to our letter to you dated 24 February 2014.
2. We have received no response to this letter. After a lapse of some 5 months we must assume that you have no response to the contents of the aforesaid letter. In the circumstances, we must also assume also that no real progress has been made in this investigation.
3. Our client has only been contacted once by the investigating officer during the past 6 months. During the month of May, Captain Masegela phoned our client and indicated that she would soon be advised of the DNA test results. She has since then been kept in the dark.
4. If the DNA tests are available please advise when the test results were supplied. Please provide us with a copy of the said results and advise us what the test results reveal.

National Office  
Cape Town  
Durban  
Grahamstown  
Johannesburg  
Constitutional Litigation UnitJ Love (National Director), K Retschke (Director: Finance), BJ Broster,  
S Mafardla (Director), A Andriana, S Kahanavitz, WR Kofent, C May, M Mudekwa, BJ Smith  
PB Mthembu (Acting Director), A Turpin  
B Eaphon (Director), C McConnachie  
N Falar (Director), T Mphahlele, C van der Ende,  
J Brickhill (Head of C.U.), M Bishop, G Bwos SO, T Ngwenyane, U Nino, M Wheldon, W Wicomb

TP 17

TN 35 419  
35

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag x1500 Silverton 0127

Verwysing  
Reference JV Plein 1469/02/1996

Navrae  
Enquiries Col N Xaba

Telefoon  
Telephone 012 401 3276  
079 889 9582

Faksnommer  
Fax number 012 401 3235

THE COMMANDER  
CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
SILVERTON  
0127

2014-08-11

Legal Resources Centre  
P O Box 9495  
JOHANNESBURG  
2000

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE: JV PLEIN 1469/02/1996**

1. As you are aware, your client appointed a private investigator, Mr Frank Dutton, to investigate the disappearance of MS Simelane.
2. In fact, certain of the state witnesses have advised the Investigating Officer that they had been contacted by Mr Dutton.
3. It is imperative that the DPCI conduct a full investigation into this matter and the issue of what previous statements have been made at various stages by the State witnesses at various stages is of critical importance when assessing the credibility.
4. In this regard, you are kindly requested to arrange for Mr Dutton to provide the Investigating Officer with an affidavit, outlining what investigation he conducted, with whom he had contact and if in fact these persons were State witnesses and what was conveyed to him by them.

COLONEL  
COMMANDER: CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
ORGANISED CRIME  
N XABA

2014-08-11

Col Xaba/brlewe33(s)

TP 17

**Carien van der Linde**

---

**From:** Carien van der Linde <carien@lrc.org.za>  
**Sent:** 09 September 2014 10:01 AM  
**To:** 'kadwaE@saps.gov.za'  
**Cc:** 'cmacadam@npa.gov.za'; 'hzwart@npa.gov.za'  
**Subject:** KIDNAPPING TORTURE DISAPPEARANCE AND MURDER OF NOKHUTHULA  
AURELIA SIMELANE / PRIORITY INVESTIGATION: JV PLEIN 1469/02/1996  
**Attachments:** LETTER COL XABA 9 9 2014.pdf

Dear Col Xaba,

I attach correspondence for your attention.

Kind regards

**Carien van der Linde**  
Attorney

| Tel: 011 836 9831 | Fax: 011 836 8680 | Email: [carien@lrc.org.za](mailto:carien@lrc.org.za) |  
| Mobile: 060 346 9577 |  
| Physical : 15<sup>th</sup> Floor | Bram Fischer Towers | 20 Albert street | Marshalltown  
|  
| Johannesburg | South Africa |  
| Postal: P.O Box 9495 | Johannesburg 2000 |  
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TP 17

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ADDRESS

RESULT

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308 MEMORY TX

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2/2

REASON FOR ERROR  
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E-3) NO ANSWERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION

## Johannesburg Office

5<sup>th</sup> Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa  
 PO Box 9495 • Johannesburg 2000 • South Africa  
 Tel: (011) 836 9831 • Fax: (011) 836 8600 • Website [www.lrc.org.za](http://www.lrc.org.za)  
 PBO No. 930003292  
 NPO No. 023-004

**LRC**

LEGAL RESOURCES CENTRE

Your ref: JB/ CAS: 1469/02/1996

9 September 2014

**Colonel N Xaba**

Commander: Crimes Against the State

Directorate for Priority Crimes Investigation

Private Bag X 1500

SILVERTON

0127

By Fax and email: (012) 401-3235/ kadwaE@saps.gov.za

Dear Colonel Xaba,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
 AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We refer to your letter dated 11 August 2014.
2. We wish to advise you that the affidavit of Frank Dutton, the family's private investigator, is under preparation and will be filed in due course.
3. We should state at this stage that Mr. Dutton did not take any statements from any witness or person. There can accordingly be no credibility issues arising.
4. The real issue in relation to credibility will be the inordinate and extended time period that this investigation has taken. The only reason why Mr. Dutton was appointed by the family was because of the many years of inaction of the SAPS and the NPA. This step was entirely reasonable in the circumstances and was taken out of great frustration on the part of my clients.

National Office:  
 Cape Town:  
 Durban:  
 Grahamstown:  
 Johannesburg:  
 Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance), EJ Bröster  
 S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikiwa, HJ Smith  
 PB Mahomed (Acting Director), A Turpin  
 S Sephton (Director), C McConnachie  
 N Fakir (Director), T Malyense, C van der Linde,  
 J Brickhill (Head of CLU), M Bishop, G Bizos SC, T Ngcukaitobi, S Ntind, M Wheelodon, W Witzomb

EAX HEADER: LEGAL RESOURCES CENTRE

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REASON FOR ERROR  
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E-3) NO ANSWERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION

## Johannesburg Office

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 P.O. Box 9495 • Johannesburg 2000 • South Africa  
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 PBO No. 930003292  
 NPO No. 023-004

**LRC**

Your ref: JB/ CAS: 1469/02/1996

9 September 2014

Colonel N Xaba

Commander: Crimes Against the State

Directorate for Priority Crimes Investigation

Private Bag X1500

SILVERTON

0127

By Fax and email: (012) 401-3235/ kadwaE@saps.gov.za

Dear Colonel Xaba,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
 AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

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4. The real issue in relation to credibility will be the inordinately long and extended time period that this investigation has taken. The only reason why Mr. Dutton was appointed by the family was because of the many years of inaction of the SAPS and the NPA. This step was entirely reasonable in the circumstances and was taken out of great frustration on the part of my clients.

National Office:  
 Cape Town  
 Durban  
 Grahamstown  
 Johannesburg  
 Constitutional Litigation Unit

J Love (National Director), K Reinecke (Director: Finance), E1 Broster  
 S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikwa, HJ Smith  
 PB Mohamed (Acting Director), A Turpin  
 S Sephton (Director), C McCarthy  
 N Fakir (Director), T Mphahlele, C van der Linde  
 J Brickhill (Head of CLU), M Elshop, G Blazs SC, T Ngcukaltobi, S Nindi, M Wheelodon, W Wilcorib

**Johannesburg Office**

15<sup>th</sup> Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa  
PO Box 9495 • Johannesburg 2000 • South Africa  
Tel: (011) 836 9831 • Fax: (011) 836 8680 • Website [www.lrc.org.za](http://www.lrc.org.za)  
**PBO No. 930003292**  
**NPO No. 023-004**

423  
**LRC**

**Legal Resources Centre**

Your ref: JB/ CAS: 1469/02/1996

9 September 2014

**Colonel N Xaba**

Commander: Crimes Against the State  
Directorate for Priority Crimes Investigation  
Private Bag X1500  
SILVERTON  
0127

By Fax and email: (012) 401-3235/ kadwaE@saps.gov.za

Dear Colonel Xaba,

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

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4. The real issue in relation to credibility will be the inordinate and extended time period that this investigation has taken. The only reason why Mr. Dutton was appointed by the family was because of the many years of inaction of the SAPS and the NPA. This step was entirely reasonable in the circumstances and was taken out of great frustration on the part of my clients.

National Office:  
Cape Town:  
Durban:  
Grahamstown:  
Johannesburg:  
Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance), EJ Broster  
S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikwa, HJ Smith  
FB Mahomed (Acting Director), A Turpin  
S Sephton (Director), C McConnachie  
N Fakir (Director), T Mbhense, C van der Linde,  
J Brickhill (Head of CLU), M Bishop, G Bizos SC, T Ngcukaitobi, S Nindl, M Wheeldon, W Wilcomb

TPD

5. Since we have not heard from further you or the NPA we assume that you have not received any further communications or instructions from the PCLU.

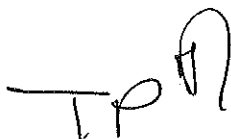
Yours faithfully,



**CARIEN VAN DER LINDE**  
**LEGAL RESOURCES CENTRE**

Copy to: Adv. S K Abrahams, Acting Head: Priority Crimes Litigation Unit -- Fax: (012) 845 6337;

Adv. C Macadam, Priority Crimes Litigation Unit: -- Fax: (012) 845 6337  
Email: cmacadam@npa.gov.za / hzwart@npa.gov.za



SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag x1500 Silverton 0127

Verwysing      JV Plein 1469/02/1996  
Reference

Navrae          Capt TP Masegela  
Enquiries

Telefoon        012 401 3262  
Telephone      082 779 8543

Faksnommer    012 401 3235  
Fax number

THE COMMANDER  
CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
SILVERTON  
0127

2014-09-10

Legal Resources Centre  
P O Box 9495  
JOHANNESBURG  
2000

Attention: Angela

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE: JV PLEIN 1469/02/1996**

This office is still waiting response to our letter dated 2014/08/11.

The National Prosecution Authority could not make decision without the required affidavit.

COLONEL  
COMMANDER: CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
ORGANISED CRIME  
N XABA

2014-09-10

Capt Masegela/bricwe35(s)



SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag x1500 Silverton 0127

Verwysing  
Reference

JV Plein 1469/02/1996

Navrae  
Enquiries

Col N Xaba  
Capt TP Masegela

Telefoon

012 401 3276  
012 401 3262

Telephone

079 889 9582  
082 779 8543

Faksnommer  
Fax number

012 401 3235

THE COMMANDER  
CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
SILVERTON  
0127

2014-09-25

Legal Resources Centre  
P O Box 9495  
JOHANNESBURG  
2000

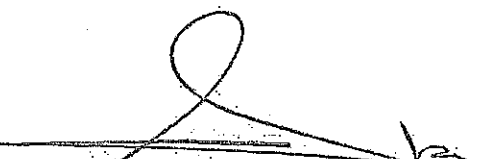
Attention: Angela

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE: JV PLEIN 1469/02/1996**

Please be informed that the docket has been returned to the investigating officer for further instructions to comply with emanating from Frank Dutton's affidavit.

Could Thembi furnish us with particulars of the family members who were studying with the deceased in the University of Swaziland.

Your office will be informed about the progress in this matter.

  
COLONEL  
COMMANDER: CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
ORGANISED CRIME  
N XABA

2014-09-25

Capt Masegela/briewe35(s)

TPN

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag x1500 Silverton 0127

Verwysing  
Reference JV Plein 1469/02/1996Navrae  
Enquiries Capt TP MasegelaTelefoon  
Telephone 012 401 3262  
082 779 8543Faksnommer  
Fax number 012 401 3235THE COMMANDER  
CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
SILVERTON  
0127

2014-10-22

Legal Resources Centre  
P O Box 9495  
JOHANNESBURG  
2000

Attention: Angela

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE: JV PLEIN 1469/02/1996**

Firstly I would like to inform you that the investigation is still ongoing and statements of witnesses are obtained but not all of them have been traced.

Can your client, Mrs Thembi Nkadineng provide us with the particulars of family members who were studying with Nokuthula at Swaziland University.

One of the outstanding statements is of your client, Mrs Thembi Nkadineng.

Can she please provide us with a affidavit stating the following aspects:

- When did Nokuthula go to Swaziland to complete her studies
- When last did she made contact with Nokuthula prior to her disappearance
- Was she aware of any activities in the ANC and what were those activities
- It would also be relevant to indicate if she know any steps that the ANC took to locate Nokuthula

COLONEL

COMMANDER: CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
ORGANISED CRIME  
N XABA

Capt Masegela/briewel11(s)

TP 11

**Carien van der Linde**

---

**From:** DPCI:CATS Masegela Tlou - Captain <MasegelaT@saps.gov.za>  
**Sent:** 26 February 2015 07:21 AM  
**To:** carien@lrc.org.za  
**Cc:** Angela Mudukuti; Xaba N - Colonel  
**Subject:** KIDNAPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE

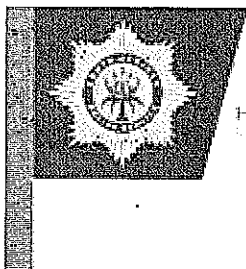
Good Morning.

Please be advised that the above matter is still under investigation and will soon be handed over to the National Prosecuting Authority for their decision.

The investigating officer must still obtain the last few statements from outstanding witnesses .

Kind regards.

Capt TP Masegela  
Crimes Against the State  
Organised Crime  
Directorate for Priority Crime Investigation  
Tel 012-4013262  
082 779 8543  
Fax 012-4013235



TP

TN 41 429

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag x1500 Silverton 0127

Verwysing Reference	JV Plein 1469/02/1996
Navrae Enquiries	Lt Col MS Mahlangu
Telefoon Telephone	012 401 3264
Faksnommer Fax number	012 401 3235

THE COMMANDER  
CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
SILVERTON  
0127

2015/04/09

Legal Resources Centre  
P O Box 9495  
JOHANNESBURG  
2000

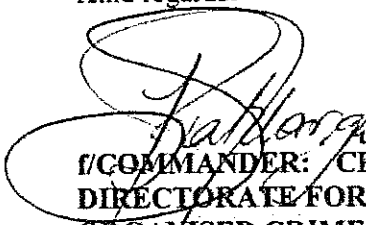
Attention: Carien

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA  
AURELIA SIMELANE: JV PLEIN 1469/02/1996**

Please be informed that the above mentioned case docket has been forwarded to the National Prosecution Authority for decision.

Your office will be informed about the progress in this matter.

Kind regards.

  
LIEUTENANT COLONEL  
//COMMANDER: CRIMES AGAINST THE STATE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
ORGANISED CRIME  
MS MAHLANGU

Capt Masegela/briewe113(s)

TP 7

TN 42

**SECRET**

**REPORT  
AMNESTY TASK TEAM**

**SECRET**

TP 9

431

## Secret

### REPORT: AMNESTY TASK TEAM

#### 1. Background

1.1 A Director-General's Forum, under the chairpersonship of the Director-General: Justice and Constitutional Development on 23 February 2004, appointed a Task Team to consider and report on the following:

- "1. Consideration of the nature of the 'arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation' that the NPA and intelligence agencies may come up with in assisting persons who divulge information relating to offences committed during the conflicts of the past.
2. Consideration of a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past.
3. Bearing the above-mentioned in mind, whether legislative enactments are required."

1.2 The Task Team comprises the following members:

Deon Rudman (Chairperson):	Department of Justice and Constitutional Development
Yvonne Mabule :	National Intelligence Agency
Vincent Mogotloane :	National Intelligence Agency
Gerhard Nel :	National Prosecuting Authority
Lungisa Dyosi :	National Prosecuting Authority
Ray Lalla :	South African Police Service
Joy Rathebe :	Department of Defence

1.3 The Task Team was requested to submit its report to the Director-General's Forum by close of business on 1 March 2004. The Task Team met for the first time on 26 February 2004 and again on 1 March

Secret

2

**Secret**

2004. Commissioner Ray Lalla could unfortunately not attend the first meeting. He did, however, submit his proposals to the Task Team for its consideration.

**2. Terms of reference**

2.1 At the outset the Task Team discussed its terms of reference in detail. It came to the conclusion that it had to perform its task within the framework laid down by the President in his statement to the National Houses of Parliament and the Nation on the occasion of the Tabling of the Report of the Truth and Reconciliation Commission on 15 April 2003. The President provided the following guidelines:

- (a) There shall be no general amnesty, because it would fly in the face of the TRC process and detract from the principle of accountability which is vital, not only in dealing with the past, but also in the creation of a new ethos within our society.
- (b) Yet we also have to deal with the reality that many of the participants in the conflicts of the past did not take part in the TRC process. Among these are—
  - individuals who were misled by their leadership to treat the process with disdain;
  - others who calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel;
  - others who expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases, which did not happen.

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433

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**Secret**

- (c) "Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations."
- (d) "We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing."
- (e) "However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation."
- (f) "This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts."
- (g) "It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today; for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity."
- (h) "This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts."

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- (i) "Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action."
- (j) "Relevant Departments are examining the practical modalities of dealing with this matter; and they will also establish whether specific legislation is required in this regard."
- (k) "The National Directorate of Public Prosecutions and relevant Departments will be requested to deal with matters relating to people who were unaccounted for, post mortem records and policy with regard to burials of unidentified persons. We would like to encourage all persons who might have any knowledge of people still unaccounted for to approach the National Directorate of Public Prosecutions, the South African Police Service and other relevant departments."

2.2 Paragraph 1 of the Task Team's terms of reference relates directly to the abovementioned framework determined by the President. Paragraphs 2 and 3 were added to the Task Team's terms of reference in order to enable it to pursue alternative routes in order to address the concerns expressed by the President should the Task Team deem it necessary.

### 3. Discussion

3.1 In its deliberations the Task Team also took cognisance of the following factors:

- (a) In terms of section 179(1) and (2) of the Constitution the National Prosecuting Authority (NPA) is an independent constitutional institution and the National Director of Public Prosecutions (NDPP) has full discretion on whether a particular

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435

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**Secret**

prosecution should or should not be instituted. The Task Team's recommendations should therefore be consistent with this constitutional requirement.

- (b) Any recommendations relating to the granting or refusing of amnesty should be in line with the TRC process which was constitutionally entrenched as a trade-off between the individual's right to seek justice in a court of law, on the one hand, and the imperatives of reconciliation and reparation, on the other.

**3.2 Ad paragraph 1 of terms of reference**

3.2.1 In order to give effect to the "arrangements" contemplated in the President's statement as reflected in paragraph 1 of the Task Team's terms of reference, it is recommended that a Departmental Task Team be appointed comprising members of the following Departments or institutions:

- The Department of Justice and Constitutional Development
- The Intelligence Agencies
- The South African National Defence Force
- The South African Police Service
- Correctional Services
- The National Prosecuting Authority
- Office of the President

3.2.2 The functions of the proposed Task Team should be the following:

- (a) Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard.

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**Secret**

436

- (b) To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—
- (i) the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;
  - (ii) the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision.
- (c) To—
- receive information or representations from victims, perpetrators, legal representatives or any other person or institution regarding any specific matter;
  - gather intelligence information;
  - investigate the matter;
  - consult victims.
- (d) To consider the following factors when carrying out its mandate:
- (i) The general criteria governing a decision to prosecute as determined by the NDPP in the Policy Manual attached hereto as Annexure "A".
  - (ii) The following specific criteria:
    - o Whether the alleged offence is associated with a political objective committed in the course of the conflicts of the past.

TP 9

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437

7

**Secret**

- o Whether a prosecution can be instituted on the strength of adequate evidence.
- o Whether the case, geographically and politically, reflects the aims and objectives set out in the Promotion of National Unity and Reconciliation, 1995(Act 34 of 1995), and is not in conflict with the requirements of objectivity in prosecutions specified in the Constitution.
- o Whether the offence in question is serious.
- o Whether the ill health of or other humanitarian consideration relating to the accused may justify the non-prosecution of the case.
- o Whether the prosecution will lead to the traumatising of victims and conflicts in areas where reconciliation has already taken place.
- o The degree of co-operation on the part of the alleged offender.
- o The credibility of the alleged offender.
- o The alleged offender's sensitivity to the need for restitution.
- o The alleged offender's further endeavours to expose possible further clandestine operations during the past years of conflict.
- o The degree of remorse shown by the alleged offender and his or her attitude towards reconciliation.
- o The degree of indoctrination to which the alleged offender was subjected.
- o The extent to which the alleged offender carried out instructions or perceived instructions.
- o The disclosure of organisations/individuals, if any, under whose instructions the alleged offender operated.

  
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8

**Secret**

- o The alleged offender's role during the TRC process – co-operation, full disclosure and assisting the process in general (if relevant).
- o Renunciation of violence and willingness to abide by the Constitution on the part of the alleged offender.
- o Whether the alleged offender fully disclosed the alleged offences.
- o The views of the NPA.
- o If the accused is in custody, the views of the presiding judge or magistrate.
- o Any other criteria for deciding whether a political offence was committed as set out in the TRC Act.
- o Any further criteria, which the Task Team might deem necessary.

(e) To consider—

- (i) the provisions of section 105A of the Criminal Procedure Act, 1977(Act 51 of 1977), relating to plea and sentence agreements and the directives issued by the NDPP in terms of section 105A(11) of the said Act;
- (ii) the provisions of sections 7 of the Criminal Procedure Act relating to the issuing of a *nolle prosequi* certificate and the right of a private person to institute criminal proceedings in terms of the section 8 of the said Act;
- (iii) the provisions of section 18 of the Criminal Procedure Act relating to the lapsing of the right to institute a prosecution for any offence after the expiration of a period of 20 years from the time when the offence was committed, other than the offences of murder; treason committed when the Republic is in a state of war; robbery, if aggravating circumstances were present; kidnapping; child-stealing; rape; or the crime of genocide, crimes

TP 7  
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439

9

**Secret**

against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002;

- (iv) the possibility of diversion in the case of juvenile offenders;
- (v) possible arrangements settling the matter out of court;
- (vi) the provisions of section 204(2) of the Criminal Procedure Act relating to the discharge of the alleged offender from prosecution for the alleged offence if such offender testified as a state witness and answered all questions frankly and honestly.

3.2.3 If the above proposals are acceptable, it is recommended that the President announces the proposed process and invites full participation by those who may benefit from the process.

3.2.4 The Task Team realises that the proposed process will have the following shortcomings/concerns:

- (a) A possible negation of the constitutional rights of victims, the public at large and alleged offenders.
- (b) The possibility of the institution of private prosecutions.
- (c) The absence of any guarantee that alleged offenders will not be prosecuted. This might mean that they will be reluctant to approach the Task Team and make full disclosure. The concerns relating to persons who have disappeared, the arms caches that have not yet been discovered and the Kwazulu-Natal problem will not be solved.

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10

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- (d) Public perception regarding the participation in a further amnesty process by the security services as the public may regard them as perpetrators in the conflicts of the past.

### 3.3 Ad paragraph 2 of terms of reference

3.3.1 The Task Team is of the view that the only way to address the above concerns adequately would be to provide for a further amnesty process similar to that of the TRC process. This possibility elicited much debate within the Task Team. On the one hand, there were those who rejected this possibility out of hand. They argued that such a process would undermine and discredit the TRC process, further undermining the reconciliation process and not necessarily achieve the desired objectives. They argued that there is no reason why offenders who previously refused to participate in the TRC process will now all of a sudden decide otherwise. Some members of the Task Team, however, placed emphasis on the need to create a further effective opportunity for full disclosure in order to address the concerns referred to in paragraph 3.2.4(c) above. They argued that a substantial number of those individuals who were in the past misled by their leadership and others who expected their political leadership to provide the overall context against which they could present their cases, may make use of a further amnesty process.

3.3.2 In the light of the views expressed by the President regarding a further amnesty process, the Task Team decided not to make a recommendation in this regard and to leave this decision in the hands of Government. Should Government, however, decide to proceed with such a further process, a draft Indemnity Bill is attached as Annexure "B" for consideration.

### 3.4 Ad paragraph 3 of terms of reference

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The recommendations under paragraph 1 of the terms of reference do not require any legislation. Should Government, however, decide on a further amnesty process as discussed in paragraph 3.3, legislation will be required since the mechanisms and procedures of the TRC Act have run their course and can no longer be applied. If it is decided to follow the latter route, an amendment of the Constitution is also proposed in order to enable such legislation being adopted and to pass muster in the Constitutional Court.

  
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## ANNEXURE "A"

## GENERAL CRITERIA GOVERNING A DECISION TO PROSECUTE

## 1. General

- (a) The process of establishing whether or not to prosecute usually starts when the investigating officer presents a docket to the prosecutor. The case needs to be studied carefully to make sure that it is properly investigated. In this regard the prosecutor may—
- request the police to investigate the case further;
  - decide to institute a prosecution;
  - decline to prosecute and to opt for pre-trial diversion or other non-criminal resolution; or
  - decline to prosecute without taking any other action.
- (b) The decision whether or not to prosecute must be taken with care, because it may have profound consequences for victims, witnesses, accused and their families. A wrong decision may also undermine the community's confidence in the prosecution system.
- (c) Resources should not be wasted pursuing inappropriate cases, but must be used to act vigorously in those cases worthy of prosecution.
- (d) In deciding whether or not to institute criminal proceedings against an accused person, prosecutors should assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued. This assessment may be difficult, because it is never certain whether or not a prosecution will succeed. In borderline cases, prosecutors should probe deeper than the surface of written statements. Where the prospects of success are difficult to assess, prosecutors should consult with prospective witnesses in order to evaluate their reliability. The version or the defence of an accused must also be considered, before a decision is made. This test of a reasonable prospect must be applied objectively after careful deliberation, to avoid an unjustified prosecution. However, prosecutors should not make unfounded assumptions about the potential credibility of witnesses.
- (e) The review of a case is a continuing process. Prosecutors should take into account changing circumstances and fresh facts, which may come to light after an initial decision to prosecute has been made. This may occur after having heard and considered the

TP 17

443

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version of the accused person and representations made on his or her behalf. Prosecutors may therefore withdraw charges before the accused has pleaded in spite of an initial decision to institute a prosecution.

2. **Factors to be considered when evaluating evidence**

When evaluating the evidence prosecutors should take into account all relevant factors, including—

(a) *How strong is the case for the State?*

- Is the evidence strong enough to prove all the elements of an offence?
- Is the evidential material sufficient to meet other issues in dispute?

(b) *Will the evidence be admissible?*

Will the evidence be excluded because of the way in which it was acquired or because it is irrelevant or because of some other reason?

(c) *Will the state witnesses be credible?*

- What sort of impression is the witness likely to make?
- Are there any matters that might properly be put by the defence to attack the credibility of the witness?
- If there are contradictions in the accounts of witnesses, do they go beyond the ordinary and expected, thus materially weakening the prosecution case?

(d) *Will the evidence be reliable?*

If, for example, the identity of the alleged offender is likely to be an issue, will the evidence of those who purport to identify him or her be regarded as honest and reliable?

(e) *Is the evidence available?*

Are the necessary witnesses available, competent, willing and, if necessary, compellable to testify, including those who are out of the country?

9

(f) *How strong is the case for the defence?*

Is the probable defence of the accused likely to lead to his or her acquittal in the light of the facts of the case?

3. **Prosecution in the public interest**

Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of a conviction, a prosecution should normally follow, unless public interest demands otherwise. There is no rule in law, which states that all the provable cases brought to the attention of the NPA must be prosecuted. On the contrary, any such rule would be too harsh and impose an impossible burden on the prosecutor and on a society interested in the fair administration of justice. When considering whether or not it will be in the public interest to prosecute, prosecutors should consider all relevant factors, including:

(a) *The nature and seriousness of the offence:*

- The seriousness of the offence, taking into account the effect of the crime on the victim, the manner in which it was committed, the motivation for the act and the relationship between the accused and the victim.
- The nature of the offence, its prevalence and recurrence, and its effect on public order and morale.
- The economic impact of the offence on the community, its threat to people or damage to public property, and its effect on the peace of mind and sense of security of the public.
- The likely outcome in the event of a conviction, having regard to sentencing options available to the court.

(b) *The interests of the victim and the broader community*

- The attitude of the victim of the offence towards a prosecution and the potential effects of discontinuing it. Care should be taken when considering this factor, since public interest may demand that certain crimes should be prosecuted - regardless of a complainant's wish not to proceed.
- The need for individual and general deterrence, and the necessity of maintaining public confidence in the criminal justice system.
- Prosecution priorities as determined from time to time, the likely length and expense of a trial and whether or not a prosecution would be deemed counter-productive.

TP 9

445

4

(c) *The circumstances of the offender*

- The previous convictions of the accused, his or her criminal history, background, culpability and personal circumstances, as well as other mitigating or aggravating factors.
- Whether the accused has admitted guilt, shown repentance, made restitution or expressed a willingness to co-operate with the authorities in the investigation or prosecution of others. (*In this regard the degree of culpability of the accused and the extent to which reliable evidence from the said accused is considered necessary to secure a conviction against others, will be crucial*).
- Whether the objectives of criminal justice would be better served by implementing non-criminal alternatives to prosecution, particularly in the case of juvenile offenders and less serious matters.
- Whether there has been an unreasonably long delay between the date when the crime was committed, the date on which the prosecution was instituted and the trial date, taking into account the complexity of the offence and the role of the accused in the delay.

The above factors and the weight to be attached to them will depend upon the particular circumstances of each case. It is important that the prosecution process is seen to be transparent and that justice is seen to be done.

17

EXTRACTS FROM THE AFFIDAVIT OF  
ADVOCATE VUSUMZI PATRICK PIKOLI BEFORE THE  
GINWALA COMMISSION OF INQUIRY

TP 11

shortly thereafter. The first time this alleged complaint was brought to my attention was in the original submission.

259. I am also surprised that the Minister has gone on oath to state that the NPA reflected in its annual report for 2006/2007 that a request was made to National Treasury for the separate listing of the NPA. It is clear from annexure "VP51" hereto that no such request for the listing of the NPA was made to National Treasury and I also attach as annexure "VP52", a copy of the relevant extract from the NPA's annual report for 2006/7 from which it is clear that there is no reference to the listing of the NPA.

#### POST TRC LITIGATION

260. In this section I will deal with the allegations set out in paragraphs 114 to 124 of the Government's original submission as amplified by the Minister in paragraph 62 of her affidavit and in the affidavit of the DG (paragraphs 31 to 35) and the affidavit of Assistant Commissioner Jacobs. I have not considered there to be an "area of difference" between the Minister and me in regard to the handling of what is referred to as the post -TRC litigation. As will appear from what is stated below, the Minister was kept informed

TP 17

of relevant developments in regard to the process as it evolved and she provided her support as required from time to time. The only request for guidance not responded to was that flowing from the dispute relating to the implementation of the prosecution policy guidelines which arose between me and Mr Selebi and the Directors General of Justice and Constitutional Development and NIA. That request for guidance addressed to the Minister in February 2007 remained unanswered at the time of my suspension. I did not in any way regard the issues in respect of which guidance has been sought as any difference between the Minister and myself as she had not been involved in the matter at all.

261. I do not intend to restate my response to the Government's underlying contention that the effect of Section 179(6) of the Constitution is that the NDPP may not act without the concurrence of the Minister who:

*"Exercises the final responsibility over the prosecuting authority" (para 117 of the Government submission)*

That proposition is dealt with fully earlier in this affidavit.

TP 17

262. A history of the problems encountered by the NPA in applying the **"PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994"** ("the Prosecution Policy") is set out in my memorandum to the Minister dated 15 February 2007 (annexure **TRC1**). This sets out my detailed analysis of the background which gave rise to the notion of inter-departmental collaboration in the form ultimately expressed in paragraph B6 of the Prosecution Policy – i.e. that the PCLU should be assisted in the execution of its duties (defined in B4 as overseeing investigations and instituting prosecutions) by a senior designated official from the following State departments or other components of the NPA:

262.1. The National Intelligence Agency;

262.2. The Detective Division of the South African Police Service;

262.3. The Department of Justice and Constitutional Development; and

262.4. The Directorate of Special Operations.

TP 9



263. It is not my intention to repeat the content of my memorandum in this affidavit and I ask that it be regarded as incorporated herein. I will expand on some aspects of the matter in the following paragraphs.
264. The foundation for the development of the Prosecution Policy is the statement by President Mbeki in April 2003 following receipt of the final TRC report. This is canvassed in paragraph 3 of TRC1. The President required that the prosecution of persons who did not take part in the TRC process was to be left in the hands of the NPA. As part of the "normal legal processes" the NPA, working with the National Intelligence Agency, was to be accessible to persons who were prepared to unearth the truth and who wished to enter into agreements that are standard in the normal execution of Justice and the prosecuting mandate, and are accommodated in existing legislation.
265. Prior to the adoption of the Prosecution Policy and in my then capacity as DG, I had chaired a Director-General's Forum which appointed a Task Team to report on a mechanism to give effect to the President's objectives. The matter is dealt with in paragraph 2 of TRC1. It is important to note that the recommendation of the

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establishment of an interdepartmental Task Team and of a two stage process including the requirement of a recommendation from such Task Team before the NDPP instituted any criminal proceedings in relevant matters was rejected. This was because of the view that such functions would be unconstitutional and against the concept of prosecutorial independence enshrined in Section 179 of the Constitution.

266. The rejection of this proposal led to the determination of the Prosecution Policy in agreement with the Minister and after consultation with the Directors of Public Prosecutions as required by the NPA Act. The policy was tabled in Parliament and became effective on 1 December 2005.
267. In January 2006 I wrote letters to Mr Selebi and the DGs of Justice and the NIA and to the DSO requesting them to nominate a senior official to assist the PCLU in accordance with the Prosecution Policy guidelines.
268. Almost from inception the process was bedevilled by the failure of SAPS to provide the necessary support to enable the PCLU to conduct its investigations. These difficulties are dealt with in

TP 7

paragraph 4 of TRC1.

269. I was advised by Mr Selebi that Advocate Ackermann should not participate in the process. The distrust between SAPS and Advocate Ackermann stemmed from allegations and counter-allegations in regard to the latter's supposed intention to launch criminal proceedings against the leadership of the ANC. These contentions had surfaced from time to time notwithstanding the issue of a press release by the NPA in 2004 confirming that a decision had been taken that no such prosecution would take place (annexure **TRC2**).

270. I informed Mr Selebi that Advocate Ackermann was the head of the PCLU by Presidential proclamation and that it was appointed not for SAPS to determine who should discharge the mandate given to the PCLU under the Guideline.

271. Faced with this lack of co-operation I sought the assistance of the Presidency in securing the collaboration necessary to apply the Prosecution Policy Guidelines.

272. In mid 2006 Reverend Chikane organised a meeting at the Presidency which was attended by himself, the DGs of Justice and

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NIA, Mr Selebi, the Secretary of the Defence Secretariat, Mr Jafta from the Presidency and I. This first meeting dealt in general terms with the question of developing a spirit of co-operation amongst the agencies as contemplated in the guideline process. Reverend Chikane supported the notion that there should be collaboration in assisting the NPA to fulfil its functions. At this meeting there was again a complaint by Mr Selebi in regard to Advocate Ackermann's involvement in the process. My recollection is that there was no discussion of the formation of a working committee at this meeting.

273. Some time later a meeting was convened at the home of Minister Skweyiya, the Minister of Social Development. The meeting was attended by the Ministers of Safety and Security and Defence, Minister Thoko Didiza (Acting Minister of Justice and Constitutional Development representing Minister Mabandla who was indisposed) and Mr Jafta. The meeting was called by Acting Minister Didiza and I was told that it related to the prosecution in the Chikane matter. It was originally suggested that Advocate Ackermann accompany me to the meeting but I elected to go on my own in order to establish what the concerns were.

274. It transpired at the meeting that:

TP 17

274.1. The Minister of Safety and Security was concerned about the decision to proceed with the prosecution and with Advocate Ackermann's involvement in the process and the issue of whether it was Advocate Ackermann or me who was behind the decision to prosecute.

274.2. The Minister of Social Development was concerned about the impact of the decision to prosecute on the ranks of ANC cadres who were worried that a decision to prosecute in the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.

274.3. The Minister of Defence had concerns about where the decision to prosecute rested – did it rest with me or did it rest with Advocate Ackermann.

275. I explained to the Ministers that the decision to proceed with the prosecution rested with me as did all other decisions in regard to post-TRC prosecutions being considered by the PCLU. I assured them that no prosecution would be undertaken without my specific direction and reiterated my concern about the delay in the process

TP 7

particularly in view of the requirement that I report to parliament on these matters. My recollection is that there was no discussion about the formation of a working group or Task Team at this meeting. The Minister of Defence appeared satisfied with my explanation that I would exercise the decision as to whether there was a prosecution or not. The Minister of Safety and Security appeared to continue to be worried about the involvement of Advocate Ackermann. I have no recollection of a particular position adopted by the Acting Minister of Justice.

276. It was following this meeting that a meeting took place at the office of the Presidency which is dealt with in paragraph 4.2 of my memo TRC1. My understanding and recollection of the meeting was that the role of the working group was that set out in paragraph 4.3 of TRC1 – i.e. the working committee or Task Team would not make recommendations on a decision as to whether to prosecute or not but would be responsible for ensuring that the NPA obtained the necessary information or such inputs as were appropriate from the various departments so as to assist and enable me to reach a well considered decision whether to institute proceedings or not. The Task Team would deal with all relevant matters identified by the PCLU and SAPS.

TP 17

277. I have no recollection whatsoever of any suggestion at this meeting of the establishment of a separate committee of DG's which would receive reports from the Task Team. Had there been any suggestion that the Task Team members would report back to the DG's who would in turn make recommendations to me in regard to the question of whether to prosecute or not, I would have objected to this as it would have amounted to falling back to the position originally suggested before the guidelines were established and which had been rejected by all parties as unconstitutional.
278. At this meeting I proposed that Dr Ramaite should chair the Task Team. I suggested this in order to deal with the complaints in regard to Advocate Ackermann's position and as a concession to get the Task Team working. The proposal was accepted by those at the meeting. Dr Ramaite is the Deputy National Director of Prosecutions to whom the PCLU reports.
279. Subsequent to this meeting there was a further meeting of Ministers in the security cluster at the office of the Minister of Safety and Security. This was attended by the Minister for Safety and Security, the Minister of Social Development, Acting Minister Didiza, Mr Selebi, various DGs and Mr Jafta. The proposal for the

TP 9

establishment of a working group was put to the Ministers. It was agreed that the proposed working committee would proceed. Once again I have no recollection of any suggestion of a separate committee of Directors General or that the Task Team would be reporting to such a committee.

280. After this meeting letters were again written to the various Directors General, Mr Selebi and the DSO in early October 2006 inviting them to nominate a senior official to perform the functions set out in paragraph B6 of the guidelines. (An example of such letter appears as annexure A to the affidavit of Assistant Commissioner Jacobs). The letters were in the same format as those sent out in January 2006 at the time of my first attempt to secure assistance. The letters were drafted for me and referred to the appointment of Dr Ramaite to *"head and supervise the prosecution processes of all TRC-related matters"*.

281. The Task Team met for the first time on 12 October 2006. The minutes of the meetings of what became referred to as the "Task Team on TRC cases" are annexed to the affidavit of Commissioner Jacobs save for the minutes of its meeting on 8 August 2007, a copy of which is annexure **TRC3** hereto. As is commented on by

TP 7



various parties, the minutes of these meetings are not a full record of all of the issues canvassed. As the minutes reflect I attended the opening session of the first meeting together with Ms Pillay, the Directors General of the NIA and Justice and Mr Jafta from the Presidency. The details of my address to the Task Team are set out in paragraph 4.3 of TRC1. I recollect dealing expressly with a question by a representative of the NIA who raised the issue of whether it was the function of the team to make recommendations on a decision whether to prosecute or not. I indicated clearly that the decision as to whether to launch a prosecution rested with me and not with the committee.

282. I have noted the terms of the final sentence of paragraph 1 of the minutes of this<sup>8</sup> meeting stipulating that:

*"The role of the committee will be to make recommendations to the NDPP on each case".*

It was indeed the responsibility of the Task Team to assist in the process of obtaining the requisite information or assistance from the various departments so as to enable me to reach a decision as to whether to prosecute or not. There was, however, definitely not any

TP 17

suggestion that a recommendation by the Task Team on whether to prosecute was a pre-requisite for any decision that I might take. To the extent that the terminology referring to the making of recommendations by the Task Team in this and other TRC related documentation is interpreted to support that contention this is both regrettable and wrong.

283. I did not participate further in the activities of the Task Team which was conducted under the chairmanship of Dr Ramaite. I received reports from time to time on their activities. It was certainly my understanding that the committee was functioning and securing the requisite co-operation from the other agencies which had previously been missing. I refer in this regard to the affidavit of Dr Ramaite.

284. In December 2006 Dr Ramaite reported to me in regard to the contention raised by Mr Selebi through Commissioner Jacobs that it was the function of the Task Team that it should make a final recommendation to a body identified as the "Committee of Directors General" which would in turn make recommendations to me. The developments in this regard are dealt with in paragraphs 4.4.1 to 4.6 of TRC1. In essence the proposal made by Mr Selebi

TP 11

and subsequently supported by the Directors General of Justice and NIA amounted to a reversion to a two stage process in which my decision on any prosecution would be dependent upon a prior recommendation by an intervening committee of directors general which would be subject to the same constitutional challenge as had led to the rejection of this proposal in 2004.

285. It became clear to me that there was a material misunderstanding in regard to the role of the Task Team and that unless this was resolved, I would not be able to carry out my functions within the contemplation of the relevant legislation and as envisaged by the Government.
286. In the circumstances I informed Mr Selebi and the Directors General that there was this misunderstanding and I wrote my very detailed letter to the Minister on 15 February and requested her guidance. As at the date of my suspension I had received no response from the Minister. Pending such response the functioning of the Task Team was compromised by the uncertainty as to its mandate although it did meet again on 8 August as appears from the minutes being **TRC3** hereto.

TP 11

Reverend Chikane matter

287. The decision to prosecute those involved in the poisoning of Reverend Chikane became the central issue around which the dispute in regard to the functioning of the Task Team revolved. After I made the final decision to proceed with the prosecution on 25 January 2007 I prepared a report for the Minister which is dated 7 February but which was signed by me on 15 February 2007. A copy is annexure **TRC4**. I do not intend to repeat the content set out in that memorandum in this affidavit and I ask that it be regarded as incorporated herein. Once again I will expand on some aspects of the matter.

288. As appears from the history set out in paragraph 2 of TRC4, the decision to prosecute the three Security Branch members involved in the poisoning of Reverend Chikane (Otto, Smith and van Staden) was taken in November 2004, before my appointment as NDPP. Dr Ramaite SC, in his capacity as Acting National Director, however instructed that the matter hold over pending the development of the Prosecution Policy and the guidelines.

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289. When the Prosecution Policy became effective in December 2005 I reviewed the available evidence implicating the three suspects which was, in my opinion, clearly sufficient to justify a prosecution. I therefore gave the initial instruction to proceed with the prosecution in February 2006. In response to this notification the three suspects made representations to me in terms of the Guidelines in support of their contention that they should not be subject to prosecution. The position was reviewed by a team within the NPA under the leadership of Advocate Pretorius who reported to me that the representation did not comply with the requirements set out in the guidelines. After reviewing the report and the underlying documentation I wrote to the legal representative of the suspects in July 2006 informing him of my intention not to accede to the representations and to pursue the prosecution.
290. In response I received further representations contending that the suspects had received indemnity in respect of the threatened prosecution in terms of the original Indemnity Act of 1990. I caused an independent opinion to be obtained from senior counsel concerning the validity of this claim of indemnity. The opinion was received in November 2006.

TP n

291. At its meeting on 25 October the Task Team had received an audit report on all cases in the possession of the PCLU. A copy of that report was forwarded to me by Dr Ramaite and this confirmed that in the prosecution of Otto and others my direction to Advocate Ackermann SC to proceed with the prosecution had been put on hold in early October pending receipt of an opinion from counsel.
292. The Chikane matter was discussed within the Task Team for the first time at its meeting on 6 November where Mr J Lekalakala of SAPS for the first time raised the contention that the recommendations of the Task Team are necessary because:

*"The National Commissioner is of the view that Rev Chikane is not interested in prosecution of the matter. He suggested that contact has to be made with Rev Chikane to ascertain his attitude."*

The minutes record that:

*"According to Adv Ackermann the complainant (Rev) indicated that he leaves the matter in the hands of the NPA. It was then decided that the latter's attitude be ascertained and the matter was therefore closed pending a feedback on*

TP 17

*his attitude."*

293. In early December I was informed of the renewed contention by Mr Selebi that Reverend Chikane had not been consulted.
294. Reverend Chikane had in fact been extensively consulted in relation to the proposed prosecution. I personally held a number of discussions with him during the course of the many meetings we held over an extended period. These were one on one meetings of which no particular record was kept. I did, however, discuss the decision to prosecute with him on several occasions. I was intimately involved in the establishment of the guidelines and was aware of the requirement that there should be a consultation with the victim before any prosecution proceeded.
295. Even before the guidelines had been published, I was aware of Reverend Chikane's general attitude towards the issue of a prosecution – namely that whilst he might have his own personal decisions in regard to whether he forgave the perpetrators or not, insofar as the application of the laws of the land was concerned, the matter must take its ordinary course. If a decision was made by the prosecuting authorities he would accept that.
- TP 11

296. After the guidelines were published I had various meetings with Reverend Chikane. These were mostly at his office at the Presidency save for a meeting held in my office in December 2006 which had been called to discuss some draft cabinet memos in regard to the implementation of the findings of the Khampepe Commission. Because the matter had been raised by Mr Selebi, I again discussed the prosecution with Reverend Chikane and updated him on the current status of the prosecution of Messrs Otto, Smith and van Staden. His attitude to me remained unchanged.
297. In December and after the developments in regard to this matter within the Task Team were reported to me I instructed Advocate Ackermann to once again visit Rev Chikane to confirm his position. I knew that Ackermann had discussed the matter with him as far back as 2004.
298. Towards the end of January 2007 Advocate Ackermann and Advocate Mhaga reported to me that they had met with Reverend Chikane on 22 January and that he had reaffirmed his consistent attitude – namely that he was not against a prosecution and that the matter should take its ordinary course. In the light of this

TP 7



confirmation I wrote to the legal representatives of Messrs Otto, Smith and van Staden on 25 January 2007 and informed them that the matter would now proceed and I instructed the PCLU to act accordingly.

299. As appears from TRC4 the decision at that time was to proceed against the three individuals against whom a prosecutable case had been established. As my report TRC4 indicates in paragraph 3 thereof, the former Minister of Police, Adriaan Vlok and the former head of SAPS, General van der Merwe, had both made representations to me as contemplated in the guidelines. In essence, they both admitted authorising the murder of Reverend Chikane and required of me not to prosecute them in the light of this disclosure. They would not make full disclosure in response to requests for information and I declined to accede to their request that they be given immunity from prosecution.

300. During the course of the next few months the legal representative of Messrs Otto, Smith and van Staden, who was also the representative of Messrs Vlok and van der Merwe, held detailed negotiations with Advocate Ackermann and members of the PCLU in regard to a plea bargain and sentencing agreement. These

TP 17

prosecution had been set down for hearing on 17 August 2007 and that all accused had indicated their intention to plead guilty to a charge of attempting to kill Reverend Chikane by means of poisoning. It informed her of the fact that plea and sentencing agreements had been entered into. I signed this letter on 10 July 2007 and almost immediately thereafter I went off on compassionate leave because of the illness and the subsequent death of my mother. In my absence, on 17 July 2007, Dr Ramaite and Advocate Ackermann were summonsed to a meeting with the Minister and reported to her as described in Dr Ramaite's affidavit. At the time of that meeting the Minister did not appear to have read my letter dated 6 July.

303. Because of the allegations relating to the attitude of Reverend Chikane it is perhaps illustrative to attach an article written by him and published in the City Press on 18 August 2007 immediately following the court hearing (annexure **TRC5**). He records, inter alia,:

*"Yet I believe the Vlok trial is of national importance for reasons other than my personal interests."*

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*The outcome of the court process gives practical expression to the spirit of the 2005 NPA guidelines that regulate the handling of outstanding TRC-related matters. ... also significant is the outcome of the court in re-affirming the importance of dealing with TRC-related matters within the confines of the law.*

*Hopefully, the outcome of the court will serve to renew our collective trust in the integrity of our legal system, particularly in its proven capacity to handle sensitive and complicated political matters in an unbiased manner.*

*The evidence that NPA guidelines can facilitate a win-win outcome is there for all to see. One can only hope that the wisdom of working within the law is recognised widely.*

*The uniqueness of our jurisprudence – however imperfect – to deal with conflicts of the past is a marvel for most of the world. I suspect the manner in which we have handled the case related to Vlok and others will have important lessons inside and outside our country.*

*This, I hope, will further serve correctly to project ours as a*

TP 1

*country of people who have demonstrated that it is possible to make the law advance national unity and reconciliation."*

The article stressed that Chikane is Director General in the Presidency and Secretary of the Cabinet but that he was writing in his personal capacity.

304. In summary the successful prosecution of the parties involved in the poisoning of Reverend Chikane:

304.1. Was initiated prior to my appointment as NDPP and thereafter pursued on my instructions and in complete conformity with the Prosecution Policy and guidelines including the receiving of representations from the accused person.

304.2. The requirement of the consultation with the victim was fully discharged over an extended period and, in particular, in personal discussions which I had with Reverend Chikane and in discussions with members of the PCLU conducted in accordance with my express instruction.

304.3. I enclose as **TRC6** a media statement released by me

TP 11

following the conclusion of the proceedings and I adhere to the sentiments expressed in that.

### KHAMPEPE COMMISSION

305. Government alleges that during the hearings of the Khampepe Commission of Enquiry ("Khampepe Commission") I made *"a false submission that the Ministerial Coordinating Committee ("MCC") established in terms of Section 31 of the NPA Act never met"*.
306. This complaint is not supported by affidavit and it is not clear who is alleging that I made a false submission to the Khampepe Commission. I do not recall that I made any such submission.
307. Pursuant to a letter written to Government's attorney, my attorneys were provided with copies of the transcripts of the evidence given at the Khampepe Commission. My attorneys have perused the transcripts and have been unable to find a reference to me saying that the MCC never met.
308. Consequently my attorneys requested, in writing (a copy of which is attached hereto as annexure "VP53"), the Minister to attach the relevant extracts from the transcripts that Government relies upon

TP 9