IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 86381 /18

In the *ex parte* application of:

THEMBISILE PHUMELELE NKADIMENG Applicant

CONSOLIDATED INDEX:

NO.	DESCRIPTION OF DOCUMENT	PAGE NO.
1.	Notice of Motion	1 - 3
2.	Founding Affidavit of Thembisile Phumelele Nkadimeng	4 - 30
3.	Annexure **"TN 1"** - Confirmatory Affidavit of Sizakele Ernestina Simelane	31 -33
4.	Annexure **"TN 2"** - Decision of the Amnesty Committee	34 - 43
5.	Annexure **"TN 3"** - Indictment	44 - 57
6.	Annexure **"TN 4"** - Supporting Affidavit of Frank Dutton	58 - 102
7.	Annexure **"TN 5"** - Newspaper Report	103 - 104
8.	Annexure **"TN 6"** - Newspaper Report	105
9.	Annexure **"TN 7"** - Letter from Neville Thoms	106 - 110
10.	Annexure **"TN 8"** - Letter from Neville Thoms	111 - 115
11.	Annexure **"TN 9"** - Warning in terms of Section 35 of the Constitution of the Republic of South Africa	116 - 119
12.	Annexure **"TN 10"** - Letter from the Chairperson of the Working Group on Enforced or Involuntary Disappearances	120 - 121

13.	Annexure "**TN 11**" - City Press Opinion	122 - 132
14.	Annexure "**TN 12**" - Media Briefing	133 - 143
15.	Annexure "**TN 13**" - Newspaper report	144 - 155

DATED AT Johannesburg ON THIS 29th DAY OF November 2018.

M Hathorn

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TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT

PRETORIA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 86381 **/18**

In the *ex parte* application of:

THEMBISILE PHUMELELE NKADIMENG Applicant

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2018 -11- 30
L. W. MUTAU
REGISTRATEUR VAN DIE HOË HOF VAN SUID-AFRIKA GAUTENG AFDELING, PRETORIA

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to apply to the above Honourable Court on 6 June 2019 at 10h00, or so soon thereafter as counsel for the applicant may be heard for an order in the following terms:

1 That a *rule nisi* be issued calling upon all interested parties to show cause (if any) before this Court on a date to be determined by the Court at the hearing of the matter, why an order in the following terms should not be made final:

1.1 It is ordered that Nokuthula Aurelia Simelane (identity number: 5-5934984-3) born on 5 September 1959, be presumed dead.

2 That service of this order be effected in the following manner:

2.1 By publishing a copy of this order in one edition of the Government Gazette, *Die Beeld* and the *Citizen* newspapers;

2.2 By the Deputy-Sheriff by serving a copy of this order on:

2.2.1 Willem Helm Coetzee of 15 Rooitou Street, Weltevredenpark, Roodepoort;

2.2.2 Anton Pretorius of 20 Dunedin, 152 Malcom Road, President Ridge, Randburg;

2.2.3 Frederick Barnard Mong of 5 Amm Street, Sonlandpark, Veeriging; and

2.2.4 Msebenzi Timothy Radebe of 8 Roma Street, Honeyhills, 1724 *alternatively* 36 Stumke Street, Witpoortjie, Roodepoort, 1724, Gauteng.

3 Should any interested person wish to oppose the relief set forth, they shall deliver their answering affidavits, if any, or a notice envisaged in terms of Uniform Rule 6(5)(d)(iii) fifteen (15) days prior to the return date as envisaged in paragraph 1 above.

4 Costs, in the event of opposition, including those of two counsel.

5 Further and/or alternative relief.

TAKE NOTICE THAT the Applicant has appointed **WEBBER WENTZEL** as its attorneys of record with the details as set out below at which the Applicant will accept service of any legal process notices and documents.

TAKE FURTHER NOTICE THAT the attached affidavits of **Thembisile Phumelele Nkadimeng, Sizakele Ernestina Simelane** and **Frank Kennan Dutton** will be used in support of this application, and will be supplemented to the extent necessary.

SIGNED AND DATED at Johannesburg ON THIS THE 28th DAY OF November 2018

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FOUNDING AFFIDAVIT

Contents

OVERVIEW OF THIS APPLICATION 3
THE CIRCUMSTANCES UNDER WHICH NOKUTHULA WAS LAST SEEN 5
The Abduction 5
Captivity and torture at Northam 7
The disappearance of Nokuthula 11
MODUS OPERANDI OF THE SECURITY BRANCH 13
EFFORTS TO INVESTIGATE AND TRACE NOKUTHULA 17
MEDIA ATTENTION 24
CONCLUSION 25

I, the undersigned,

THEMBISILE PHUMELELE NKADIMENG

state under oath as follows:

1 I am an adult female and I am the Executive Mayor of City of Polokwane. I reside at 82 General Viljoen Street, Welgelegen, Polokwane and I am the Applicant in this matter.

D.A TP

2 I act in the interests of myself and my family and I depose to this affidavit on behalf of my wider family. I attach the confirmatory affidavit of my mother, Sizakele Ernestina Simelane marked **TN1** which supports this application.

3 The facts herein, unless stated otherwise or as appears from the context, are within my own personal knowledge and are to the best of my knowledge and belief, both true and correct.

4 Where I make averments not directly within my knowledge, I do so on the basis of information made available to me. Where in writing, I attach such copies. I verily believe such information to be true and correct. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be true and correct.

5 Where I make use of headings in this affidavit, I do so for convenience only and do not thereby intend to limit anything stated under a particular heading only to that topic. I pray that this affidavit be read as a whole.

6 In preparing this affidavit, I have had reference to various materials, including:

6.1 Part A of the investigation docket into the murder of Nokuthula (Priority Investigation: JV Plein: 1469/02/1996);

6.2 The record of the Truth and Reconciliation Commission ("**TRC**") amnesty hearing and the decision of the Amnesty Committee in respect of Willem Coetzee ("**Coetzee**"), Anton Pretorius ("**Pretorius**") and Frederick Mong ("**Mong**") (Amnesty Decision AC/2001/185);

DATP

6.3 The Final Report of the TRC insofar as it pertains to Nokuthula.

7 The aforesaid decision of the Amnesty Committee is annexed hereto marked "**TN2**". The abovementioned Part A of the Investigation Docket and the TRC Report are voluminous documents and have not been attached to this affidavit but can be supplied on request.

8 Coetzee, Pretorius and Mong presently face charges for the murder of Nokuthula before the High Court (Gauteng Division) under Case Number: CC 16/2016. Accused one, Msebenzi Timothy Radebe ("**Radebe**"), is also charged with kidnapping. A copy of the indictment dated 14 March 2016 against the accused with reference 10/2/11/1-P8/2016 is annexed hereto marked "**TN3**".

9 Coetzee, Pretorius and Mong received amnesty for Nokuthula's kidnapping but were denied amnesty for her torture. Radebe did not apply for amnesty and neither did Willem Schoon, the Commander of Security Branch C1 Section, under whose overall command the accused fell. None applied for amnesty for her murder. (Coetzee, Pretorius, Mong and Radebe are collectively referred to as "**the accused**").

OVERVIEW OF THIS APPLICATION

10 This application seeks a presumption of death order for my sister, Nokuthula Aurelia Simelane ("**Nokuthula**"). I submit that when the circumstances relating to Nokuthula's disappearance are considered, the overwhelming probabilities are that Nokuthula is deceased.

TP DA

11 In 1983 Nokuthula was a 23 year old university graduate and was a courier for Umkhonto we Sizwe ("**MK**"), the armed wing of the African National Congress ("**ANC**"), moving between Swaziland and South Africa. She was betrayed by one of her own and was abducted and brutally tortured by the Security Branch ("**SB**") of the former South African Police ("**SAP**") in September of 1983.

12 Nokuthula was never seen again. We know from the TRC hearings that my sister suffered terribly at the hands of the SB. We know that she refused to collaborate with the forces of Apartheid. For this she paid the ultimate price.

13 Nokuthula's story is rooted in South Africa's bitter and divided past. She devoted her life to resisting the pernicious system of Apartheid. My family and I have been searching for answers for more than 35 years. We have not rested and continue to search for her remains and to bring justice to her killers.

14 We know from the evidence of certain SB members that she suffered the most brutal torture before she was murdered. However, we do not know how she died, and where her body is today. We have spent three and a half decades looking for Nokuthula. We have even appointed private detectives to assist us, but our efforts have to this day proven unsuccessful.

15 More than 35 years later, we have not heard from Nokuthula. Having regard to the condition of Nokuthula's captivity, her treatment at the hands of the SB, and her utterly grim state when she was last seen alive, we believe that it is beyond debate that Nokuthula is dead.

TP D.A

16 Neither official nor privately commissioned investigations have discovered any evidence that Nokuthula ever surfaced since her abduction at the hands of the SB. Despite the fate of my sister receiving widespread media attention we have not received any sign from anyone that she is still alive. In these circumstances, my family and I wish this Court to order that my sister be presumed dead.

THE CIRCUMSTANCES UNDER WHICH NOKUTHULA WAS LAST SEEN

The Abduction

17 Nokuthula was a student at the University of Swaziland and a member of MK, the armed wing of the ANC. During 1982 she joined the Transvaal Urban Machinery ("**the TUM**") of MK. The Chief of Staff of this body was Gilbert Twala. Nokuthula operated as a courier for one of the MK units within the TUM.

18 Nokuthula disappeared after being abducted by the Security Branch on or about 10 September 1983. It was established during the TRC hearings that Nokuthula disappeared while on a mission in Johannesburg after making contact with a certain Norman L Mkhonza ("**Mkhonza**") at the Carlton Centre.

19 It also emerged that in fact she was abducted by the SB with the help of Mkhonza, whom Nokuthula believed was a fellow MK member when in fact he was an apartheid state "*Askari*" (a former MK member turned state operative) connected to the Soweto Intelligence Unit of the South African Security Branch

20 Having been alerted to the arranged meeting that was to take place between Nokuthula and her colleagues (although apparently not aware of Nokuthula's identity), the commander of the Soweto Intelligence Unit, Willem H Coetzee conveyed this information to the commander of the Soweto Security Branch, Brigadier Hennie Muller ("**Muller**").

21 Muller ordered that Nokuthula should be abducted with a view to turning her into an agent of the Security Branch. Pursuant to this order, Coetzee gathered a group of Security Branch officers, including Mkhonza, Pretorius, J F Williams, J E Ross, Peter Lengene (now deceased) ("**Lengene**"), Mong, Lazarus Selamolela ("**Selamolela**") and Radebe and prepared them for the operation.

22 On the day of the planned meeting, and in accordance with the plan decided upon by the group of police officers mentioned above, Mkhonza lured Nokuthula to the basement of the Carlton Centre where she was apprehended and abducted.

23 Nokuthula was manhandled *inter alia* by Radebe, bundled into the boot of a police vehicle and transported to the "*Custodum*" Flats in Norwood, where the Security Branch had an operational office in the cleaner's quarters on the roof of the building. Nokuthula was left in one of the police vehicles out of sight of the general public. She was subsequently removed to the operational office where she was kept for a few days.

24 The TRC hearings show that while Nokuthula was kept at the operational office at Custodum, she was interrogated and continuously assaulted by Coetzee,

Pretorius, Lengene, Mong, Selamolela, Radebe and Veyi (hereinafter referred to as "**the perpetrators**"). The assaults were of a serious nature and they amounted to torture. Williams, Ross and Mkhonza had ceased their participation in the incident after the abduction at the Carlton Centre. Mzimkulu Nimrod Veyi ("**Veyi**") was a new addition to the group after the abduction.

Captivity and torture at Northam

25 Nokuthula was subsequently transferred to secluded premises on a farm in the district of Northam in the present North West Province. Here she was detained for a period of between 4 to 8 weeks. The interrogation and torture continued on the farm with the intention of ultimately forcing Nokuthula to become an Askari and work as an agent for the SB.

26 The conditions of Nokuthula's captivity and treatment at the Northam farm at the hands of the perpetrators was inhumane. She was held captive in a small, hot room. Her torture and abuse at the hands of her perpetrators included the following:

26.1 Nokuthula was tortured and assaulted for several weeks.;[1] and her sleep was kept to a minimum;[2]

26.2 Nokuthula was administered electric shocks by way of a hand-held generator that was wound with a handle to produce electrical currents;[3]

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1 TRC Report Vol 2 pp 236-7 paras 289-91; Witness Statement, Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A3 p 4; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 3; Truth and Reconciliation Commission Amnesty Decision AC/2001/185 para 2.

2 Witness Statement, Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A3 p 4.

DA TP

26.2.1 Two electric wires were attached to various parts of her body while the machine was repeatedly wound causing electric shocks for minutes at a time.[4]

26.2.2 At times the terminals were attached to her neck and exposed nipples;[5]

26.2.3 Electrical shocks were continuously administered to her until she was comatose with foam and froth coming from her mouth;[6]

26.3 Nokuthula was repeatedly suffocated by placing a wet canvas bag over her head and holding it tightly around her neck depriving her of air.[7] The bag was held in this way until her body convulsed and while convulsing she would often urinate and soil herself;[8]

26.4 Nokuthula was thrown into a zinc dam on the farm after bouts of interrogation.[9] She was near drowned while underwater in the this dam;[10]

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3 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 3; Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 1; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3.

4 Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 2; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3.

5 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3; Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 1.

6 Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 1.

7 Witness Statement, Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A3 p 4; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 3; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3; Witness Statement, Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 4.

8 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3; Witness Statement, Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 4.

9 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 4; Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 2; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3.

26.5 Nokuthula was tortured and sustained severe injuries from her torture;[11] She was severely assaulted and brutally beaten;[12] The assaults on her included punches, kicks and slaps;[13] The blows to Nokuthula were delivered at full force blows and no consideration was given to the fact that she was a defenceless woman;[14]

26.6 After each session of torture, Nokuthula was in a grim state. She was smeared with her own faeces and stank of urine and sweat (from torture sessions and because of her captivity in the small, hot room);[15]

26.7 As the torture sessions continued, Nokuthula's state of health became so poor that she was unable to perform her own ablutions.[16] The black SB officers had to obtain a bucket for Nokuthula to use in the room. There was blood in her urine;[17]

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10 Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 2.

11 TRC Report Vol 6 Section 3 p 225 para 203.

12 TRC Report Vol 6 Section 3 p 225 para 201; Witness Statement, Nakone Natseetsele Edward Sefuthi, Docket Part A, Exhibit A8 p 5 para 26; Witness Statement, Moleke Peter Lengene, Docket Part A, Exhibit A14 p 7; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3.

13 Witness Statement, Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A3 p 4; Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 2; Witness Statement, Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 5.

14 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 4; Witness Statement, Moleke Peter Lengene, Docket Part A, Exhibit A14 p 7; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 2.

15 Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 2; Witness Statement, Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 5.

16 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 4; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 1.

17 Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 5.

DA TP

26.8 Black officers tried to nurse Nokuthula, but had to be careful not to be caught by their superiors;[18]

26.9 Nokuthula's physical condition eventually deteriorated such that she could no longer walk unassisted, even if her restraints had been removed.[19] She had swellings and bruises all over her body;

26.10 Nokuthula was so badly assaulted that her face was barely recognisable towards the end of her captivity;[20]

26.11 Nokuthula's condition the last time that she was seen alive by the black SB officers was as follows:[21]

26.11.1 Her face was swollen and distorted. Her head was similarly swollen and painful in different places.

26.11.2 Her legs were swollen and she was in extreme pain. Her ankles were particularly swollen and rubbed raw from the leg irons.

26.11.3 Her wrists were lacerated, swollen and painful from the handcuffs.

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18 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 3; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 2.

19 Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 pp 34; Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 1; Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 3; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 1; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3; Witness Statement, Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 1; Truth and Reconciliation Commission Amnesty Decision AC/2001/185 para 7.

20 TRC Report Vol 6 Section 3 p 225 para 203; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A13 p 3; Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 3; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 3; Witness Statement, Matsebetsebe Edward Seputhi, Docket Part A, Exhibit A210 p 1; Truth and Reconciliation Commission Amnesty Decision AC/2001/185 para 7.

21 Witness Statement Mzimkulu Nimrod Veyi, Docket Part A, Exhibit A208 p 1; Witness Statement, Mohapi Lazarus Selamolela, Docket Part A, Exhibit A209 p 1.

DATP

14

26.11.4 She had lost her sense of balance and could not stand independently. She had to be assisted to remain upright.

26.11.5 She was unable to lift her arms higher than her shoulders.

The disappearance of Nokuthula

27 The following statements made by the black officers, Veyi, Lengene and Sefuthi, shed some light on the circumstances of Nokuthula's enforced disappearance:

27.1 A statement made by Veyi and contained in the docket indicates that the last time he saw Nokuthula was near the 4-way stop junction of the Fochville/Carltonville and Johannesburg/Potchefstroom roads. She was in the boot of Coetzee's vehicle and was alive with her hands cuffed behind her back. Her feet were in leg irons. A few days later, when he asked Pretorius where Nokuthula was, he received the response: "*Moenie [so] baie vrae vrag nie*" (don't ask so many questions). Veyi was told by one of his colleagues, Sergeant Mathibe, that Coetzee and Pretorius had shot and buried Simelane near Rustenburg. Mathibe has since died.

27.2 Lengene originally made a statement to the investigating officer (Captain Leask) while he was still under the direct command of Coetzee. In a subsequent interview with Leask, he admitted that his "*original statement was not the whole truth*". Before making his statement he had met with Coetzee and Pretorius who told him that "*it was up to him and [Mkhonza]*

DA TP

to save their skins". Pretorius warned Lengene that they would be provided with a copy of his statement by Dir. Neville Thoms (then Head of Priority Crimes, Gauteng). He also said that the investigating officer would not be able to prove any charges as "*he had no proof of a body*". Lengene stated that after the first interview he had been taken to Coetzee who wanted to know what was said in the interview. He was told to rewrite a statement, which Pretorius vetted and which he was instructed to keep it in a safe place so that it could later be handed to an attorney who was being arranged through the police. Lengene stated that he feared Coetzee and Pretorius very much and "*at no cost must they become aware of my statement...*" He has since died.

27.3 Mokane Sefuthi, a former policeman, states that he was posted to guard Nokuthula while she was being held. He stated that Coetzee, Pretorius and Mong continuously threatened Nokuthula with death during the interrogations. After Nokuthula had been removed from the farm, Sefuthi asked Pretorius what had happened to her. Pretorius replied that that Sefuthi "*would never see her again*".

28 Nokuthula never returned to Swaziland after being abducted by the South African Security Branch and has since disappeared. We have not seen or heard from her in the ensuing 35 (thirty-five) years despite our diligent efforts to find her, which I detail later in this affidavit.

29 I respectfully submit that these facts are all contained in the police docket that was provided to the TRC, or were contained in the findings of the TRC Amnesty

D.A TP

Committee in relation to the amnesty application of the perpetrators (with the exception of Radebe, who did not apply for amnesty), which is dated 23 May 2001 and annexed hereto marked **TN2.**.

30 I submit that the brutal conditions of Nokuthula's detention and her unrelenting and vicious treatment at the hands of the perpetrators left her in such a weakened and desperate physical state that she would have died if she was not afforded urgent medical treatment in hospital. I am advised that expert medical evidence in this regard will be led by the prosecutors at the trial of the accused.

31 The accused murdered Nokuthula in order to cover up the ruthless torture perpetrated by the accused and to ensure that she could never testify against them. Indeed this was the routine practice of the SB in cases of failed "kopdraai" operations, which I will deal with below.

MODUS OPERANDI OF THE SECURITY BRANCH

32 During apartheid kidnappings, torture and murder by the SB were the order of the day and specifically authorised, not only by the applicants' immediate superiors, but also by the commanders of the SB, the commissioner of police, the Minister of Police and the State Security Council ("**SSC**").

33 The *modus operandi* employed by the Security Branch at that time involved '*kopdraai*' operations which routinely included torture and the elimination of captives who refused to become informers. This modus operandi was endorsed

and confirmed not just by their commanders, but also the most senior commanding officers in the SAP, including officers commanding the Security Branch and the commissioners of the SAP. Such authorisation also came from the political hierarchy, including cabinet ministers and the erstwhile State Security Council. In this regard I refer to the supporting affidavit of Frank Dutton annexed hereto marked "**TN4**".

34 In the context of the 1980s, orders to carry out such operations, even involving torture and murder, against perceived terrorists seen to be part of the "Total Onslaught", were viewed as routine police work by the Security Branch. Indeed, such operations were entirely consistent with the national security approach of the government at the time.

35 The 2 officers, Brigadier Willem Frederick Schoon and the late Brigadier H C Muller, who both authorised the operation against my sister were no strangers to unlawful actions, including abductions, torture and murder. The supporting affidavit of Frank Dutton sets out a non-exhaustive list of unlawful activities involving the two as reflected in the Final Report of the Truth and Reconciliation Commission (TRC). These included multiple crimes of torture, murder, conspiracy to murder, attempted murder, kidnapping, bombing, and setting up arms caches, cover-ups and perjury.

36 Amnesty records reveal that during the 1980s multiple serious crimes were committed by Willem Coetzee (AM 4122/96) and Anton Pretorius (AM4389/96), collaborating closely with others such as Eugene de Kock (AM 0066/96). They worked under the command of Brigadier Schoon (AM 4396/96), who in turn

DA TP

was authorised by the then Commander of the Security Branch, Johannes Velde Van Der Merwe (AM4157/96). These crimes included murder, conspiracy to murder, attempted murder, kidnapping and establishing an arms cache. Van der Merwe subsequently became the Commissioner of Police.

37 Contrary to the claims of Coetzee and his colleagues, the Amnesty Committee found, on the basis of the evidence of the black officers, that:

37.1 Nokuthula did not cooperate with the Security Branch and did not furnish any material information to them (page 6, Amnesty Finding);

37.2 All attempts to recruit her as an informant proved "*fruitless*"(page 7, Amnesty Finding);

37.3 She sustained serious and prolonged torture to the point where she was hardly recognizable and could barely walk (page 7, Amnesty Finding);

37.4 She was not returned to Swaziland following her captivity (page 6, Amnesty Finding).

38 Coetzee and his co-accused had no choice but to come forward to apply for amnesty in order to avoid criminal prosecution. They did so for no other reason than self-preservation. They came forward only because they had been implicated by some of the black members involved in the abduction and captivity of Nokuthula.

TP D.A

19

39 Indeed, the writing was on the wall for them the moment the Sowetan newspaper published two stories about Nokuthula's disappearance on 27 January 1995 and, in particular, on 6 February 1995. Copies of the newspaper reports are annexed hereto marked by "**TN5**" and "**TN6**". The newspaper articles prompted the police to open an investigation docket under case number CAS1469/02/1996.

40 The reason why the accused did not apply for amnesty for murdering Nokuthula is because there were no witnesses to Nokuthula's murder and nobody could implicate them directly. The black officers were only witnesses to the kidnapping and torture, which only necessitated the white officers applying for amnesty for these offences.

41 The black officers in question were not witnesses to the murder, although they strongly suspected that she was murdered, which was the normal practice of the SB in such cases. According to the black officers Nokuthula was last seen alive in the boot of Coetzee's vehicle with her hands cuffed behind her back and her ankles also cuffed.

42 I submit that a perusal of amnesty applications reveals a general trend of perpetrators only applying for amnesty in cases where they could be directly implicated. Indeed in every other amnesty application made by Coetzee and Pretorius they faced the risk of being implicated by Eugene de Kock who was cooperating with the authorities. In this regard see the supporting affidavit of Frank Dutton.

TP DA

43 Significantly, the TRC concluded that there was a discernible pattern which reflected that most security force amnesty applicants came forward only when there was a likelihood of a case proceeding against them. In the TRC Final Report in the chapter titled "*Former South African Government and its Security Forces. Part One: Overview of Amnesty Applications*" at Volume 6, Section 3 paragraph 19, the TRC found that:

> "... in a number of instances, **it is clear that applicants chose not to apply for incidents where they believed that there was little interest or likelihood that the state would make headway with a case against them**." (Emphasis added)

EFFORTS TO INVESTIGATE AND TRACE NOKUTHULA

44 Nokuthula's disappearance and the events that have transpired since the TRC hearings have left me and my family with a deep sense of loss and anguish. Since her disappearance, we have spared no effort in our search for her or her remains.

45 Our family enquired at the South African / Swaziland border whether she had crossed into South Africa, but there was no record of her doing so. My family made inquiries with the ANC in Swaziland, and in the neighbouring countries such as Botswana. All these efforts proved fruitless. Nokuthula's disappearance was reported to the police, both in Swaziland and, subsequently, in South Africa.

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46 All these efforts proved fruitless. It was only when the aforesaid articles were published in the Sowetan newspaper in 1995 that information began to emerge, prompting the opening of an investigation under Captain Leask.

47 On 19 February 1996 Director Neville Thoms, the Head of Priority Crimes, Gauteng addressed a letter to the Secretariat of Safety and Security and the National Head of Priority Crimes summing up the investigations to date. A copy of this letter is annexed hereto marked **TN7**. A further letter, expanding on the contents of this letter was sent to the Divisional Chief of the National Crime Investigation Services in Pretoria on 26 February 1996, and a copy thereof is annexed marked **TN8.**

48 According to the docket's 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 D'Oliviera of the Third Force Investigations team. A discussion was then held with Dr D'Oliviera. At this meeting it was decided that all possible evidence must be gathered and the investigation must proceed.

49 An entry made in the investigation diary on 22 October 1996 by Thoms indicates that the matter was to be held back pending the instructions of the Attorney General. Captain Leask then filed the investigation notes in the "*respective files*". The state advocate handling the file, Advocate Ebrahim, issued no further instructions.

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50 The final entry in the investigation diary prior to the amnesty hearings before the TRC on 10 February 1998 reads "*amnesty hearings o/s*". I presume that "*o/s*" means "*outstanding*". On 6 July 1998, Coetzee was warned of his rights in terms of section 35 of the Constitution in respect of Nokuthula's murder. He declined to make a statement. A copy of the warning is annexed hereto marked **TN9**.

51 Our family then proceeded to participate in the TRC process, which sought truth and closure as to the circumstances surrounding Nokuthula's disappearance, torture and death. On 3 June 1997, my father, Matthew Simelane, testified in a "*victims' hearing*" before the Human Rights Violations Committee. He explained our family's plight and the efforts we had undertaken to try and find the truth. A copy of the transcript of the hearing can be made available on request.

52 After the amnesty applications were filed, it quickly became clear that some of the black perpetrators were willing to tell the truth and acknowledge their role in Nokuthula's torture and disappearance. On the other hand, Pretorius, Coetzee and Mong took a confrontational and uncooperative attitude, complying only to the extent they felt was necessary to obtain amnesty. They refused to apologise to the family or to demonstrate any sense of remorse for the pain caused to our family.

53 The TRC Amnesty Committee granted amnesty for kidnapping to all those who applied for amnesty for her abduction and captivity. In addition, Selamolela and Veyi were granted amnesty in respect of her torture. However, the TRC

D.A TP

Amnesty Committee declined to grant amnesty to Coetzee, Pretorius and Mong for the torture of Nokuthula on the basis that they had failed to make "*a full disclosure of all relevant facts*" as required by section 20(1)(c) of the Promotion of National Unity and Reconciliation Act, 34 of 1995 (the TRC Act). In particular, the majority of the Amnesty Committee found that:

> *"[T]he evidence of Coetzee, Pretorius and Mong is untruthful insofar as it concerns the duration and extent of Ms Simelane's torture whilst she was in the custody of the Security Branch, especially on the farm. Coetzee, Pretorius and Mong have accordingly failed to make a full disclosure of all relevant facts in regard to this aspect of the matter as required by the provisions of Section 20 of the Act. Their applications are accordingly REFUSED on this aspect."*

54 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 as it took the family many years to force the authorities of the democratic South Africa to consider a prosecution. This was the second betrayal of Nokuthula and everything she stood for. This betrayal cut the deepest.

55 My father, Matthew Simelane, went to his grave in 2001 without knowing what happened to Nokuthula. My brother, Antonio Lungelo Simelane, died last year after suffering from years of anxiety and depression. My mother, Sizakele Ernestina Simelane, now 77 years old and sick with nervous tension, fears that she will die without knowing; and without burying Nokuthula's remains with the dignity she deserves.

56 Even though a police docket was opened in 1996 little or no official action followed. After the amnesty decision the matter was referred to the NPA.

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During 2005 my legal representatives urged the NPA's Priority Crimes Litigation Unit ("PCLU"), which was responsible for the cases referred by the TRC to the NPA, to take various initial steps, including:

56.1 Prosecuting suspects who did not apply for amnesty for kidnapping, since kidnapping is listed as one of the exceptions to the 20 year prescription rule in section 18 of Act 51 of 1977;

56.2 Preferring charges of defeating the ends of justice against Coetzee and Pretorius for intimidating a junior officer, Sergeant Lengene, into making a false statement and for attempting to coach a witness, Norman Mkhonza, into making a false statement, which were indicative of a cover up of Nokuthula's murder.

57 These requests were ignored. The PCLU advised me that their hands were tied as they were waiting for a new policy to deal with the so-called political cases. Until this new 'policy' was issued an effective moratorium on pursuing the TRC cases was in place. When the amendments to the NPA's Prosecution Policy emerged in late 2005 it essentially created a backdoor amnesty for perpetrators of so-called political crimes. It gave such perpetrators, like my sister's killers, a second opportunity to escape justice.

58 Together with the widows of the Cradock Four, the young freedom fighters murdered by a SB hit squad in 1985, I went to court to challenge the policy in the matter of **Nkadimeng & Others v The National Director of Public Prosecutions & Others** (TPD case no 32709/07). In 2008 the High Court

struck down the amendments to the Prosecution Policy, declaring them to be absurd and unconstitutional. A copy of the judgment of Legodi J is available online[22] and a hard copy can be made available on request.

59 We thought that the striking down of the amendments to the Prosecution Policy 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. Yet again they said their hands were tied. It took a high-level intervention for an investigating officer to eventually be appointed to the case in 2010; but the docket had apparently gone "missing".

60 Without support from the authorities, I was forced to appoint a private detective to assist me in my search for my sister. During 2011, I retained Frank Dutton to inquire into the whereabouts of Nokuthula. Mr Dutton's investigation was sponsored by the Foundation for Human Rights.

61 Mr Dutton's investigations revealed that none of Nokuthula's family members, closest friends and colleagues, including cadres in the underground, had seen or had any contact with Nokuthula following her kidnapping. They all maintained that Nokuthula had not returned to Swaziland and was never seen against after her disappearance early in September 1983.

62 I reported the inaction of the South African authorities to the United Nations Special Rapporteur on Enforced Disappearances who in turn corresponded with the government. A copy of the letter received from the Chairperson of the

[22] http://www.saflii.org/za/cases/ZAGPHC/2008/422.html

TP D.A

Working Group on Enforced or Involuntary Disappearances dated 24 July 2014 is annexed hereto marked **TN10**.

63 By the end of 2012, even after finding the docket, there was no progress. It was clear to me that the authorities were not taking Nokuthula's case seriously. As mentioned, they even declined to pursue those police officers involved in the kidnapping who did not apply for amnesty. At the beginning of 2013, the 30th year of Nokuthula's disappearance, and 18 years since the opening of the police docket, I gave up on a prosecution and demanded the holding of a judicial inquest into her death. This request was refused. Remarkably, the NPA claimed that their investigations were still not yet complete.

64 Since January 2013 my lawyers and I engaged in extensive communications with the NPA and the SAPS in an effort to persuade them to finalize their investigations or at least refer the case to a judicial inquest. For years, these efforts came to naught.

65 Out of sheer frustration, on 20 May 2015 I filed an application before the High Court in Pretoria in the matter **Thembisile Phumelele Nkadimeng vs. National Director of Public Prosecutions & 8 Others, Case Number 35554/2015**. I sought an order compelling the South African Police Service (SAPS) to finalize their investigations and an order compelling the National Director of Public Prosecutions (NDPP) to make a decision in my sister's case. These papers set out the very extensive efforts my family and I made to

TP D.A

persuade the authorities to take action in Nokuthula's case over decades. The full papers are available online[23] and a hard copy can be supplied on request.

66 This application disclosed evidence of gross political interference in the operations of the NPA (as per the supporting affidavits of Advocates Vusi Pikoli and Anton Ackermann SC) and explained how the political cases from the past, including Nokuthula's case, were deliberately suppressed.

67 As a result of this court application murder and kidnapping charges were eventually preferred in the indictment of **The State v MT Radebe and 3 Others (Case No.: CC19/16)** (" the indictment") dated 14 March 2016.

MEDIA ATTENTION

68 Nokuthula's case has generated significant media coverage and widespread recognition over the years. In addition to the Sowetan and other newspaper articles a documentary about my sister's story was made and screened on TV ("*Betrayal*", SABC, Grey Matter Media, Johannesburg: Film Resource Unit [distributor], ©2006.).

69 A statute of my sister was erected in the Bethel cultural precinct in 2009. My mother resides in Bethel. I wrote an opinion piece in the City Press dated 26 December 2013, a copy of which is annexed hereto marked T**N11**.

[23] The full papers (without annexes) can be downloaded at: http://www.southernafricalitigationcentre.org/cases/ongoing-cases/south-africa-challenging-npa-inaction-for-trc-related-prosecutions/. The full papers with annexes can be downloaded at: http://www.saha.org.za/news/2011/May/press_release_sactj_press_release_on_launch_of_the_nokuthula_simelane_matter.htm

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70 I held a media briefing on 9 February 2016, after the NPA announced that it would finally criminally prosecute Radebe, Coetzee, Pretorius and Mong for murdering my sister. Articles to this effect are attached marked **TN12**.

71 The legal case relating to the obligation on the Commissioner of Police to pay the legal costs of those accused of murdering my sister was widely covered in print and online media during June 2018. I attach an example of the media coverage marked **TN13**.

72 It stands to reason that if Nokuthula were alive she would have become well aware of our efforts to locate her as well as our quest for justice. Given that she has made no attempt to contact us in the 35 years since her disappearance, it must follow that she is dead.

CONCLUSION

73 In summary, having set out the circumstances above, I submit that the following factors clearly demonstrate that this Court should grant an order for a presumption of death for Nokuthula:

73.1 An extensive period of time has elapsed since Nokuthula's disappearance. Despite a period of 35 (thirty-five) years elapsing, Mr Dutton's investigations revealed that none of Nokuthula's family members, closest friends and colleagues, including cadres in the underground, have seen or had any contact with Nokuthula following her kidnapping.

73.2 Nokuthula was abducted, tortured and murdered by the Security Branch. She was kept captive and brutally tortured for a sustained period. The black SB officers attest to the grim state that Nokuthula was in at the time she was last seen alive.

73.3 My family and I have taken active steps to trace Nokuthula during this time to no avail. These include making multiple inquiries, participating in the TRC process, appointing a private detective, placing pressure on the authorities, and ultimately litigating in order to compel the authorities to take steps against those who brutalised and murdered my sister.

73.4 Nokuthula's case has garnered significant media coverage. Yet, Nokuthula has not sought to make contact with our family nor has any member of the public has come forward with information that she is alive.

74 In these circumstances, I submit that the probabilities overwhelmingly support the conclusion that my sister is no longer alive. We as the family seek and are entitled to closure. Declaring my sister to be presumed deceased will be a meaningful step in the process of our healing as a family.

THEMBISILE PHUMELELE NKADIMENG

I certify that the deponent has acknowledged that she knows and understands the content of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and affirmed to before me at

Polokwane on this 15th of November 2018, the regulations contained in Government Gazette Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

LIABENG ARNOLD MOHUBA
Commissioner of Oaths
Practising Attorney RSA
32 Bodenstein Street
Polokwane
0700

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 86381 **/18**

In the *ex parte* application of:

THEMBISILE PHUMELELE NKADIMENG Applicant

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIZAKELE ERNESTINA SIMELANE

state under oath as follows:

1 I am Sizakele Ernestina Simelane. My identity number is 401209 0309 080. I am the mother of the late Nokuthula Aurelia Simelane ("**Nokuthula**"). I am also the mother of the applicant in this matter, Thembisile Phumelele Nkadimeng ("**Thembi**").

2 The facts as stated herein, unless stated otherwise stated or appears from the context, are within my own personal knowledge and are to the best of my knowledge and belief, are both true and correct.

3 I endorse the application launched by Thembi for an order for a presumption of death of Nokuthula. I confirm the contents of Thembi's affidavit insofar as they pertain to me and my family.

L.P SE

4 Nokuthula was my first child. I gave birth to her when I was 20 years old. I am nearly 78 years old. Nokuthula's father and my husband, Matthew, died in 2001 without knowing what happened to her. We still don't know what happened to her and have endured daily agony since her disappearance in 1983.

5 We know that Nokuthula was abducted and brutally tortured by the Security Branch of the former South African Police. We know that she refused to collaborate with the apartheid security forces. Nokuthula's was in a grim state when she was last seen alive in 1983. In the ensuing thirty-five years, she has since not been seen or heard from, despite our diligent inquiries and multiple investigations.

6 We also know now that it was routine practice for the Security Branch to murder their captives if they refused to collaborate and to conceal their remains in a manner that made discovery unlikely, if not impossible. We have tried to find out what happened to Nokuthula but do not have answers. The Security Branch officers who murdered her have cruelly refused to disclose the whereabouts of Nokuthula's last resting place.

7 I have lost all hope that my daughter is alive and submit that the evidence overwhelming points to the contrary. I accordingly pray that this Court grant the order for a presumption of death sought by Thembi.

SIZAKELE ERNESTINA SIMELANE

L.P.S.E

I certify that the deponent has acknowledged that she knows and understands the content of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and affirmed to before me at Emalahleni on this 06 of November **2018**, the regulations contained in Government Gazette Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

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TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, NO.34 OF 1995.

W H COETZEE 1ST APPLICANT

(AM4122/96)

A PRETORIUS 2ND APPLICANT

(AM4389/96)

J F WILLIAMS 3RD APPLICANT

(AM4375/96)

J E ROSS 4TH APPLICANT

(AM4377/96)

F B MONG 5TH APPLICANT

(AM4154/96)

N L MKHONZA 6TH APPLICANT

(AM5420/97)

M M VEYI 7TH APPLICANT

(AM5421/97)

M L SELAMOLELA 8TH APPLICANT

(AM5419/97)

DECISION

1. INTRODUCTION

TP 9

This is an application for amnesty in terms of the provisions of Section 18 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 ("the Act"). The matter relates to the abduction and subsequent treatment of Ms Nokuthula Aurella Simelane during or about the period August - September 1983. The sequence of events constituting the incident will be set out more fully later in this decision. All of the Applicants were to a greater or lesser extent involved in the incident. They were at all material times members of the Security Branch of the then South African Police attached to the Intelligence Unit stationed at Soweto in the present province of Gauteng. The Applicants fall into two categories in accordance with the extent of their respective participation in the incident. The participation of Applicants Williams, Ross and Mkhonza was limited to the abduction of Ms Simelane while the remainder of the Applicants participated throughout the duration of the incident, except for Veyi who joined in after the abduction. The latter group of Applicants engaged in an internecine war during the course of the hearing which was conducted between two camps. The one camp, consisting of Coetzee, Pretorius and Mong, was represented by Mr Visser and the other camp, consisting of Veyi and Selamolela, was represented by Mr Lamey. All of the Applicants testified in support of the applications. Their versions largely coincided in regard to the abduction of Ms Simelane while the respective versions of the two conflicting camps were mutually destructive in relation to the subsequent treatment of Ms Simelane. The interests of the next-of-kin of Ms Simelane were represented at the hearing by Mr van den Berg who indicated in argument that only the applications of Coetzee, Pretorius and Mong are being opposed. Mr van den Berg presented testimony of Gilbert Thwala in support of the case of the next-of-kin.

It is necessary to set out the material evidence in more detail. The summary of the relevant evidence will commence with the facts which are common cause, followed by the respective conflicting versions of the Applicants involved in the dispute of fact in regard to the treatment of Ms Simelane and will conclude with the version of Mr Thwala.

2. FACTS WHICH ARE COMMON CAUSE

Certain sources attached to the Soweto Intelligence Unit of the Security Police including Mkhonza, had infiltrated the ranks of the African National Congress ("ANC") and its military wing Umkhonto weSizwe ("MK") in Swaziland. The Soweto Intelligence Unit under the command of Coetzee, was alerted by these sources that a meeting was arranged between Mkhonza and an MK member at the Carlton Centre in Johannesburg during or about August - September 1983. Coetzee conveyed this information to the overall commander of the Soweto Security Police, the late Brigadier H Muller. After having considered various options, Muller ordered that the MK member should be abducted with a view to turning the member into an agent of the Security Police. Pursuant to this order, Coetzee gathered a group of Security Police officers, including the Applicants, and prepared them for the operation. On the day of the operation, the group monitored the movements of the MK member with a view to executing the planned abduction. It was only at that stage that it transpired that the MK member was a lady, Ms Simelane. She was young, attractive, soft-spoken and had a slender figure. She had also just completed a degree at the University of Swaziland. In accordance with the plan decided upon by the group of police officers, Mkhonza lured Ms Simelane to the basement of the Carlton Centre where she was apprehended and abducted. Ms Simelane was manhandled, placed in the boot of a police vehicle and transported to the Custodum Flats where the Security Police had an operational office in the cleaner's quarters on the roof of the building. Ms Simelane was left in one of the police vehicles out of sight of the general public. She was subsequently removed to the operational office where she was kept for a few days.

Throughout this period Ms Simelane was interrogated and continuously

TP 9

assaulted by a group of Security Police officers. The assaults were of a serious nature and Applicants accepted that this can be equated to torture. All of the Applicants save for Williams, Ross and Mkhonza were to a greater or lesser extent involved in her torture. The letter had ceased their participation in the incident after the abduction was executed at the Carlton Centre. Ms Simelane was subsequently transferred to a secluded premises on a farm in the district of Northam in the present North West Province. Here she was detained for a period of approximately 4 to 5 weeks. The interrogation and torture continued on the farm. The pith of the conflict between the versions of the relevant Applicants concerns the events surrounding the interrogation and torture of Ms Simelane on the farm. The respective versions in this regard will now be set out.

3. VERSION OF COETZEE, PRETORIUS AND MONG

According to these Applicants, the assaults occurred only during the course of the first week of Ms Simelane's detention, whereafter it was effectively terminated apart from the odd occasion when she would be given a slap or a punch in order to secure her continued co-operation. After the first week of detention, Ms Simelane agreed to work as an agent of the Security Police. She gave her full co-operation to Coetzee who was leading the group of police officers. As she was concerned about her safety, Ms Simelane requested Coetzee not to let the black officers in the group know that she was in fact working with the police. This fact was accordingly not conveyed to either Veyi or Selamolela. Ms Simelane furnished information concerning the structures and operations of MK in Swaziland. In order to ensure Ms Simelane's continued credibility with the ANC and MK, certain targets were attacked by the Security Police under false flag operations. These attacks formed part of the orders which Ms Simelane had to convey to MK units inside South Africa. MK would have become suspicious of Ms Simelane should these attacks not have been launched which in turn would have compromised the continued operations of the Security Police agents who had infiltrated MK. Ms Simelane's recruitment occurred over a period of time and was finalised approximately two weeks prior to her departure from the farm. She was registered as an occasional source of the Soweto Security Police to be handled by Coetzee and Pretorius.

During the period of her stay on the farm, Ms Simelane's personal needs such as toiletries, food, clothing and the like were attended to. Throughout this period, her hands and legs were cuffed at night in order to stop her from escaping. After the necessary arrangements were made, steps were taken to return Ms Simelane to Swaziland. Only Coetzee, Pretorius, the late Sergeant Mothiba and one of the Security Police sources were involved in the arrangements concerning the handling of Ms Simelane as a Security Police source. Mothiba and the source eventually transported Ms Simelane to Swaziland. She subsequently failed to keep the pre-arranged appointments with her Security Police handlers. The Security Police never heard of Ms Simelane again. The Applicants vehemently denied that Ms Simelane's torture continued beyond her first week of detention or that she was so badly assaulted over the prolonged period of her detention that she was hardly recognisable towards the end of her stay on the farm. They likewise denied that electric shocks were administered to Ms Simelane during her detention on the farm or that her torture included her being thrown into the dam on the farm. They furthermore strenuously denied that Ms Simelane was killed by the Security Police and her body disposed of after she was removed from the farm.

4. VERSION OF VEYI AND SELAMOLELA

Only Selamolela was involved in the abduction, while both of them were involved in the subsequent detention of Ms Simelane at the Custodum Flats and on the farm in the Northam district. She was completely outnumbered by the members of the Security Police who were all male and physically superior to her. Throughout the period of her detention, Ms Simelane was interrogated and severely assaulted.

Both the interrogation and the assaults were led by the white officers, particularly Coetzee who was in overall command of the group of Security Police. Ms Simelane never co-operated Ms Simelane never co-operated with the police neither did she furnish any material information concerning MK as alleged by Coetzee and the other white officers. She persisted with this stance right up to the end of her stay on the farm and there was never any question of her being recruited as an agent of the Security Police. It is due to this attitude, that she was severely assaulted throughout her detention. Towards the end of her stay on the farm, her physical condition had deteriorated to such an extent as a result of the assaults, that she could hardly be recognised. She had great difficulty in walking and her physical condition had generally deteriorated quite badly. According to Selamolela she was also subjected to torture by electric shocks on the farm. She was, moreover, thrown into the dam on the farm. According to Veyi he last saw Ms Simelane lying in the boot of Coetzee's vehicle while she was still cuffed. He was under the impression that Selamolela accompanied him on this occasion. Selamolela on the other hand had no recollection of this incident. To their knowledge, no toiletries, medication or similar personal items were furnished to Ms Simelane during her detention on the farm. She was in fact dressed in a brown police overall throughout this period. They disputed the version of Coetzee and the other white officers that the information furnished by Ms Simelane led to the false flag attacks on the electrical power stations or was instrumental in the arrest of a number of persons linked to MK. Despite the sustained assaults and the other attempts to recruit her, Ms Simelane remained unco-operative to the end. According to Veyi, Mothiba informed him that Coetzee and Pretorius were involved in the subsequent killing of Ms Simelane and the disposal of her body.

5. VERSION OF GILBERT THWALA

At all material times he was the chief of staff of the Transvaal Urban Machinery of MK and was based in Swaziland. During 1982, Ma Simelane joined his unit and she was operating as a courier for one of the MK units within the Transvaal Urban Machinery. During September 1983, he deployed Ms Simelane on a mission to make contact with one of the other MK units within the Transvaal Urban Machinery at the Carlton Centre in Johannesburg. He had previously made the necessary arrangements with a member of that unit for the meeting with Ms Simelane. The arrangement was in fact that Ms Simelane would collect certain written arrangements in regard to lines of communication between the relevant MK unit and the MK command in Swaziland. She was only given the necessary information to enable her to complete the mission. She was specifically never given any information concerning the membership of the unit or in regard to operational issues such as the location of arms caches or targets for attack. After the necessary logistical arrangements had been made, Ms Simelane was briefed on the mission a few days before her actual departure from Swaziland for South Africa. Arrangements were made for her to be accommodated by an MK member, one Duma Nkosi.

She left Swaziland around the 8th September 1983 and the meeting at the Carlton Centre was arranged for Saturday, 11th September 1983. The arrangement was that Ms Simelane would communicate with him after the meeting at the Carlton Centre on the Saturday. By the Saturday evening, when Ms Simelane had not yet made contact with him, he realised that there was a problem. He made telephonic contact with Duma Nkosi and established that Ms Simelane had failed to return home after having left for a meeting in the morning. It transpired that Ms Simelane's clothing and other possessions were still at the home of Mr Nkosi. He also telephoned Ms Simelane's home to enquire whether she was possibly there. Her relatives indicated that to their knowledge, Ms Simelane was still in Swaziland and were surprised to hear that she would be collecting some items from home that she needed for the purposes of her imminent graduation. By the following evening, he realised that Ms Simelane had disappeared and he instituted the necessary precautions to ensure that the MK units or their operations would not be

compromised by the disappearance of Ms Simelane. He ordered the MK unit to which Ms Simelane was attached as well as the unit of Mr Nkosi to immediately cease all operations until further notice. Steps were also taken in Swaziland to secure the MK premises which were known to Ms Simelane. He again communicated with Ms Simelane's family and indicated to them that she seemed to have disappeared in Johannesburg.

He denied that Ms Simelane had anything to do with the arrest of approximately 18 MK members during 1984. He indicated that apart from one member of the group that was arrested, Ms Simelane had never met any of the other arrestees and had no basis of possibly knowing that they were members of MK. He had taken steps to resolve the mystery surrounding the disappearance of Ms Simelane. He indicated that although he accepted, as one of the possibilities, that she was arrested by the South African Security Police he was puzzled by the fact that no action was taken by the latter against any of the units or the MK premises in Swaziland that were known to Ms Simelane. He had never seen Ms Simelane since her departure for South Africa and emphatically denied the suggestion that Ms Simelane was killed by MK after she was placed back in Swaziland by the Security Police. He indicated that if Ms Simelane had in fact returned to the ANC structures or MK in exile he would have been apprised of that fact and would have been central in any possible MK or ANC investigation into the situation of Ms Simelane.

6. EVALUATION OF THE EVIDENCE

It is apparent from a conspectus of the respective versions that the material matters in issue are :

6.1 The duration of Ms Simelane's torture;

6.2 Whether Ms Simelane co-operated with the Security Police and was recruited by them;

6.3 Ms Simelane's physical condition towards the end of her stay on the farm;

6.4 Ms Simelane's fate subsequent to having been removed from the farm.

Having carefully considered the matter, we are satisfied that in spite of some discrepancies in their versions, the evidence of Veyi and Selamolela is basically truthful. They have both made a very favourable impression upon us and their testimony has struck us as honest as well as a genuine attempt to convey all of the facts and circumstances concerning the incident to the best of their ability. We bear in mind that they have been called upon to recount events that occurred a very long time ago and in which they did not play a leading role. In the case of Selamolela he had to contend with the additional disadvantage of suffering from the effects of post-traumatic stress syndrome which, according to the medical evidence placed at our disposal, negatively affected his memory. There is, in our view, no merit in the submission made on behalf of Coetzee and the other white Applicants that Veyi and Selamolela adopted a hostile position towards their white superiors and were actuated by a desire to put the latter in as bad a light as possible while minimizing their own role in the incident. It is common cause that they made a public disclosure of the circumstances surrounding the Simelane incident after her disappearance was highlighted in a prominent article in the Sowetan newspaper. They subsequently made statements to the then Attorney-General of the Transvaal which were basically consistent with their versions at the amnesty hearing. These statements were deposed to prior to the date on which the first amnesty applications were made in respect of the Simelane incident and at a time when they

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had no indication whether or not on what basis any of their superiors may apply for amnesty.

There can be no doubt, in our view, that their principal motivation was to make a full disclosure of the entire incident and to lift the burden of guilt that they were carrying concerning their own role in what they experienced as an unwarranted and unjustifiable invasion of the basic human rights of Ms Simelane. It is inexplicable why they should falsely exaggerate the duration of Ms Simelane's torture when they have confessed their own complicity in that torture. We find it highly improbable that they would implicate themselves in an offence, the severity of which they falsely exaggerate.

We have not been similarly favourably impressed by the versions of either Coetzee, Pretorius or Mong. We have no doubt, that they have made common cause and orchestrated their testimony in an attempt to minimize their roles in the torture of Ms Simelane. They were evasive and resorted to prevarication and long-winded technical explanations whenever they sensed difficulties or shortcomings in their versions. They studiously failed to furnish direct enswers to questions which they regarded as potentially damaging to their case. The record speaks for itself in this regard. Moreover, various aspects of their versions are inherently improbable. They failed to furnish a reasonable or acceptable explanation for the fact that Ms Simelane was kept in foot cuffs throughout the period of her stay on the farm in spite of having allegedly agreed to become a police informer. Their explanation that this was done as a precaution against Ms Simelane possibly fleeing, contradicts the allegation that she had in fact been recruited and registered as a police informer while staying on the farm. It is, furthermore, inherently improbable that they would have continued detaining Ms Simelane under primitive and extremely adverse conditions on a remote farm in the bushveld at a time when they in fact had her full co-operation as a newly recruited informer. The probabilities in this regard instead favour the version of Veyi and Selamolela that she was held under these circumstances and continuously assaulted precisely because of the fact that she had refused to co-operate with the police. The version that, on Ms Simelane's insistence, the fact of her recruitment was kept secret from the black members is, in our view, a clever but unpersuasive attempt to neutralise the effect of the contrary version of Veyi and Selamolela. It is beyond the realm of belief that Coetzee and the other white officers could keep up this facade for approximately one month on the farm while at the same time somehow managing to involve Mothiba in Ms Simelane's recruitment without raising the suspicion of the remaining black members. On the totality of the evidence before us, 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 in dispute. We are not persuaded that the criticisms levelled at the versions of Veyi and Selamolela in the argument submitted on behalf of Coetzee, Pretorius and Mong affect those versions in any material way even less does it warrant the total rejection of those versions.

Insofar as the evidence of Mr Gilbert Thwala is concerned, we are satisfied that his version is honest and truthful. We are not persuaded that the rancour that developed during cross-examination between Mr Thwala and Mr Visser is indicative of or only explicable on the basis of mendacity on the part of Mr Thwala. This factor does not detract from the gravamen of that version which in broad terms corroborate the evidence of Veyi and Selamolela that Ms Simelane never co-operated or furnished any material information to the police. It, moreover, constitutes a compelling basis for the conclusion that Ms Simelane never returned to Swaziland after she was abducted by the Security Police.

7. FINDINGS

In the circumstances, we are satisfied that Ms Simelane was abducted by

TP 17

members of the South African Security Police, including some of the Applicants, acting under the command of Coetzee on or about Saturday, 11 September 1983 at the Carlton Centre, Johannesburg. During her subsequent 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 after having been abducted by the South African Security Police and had disappeared since. It is not necessary for the purpose of this matter to make a definitive finding on the eventual fate of Ms Simelane.

8. CONCLUSION

The abduction and subsequent situation of Ms Simelane will be dealt with separately.

8.1 Abduction

It is not in contention that the abduction of Ms Simelane was duly authorised by the then commander of the Soweto Security Branch. The facts and circumstances relating to this incident have been fully disclosed. The operation was directly linked to the political struggle being waged at the time against the ANC or MK which were regarded as the political enemies of the South African State and its Security Forces. We are accordingly satisfied that this incident constitutes an act associated with a political objective as envisaged by the Act. Amnesty is accordingly GRANTED to all of the Applicants, save for Veyi who was not involved, in respect of all offences or delicts arising from the abduction of Ms Simelane on or about Saturday 11 September 1983 at or near the Carlton Centre, Johannesburg. We have considered the position of Mkhonza and are satisfied that his actions contributed directly to the unlewful abduction. He is accordingly also entitled to amnesty in spite of the fact that he was under the initial impression that Ms Simelane would be lawfully arrested.

8.2 Torture

In the light of what is set out above, we conclude that the evidence of Coetzee, Pretorius and Mong is untruthful insofar as it concerns the duration and extent of Ms Simelane's torture whilst she was in the custody of the Security Police, especially on the farm. Coetzee, Pretorius and Mong have accordingly failed to make a full disclosure of all relevant facts in regard to this aspect of the matter as required by the provisions of Section 20 of the Act. Their applications are accordingly REFUSED on this aspect.

Insofar as the applications of Veyi and Selamolela are concerned, we are satisfied that they have made a full disclosure of all relevent facts. At all material times they were acting on the orders of their commander, Coetzee, who informed them that Ms Simelane was a member of MK. Their actions were accordingly directed against a perceived political enemy and as such constitute acts associated with a political objective as envisaged by the Act. Their applications accordingly comply with all of the requirements of the Act. In the circumstances, amnesty is hereby GRANTED to the Applicants Veyi and Selamolela in respect of all offences and delicts arising from the torture of Ms Simelane subsequent to her abduction as set out above.

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In our opinion Ms Nokuthula Aurella Simelane, alternatively her next-of-kin are victims in respect of the incidents for which amnesty is hereby granted and the matter is accordingly referred for consideration in terms of the provisions of Section 22 of the Act.

DATED AT CAPE TOWN THIS 23RD DAY OF MAY 2001

DENZIL POTGIETER, A-J

A-J CHRIS DE JAGER, A-J

ADV L GCABASHE

AC/2001/185

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, NO.34 OF 1995.

W H COETZEE 1ST APPLICANT

(AM4122/96)

A PRETORIUS 2ND APPLICANT

(AM4389/96)

J F WILLIAMS 3RD AP ICANT

(AM4375/96)

J E ROSS 4TH APPLICANT

(AM4377/96)

F B MONG 5TH APPLICANT

(AM4154/96)

N L MKHONZA 6TH APPLICANT

(AM5420/97)

TP

M M VEYI 7TH APPLICANT

(AM5421/97)

M L SELAMOLELA 8TH APPLICANT

(AM5419/97)

A D D E N D U M

I agree with the result but do not agree with some aspects and conclusions in paragraph 6 above. The Applicants Coetzee, Pretorius and Mong did not satisfy me that they've made a full disclosure of all relevant facts.

CHRIS DE JAGER, A-J

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"TN 3" 44

IN THE HIGH COURT OF SOUTH AFRICA

(Gauteng Division, Pretoria)

The Director of Public Prosecutions : Gauteng, Pretoria, who as such prosecutes for and on behalf of the State, presents and informs the Court that :

MSEBENZI TIMONTHY RADEBE

A 65 year old male, residing at 36 Stumke Street, Witpoortjie Extension 11 Roodepoort.
(Hereinafter referred to as **ACCUSED 1**)

WILLEM HELM JOHANNES COETZEE

A 63 year old male, residing at 4 Acapulco Sonderend Street, Helderkruin, Roodepoort
(Hereinafter referred to as **ACCUSED 2**)

ANTON PRETORIUS

A 57 year old male, residing at 20 Dundsdon, Malcolm Road, President Rhodes.
(Hereinafter referred to as **ACCUSED 3**)

FREDERICK BARNARD MONG

A 57 year old male, residing at 5 Anne Street, Solandpark, Vereeniging.
(Hereinafter referred to as **ACCUSED 4**)

4E

Are guilty of the crimes of:

1. KIDNAPPING; (ACCUSED NO 1 ONLY)

2. MURDER READ WITH THE PROVISIONS OF SECTION 18 (a) ,92(2) , 94 ,256 , 257 AND 258 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977;(ACCUSED 1-4)

COUNT 1 – KIDNAPPING (ONLY ACCUSED 1)

IN THAT on or about 11 September 1983 and at or near the Carlton Centre Mall, in the district of Johannesburg the Accused, did unlawfully and intentionally deprive **Nokuthula Aurelia Simelane** of her liberty and freedom of movement by removing her against her will from the Carlton Centre Mall where after they took her to the Custodum flats in Norwood and to Northam in Thabazimbi against her will.

COUNT 2 – MURDER (ACCUSED 1-4)

IN THAT on or about between September to November 1983 and at or near Uitsig Oos Farm, Northam, in the district of Thabazimbi, the Accused did unlawfully and intentionally kill **Nokuthula Aurelia Simelane**, a 27 year old female person.

WHEREFORE upon due proof and conviction, the said Director of Public Prosecutions prays for sentence against the Accused according to law.

In terms of Section 144(3) (a) of the Criminal Procedure Act 51 of 1977, lists of witnesses as well as a summary of substantial facts are attached hereto.

K.R. MATHENJWA

DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

PRIORITY CRIMES LITIGATION UNIT

SUMMARY OF SUBSTANTIAL FACTS

1.

Accused 1 – 4 were all attached to the Soweto Intelligence Unit at the South African Police Security Branch and they were specifically concerned with intelligence gathering. Accused 1 – 4 controlled various classes of informants and agents.

2.

The Soweto Intelligence Unit of the Security Police, including Norman Lungile Mkhonza infiltrated the ranks of the African National Congress ("ANC") and its military wing Umkhonto weSizwe ("MK") in Swaziland.

3.

The Soweto Intelligence Unit under the command of Accused 2 was alerted that a meeting would take place between a Mkhonza who was an RS member (policemen who operated under deep cover) and an MK member at the Carlton Centre in Johannesburg during September 1983.

4.

Accused 2 informed the late Brigadier H Muller, who was the overall commander of the Soweto Security Police at that stage, about the meeting. Muller and Accused 2 were in agreement that the MK member should be abducted in order to turn the member into an agent for the Security Police. It was unknown at that stage that the MK member was a female person.

5.

Accused 2 gathered a team of the Soweto Intelligence Unit Police officers, which included inter alia, Accused 1, 3 and 4. Accused 2 proceeded to prepare the team for the operation.

6.

On the day of the operation, the MK member turned out to be **Nokuthula Aurelia Simelane**, a 27 year old female person (herein after referred to as the deceased). Mkhonza lured Simelane to the basement of the Carlton Centre mall, where she was apprehended and kidnapped by inter alia Accused 1 - 4.

7.

The deceased was manhandled and bungled into the boot of a police vehicle together with Accused 1, who assisted to subdue inside her the boot , where after the deceased was taken to the Custodum Flats in Norwood. At the Custodum Flats in Norwood the Soweto Intelligence Unit had an operational office in the servant's quarters on the top floor, in the roof of the building.

8.

The deceased was kept at the Custodum flats for a few days where she was interrogated and continuously assaulted and tortured by Accused 1- 4.

9.

Shortly thereafter the deceased was taken to secluded premises on a farm in Northam that belonged to the family of Accused 2. The deceased was detained at the farm for a period of approximately 4 to 5 weeks.

10.

At the Notham farm, the deceased was handcuffed and shackled with leg irons. Accused 1-4 continued to severely assault and torture the deceased, whilst they interrogated her. Towards the end of her stay on the farm, the deceased's overall physical condition had generally deteriorated to such an extent that her face was barely recognizable and she could not walk unassisted. The deceased then disappeared whilst being in the hands of Accused 1-4 from 1983 up to date.

11.

It will also be alleged that the Accused acted in furtherance of a prior agreement to commit the crimes of as set out in Counts 2 – 3 of this indictment, alternatively acted in furtherance of a common purpose. Precisely where, when and in what manner the common purpose was formed and who all the parties thereto were, are at present unknown to the State. The State does, however, allege that the common purpose was in existence at the latest, shortly before and for the duration for the commission of the crimes as set out in this indictment.

12.

It will also be alleged those at all relevant times, to the indictment where the Accused were not the physical perpetrators they associated themselves with the acts and omissions committed by the other Accused in the implementation and execution of the common purpose and that they shared their intention to commit the crimes as set out in the indictment.

LIST OF WITNESSES

1. SIZAKELE ERNESTINAH SIMELANE
   1326 FIRST STREET, EMZINI
   BETHAL

2. MZIMKULU NIMROD VEYI
   76 AMY STREET
   MEREDALE

3. MALOSELA PATRIC KOBE
   SAPS
   PCIU
   HEIDELBERG

4. MAKONE MATSEBETSEBE EDWARD SEFUTHI
   15 BEACON STREET
   CRYSTAL PARK
   BENONI

5. NORMAN LUNGILE MKHONZA
   65 KOWIE STREET
   THREE RIVERS
   VEREENIGING

6. PETRUS MOKEBE MADIBO

   SAPS

   WEST RAND MURDER AND ROBBERY UNIT

   KRUGERSDORP

7. MOHAPI LAZARUS SELAMOLELA

   SAPS

   ORGANISED CRIME INVESTIGATION UNIT

   GAUTENG

8. DUMA NKOSI

   351 EXT 2, NO 11022

   THOKOZA

9. THEMBI VILAKAZI

   WILLIAM PITCHEN COLLEGE

   MAMZINI

10. JOHAN HENDRIK PRETORIUS

    LOCAL CRIMINAL RECORD CENTRE

    SAPS

    RUSTENBURG

11. NOKO REUBEN KGOMO

    SAPS

    INTERPOL

421 PRETORIUS STREET

PRETORIA

12. SARAH MADELEINE FULLER

PCLU

13. NIMROD VEYI

76 AMY STREET

MEREDALE

14. INEELO ERNEST MAKUNG

NATIONAL CRIME SCENE MANAGMENT

PRETORIA

15. JABU MARINES NGOBESE

29399 VISTA VIEW

MAMELODI EAST

16. GILBERT ZAKEHLE THWALA

19 MARTIN PRINSLOO STREET

NORKEM PARK

KEMPTON PARK

17. VINCENT SIPHITHIRSA MALAZA

STAND 889 SECTION 3 KANYAMAZANE

18. JUSTICE MAFA NGIDI

24-17TH AVE

ALEXANDRA

19. THOKGELE BIZZA MASEMOLA

SAPS

PERSONELL MANAGEMENT

20. DUMA NKOSI

11022 TANEKJEKWAYO STREET

351 EXT 2 THOKOZA

21. TLOU PHAKISA MASEGELA

SAPS

DPCI

22. NTOMBI ELSIE NKOSI

1072 MAVENA STREET

SOWETO

23. MARTIN JOHAN NAUDE

126 WITSTINKHOUT ROAD

HENNOPSPARK

CENTURION

24. WILHELMINAH NKELE DISEKO

LRCR

JOHANNESBURG

PR NR: 390/2014

25. LOUIS GOODLOVE MUNYAI

LRCR

JOHANNESBURG

PR NR: 380/2014

26. STEPHINA RAMATSOBANE NCHABELENG

LCRC

BRITS

PR 280/03/2013

27. CHRISTO PETRO DEETLEFS

1479 BOSVELD CRESENT

RAYTON

28. VINCENT SIPHITHIRSA MALAZA

STAND 889

SECTION 3

KANYAMAZANE

29. JOHANNES ALBERTUS STEYN

SOLIDATUS 401

RIA STREET

MURRAYFIELD

PRETORIA

30. VINCENT SIPHITIRSA MALAZA

STAND 889 SECTION 3

KANYAMAZANE

31. FRANCOIS PAULUS RETIEF VAN DER MERWE

LRCR

NATIONAL CRIME SCENE MANAGEMENT

32. TSHABALA CHARLES

14 CAROLINA STREET

DAWNPARK

BOKSBURG

33. REAVELL RHODES NKONDO

2 PRESIDENT BRAND STREET

WESTDENE

BLOEMFONTEIN

34. RATUBATSI SUPER MOLOI

584 BAUHINIA STREET

MORNINGSIDE

SANDTON

35. MBALI TERESA MNCADI

897 PATRYSHOND STREET

GARSFONTEIN

PRETORIA

36. SIPHO MLUNGISI TWALA

144 KATHERINE STREET

GRAYSTON RIDGE PARK

SANDTON

37. NOEL BONGINKOSI NKUMANE

1898 MBULI STREET

THUTUKANI

WESSELTON

ERMELO

38. LUNGELO ANTONIO SIMELANE

KERNEELS HUMAN STREET

DE BRUIN PARK

ERMELO

39. THEMBISILE PHUMELELE NKADIMENT

82 GENERAL VILJOEN STREET

WELGELEGEN

POLOKWANE

40. WENDY PHALANE MPAMA

7 PEBBLE PLACE

SEAGLEN

SEAVIEW

41. DR RGR MOORAD

DR KENNETH KAUNDA DISTRICT

DEPARTMENT OF HEALTH

NORTWEST PROVINCE

42. JAMES FREDERICK WILLIAMS

ERF 196

MIDSTREAM ESTATE

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 86381 /18

In the ex *parte* application of:

THEMBISILE PHUMELELE NKADIMENG Applicant

SUPPORTING AFFIDAVIT

Contents

INTRODUCTION 2
THE CONTEXT: A REALM OF CRIMINALITY 5
THE ROLE OF THE SECURITY BRANCH 7
MODUS OPERANDI OF THE SECURITY BRANCH 13
THE ROLES OF THE MAIN SB PROTAGONISTS 17
INSIGHT INTO SAP COMMANDER INVOLVEMENT IN POLITICAL VIOLENCE 19
MOTIVATIONS FOR MURDER 24
FACTS WHICH ARE COMMON CAUSE IN NOKUTHULA"S CASE 27
VERSION OF BLACK SECURITY BRANCH MEMBERS 29
VERSION OF THE WHITE SB MEMBERS (COETZEE, PRETORIUS AND MONG) 31
ANALYSIS 33
Did Ms Simelane cooperate with the Security Branch? 33
False Flag Operations 33
Information which could have been revealed by Ms Simelane 34
What was the nature of her injuries? 35
Was Ms Simelane returned to Swaziland as a Security Branch agent? 36
Relatives, Friends and Acquaintances 37
Was Ms Simelane listed as Wanted? 37
CONCLUSION 38
EXPERIENCE AND EXPERTISE 40

I, the undersigned

FRANK KENNAN DUTTON

do hereby make oath and state:

INTRODUCTION

1. I am an adult male South African citizen with ID Number 4905204085086.

2. I am an International policing and investigation expert and provide expertise on a consultancy basis internationally as well as locally. I am currently retained as an investigator by the Judicial Commission of Inquiry into Allegations of State Capture.

3. I have played leading roles in complex investigations in South Africa and many other countries. Including Bosnia, Croatia, Kosovo, Sudan (Darfur), Afghanistan, DRC, Cameroon, Uganda, Nigeria, Rwanda, Kyrgyzstan, Liberia, Mozambique, Zimbabwe, Brazil and East Timor. I have 39 years of policing experience in South Africa and I was the first commander of the former Directorate of Special Operations (also known as the Scorpions).

4. In 2012 I was awarded the Order of Baobab in Gold by the President of South Africa for my policing work both locally and abroad. The citation to this award is as follows:

> *Frank Kennan Dutton: THE ORDER OF BAOBAB IN GOLD. Awarded for his exceptional contribution to and achievement in his investigative work as a dedicated and loyal policeman, for exposing the apartheid*

FKD MUP

60

government's "Third Force"; for his role in working for peace in KwaZulu-Natal; his international work in investigating and exposing war crimes and crimes against humanity in Bosnia, Kosovo and Darfur; and assisting in establishing the causes of violence in East Timor and Sudan.

5. In order to demonstrate my expertise in policing and investigations I annex hereto marked **"FKD1"** a fuller list of my experiences in policing and investigations in South Africa and abroad. I carried out private investigations into the crimes committed against Nokuthula Simelane ("Nokuthula") on behalf of the Simelane family.

6. The purpose of this affidavit is to consider the prospects of whether Nokuthula is dead or alive. I conclude that Nokuthula is dead and that she was murdered by the SB. I also conclude that the kidnapping, torture and murder of Nokuthula was entirely consistent with the typical *modus operandi* of the erstwhile Security Branch ("SB") of the South African Police ("SAP").

7. An important function of the SB was to obtain, frequently by illegal means, operational information from arrested or captured activists. The *modus operandi* employed by the Security Branch at that time involved so-called '*kopdraai*' operations which routinely included abduction, torture and the elimination (murder) of captives who refused to become informers.

8. The facts contained in this affidavit are within my own personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief, both true and correct. I have read the founding affidavit of Thembisile Phumelele Nkadimeng deposed to in this matter and I confirm the accuracy of her submissions insofar as they relate to me.

61

9. I have structured this affidavit as follows:

9.1. First, I provide the context in which the Security Branch ("SB") of the former South African Police ("SAP") operated. In this regard I highlight that the apartheid state, and in particular the SAP, entered a realm of rampant criminality when combating the perceived 'total onslaught' against South Africa.

9.2. Next I describe the role of the SB in carrying out human rights violations. I then set out the typical '*modus operandi*' of the SB and demonstrate how this involved:

9.2.1. routine abductions and torture, including murders when attempts at recruiting ANC cadres failed, or when other operatives or information had to be protected;

9.2.2. the destruction and concealing of human remains to ensure they would never be recovered; and

9.2.3. the fabrication of stories to suggest that, murders and other crimes committed by the SB, were carried out by the ANC and other opposition groups.

9.3. I then describe the broader criminal and unlawful roles of the officers who authorised Nokuthula's kidnapping and 'kopdraai'.

9.4. Next I provide my insights into the involvement of senior police commanders in political violence, based on my personal experiences;

MJP

62

9.5. I then outline various motivations for murder as explained by SB members in 54 amnesty applications;

9.6. Next I set out the common cause facts and the versions of the white and black SB officers involved in Nokuthula's case and I offer my analysis of these facts

9.7. Finally, I provide my conclusions.

THE CONTEXT: A REALM OF CRIMINALITY

10. The kidnapping, torture and murder of Nokuthula Simelane in 1983 by members of the Security Branch happened in a particular context which must be brought to the attention of this Honourable Court. This context is one where state sanctioned extra judicial killings and rampant criminality was the order of the day.

11. During the 1980s the South African State and its homeland authorities were facing unprecedented resistance from anti-apartheid groupings. Some of this resistance took the form of violent attacks against structures of the state. The South African government under PW Botha perceived the threat as a revolutionary '*total onslaught*'. The response of the security apparatus was a strategy labelled the '*Total Strategy*' aimed at combatting the revolutionary threat at several levels. The security apparatus had since the 1960s embraced the principles of Counter Revolutionary Warfare and by the 1980s these principles dictated government policy at every level.

12. The TRC in its Final Report concluded that at a certain point, which coincided with P W Botha's accession to power in 1978, the South African state through its security forces, and in particular, the SAP, ventured into the realm of criminality as a matter of state sanctioned policy (TRC Report, Vol 5 Ch. 6, Findings and Conclusions, p 212). This period ran from the late 1970s to the early 1990s.

13. Johannes Velde van der Merwe occupied the posts of, *inter alia,* second-in-Command of the Security Police, Commander of the Security Branch, Deputy Commissioner of Police (1988 – 1990) and Commissioner of Police (1990 – 1996). In his testimony to the Armed Forces hearing of the TRC he conceded that state criminality was the order of the day:

> "*All the powers were to avoid the ANC/SACP achieve their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of our law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts. People were involved in a life and death struggle in an attempt to counter this onslaught by the SACP/ANC and they consequently had a virtually impossible task to judge between legal and illegal actions.*"

14. Van der Merwe disclosed that State President P W Botha personally ordered him to bomb a building housing civilian activists (TRC Report, Vol 5 Ch. 6, Findings and Conclusions, p 224). Botha is likely to have ordered his security offences to commit a large number of criminal acts. The TRC found that during this period the state committed a host of gross violations of human rights in South Africa (TRC Report, Vol 5 Ch. 6, Findings and Conclusions, p 222). These included, amongst other violations:

    14.1. extra-judicial killings in the form of state-planned and executed assassinations,

64

14.2. attempted killings, so-called 'entrapment killings', where individuals were deliberately enticed into situations;

14.3. the mutilation of body parts;

14.4. torture,

14.5. abduction or kidnapping and disappearances,

14.6. severe ill treatment, abuse and harassment;

14.7. destruction of homes or offices through arson, bombings or sabotage;

14.8. the deliberate manipulation of social divisions in society with the intention of mobilising one group against another, resulting, at times, in violent clashes;

14.9. incursions across South Africa's borders with the intention of killing or abducting opponents living outside of South Africa;

14.10. establishment and provision of support to offensive paramilitary units or hit squads for deployment internally against opponents of the government.

15. Senior officers such as Van der Merwe and former Police Minister, Adriaan Vlok, who served as Minister of Police between 1986 and1991, were at the heart of the state machinery that carried out massive organised state sponsored crime over several years.

THE ROLE OF THE SECURITY BRANCH

16. The Police Act 7 of 1958 mandated the SAP with *inter alia* the preservation of internal safety. The Security Branch ("SB"), a division of the South African Police, was charged with spearheading this function. The SB was the effective

intelligence wing of the former SAP, falling directly under the Commissioner of the SAP. It operated in a separate and parallel structure to the Uniform and Detective branches of the SAP.

17. According to evidence provided to the TRC at various amnesty hearings (such as *Amnesty Hearing into the Murder of K McFadden and Z Nyanda;* and *Amnesty Hearing into Murder of Griffiths Mxenge*) by General Johann van der Merwe; Brigadier Willem Schoon, Eugene de Kock and Dirk Coetzee, the commanders and members of the SB saw their function of preserving internal safety as a political task to entrench and support the Nationalist Party controlled government. The SB became infamous for the cruel, inhumane and illegal methods used (TRC Report, Vol 2 - *State Security Forces between 1960 and 1990*: Appendix, Page 316).

18. The *Commission of Inquiry regarding the Prevention of Public Violence and Intimidation* ("Goldstone Commission"), under the chairpersonship of Justice Richard Goldstone, was appointed by former President F W de Klerk on 24 October 1991, in terms of The Prevention of Public Violence and Intimidation Act No. 139 of 1991, to investigate incidents of public violence and intimidation in South Africa prior to the 1994 general election. Other members of the Goldstone Commission included Adv. Danie Rossouw, SC (Vice-Chairperson), Adv. Solly Sithole, Ms Lillian Baqwa, and Mr Gert Steyn.

18.1. In April 1994, the Goldstone Commission handed over to a newly appointed International investigation team, (and also provided to State President, FW de Klerk), a report titled '*Report to the International*

66

Investigation Team. This report detailed various criminal conduct of the SB including murder, fraud, blackmail and political disinformation.

18.2. The Commission's "Third Force" report of the 18 March 1994 (*Interim Report on Criminal Political Violence by Elements within the South African Police, the KwaZulu Police and the Inkatha Freedom Party*) drew attention to the criminal activities of the Security Branch in the 1980s. Under the heading '*Comments*' the report reads as follows:

> *"7.1. We would like to draw attention to the fact that [former Security Policeman, Paul] Erasmus has opened only one window into the frightening operation of the Security Police in South Africa. Their involvement in violence and political intimidation is pervasive and touches directly or indirectly every citizen in this country. The documents we have been given by one warrant officer can only be a tiny sample of the whole.*
>
> *7.2 The whole illegal criminal and oppressive system is still in place and its architects are in control of the SAP. It cannot be coincidence that in most senior ranks of the SAP there is such a predominance of officers who have led the Security Branch over the past couple of decades."* (Underline added).

18.3. The report led directly to the establishment of a special team of investigators under the Transvaal Attorney-General, Dr D' Oliveira. The operations of this investigation prompted several Security Branch members to apply for amnesty in order to avoid prosecution and potential criminal sanction.

19. The Security Branch served as the effective 'political wing' of the SAP.

19.1. The notorious *Koevoet* unit fell directly under the Security Branch Headquarters.

19.2. Around the country, the Security Branch was organised in divisions. Each division in turn was divided into branches. The Security Branch division closest to each neighbouring state was also responsible for carrying out SB operations in that country.

19.3. Central to the structure of the Security Branch were Sections A-G, each of which was headed by a colonel. The most controversial of the sections were Section A, which dealt with Intelligence, and Section C, which was the ANC/ PAC Desk.

19.4. Section C1 became known as Vlakplaas. The purpose of Vlakplaas was ostensibly as a place to rehabilitate 'turned terrorists' or, as they were called, 'Askari'. The Askaris were eventually divided into units and supervised by the SB, and it was this change that transformed Vlakplaas into a counter-insurgency unit. The units responded to requests that were channelled to them via the head of Section C or via branch commanders (TRC Final Report, Vol 2, Ch. 3, *State Security Forces between 1960 and 1990*: Appendix p 316).

19.5. Coetzee and his co-accused operated in a sister unit to Vlakplaas also reporting to the officer commanding Section C, Brigadier Willem Schoon.

19.6. The target of the SB was any person or organisation which opposed the government and its policies. Its activities included the close monitoring of the affairs and movements of individuals, the detention of

tens of thousands of citizens and the torture of many, as well as trials and imprisonment of suspects.

19.7. Gavin Cawthra in his book, *Policing in South Africa*, (p 65) quotes former Security Branch chief, General Coetzee, stating in 1982 that "*our target is that collection of individuals and organisations, operating from within and without, who practice or attempt subversion or revolution*". Opponents to Apartheid were perceived and represented by the Security Branch as part of a world-wide communist conspiracy. Against this onslaught, the SAP saw themselves as defenders of the '*Free World*' and of '*Christian civilisation*' (Cawthra, p 65).

19.8. In January 1990, General Basie Smit disclosed that the Security Branch had "*given attention to*" 314 000 individuals and 9 500 organisations" since it was formed in the late 1940s (Cawthra, p 65).

19.9. The TRC found that (Vol 2, Ch. 3, *The State inside South Africa between 1960 and 1990*, p288):

19.9.1. Extra-judicial killings were undertaken by a number of different security branch divisions and by the special forces and occurred across the country but with a concentration in areas adjacent to South Africa's borders with its immediate neighbours as well as within those states;

19.9.2. Extra-judicial killings were often the end result of a process of operationally directed intelligence collection on targeted individuals;

69

all three primary security intelligence arms -- National Intelligence Service (NIS), Section C2 of the Security Branch and Military Intelligence;

19.10. Evidence presented during the amnesty application of Brigadier Jack Cronje (AM2773/96), (former Divisional Commander of the Northern Transvaal Security Police and former Commander of C1 Section (Vlakplaas) 1983 – 1985), and 4 other former security policemen revealed that a multi-departmental "C*ounter-revolutionary Intelligence Target Centre*", known by its Afrikaans acronym "Trewits" (Teenrewolusionere Inligtingstaakspan), was responsible for the drawing up of hit lists of prominent activists for "*elimination*" and the planning of the hits.

19.11. According to the TRC, one of those accused of murdering Nokuthula, Lieutenant Colonel Anton Pretorius of the Soweto Intelligence Unit, attended regional TREWITS meetings (TRC Final Report, Page (Original) 284, Para 494, Vol 2, Ch. 3, Subsection 52).

19.12. The most senior SB offices routinely covered up crimes. See for example the finding of the TRC that SAP generals Johannes Van der Merwe and Basie Smit were responsible for defeating the ends of justice by helping to cover up the crimes of hit squad members (TRC Final Report, Vol 3 Ch. 3, *Regional Profile: Natal and KwaZulu*, p220).

7C

MODUS OPERANDI OF THE SECURITY BRANCH

20. In relation to *modus operandi* of abductions, interrogation and killings, the following findings of the TRC (TRC Final Report, Page Number (Original) 234, Paras 278 to 280, Vol 2, Ch. 3, Subsection 31) are instructive:

> *"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 modus 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. ..."* (Underline added)

21. Colonel Roelof Venter (Northern Transvaal Security Branch) in his amnesty application dated 13 October 1996 [AM2274/96] testified that if someone could disclose the identity of an informant that would justify his or her murder. In this

71

regard note the following extracts from the document "*Algemene Agtergrond*" attached to his amnesty application:

> *"98. Dit was uiteraard van die grootste belang om die identiteite van sodanige beriggewers ten alle koste te beskerm, ten einde wraakaanvalle op huile en hulle gesinne te verhoed.*
> *99. Soms het hierdie beskerming veroorsaak dat bepaalde ondersteuners van bevrydingsbewegings eerder geelimineer is as om hulie aan te laat kla of vry te laat, uit vrees vir die bekendmaking van die identiteit van die beriggewer wie se inligting gelei het tot die arrestasie van die ondersteuner."*

22. The former Commander of the Security Branch, Johannes Velde van der Merwe (AM 4157/96), and 9 others applied for amnesty for their roles in, *inter alia*, the murder of Maisha Johannes "Stanza" Bopape and/ or their participation in the unlawful disposal of the deceased's body and the cover-up of his death in 1988. The killing of Bopape was covered up by staging a "mock escape". In granting amnesty to the applicants the Amnesty Committee (AC/2000/059) found

> "*The applicants were all members of the security forces of the State. The evidence establishes that at all relevant times the applicants acted in the course and scope of their duties as members of the Security Branch of the police force.... the 6th and 7th Applicants were involved in the incidents for no other reason than they were the senior officers of the Witwatersrand Division, the 8th Applicant was approached with the problem concerning the Deceased in his capacity as the commanding officer of the Security Branch and he arrived at the decision and issued the instruction to dispose of the Deceased's body and cover up his death when acting in such capacity; and all the other Applicants participated in the cover-up by acting on such instructions.*" (Underline added).

23. In the Stanza Bopape amnesty hearing, Van der Merwe, testified on day one (1 September 1998) that:

72

> *"It was expected of members of the South African Police and the South African Defence Force to stop the violent onslaught at any price even if they had to act outside the law as in a war situation."* (Underline added).

24. It is important to note that Security Branch members frequently desecrated and violated the bodies of their victims to ensure that the remains could never be found. This was done by either cremation (after which the ashes of the body were disposed of in various ways); or by blowing the bodies into fragments with explosives. Dirk Coetzee testified (Amnesty Hearing Transcript, Durban, 5 November 1996) that the bodies of those eliminated would typically be burned on a pyre of tyres and wood and then the SB would:

> "...*give the impression that the person has fled into the neighbouring country, back to the African National Congress, or, if his body is left on the premises, implicate the ANC, the African National Congress, as the perpetrators of the specific murder.*" (Underline added).

25. Dirk Coetzee testified that he was ordered by C section head, Brigadier W Schoon to carry out such operations (TRC Final Report, Page (Original) 234, Paras 284, Vol 2, Ch. 3, Subsection 31). Coetzee explained:

> "*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.*"

26. The TRC reported on its special investigation into the *Secret Burial of Activists and Report on Exhumations.* It concluded that in most cases, it was found that

73

the perpetrators had covered up the identity of the victims and their final burial places. The TRC had to use police sniffer dogs to seek out the presence of lime below the soil surface, as lime was often poured over the bodies to hasten their decomposition. The TRC (TRC Final Report, Page (Original) 556, Paras 37 – 45, Vol 6, Section 4, Ch. 2, Subsection 4) found that:

> *"In a number of cases, operatives were abducted and attempts were made to turn them into askaris. Those who did not co-operate with the police were brutally killed and often buried in secret locations or in unnamed graves in cemeteries."* (Underline added)

27. Some 50 bodies were exhumed, but almost 200 cases were not finalised. The lengthy procedures necessitated by each exhumation made it impossible for the Commission to complete this task (TRC Final Report, Page (Original) 543, Paras 1 to 13, Vol 2, Ch. 6, Part 5, Subsection 1).

28. The *Missing Persons* Task Team (MPTT) of the NPA continues with the task of the recovery of remains to this day. As of July 2016, the MPTT had recovered 103 bodies and was still searching for some 500 bodies (Interview with MPTT Head, Madeleine Fullard, Radio 702, 1 July 2016).

29. Many of the cases which are cited in the TRC Report under this section ("*Abduction, Interrogation and Killing*") demonstrate the tactic of deflecting suspicion away from the Security Branch.

29.1. Cases are mentioned where victims are falsely said to have returned to exile; where Eastern Block weaponry was planted on bodies to provide misleading evidence that the dead were "terrorists"; bodies were mutilated by means of Eastern Block landmines to provide misleading

evidence (see for example: TRC Final Report, Page Number (Original) 237, Para 301, Vol 2, Ch. 3, Subsection 32).

29.2. The TRC found evidence that the strategy of fabricating stories to suggest that murders were the result of factional conflict was formulated at the highest levels. It was discovered that this strategy of misinformation was conceived by the Strategic Communications Branch ('Stratcom') of the SSC Secretariat (TRC Final Report, Page (Original) 297, Paras 559 to 560, Vol 2, Ch. 3, Subsection 57; and TRC Final Report; and Page (Original) 227, Para 251, Vol 2, Ch. 3, Subsection 28).

THE ROLES OF THE MAIN SB PROTAGONISTS

30. The 2 officers who authorised the operation against Nokuthula, Brigadier Willem Frederick Schoon (Commander of Section C of the Security Branch, 1981 – 1990) and Brigadier Hennie Muller, (Divisional Commander of the Security Branch, Johannesburg), were no strangers to unlawful actions, including abductions, torture and murder. Set out below is a non-exhaustive list of crimes in which they were implicated by the TRC.

30.1. The TRC found that Lieutenant H C Muller (as he then was) was one of the officers responsible for assaulting and torturing Suliman Saloojee in 1964, who subsequently fell to his death from the 7th floor of Security Branch Headquarters in Johannesburg (TRC Final Report, Page (Original) 540, Vol 3, Ch. 6, Subsection 7, para 54).

75

30.2. Brigadier Muller authorised the detention of Dr Neil Aggett who died in Security Branch detention and was the officer in charge overseeing Aggett's interrogation (Testimony of Brig H Muller, Neil Aggett Inquest, 1982). The TRC held the Security Branch responsible for the torture and death of Dr Aggett (TRC Final Report, Para 194, Vol 3, Ch. 6, Subsection 25).

30.3. The TRC found that various false flag or "*credibility operations*" involving bombing attacks on a power station and on the railways were authorised by both Brigadiers Muller and Schoon. These operations were aimed at giving the impression that such attacks were carried out by the ANC (TRC Final Report, Page (Original) 293, Vol 2, Ch. 3, Subsection 56, para 545).

31. Willem Frederick Schoon was implicated by the TRC in a large number of criminal incidents. He also made multiple applications for amnesty for murder, conspiracy to murder, kidnapping, bombings and perjury. Set out below are highlighted examples of his rampant criminality:

31.1. Testifying before an Amnesty Committee Brigadier Willem Schoon stated that the total onslaught of the ANC/SACP forced the Security Branch to operate outside the boundaries of the law (Amnesty Committee Hearing, Pretoria, 14 June 1999: *Murders of K. McFadden and Z. Nyanda in Swaziland during 1983*).

31.2. The late Dirk Coetzee, former Vlakplaas commander, testified at the TRC, that in 1981, Brigadier Schoon ordered the murder of Peter

76

Dlamini, who had been kidnapped and underwent a failed operation to turn him into an 'Askari'. Dlamini and Vuyani Mavuso were subsequently murdered (TRC Final Report, Page (Original) 270, Vol 2, Ch. 3, Subsection 47, paras 436-7).

31.3. The TRC reported that in 1986 a senior MK operative and two ANC members were murdered in a raid on house in Mbabane. The attacking party included Captains Willem 'Timol' Coetzee and Anton Pretorius (both accused of murdering Nokuthula). Following the attack, Eugene de Kock reported to a meeting, which included police commissioner, Johan Coetzee and Willem Schoon (TRC Final Report, Page (Original) 110, Vol 2, Ch. 2, Subsection 28, paras 261-2). The then head of the security police, General van der Merwe [AM4157/96], Schoon (AM 4396/96), De Kock (AM 0066/96), Willem Coetzee (AM 4122/96), Anton Pretorius (AM4389/96) and others were granted amnesty for the 3 murders.

31.4. Brig Schoon and 4 others were refused amnesty for the murder of 2 persons and the attempted murder of 1 arising from a bombing in Krugersdorp in February 1982. The crimes were considered by the Amnesty Committee to be wholly disproportionate to the political objective pursued. Brig Schoon and his colleagues were not prosecuted for these crimes, notwithstanding the refusal of amnesty.

INSIGHT INTO SAP COMMANDER INVOLVEMENT IN POLITICAL VIOLENCE

77

32. I myself have gained direct knowledge that the most senior commanding officers of the SB and the SAP were deeply involved in violent crime against political opponents of the apartheid regime from the following experiences:

32.1. In August 1988 I commenced investigating a series of murders of political leaders who served on the Clermont Advisory Board, which was a representative body elected by ratepayers of Clermont. The Board was composed of mainly United Democratic Front ("UDF") aligned businessmen who were opposed to the inclusion of Clermont into the KwaZulu Government territory. Samuel Jamile, then the Deputy Minister of Transport in the KwaZulu government was campaigning for Clermont's inclusion into the KwaZulu.

32.2. During this period several UDF supporting Clermont Advisory Board members were murdered. My investigation into these cases resulted in murder convictions against Samuel Jamile and another. The Divisional Commanders of the SAP in Natal; the Commissioner of the KwaZulu Police and senior members of the Security Branch directly interfered in my investigation in order to stop the criminal proceedings against Jamile.

32.3. I again experienced similar attempts at interference during my investigation of the 1988 Trust Feed Massacre, which resulted in the murder conviction of SAP Captain Brian Mitchell and four others. At the conclusion of this trial, the Judge, Justice Wilson, ordered an inquiry into the conduct of senior SAP personnel, both at the national and provincial level, in respect of their interference in the investigation

and their assistance provided to the perpetrators to evade justice. Unsurprisingly, this inquiry was never carried out by the SAP.

32.4. In August 1993 I was seconded as an investigator to the Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation ("the Goldstone Commission"). Amongst other investigations, I assisted in the investigation which resulted in the Commission's report on 18 March 1994 which found that it was probable that the Deputy Police Commissioner Lt-Gen. Basie Smit, the head of counterintelligence Gen. Krappies Engelbrecht, and the commander of the central investigation department Lt.-Gen. Johan le Roux, had masterminded a third force which conducted a campaign of criminal violence against those opposing apartheid.

32.5. This emanated mainly from evidence given to the Goldstone Commission by Security Branch 'insiders', including Chappies Klopper, Brood van Heerden and Willie Nortje. They revealed that SAP top management were linked with various atrocities, such as vigilantism, political murders, and the manufacture, purchase, smuggling and supply of weapons to Inkatha that took place in the Transvaal (now known as Gauteng) and Natal (now known as KwaZulu Natal) with the aim of making the country ungovernable prior to the democratic elections of 1994.

32.6. I learned that a prosecution docket was opened against General Engelbrecht and the others, but inexplicably, it was never pursued by the NPA. I can only assume that this case was deliberately

suppressed along with all the other so-called political cases from the apartheid era, as disclosed in the affidavits of former National Director of Public Prosecutions ("NDPP") Vusumzi Patrick Pikoli and Anton Rossouw Ackermann SC, former Special Director of Public Prosecutions and Head of the Priority Crimes Litigation Unit ("PCLU") filed in the 2015 Pretoria High Court case under Case Number 35554/ 2015. Copies of these affidavits can be made available on request.

32.7. In April 1994 I was seconded to the D' Oliveira Investigation Team and was directly involved in investigations against former Vlakplaas commander, Eugene de Kock. These investigations ultimately resulted in De Kock's conviction on multiple charges of murder and other crimes on 30 October 1996 and demonstrated the veracity of what witnesses had said about SAP command's involvement in political violence.

32.8. At the end of 1994 I was appointed as the Commander of the Investigation Task Unit, Natal and was mandated to investigate "Hit Squads" within the KwaZulu Police. This culminated in the exposure of "Operation Marion" and the controversial trial of General Magnus Malan, the former Minister of Defence, together with other senior commanders of the military and several police officers for the 1987 KwaMakhutha massacre.

32.9. The Operation Marion files which were seized from Military Intelligence Headquarters under the authority of a search warrant revealed that the former Government of South Africa, its top military and police command conspired, through the State Security Council, to instigate

and promote political violence. While the prosecution failed the then Ministry of Defence paid the civil damages claims of the families of the deceased and the TRC found that that the military had conspired with the Inkatha political party to deploy a "co*vert, offensive paramilitary unit (or hit squad)*" against opponents of the government and Inkatha (TRC Final Report, Volume 5, Chapter 6, page 234).

33. The knowledge that I derived from the above investigations and sources led me to conclude that the involvement of the SAP (and other Security Forces) in political violence was sanctioned not only by the most senior commanding officers in the SAP, including Commissioners of the SAP and commanders of the SB, but also by the highest levels of Government.

34. This conclusion is reinforced by the fact that senior SAP commanders not only failed to undertake credible investigations into the many disclosures that came to light concerning State sponsored political violence. Indeed, many of these cases were suppressed or 'covered-up' by senior SAP Commanders. Those responsible for such violations not only remained immune from discipline or criminal investigation they were rewarded with steady promotion through the ranks.

35. Even where direct orders were not given, such criminal violence was routinely condoned and encouraged by the most senior officers of the SB and SAP. The TRC made several findings that the South African state condoned unlawful killings, both within and outside South Africa (TRC Final Report, Page (Original) 212, Paras 77 to 83, Vol 5, Ch. 6, Subsection 7); condoned the practice of torture (TRC Final Report, Page (Original) 617, Paras 16 to 30, Vol

81

6, Section 5, Ch. 2, Subsection 3); failed to discipline or criminally charge SB members involved in unlawful conduct (TRC Final Report, Page (Original) 254, Paras 333 to 344, Vol 6, Section 3, Ch.1, Subsection 30).

MOTIVATIONS FOR MURDER

36. During the latter part of 2016 I studied 54 cases of politically motivated murders and kidnappings as disclosed to the Truth and Reconciliation Commission's Amnesty Committee by members of the former Security Branch for the period 1972 to 1992. In doing the study I examined the transcripts of evidence and findings of the Amnesty committees of the TRC. The study is some 60 pages long and has not been annexed to my affidavit but can be made available on request.

37. In particular, I paid attention to the specific reasons put up under oath by members of the Security Branch to explain the crimes they had committed. The SB perpetrators asserted that these crimes were committed either as a result of direct instructions given to them or issued indirectly by the South African Police command structure and Nationalist Party leaders.

38. Senior SAP commanding officers, (in some cases even the former Commissioner of Police, General Johann van der Merwe) were co-applicants for amnesty in a number of these cases. They supported the averments that these acts were committed either as a result of direct or indirect orders.

39. There were often several motives that justified a decision to murder. The most common reason was simply to eliminate a prominent activist or dangerous

82

terrorist. Other motives for murder included the need to cover up kidnappings and torture. Another motivation was the need to "protect" information extracted during interrogation. The most effective way of achieving this was to cause the disappearance of the victims to conceal the fact that they had fallen into police hands. Another reason to murder was to protect the identity of SB members and to conceal knowledge of their networks and methodologies. A further reason was to protect informers who played a role in the "capture" of the victim. There was often more than one motivation in each case.

40. The principal motivations for murders perpetrated by SB members in the 54 cases surveyed are as follows:

40.1. Deceased was a prominent activist and/ or dangerous "terrorist" – 30 instances.

40.2. Failed attempt to turn deceased into a SB agent ("kopdraai") – 9 instances.

40.3. Deceased murdered to protect informer who turned them in – 9 instances.

40.4. Murdered to protect information that was extracted – 3 instances.

40.5. Deceased could not be prosecuted or was acquitted but SB believed to be guilty - 5 instances.

40.6. Murdered to protect identity of SB members and their networks – 17 instances.

40.7. Potential recruits for MK murdered to discourage the MK recruiting programme – 3 instances.

40.8. Need to eliminate suspected ANC agents within SAP structure – 11 instances.

40.9. Death during torture – 6 instances.

40.10. Other or unknown motive – 2 instances.

41. The study only reflects the cases where SB perpetrators applied for amnesty for murder. As was pointed out by the TRC, most applicants only applied for amnesty in cases where they were at risk of being exposed and charged (TRC Report, Volume 6, Section 3 paragraph 19).

41.1. In this regard, following a perusal of amnesty applications and decisions, I am of the view that SB members tended only to apply for amnesty when there was a real possibility of being implicated by other SB operatives who had already come clean, most notably Eugene de Kock, Dirk Coetzee, Chappies Klopper, Brood van Heerden, Willie Nortje. Almond Nofomela, Manuel Olifant, Mzimkulu Veyi, Sampina Bokaba, Simon Radebe, Eric Sefadi, Christopher Mosiane and Philemon Mathebula.

41.2. Alternatively, perpetrators would apply for amnesty when they became aware that they were at risk of being prosecuted after incriminating information came to the attention of investigators through other sources.

42. It is accordingly most likely that the bulk of criminal conduct committed by the SB did not come to the attention of the TRC's Amnesty Committee. In this

regard note the following Government Gazette NO.31723 3, dated 12 December 2008 at paragraph 2:

> *"The Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), mandated the TRC to make recommendations to the President. The TRC recommended, among others, the establishment of a task team to investigate the nearly 500 cases of missing persons that were reported to the TRC, but remained unsolved. The President endorsed this recommendation in April 2003, upon tabling the TRC's Final Report in Parliament."*

43. It is reasonable to assume that many, if not most of these 500 missing persons died at the hands of the SB in unknown circumstances and their bodies destroyed or well concealed.

FACTS WHICH ARE COMMON CAUSE IN NOKUTHULA"S CASE

44. I submit that on a consideration of the common cause facts seen against the versions of the black and white officers there is no doubt in my mind that Nokuthula is dead and was killed shortly after being last seen by the black officers. I first set out the common cause facts.

45. In 1983 Nokuthula was a young, woman who had just completed a degree at the University of Swaziland. She was acting as a courier for Umkhonto we Sizwe (MK). She was betrayed by infiltrated agents in the MK structures in Swaziland. At a rendezvous in September 1983 she met with a Security Branch agent at the Carlton Centre Johannesburg. She mistakenly believed him to be an operational MK cadre. She was lured to the basement of the Centre where she was overpowered by several SB members and kidnapped. Ms Simelane was manhandled, placed in the boot of a police vehicle and

85

transported to Norwood Security Branch Flats where the SB had an operational office in the cleaner's quarters on the roof of the building. She was held, interrogated and tortured in this office for several days.

46. Coetzee and Williams testified before the Amnesty Committee of the TRC stating that after their kidnapping of Ms Simelane they met with Brigadier Muller who headed the Soweto Security Branch, and reported their action to him. They also sought permission to continue their illegal detention of Ms Simelane in order to turn her into an operative for the police (referred to in police circles as a "kopdraai"). Following SB protocols, Brig Muller referred this request to SB HQ for approval.

47. Accordingly, Brig Muller, accompanied by Coetzee and Williams, met with Brigadier Willem Schoon in Pretoria on the same day. Brig Schoon was the Head of the Security Branch Counter Terrorist Section (C1). The proposal of holding Ms Simelane illegally to forcibly turn her into a police operative was discussed. Schoon approved the kidnapping and gave authority for the illegal action to proceed further.

48. Ms Simelane was subsequently transferred to a remote bushveld farm in the district of Northam in the present North West Province. Here she was kept captive under primitive and extremely adverse conditions for a period of approximately 4 to 5 weeks in a store room without privacy, ablution, medical or kitchen facilities. The interrogation and torture resumed on the farm.

49. She was completely outnumbered by the members of the SB and was forced at all times to share the store room in which she was confined with her guards

(who accommodated themselves in the same room). They were all male and physically superior to her. She was dressed in the same brown police overall which she was given to wear and was manacled for the four or five weeks that she was held at this farm. Her legs were permanently cuffed with leg-irons while her hand-cuffs were removed on occasion during the day for short periods.

50. Both the interrogation and the assaults were led by the white officers, particularly Willem Coetzee who was in overall command of the group. Her graduation ceremony was on 30 October 1983 which she did not attend.

VERSION OF BLACK SECURITY BRANCH MEMBERS

51. According to the black Security Branch officers, Veyi, and Selamolela, Ms Simelane was interrogated and severely assaulted throughout the period of her detention. Towards the end of her stay on the farm, her physical condition had deteriorated to such an extent that she could hardly be recognised. Her wrists and ankles had sustained severe abrasions from the cuffs. She had great difficulty in walking and her physical condition had deteriorated badly. She was, according to Selamolela, also subjected to torture by electric shocks. She was, moreover, repeatedly dunked into the farm dam. No first aid, medication, toiletries or similar personal items were furnished to Ms Simelane during her detention on the farm.

52. Ms Simelane never co-operated with her captors and she never furnished any material information concerning MK as alleged by Coetzee and the other white officers. She persisted with this stance throughout. There was never any

question of her being recruited as an agent of the SB. It was because of her refusal to cooperate with the police that she was severely assaulted throughout her unlawful detention and ultimately murdered.

53. The black officers disputed the version of Coetzee and the other white officers that the information furnished by Ms Simelane led to 'false flag' attacks on Government installations or was instrumental in the arrest of 18 persons linked to MK.

54. According to Veyi he last saw Ms Simelane lying in the boot of Coetzee's vehicle near Westonaria severely injured and cuffed. Veyi testified that there was a discussion between himself and Sergeant Mothiba (since deceased) in which Mothiba allegedly reported that their Commanders, Coetzee and Pretorius, were involved in the subsequent killing of Ms Simelane and the burial of her body.

55. Veyi alleged that he subsequently inquired from Pretorius as to what had happened to Ms Simelane. He was told *"don't ask a lot of questions"*. Mkhonza said he asked Coetzee what had happened to Ms Simelane and he too was told not to ask questions. According to Veyi, Selamolela and Mkhonza, Ms Simelane was never again a topic of discussion within their Unit.

56. Veyi, Selamolela and Mkhonza say they were never informed at any subsequent time that Ms Simelane was at large or that she was a wanted person. Nor were they required to be on the lookout for her. They were never tasked to gather information or intelligence about her despite the fact that their function was gathering intelligence from sources.

VERSION OF THE WHITE SB MEMBERS (COETZEE, PRETORIUS AND MONG)

57. According to the white SB members, Coetzee, Pretorius and Mong, the assaults and torture occurred only during the course of the first week of Ms Simelane's detention. Thereafter it was effectively terminated apart from the odd occasion when she would be given a slap or a punch in order to secure her continued co-operation. During the period of her stay on the farm, Ms Simelane's personal needs such as toiletries, food, clothing and the like were attended to.

58. It is claimed that after the first week of detention, Ms Simelane agreed to work as an agent of the SB. She allegedly gave her full co-operation to Coetzee, the leader of the group of police officers. Because she was concerned about her safety, Ms Simelane apparently requested Coetzee not to let the black officers in the group know that she was in fact working with them.

59. They claimed that Ms Simelane furnished information concerning the structures and operations of MK in Swaziland. They further claimed that in order to ensure Ms Simelane's continued credibility with the ANC and MK, certain government installations were attacked by the SB under false flag operations. These attacks formed part of the orders which Ms Simelane had to convey to MK units inside South Africa. MK would apparently have become suspicious of Ms Simelane if these attacks had not been launched; which in turn would have compromised the continued operations of the Security Branch agents who had infiltrated MK.

89

60. They alleged that Ms Simelane's recruitment occurred over a period of time and was finalised approximately two weeks prior to her departure from the farm. She was allegedly registered as an occasional source of the Soweto SB to be handled by Coetzee and Pretorius.

61. After the necessary arrangements were made, steps were allegedly taken to return Ms Simelane to Swaziland. Only Coetzee, Pretorius, the late Sergeant Mothiba and a black SB member Frank Langa (also deceased) were apparently involved in the arrangements concerning the handling of Ms Simelane as a SB source. It is claimed that the deceased members, Mothiba and Langa, eventually transported Ms Simelane to Swaziland and released her there. The white officers alleged that she subsequently failed to keep the pre-arranged appointments with her SB handlers and was never heard from again. They claimed that she must have been exposed as a SB agent and was probably executed by MK.

62. The white SB members denied that Ms Simelane's torture continued beyond her first week of detention or that she was so badly assaulted over the prolonged period of her detention or that she was barely recognisable towards the end of her stay on the farm. They claimed that all injuries were completely healed by the time she was released. They likewise denied that electric shocks were administered to Ms Simelane during her detention on the farm or that her torture included her being thrown into the dam on the farm. They denied that Ms Simelane was killed by the SB and her body disposed of after she was taken from the farm.

M.V.P

90

ANALYSIS

63. There are three central questions which have to be considered:

63.1. Did Nokuthula cooperate with the SB?

63.2. What was the nature of her injuries, if any, at the time of alleged release?

63.3. Did she return to Swaziland?

Did Ms Simelane cooperate with the Security Branch?

64. The truth of what became of Ms Simelane hinges on the issue of her alleged cooperation.

65. If the 'cooperation' was a fabrication, then their version of her release into Swaziland is also false. Such falsification constitutes a cover-up for what actually happened to Nokuthula, namely that the SB murdered her.

<u>False Flag Operations</u>

66. The white SB members claimed that they conducted false flag operations by causing explosions at certain key points in the Johannesburg area to demonstrate that the instructions that Nokuthula carried as a courier were being carried out, thereby maintaining her credibility with the ANC.

67. The black SB members disputed that the false flag operations in question were associated with Nokuthula, but rather designed to give credibility to an unconnected SB undercover agent.

91

68. During the amnesty hearing it became apparent that the false flag attacks referred to limpet mine attacks on electrical sub-stations in Randburg and Sandton on 8 September 1983; and at sub-stations at Bryanston-North and Fairland on 11 September 1983. The false flag attacks claimed by the white Security Branch occurred before or coincided with Ms Simelane's kidnapping on 11 September 1983. These attacks could therefore not have been as a result of cooperation by Ms Simelane – especially as the white members claimed that Ms Simelane only started cooperating with them a week or two after her capture.

69. Coetzee and Pretorius testified at the amnesty hearing that during Nokuthula's detention she provided information which enabled the SB to:

69.1. arrest an ANC cadre whilst she was still in confinement at the farm at Northam and;

69.2. following her captivity to take action against 17 other MK operatives as well as the Sasol MK sabotage group ("the Sasol Group").

70. My own investigations have revealed that the actions taken against the Sasol Group could not have been linked in any way to the alleged cooperation of Ms. Simelane.

<u>Information which could have been revealed by Ms Simelane</u>

71. If Ms Simelane cooperated with the Security Branch as alleged, she ought to have disclosed secret information about MK of which she was aware. My

92

investigations have revealed that no specific operatives or safe houses of which she had actual knowledge were compromised.

What was the nature of her injuries?

72. The white police members, Coetzee, Pretorius and Mong, claimed that at the time of Ms Simelane's release she was injury free. Earlier injuries had healed and were no longer visible. This was disputed by the black police members, Veyi and Selamolela, who claimed that she had endured prolonged and sustained assaults and that Ms Simelane's physical condition deteriorated to the extent that she was hardly recognisable and could barely walk.

73. The TRC's Amnesty Committee made the following finding:

> *"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."*

74. The black police members said that this state of affairs precluded any possibility of releasing Ms Simelane to infiltrate MK in Swaziland.

75. It is common cause between the white and black SB members that Ms Simelane was restrained with leg and hand cuffs for the entire period of about four to five weeks of her captivity. The leg cuffs restrained her continually and were never removed; whilst the hand cuffs were removed for short periods during the day. She was fully shackled at all other times including when she slept. According to Coetzee and other white members the shackles were finally removed at the moment of her actual release from the farm.

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93

76. The black SB members asserted that, amongst other serious injuries caused by the ongoing assaults, Nokuthula had sustained severe and painful abrasion injuries to her wrists and ankles from the continual wearing of cuffs.

77. I can say that from personal knowledge hand cuffs and leg irons easily cause injuries. It is inconceivable to me that the prolonged captivity in such restraints would not have caused serious abrasions and injuries to Nokuthula's wrists and ankles.

Was Ms Simelane returned to Swaziland as a Security Branch agent?

78. The white SB members claim that Nokuthula cooperated with them and agreed to work as a Security Branch agent within MK structures in Swaziland. They claimed that as a result of this alleged agreement they returned her to Swaziland.

79. The two black SB members who apparently returned Ms Simelane to Swaziland are both deceased. They died before the Amnesty Committee Hearing took place.

80. However, central to the version of the white officers, Coetzee, Pretorius and Mong, is the physical state of Ms Simelane at the time of her alleged release. As Mr Mong explained during his amnesty hearing, should she have borne injuries this would obviously have made her re-infiltration into the ANC in Swaziland as a Security Branch agent unworkable as it would have been

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94

obvious that she had fallen into police hands. Injuries to Ms Simelane would have rendered her re-infiltration a futile exercise.

Relatives, Friends and Acquaintances

81. My investigations revealed that none of her family members, closest friends and colleagues, including cadres in the underground, had seen or had any contact with her following her kidnapping. They all maintained that Ms Simelane had not returned to Swaziland or been seen again after her disappearance early in September 1983.

Was Ms Simelane listed as Wanted?

82. Coetzee's and Pretorius's version is that after Ms Simelane's release back into Swaziland, she failed to keep pre-arranged appointments with her SB handlers, and was not seen or heard from again.

83. The SB regarded Nokuthula as a potentially dangerous person. The white members explained to the Amnesty Committee that this was the reason why Ms Simelane was at all times restrained during her captivity. They maintained that if she should have escaped they and others would have been in imminent danger. They also felt that as a trained terrorist she posed a serious threat to the State.

84. When Nokuthula failed to keep her appointments with her handlers the most logical assumption ought to have been that she had reneged on her agreement and returned to the ranks of MK. In order for the white police version to be regarded as credible they ought to have circulated her details as

95

"wanted". Furthermore they ought to have taken measures to gather intelligence to determine her whereabouts and to secure her arrest.

85. The black members, Mkhonza and Veyi, asserted that when they asked their Coetzee and Pretorius what had happened to Nokuthula they were told not to ask too many questions. Both Coetzee and Pretorius claimed during their testimony before the Amnesty Committee that they said this because of the "*need to know*" security rule. Furthermore Coetzee, Pretorius, Veyi, Selamolela and Mkhonza all testified that Ms Simelane was never again a topic of discussion at their Unit.

CONCLUSION

86. I respectfully submit that in the light of the well-known modus operandi of the SB, their notorious reputation for brutality, and in particular the SB practice of murder in respect of failed 'kopdraai' operations, that it can be safely concluded that Nokuthula is dead.

87. I submit further that it can be safely concluded that she met her demise at the hands of the white SB officers shortly after she was removed from the farm at Northam.

88. It can also be safely concluded that Nokuthula's body was disposed of in a manner that would preclude easy discovery. This was entirely consistent with the SB practice at the time.

89. There was no need for the white SB officers to apply for amnesty for the murder of Nokuthula as aside from themselves there were no witnesses to her

NWP

murder and subsequent disposal. This was entirely consistent with the SB practice of only applying for amnesty for crimes in which they could be implicated.

90. I accordingly endorse this application, and respectfully urge this Honourable Court to grant the order in the terms set out in the notice of motion.

F K DUTTON

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at PARKVIEW SAPS on this the 06TH day of November 2018 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

71631976 CST
(MV. PHASHA)

COMMISSIONER OF OATHS

AFRICAN POLICE SERVICE
COMMANDER
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CLIENT SERVICE CENTRE
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SOUTH AFRICAN POLICE SERVICE

97

Annex FKD1

EXPERIENCE AND EXPERTISE

1. My experience and expertise is as follows:

   1.1. I joined the South African Police on 1 August 1966. After undergoing a year's police training in Pretoria, I was posted to KwaZulu-Natal where I performed general policing duties at Greenwood Park, Glendale and Tongaat police stations.

   1.2. Whilst serving at Tongaat in 1971 I was appointed as a detective. Since then I have worked as a detective/investigator for the rest of my career.

   1.3. I was transferred to Pinetown Detective Branch in 1979 and held the rank of Detective Warrant Officer.

   1.4. In 1983 I was promoted to a Commissioned Officer. I was appointed as the Head of the Durban West Field Unit. This Unit was responsible for investigating serious violence related cases.

   1.5. Political violence escalated in KZN from the mid-1980s and in consequence the unit which I headed investigated many cases of political violence. Hundreds of political violence cases were investigated under my command. Some of these cases exposed the hidden hand of the then South African government and its security forces in instigating and fuelling political violence.

98

1.6. The most prominent of these investigations was the murder investigation and conviction of Samuel Jamile (the former Deputy Minister of Interior for the KwaZulu Government); and the Trust Feed case in which South African Police Captain Brian Mitchell and several KwaZulu police officers were convicted on thirteen counts of murder.

1.7. In an address to the OAU Ad Hoc Committee for Southern Africa on 28 April 1992 in Arusha, Tanzania, President Nelson Mandela highlighted Trust Feed case and the contribution that this case had made towards the successful negotiations for a democratic South Africa.

1.8. In 1992 I was appointed to head the KwaZulu-Natal investigation team of the Goldstone Commission. This led to, among other things, the exposure of the workings of the SAP Security Branch's activities under the command of former Colonel Eugene de Kock at Vlakplaas and the role and association of the South African Police top command in political violence.

1.9. In March 1994, after the Goldstone Commission had published its report on "State Sponsored Violence" implicating senior government Cabinet Ministers and the Command structure of the South African Security Forces I was appointed to serve on a Special Investigation Team headed by the then Attorney General of the Transvaal, Dr D'Oliviera. This Team was charged with conducting criminal investigations into the issues raised by the Goldstone Commission's report. I assisted in debriefing witnesses in Denmark and obtaining comprehensive affidavits from them. This resulted in the arrest of Eugene de Kock and others.

1.10. In August 1994, I was appointed by the Minister of Safety and Security, Sydney Mufamadi, to establish and command the Investigation Task Unit (ITU) to investigate hit squads within the KwaZulu Police. In 1995 I was promoted to the rank of Colonel.

1.11. In 1996 President Nelson Mandela seconded me to the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY), where I assisted in the ICTY's investigations into genocide, war crimes and crimes against humanity in Bosnia and Croatia. At the end of 1997 I was appointed to head the ICTY Office in Sarajevo where I facilitated all ICTY investigations (including the exhumations of mass graves) in Bosnia. In 1998 I was promoted to the rank of Commander (a P5 position) and commanded all field investigations in Bosnia, Croatia and Kosovo.

1.12. Early in 1999 I facilitated the initial field investigations into the forced evictions of Albanians from Kosovo by the Serb Security Forces. To achieve this I established Investigation Units in Tirana, Albania and Skopje, Macedonia. I headed these initial investigations. These investigations resulted in indictments being issued against President Milosevic and other senior officials for crimes against humanity.

1.13. I returned to South Africa in December 1999 after being recalled by the South African Government and was appointed as a Director General within the Department of Justice and tasked to establish and head the new Directorate of Special Operations (also known as the "Scorpions") a specialised investigative unit. I remained in this position until my retirement

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100

from the South African Government Service in April 2004 after 38 years of service.

1.14. Since my retirement I have worked both internationally and locally as a policing expert and private investigator.

1.15. The work that I have done for the past fifteen years is summarised below:

1.15.1. I was selected by a United Nations Security Council appointed Commission of Inquiry to investigate and assist the Commission in determining the causes of violence in Darfur during the latter part of 2004.

1.15.2. I was appointed in 2005 by UN Mission in the DRC (MONUC) to investigate incidents of sexual abuse against women.

1.15.3. I investigated incidents of violence for a Security Council appointed Panel of Experts for Sudan in 2005/2006.

1.15.4. On behalf of the UN Development Program (UNDP) I investigated the cause of an explosion in the living quarters of UN staff members in Afghanistan during 2006.

1.15.5. I headed an Investigation Team for a Commission of Inquiry appointed by the United Nations General Assembly to determine the causes of violence in East Timor during 2006.

1.15.6. I investigated and recovered missing SAM 6 missiles in Afghanistan during 2007 on behalf of UNDP.

M.V.P

1.15.7. I was selected to serve on a South African panel to review the evidence against South African Police National Commissioner, Jackie Selebi during 2007 and to make a recommendation to the Director of National Prosecutions in respect of prosecution.

1.15.8. I conducted an investigation on behalf of the World Bank into procurement irregularities in the awarding of a multi-billion US$ hydro-electric power contract in the DRC. The contract was shown to be corrupt and was subsequently withdrawn.

1.15.9. I conducted investigations on behalf of UNDP into incidents of serious staff corruption in South Africa, Mozambique, Brazil, Liberia, Cameroon, Ghana, Ethiopia and Zimbabwe at various times between 2006 and 2011.

1.15.10. Working from Geneva I conducted an investigation into embezzlement of funds from the malaria programme of "The Global Funds" in Kyrgyzstan, India and various African countries in 2009 and 2010.

1.15.11. In September 2011 I was appointed by United Nations Office on Drugs and Crime (UNODC) to conduct an assessment on the Seychelles Police Service.

1.15.12. In January 2012 I was appointed by the Seychelles Government and tasked to re-structure the Seychelles Police Service to bring about a reduction in spiralling national crime. Over a two year

period these efforts resulted in a 30% decrease of serious crime in the country; and a significant increase in police productivity.

1.15.13. While serving in the Seychelles I headed the investigations into international piracy incidents which occurred in the high sea surrounding Seychelles - as a result more than a hundred Somalian pirates were convicted in the Seychelles. This, together with other international measures, particularly the assistance of International naval forces, significantly reduced incidents of piracy in this region.

1.15.14. In September 2015 I was appointed as a Commissioner to serve on the National Planning Commission.

1.15.15. On 17 January 2017 I was appointed to serve on a Task Team to advise KZN Provincial Government on steps to reduce Rhino poaching in KZN.

1.15.16. On 8 August 2018 I commenced working as an Investigator for the Commission of Inquiry into State Capture

7163197-6 Phasha NV PSF
(N.V. PHASHA)

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MK's Mata Hari still not found

Nokuthula Aurelia Simelane was sent on a mission in September 8 1983 but never reached her destination. See pages 16 and 17.

Missing in action

By Sharon Chetty

A TRACING COMMITTEE set up by the ANC says there are more than 300 Umkhonto we Sizwe cadres who "disappeared" during the struggle for liberation.

Speculation is that many of these soldiers were killed in combat with the old South African security forces and buried in unmarked or falsely marked graves inside or outside the country.

A committee "for the bereaved" was set up in 1991 by Mr Nelson Mandela and then consisted of four returned exiles.

Its task was to inform the families of cadres who had died in exile. In 1992 another committee was set up by the ANC NEC to trace missing persons. A member of this committee, Patience Molekane, said yesterday a number of cadres had been traced, but no figures were available.

"For many of the people we just have names which they used in the camps. Their real names and families are hard to find," Molekane said.

She added that inquiries about missing cadres were still being regularly received at the ANC's Shell House in Johannesburg.

Molekane said her committee had sent a letter to outgoing police commissioner General Johan van der Merwe last April asking him to identify graves of MK soldiers who had died in action against the old South African regime.

Van der Merwe allegedly did not respond to the first letter according to Molekane and a second request was made in December.

Molekane blamed the slow progress being made by her committee and the committee for the bereaved on "a shortage of information". She said there were only two people left on the tracing committee — committee members had left to find jobs elsewhere.

Sources outside the ANC, like the Durban-based Recoc, have hinted that a number of ANC cadres may well have been "disposed of" by their own people.

Meanwhile, Eastern Transvaal police have confirmed that three MK cadres responsible for the November 1985 attack on the Sasol plant were buried in falsely marked graves in Piet Retief.

Barney Moloknane, Victor Khayiyane and Vincent Sekete were killed in a firefight with security forces when they tried to enter Swaziland at the Houtkop border post.

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Mom's question: Where's my child?

y Sharon Chetty

E elite fighting unit Barney Molokoane had help from a young woman — his ain Nokuthula Simelane — and had it been for her many of his missions may have been successful

While a social science student at the versity of Swaziland, Nokuthula ela Simelane hid their weapons, acted courier provided shelter and was the ge communication link between their ant and base and South Africa

And then she disappeared

The last her parents, Matthew and ersina, saw of her was in June 1983 at r home in Mzinoni township, Bethal. e was 24

"Nokuthula had finished her degree and s at home because she was looking for a ," recalled her mother.

"The security police was harassing her a t. She had a narrow escape after they e to our home one morning and we ided she should go back to Swaziland."

The Simelanes were confident that their ghter was all right as she lived with two ies — Leonard and Richard Vilakazi.

al citizenship

uthula had dual Swazi-SA citizenship. uncles were prominent educationists her father a former mayor of Mzinoni nship

They were well known and respected in h Bethal and Swaziland, which helped e vade the police

"Then one day Leonard phoned to ask if uthula had arrived in Bethal.

"We did not know she was on her way ause she did not say anything. Leonard d Nokuthula was going to stop at her ed Wendy Mpama in Mbabane.

"Wendy then pointed us to an MK cadre ned Mpho Mpau".

Mpau, then chief of staff in Swaziland, d sent her on two missions to South ica, the Simelane's found out.

She was apparently sent to Vereeniging d was successful in delivering a message an operative there.

Her next stop was at a house in Senoane, ero, and that is where the trail ended.

NC man

We found out that an ANC man named ma Nkosi lived in that house. Nkosi said iving from work, he found Nokuthula at e house and gave her directions to the ation Centre.

"No one knows what happened next," d Mrs Simelane.

"The man Nokuthula was to meet was ned Scotch.

"When he was called to Swaziland to count for her whereabouts, he disobeyed MK bosses.

"Later they found out that he was a uble agent and had been working for the lice.

"For ten years we searched for our ughter but found nothing,' said Mr melane.

"Then in August 1993 Mpho Mpau came us and explained that he had sent her on e two missions on September 9 1983.

"He confirmed that Scotch was a known lice informer but they (MK) could not do ything until the ANC came into power d controlled the police force."

Mpau, now a pilot with the SAA, has not ntacted them since.

The Simelanes say even the ANC refuses to accept liability for Nokuthula's disappearance ... they said she was "a mere sympathiser and not a member".

"How can they dismiss her in that way? on every major mission that Barney came to the country, we would accommodate him," explained Simelane.

"The SAP put pressure on the Swazi police to deport her, but because of her dual citizenship she was left alone. Her uncle's house was attacked many times. A bomb was found there. They know that the last person to have contact with my daughter was an informer ... they control the police now, why can't they go and ask him what happened," a bitter Mr Simelane said.

Barney with an unknown woman. The photograph was in an album found in a safe house.

Missing since 1983 ... Nokuthula Simelane.

Share prices on the Johannesburg Stock Exchange

These were prices at the close of the market.
N.B.: The JSE does not operate on public holidays.
Prices courtesy of Frankel, Pollak, Vinderine Inc

Name	Buyer	Seller	Last	H	L
1. Nail	R1,25	R1,35	R1,35	R2,00	R1,30
2. Kilimanjaro	R3,00	R3,10	R3,00	R3,50	R3,00
3. African Life	R6,20	R6,40	R6,20	R7,35	R4,60
4. Metropolitan	R33,00	R34,50	R36,00	R37,00	25,75
5. Corp Africa	R1,10	R1,30	R1,20	R1,70	R1,00

Glossary:
Buyer: Price at which the share was bought. Seller: Price at which the share was sold. Last: Last traded price on the share. H: Highest level share reached this year. L: Lowest level the share reached this year

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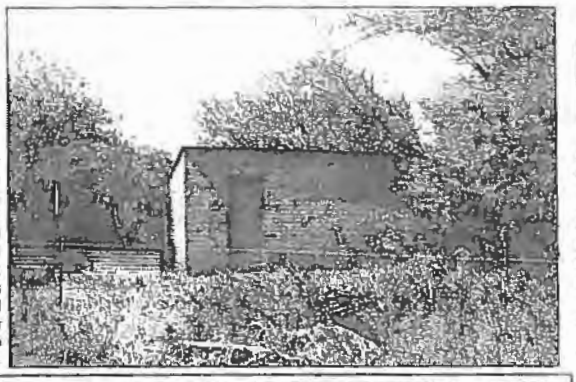
Cops trapped and killed MK cadre



MK cadre Nokuthula Simelane was killed by police 12 years ago and buried without a trace.

By Sharon Chetty

Police have admitted they killed an MK cadre Nokuthula Simelane and buried her 12 years ago without a trace. A former member of the security branch police unit based in Soweto has admitted

Nokuthula Simelane was on an MK mission in Johannesburg in September 1983 when she went missing.

It was later discovered that the man she was to meet at the Carlton Centre in Johannesburg was a police informer — but the trail died there and despite 12 years of searching by her parents, Matthew and Ernestina Simelane, everything remains a blank.

This weekend a member of a police security branch unit that operated out of Soweto, said Simelane had been arrested when one of their informers set a trap for her.

Simelane was taken to a farm near Thabazimbi in the Northwestern Transvaal and kept there for almost two months, he revealed.

He was part of a unit of nine men who gathered intelligence on activists.

They passed the information on to the C10 unit at the notorious Vlakplaas base which dealt with "terrorists".

'She was very beautiful'

Constable X, who prefers not to be named at this stage, said the black members of the unit guarded Simelane while the white members tortured her.

"She was very beautiful. But by the time they (the white officers) were 'finished' with her, she could not be recognised," he said.

Because Simelane was regarded as a "terrorist" she was kept in leg-irons and handcuffs and interrogated constantly, he said.

He described how one day the leader of the unit drove around with Simelane — in handcuffs and leg-irons — lying in the boot of his car.

"She was still alive, and lying crouched on the floor," he recalled.

Constable X had decided to speak about his unit's nefarious deeds, because, he was "haunted by the evils that were committed".

"My conscience says that this must be made public ... everyone should know about the past," he said. He is prepared to testify before the Truth Commission.

Shot dead and buried

When he saw a picture of Simelane and an article on her disappearance in the *Sowetan* last week, he had no doubt that she was the captive he guarded.

The last time he saw her she was still alive and being held on the farm. After he was sent back to Soweto, he inquired after the woman.

"*Moenie baie vrae vra nie*," was the reply he got from one of his superiors. Later he was told by a sergeant that the two white leaders of the unit had shot dead and buried Simelane in Rustenburg.

A *Sowetan* team accompanied Constable X to the farm in Northam, outside Thabazimbi, where he said Simelane was held.

The owners of the farm for 30 years, PC and Mattie Welthagen, confirmed that they were related to the leader of the SB unit, but said they had lost contact with him.

However, they did confirm that the man, whom they knew worked as a *speurder* (detective) with the security branch, used to stay at the farm frequently in the 1980s and that at one stage a young black woman was made to stay there.

Mrs Welthagen said that they were told that the woman was learning to become a policewoman and that she needed to keep away from people.

The couple, who are in their 70s, said their memories were failing and they could not recall exactly who was taken there.

The outbuilding which Constable X said was used as the prison, is a short distance from the main farmhouse.

There is a road leading directly to that cottage and Constable X says a separate access road was used by the policemen.

"We slept in sleeping bags on the floor. We used to wash at the tap outside.

"There's the place where we used to have braais," he said, pointing to a fire-scorched section on one side.

Welthagen said that the stuffy, one-roomed abode was built more than 20 years ago to house farm labourers.

No one was living there because the Welthagen's had stopped farming their land.

The names of the policemen involved in the security branch unit are known to *Sowetan*.

At least two of the white officers appear on a controversial list of 3 500 people who applied for indemnity shortly before last April's elections.

"TN 7" 106

[redacted]

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GAUTENG

JOHANNESBURG

2000

1996-02-19

A. The Secretariat for
Safety and Security
Mr A Cachalia
Private Bag X463
PRETORIA

B. The National Head
Priority Crime
PRETORIA

INVESTIGATION INTO THE ALLEGED KIDNAPPING AND MURDER OF NOKUTHULA SIMELANE DURING SEPTEMBER 1983 - MEMBERS OF THE SECURITY POLICE PROTEA, SOWETO - HEAD OFFICE REFERENCE 54/1/2(668) REFERS

1. The investigation into this matter has received priority attention and the necessary statements obtained where possible.

2. The following persons have given sworn statements:

2.1 Mrs Simelane - Mother of missing person Nokuthula Simelane.

2.2 Sgt Mzimkulu Nimrod Veyi - Members of the South African Police Service and source of revelations made to Sowetan and published on 1995-02-06.

TP 17

2.3 Constable Malosela Patrick Kobe - Member of the South African Police Service and ex member of the Security Police.

2.4 Constable Mokone Matsebetse Edward Sefuthi - ex member of Security Police, now retired.

2.5 Mr Petrus Cornelius Welthagen - owner of farm at Northarn where part of alledged crimes were to have taken place.

2.6 Sgt Moleke Peter Lengene - member of the South African Police Service and presently still working under the direct command of Superintendent Anton Pretorius.

2.7 Mr Norman Lungile Mkhonza, alias "Scotch" - ex covert agent for security Police, Protea, Soweto.

2.8 Inspector Mokapi Lazarus Selamolela - member of the South African Police Service and ex-member of the Security Police, Protea Soweto.

3. Very briefly, the persons interviewed scretch the facts leading to the disappearance of Nokuthula Simelane as follows:

3.1 She was an MK agent for the ANC and conducted courier services from Swaziland to South Africa and visa versa.

3.2 She worked under the command of a "Mpho" who during September 1983 sent her to South Africa where she was to meet agent "Scotch".

3.3 Before meeting "Scotch" she stopped over at an ANC Safehouse where Mr Duma Nkosi assisted her with directions to get to the Carlton Centre.

3.4 Nokuthula Simelane met with Scotch (covert agent) who had already informed the then Warrant Officer W H J Coetzee and Sgt A Pretorius who organised the arrest of Nokuthula Simelane in a basement at the Carlton Centre.

3.5 After her arrest she was taken to a room in the married quarters of the SAPS Norwood where she was detained and tortured for about one to two weeks. Hereafter she was taken to a farm at Northarn in the Northen Transvaal, where she was further detained, tortured and interrogated. This lasted up and until the festive season, December 1983. It was at this stage that she was last seen by the witnesses interviewed.

4. The actual interrogators are alleged to be

W H J Coetzee now Superintendent
A Pretorius do
F B Mong now Inspector
P Lengene now Sergeant
Radebe now retired

5. Witnesses/suspect that are alleged to be deceased are Sgt Mathuba and ex covert agent Frank Langa "Big Boy"!

6. On 1996-02-15 an interview was held with Mr D Nkosi in Cape Town.

6.1 He knew about the meeting which was to take place, also that he had provided safety for Nokuthula in Soweto and after giving directions to her to reach the Carlton Centre, Nokuthula was never seen again.

6.2 Upon his return from Cape Town Mr Nkosi will assist and facilitate a meeting where "Mpho" will also then be interviewed and their full statements obtained.

7. On 1996-02-17 on the request of Sgt Lengene I re-interviewed him in which he passed on the following information:

7.1 He had not told the truth on the day he gave me his statement for the following reasons:

TP

7.1.1 He is presently serving under the command of Superintendent A Pretorius who also brought him for the interview on the day of him giving his statement.

7.1.2 He had been told that it was up to him and Norman "Scotch" to save their skins.

7.1.3 That Director Thoms would reveal all that he had said to them after taking his statement.

7.1.4 The Captain Leask would not be able to prove any charges as he had no proof of a body,

7.2 After the interview the following took place:

7.2.1 He was taken to Superintendent Coetzee's office where he was asked what had been said during the interview.

7.2.2 He was led into an argument because he had mentioned Scotch's name.

7.2.3 He was told to rewrite a statement which Superintendent Pretorius then first read and after okaying it, 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.

8. On 1996-02-07 Superintendent Coetzee promised Captain Leask, the investigating officer to make available the witness/suspect "scotch" which up and until now has not been honoured.

8.1 The investigating officer however on 1996-02-09 found Scotch, on own accord and obtained his statement.

8.2 On 1995-02-10 Superintendent Pretorius and Coetzee secretly met with Scotch and coached him into what his version and manner should be if Captain Leask was to approach him. This discussion was secretly taped by the investigation team.

TP

9. It has become further very clear from the meeting with Sgt Lengene on 1996-02-17 that the incident regarding Nokuthala was not a once off incident but part of an extensive conduct which has lead directly to the planting of bombs, kidnapping of and murdering of numerous other persons.

9.1 Lengene confesses his own part in the murder of a person whom he had shot with an AK 47 rifle given to him by Superintendent Pretorius/Coetzee after the person had been told to plant a limpet bomb in Soweto.

10. A detailed statement will be obtained from Sgt Lengene on 1996-02-19 at a secret rendevouz upon which he has firmly stated he wishes to reveal all the "dirty tricks" which had taken place during his career in the Security Police as of 1982 up and until now.

11. It is of great concern to this office that both Superintendent Coetzee and Pretorius are presently employed in positions where they can easily continue with intimidation, defeating the ends of justice because of their contacts with the CIS and its members. This could also lead to the elimination of witnesses.

12. The investigating team has to go to great lenghts to keep the investigation, witnesses and information from the very persons attached to the priority crimes division of Gauteng. It is suggested that they be re-transferred to a post in the Uniform Pro-active division.

13. All further information will be brought to your attention.

14. An offical murder and kidnapping investigation has been launched under registered case docket John Vorster Square CAS 1469/02/96.

DIRECTOR
HEAD : PRIORITY CRIME : GAUTENG
N W THOMS

/MH/LIB11/108

TP

"TN 8" 111

[redacted] 14 45

South African Police Service Suid-Afrikaanse Polisiediens

Private Bag 5
Privaatsak

Your reference / U verwysing

My reference / My verwysing 29/36/2

Enquiries / Navrae Direct Thoms / Capt Leask

Tel (011) 407-0152

Fax / Faks (011) 407-0150

HEAD NATIONAL CRIME INVESTIGATION SERVICE
HOOF NASIONALE MISDAADONDERSOEKDIENS
GAUTENG
JOHANNESBURG
2000

1996-02-26

A. The Divisional Chief
National Crime Investigation Services
PRETORIA

B. The Head
National Priority Crime Investigation Services
PRETORIA

INVESTIGATION INTO THE ALLEGED KIDNAPPING AND MURDER OF NOKUTHULA SIMELANE DURING SEPTEMBER 1983 - MEMBERS OF THE SECURITY POLICE PROTEA, SOWETO - HEAD OFFICE REFERENCE 54/1/2(668) REFERS

1. The investigation into this matter has received priority attention and the necessary statements obtained where possible.

2. The following persons have given sworn statements:

2.1 Mrs Simelane - Mother of missing person Nokuthula Simelane.

2.1.1 She states that Nokulhula was last seen in June 1983 - she was always travelling between S.A. and Swaziland as she was working for the ANC. Her disappearance was strange as she was to have graduated during October 1983 - Her personal belongings were found at Duma's place in Soweto as he was the last person of the ANC to see her.

TP 9

John Vorster Square CHS 1469192476 26-7

2.2 Sgt Mzimkulu Nimrod Veyi - Member of the South African Police Service and source of revelations made to Sowetan and published on 1995-02-06.

2.2.1 He states that he guarded Nokuthula as he worked under the command of Nokuthula's captors Superintendent Coetzee en Pretorius - His guard duties took place at the farm in Northam - he witnessed torture of Nokuthula - last saw her alive in the boot of Superintendent Coetzee's state vehicle on Potch/Johannesburg road near Fochville.

2.3 Constable Malosela Patrick Kobe - Member of the South African Police Service and ex member of the Security Police.

2.3.1 He states entirely hearsay evidence - he never knew or saw Nokuthula - he worked covertly on the AZAPO line - only heard numours that Superintendent Pretorius, Coetzee and Inspector Mong were responsible for the alleged murder of Nokuthula.

2.4 Constable Mokone Matsebetse Edward Sefuthi - ex member of Security Police, now retired.

2.4.1 He states that he was a guard who on instructions of Superintendent Coetzee and Pretorius assisted in arresting Nokuthula at the Carlton Centre, taking her then to Norwood SAPS flats where she was detained for ± one to two weeks, then taken to Northam where she was kept for ± 2 months - he also witnessed torturing and last saw her at the farm.

2.5 Mr Petrus Cornelius Welthagen - owner of the farm at Northam where part of alledged crimes were to have taken place.

2.5.1 He states that Superintendent Coetzee a family member had requested the use of the outbuilding for training of police recruits - he cannot identify Nokuthula but states that two women were brought to the farm over a period of two months.

2.6 Sgt Moleke Peter Lengene - member of the South African Police Service and presently still working under the direct command of Superintendent Anton Pretorius.

TP (J)

2.6.1 He in his first statement corroborates Sefuthi but denies ever having seen any torture taking place - he further states that Superintendent Coetzee and Pretorius gave Nokuthula clothing and money during December and released her to return to Swaziland.

2.6.2 In his second statement he alleges his first statement was made under duress from Superintendent Pretorius and Coetzee - he was told to rewrite a statement which he did and Superintendent Pretorius first checked it (Now as exhibit with Investigating officer) - he further states and corroborates the other witnesses that Nokuthula was trapped, tortured and adds that she was taken to Westonaria where she was further detained by Superintendent Coetzee and Pretorius at the private dwelling of Coetzee's brother - he then also states that he was part of a force under Coetzee and Pretorius in which he and other security Policemen and/or Askaris murdered ANC recruits after letting them place limpet bombs at railway points in Soweto - further that they also blew up and threw handgranades at councillers houses and municipal buildings in Soweto - he also has exposed the names of the other members involved.

2.7 Mr Norman Lungile Mkhonza, alias "Scotch" - ex covert agent for security Police, Protea, Soweto.

2.7.1 He states that he was a covert agent and set up the trap for Superintendnet Coetzee and Pretorius to capture Nokuthula - he was taken to a clinic after her arrest where he was placed in plaster of paris and a false message was sent to Swaziland by covert agent Frank Langa, that he had never met Nokuthula because he was involved in a car accident.

2.8 Inspector Mokapi Lazarus Selamolela - member of the South African Police Service and ex-member of the Security Police, Protea Soweto.

2.8.1 He corroborates all the other witnesses with regards to the trap, detaining and torture of Nokuthula - he however does not corroborate Veyi in that they were together when Veyi alleges he last saw Nokuthula alive in the boot of Coetzee's vehicle.

TP 07

2.9 Gilbert Thwala alias "Mpho" - Nokuthula's Commander in Swaziland.

2.9.1 He states she was sent to meet Scotch and Frank at the Carlton Centre - she was last seen or heard of after this meeting - she was expected back because she had to graduate - complete denial that the ANC had killed her as she was very valuable to them.

2.10 Duma Nkosi - owner of ANC Safehouse in Senoane Soweto.

2.10.1 He states that she stayed at his place whilst in Johannesburg 1983 - he gave her directions to get to the Carlton Centre on her request - she never returned - her personal belongings were removed from his place by her parents.

3. The actual interrogators are alleged to be

W H J Coetzee now Superintendent
A Pretorius do
F B Mong now Inspector
P Lengene now Sergeant
Radebe now retired

4. Witnesses/suspect that are alleged to be deceased are Sgt Mathuba and ex covert agent Frank Langa "Big Boy"!

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TP

John Vorster Square CAS 1469/02/96.

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6.1 Lengene confesses his own part in the murder of a person whom he had shot with an AK 47 rifle given to him by Superintendent Pretorius/Coetzee after the person had been told to plant a limpet bomb in Soweto.

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B.1. For your information

DIRECTOR
HEAD : PRIORITY CRIME : GAUTENG
N W THOMS

/MH/[illegible]/118

TP

"TN 9" 116

[redacted] 262

WAARSKUWINGSVERKLARING DEUR VERDAGTE

Om 14 30 op hierdie 6de dag van Julie 1998
te Pretoria
kantoornommer Kaufgeversie Saat, voer ek 'n onderhoud met Willem Hetu Johannes Coetzee, hierna die verdagte genoem. In my kantoor is daar slegs ek, die verdagte en Jurp Pieterse, 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 / Vr~~edesbeampte~~ 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 Roof Moord. Nokuthula Simelane wat gepleeg is op die — dag van Gedurende September 1983 om ongeveer — te (plek) Carlton Sentrum J.H.B. _____ 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 geregshof teen hom / haar gebruik mag word; en*
3. *Dat hy/sy die reg het om met 'n regsverteenwoordiger 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 getuienis teen hom/haar gebruik kan word nie.*

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/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/REGTERDUIMAFDRUK VAN VERDAGTE

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

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: _____

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

BOSTAANDE VERKLARING DEUR MY AFGENEEM:

PLEK: Pretoria

DATUM: 98/7/6

TYD: 14:32

HANDTEKENING: BEAMPTE
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.*

" TN 10 "

120

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. Nokuthula 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) 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

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

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JUST IN ANC

Columnists

My sister's heart

Thembi Nkadimeng @City_Press
26 December 2013 16:00

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Thembi Nkadimeng, 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 Nkadimeng 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.

TALK NO 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

WE LIKE

1 SA won't look nice

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

without white people – Julius Malema

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

3 SIU keeps Nkandla documents under lock and key

4 Oscar Pistorius trial in quotes

5 Brave Bafana settle 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 VIEW RESULTS

Polls Archive

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

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

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.

RELATED LINKS

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» Body of MK leader found

» Alarm only raised hours after girl went missing

» Diary of a cadre who lived in the shadow of death

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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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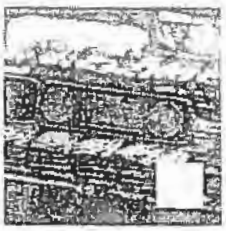

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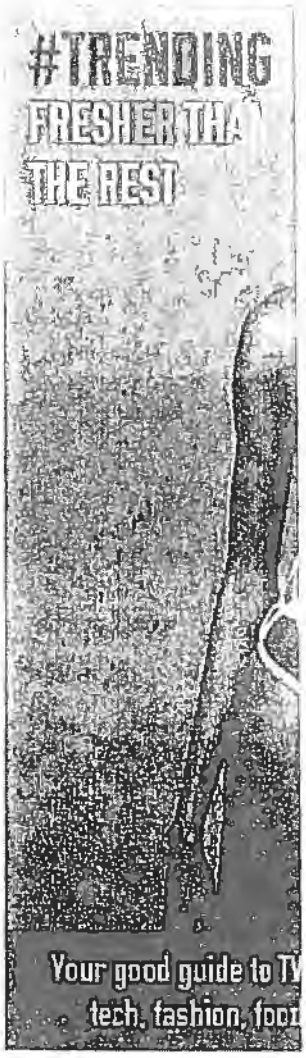

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News

Soweto cops face prosecution over apartheid crime

By TMG Digital - 09 February 2016 - 08:45

IN STEP: After the ANC was banned in 1960 thousands of its members went into exile, joining its military wing Umkhonto weSizwe in camps in several African countries Photo: ZOLILE NQOSE COLLECTION

The National Prosecuting Authority intends to pursue a case against four Soweto security branch policemen implicated in the murder of a young Umkhonto we Sizwe courier in the 1980, it said on Monday.

Nokuthula Simelane, from Bethal, was 23 when she was abducted from Johannesburg's Carlton Centre by the Soweto security branch on September 8 1983. She was taken to a farm in North West, where she was tortured for several weeks. This is according to evidence heard at the Truth and Reconciliation Commission.

Eight Soweto security branch operatives applied for amnesty for Nokuthula's detention and torture. Five were successful.

Simelane's sister filed an application before the Pretoria high court in May last year in a bid to force a formal inquest into her suspected kidnapping, torture and murder.

Thembi Nkadimeng, a mayor of Polokwane, said in a statement issued by the Southern African Litigation Centre last year that there has been no rest for her family since her sister's disappearance.

"We know she suffered terribly but we don't know how she died, and where her body is today. We have spent three decades looking for Nokuthula. Now we want justice and closure."

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South Africa to prosecute apartheid-era police for murder

Four former officers will be charged in the 1983 killing of Nokuthula Simelane in Soweto

February 9, 2016 11:11AM ET

South African prosecutors plan to charge four former members of the apartheid-era security forces for the 1983 murder of Nokuthula Simelane, a young woman who had recently graduated from college and was a courier for the then-banned African National Congress.

The National Prosecuting Authority said that she disappeared while being held by the Soweto Special Branch police unit, that she was kidnapped and tortured and that her body has not been recovered.

After apartheid ended in 1994, South Africa's Truth and Reconciliation Commission investigated

atrocities and granted amnesty to some accused perpetrators.

Luvuyo Mfaku, a prosecution spokesman, said Tuesday that three of the four suspects in Simelane's death applied for amnesty for her kidnapping but not for her murder. The fourth suspect will be charged with kidnapping and murder, he said.

According to prosecutors, she was an underground operative for the African National Congress, the main anti-apartheid group, which became South Africa's ruling party in 1994. She was illegally held for a week at a police barracks in Johannesburg, where she was tortured under questioning, prosecutors said. She was then interrogated and tortured at a farm for several weeks, they said.

The suspects are due to appear in a Pretoria court on Feb. 26.

Some South Africans believe more white officials should have been prosecuted for apartheid-era crimes. The highest-profile figure to be convicted is Eugene de Kock, the former head of a covert unit that committed multiple killings. He was granted parole last year.

Retired Archbishop Desmond Tutu, who was the chairman of the Truth and Reconciliation Commission, recently defended the panel's work, saying the state later failed "to hold to account those who didn't receive amnesty."

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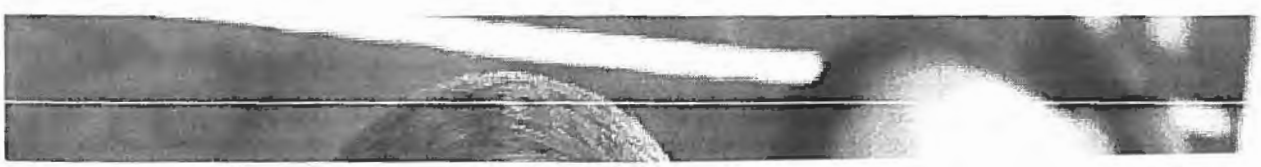

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EYEWITNESS NEWS

NPA FINALLY OFFERS NOKUTHULA SIMELANE'S FAMILY CLOSURE

Four former apartheid policemen were arrested after the former MK veteran was kidnapped and tortured.

Thembi Nkadimeng briefing the media about her sister Nokuthula Simelane who has been missing for past 32 years. Picture: Kgothatso Mogale EWN

NPA (https://ewn.co.za/Topic/NPA) Nokuthula Simelane (https://ewn.co.za/Topic/Nokuthula-Simelane) Thembi Nkadimeng (https://ewn.co.za/Topic/Thembi-Nkadimeng)

Ziyanda Ngcobo (ewn.co.za Contributors ziyanda_ngcobo) | 3 years ago (1100 days ago)

JOHANNESBURG - Nearly 33 years since the disappearance of Nokuthula Simelane (http://ewn.co.za/Topic/Nokuthula-Simelane), the National Prosecuting Authority (NPA) has finally decided to criminally prosecute four former apartheid policemen for her murder (http://ewn.co.za/2016/02/08/4-Soweto-members-for-apartheid-police-to-appear-in-court-slain-MK-veteran).

Simelane was an Umkhonto we Sizwe member working in operations between Swaziland and South Africa.

The four Soweto Special Branch members kidnapped and tortured Simelane and hasn't been seen since.

At the Truth and Reconciliation proceedings, three of the accused applied for amnesty from prosecution for her kidnapping, but not her murder.

Last year Simelane's sister Thembi Nkadimeng, who is now the mayor of Polokwane, pleaded with the NPA to give her family closure.

"We all just want to embrace and be given that opportunity to grieve and close this story."

Now the NPA has heeded that call.

Spokesperson Luvuyo Mfaku says, "The national director decided on 30 January to arraign the four members on the basis of the strength of evidence at his disposal."

Former NPA head advocate Vusi Pikoli has said previous attempts to prosecute those who didn't apply for amnesty were blocked by senior African National Congress politicians.

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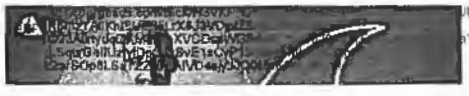

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Nokuthula Simelane murder: SAPS ordered to pay ex-cops' legal costs

GAUTENG / 5 JUNE 2018, 2:19PM / ZELDA VENTER

Former Soweto Special Branch members Willem Coetzee, Anton Pretorius and Frederik Mong in the Pretoria Magistrate's Court on February 26 where they were charged with the 1983 murder of Nokuthula Simelane. Picture: African News Agency (ANA) Archives

Pretoria - In a victory for the family of ANC operative Nokuthula Simelane, who was allegedly abducted in the parking area of the Calton Centre in Johannesburg more than 34 years ago and never seen again, the Gauteng High Court, in Pretoria, on Tuesday ordered the police to pay the legal costs of the three former security policemen accused of her murder.

This ruling will now pave the way for the case to go to trial and for the family to get closure.

Judge Cynthia Pretoria found that the police was biased and followed an unfair procedure in their refusal to pay for the legal fees in the upcoming murder trial of Willem Coetzee, Anton Pretorius and Frederick Mong.

"The process was not impartial and there is thus a reasonable apprehension of bias against the three applicants, " she said.

They turned to court after the police refused their applications for the payment of their legal costs in the criminal trial.

Simelane's sister, Thembisile Nkadimeng joined the proceedings and supported the application for the police to pay the legal fees, as the family wanted the trial to proceed and justice to be done.

Judge Pretorius said the state machinery had throughout failed the deceased and her family abysmally.

145

She said the delay to bring this matter to trial has lasted decades. Since the indictment of the three applicants, the matter was postponed four times to resolve the matter regarding legal assistance.

"It would be in the public interest if this trial commences as soon as possible to ensure justice not only to the applicants, but to the the fourth respondent (Nkadimeng) and her family and society as a whole," Judge Pretorius said.

She commented that the trial has already been unduly delayed because of the legal fees issue.

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The police refused the three's application for it to pay their legal fees in May 2016. This followed their arrests in February 2016 regarding the alleged murder of Simelane in 1983. They were each released on R5 000 bail.

It is claimed that they, while in the employ of the then South African Police (SAP) murdered the 23-year-old Simelane, who was an underground operative of the ANC.

She was kidnapped and detained at a safe premises, where she was tortured and assaulted by the three for weeks. They said this was done on the instructions of their commanding officers, as they wanted to recruit her as an agent for the security branch.

"She was treated in the most reprehensible, inhumane manner while in custody of these members... according to the applicants they dropped her at the Swaziland border after she agreed to assist the security branch. She was never seen again. To date her family still do not know what happened to her or where her body is."

The three were granted amnesty by the Truth and Reconciliation Committee (TRC) for kidnapping.

In refusing their application for the police to pay for their defence regarding their murder trial, the police said the three had exceeded their powers of duty, that it would be against State and public interest to grant legal assistance and that the State is the complainant in this case.

The police also complained that in the case of them being convicted, it would be difficult to recover the money from them.

It was said that if they were cash strapped, they should apply for legal aid.

But Judge Pretorius said the three were members of the SAP in 1983 when this incident took place and they were under command and instruction of their commander at the time and as such qualified for legal assistance.

She said the court had to consider the prevailing circumstances during 1983 at the height of the apartheid government's war against the liberation movements.

"I cannot find, and it is not incumbent on me to find whether the applicants acted in a manner, at that particular time, exceeding their powers. It will be for the trial court to make such a determination," the judge said.

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Court orders SAPS to pay legal costs of former policemen accused of MK vet's murder

2018-06-05 21:26

Jeanette Chabalala and Alex Mitchley

news24

The North Gauteng High Court in Pretoria has ordered the South African Police Service (SAPS) to pay the legal costs of former officers accused of murdering Umkhonto weSizwe operative Nokuthula Simelane in 1983.

In a statement, the Foundation for Human Rights said Tuesday's ruling "establishes an important principle in the quest to finally hold those perpetrators of human rights violations who evaded the Truth and Reconciliation Commission (TRC) process, or had amnesty applications declined, accountable for their crimes".

Simelane, was allegedly abducted, detained and tortured by former apartheid-era Soweto security branch members in 1983.

Three of the security police officers, Willem Coetzee, Anton Pretorius and Frederick Mong, were granted amnesty by the TRC for Simelane's abduction and detention. A fourth officer, Tim Radebe, never applied for amnesty.

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The foundation quoted Judge Cynthia Pretorius saying: "The delay has lasted decades. Since the indictment of the three applicants, four postponements had already been granted in order to resolve the issue of legal assistance."

It said Pretorius found that the State had "abysmally failed" Simelane and her family.

Head of the foundation and former TRC commissioner Yasmin Sooka said the ruling was a confirmation that the three accused were not on a "private frolic of their own but were part of the apartheid state's apparatus".

"While we are pleased that former security policemen have been indicted for her murder and now hope for a speedy trial, these three ought not to be the only ones. At what point will the National [Prosecuting] Authority indict those at command level?"

In 2016, after 32 years of fighting, the four were charged with Simelane's murder, following a decision by the National Prosecuting Authority to pursue the case.

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Nokuthula Simelane, an anti-apartheid activist who disappeared in 1983. (City Press)

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The High Court previously heard that both Simelane's father and brother died fighting for answers and justice and that her mother was ill, News24 reported.

Advocate Muzi Sikhakhane, SC, representing Simelane's sister Polokwane Mayor Thembi Nkadimeng, told the court at the time that the family wanted the criminal case to go ahead "so that the case can be resolved speedily so the family can know what happened to their sister their daughter".

"Therefore, any further delay would add to that injustice," said Sikhakhane

Nkadimeng had joined her sister's alleged killers apartheid police officers, in a court application in a bid to force SAPS to pay their legal fees so that the family can finally get closure

He explained that this was why the family had joined the application alongside Simelane s alleged murderers.

He further argued the special branch members were acting within the cause and scope of their work when they abducted Simelane from Carlton Centre in Johannesburg, before taking her to Norwood and then to a farm in Vlakplaas, North West, where she was tortured for weeks.

Sikhakhane said that to abduct, detain and torture supposed enemies of the state in order to turn them into informants was the policy of the apartheid government. He said in Simelane's case, it was authorised by the police officers' superiors.

The practice was called "kop draai", Sikhakhane added.

Advocate Ngwako Maenetje, SC, for the SAPS argued that the provision in law regard ng legal fees being paid by the state for police officers didn't make allowances for former employees

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SAPS ordered to pay legal fees of security cops accused of murdering MK fighter

Raeesa Pather (https://mg.co.za/author/raeesa-pather) 06 Jun 2018 15:21

Judge Cynthia Pretorius handed down judgment on June 5 after the gruelling litigation led to numerous delays in the trial of Willem Coetzee, Anton Pretorius, and Frederick Mong. (African News Agency archives)

(https://mg.co.za/article/2018-06-06-saps-ordered-to-pay-legal-fees-of-security-cop-accused-of-murdering-mk-fighter)

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The Pretoria high court has ordered the South African Police Service to pay the legal fees of three apartheid-era security policemen who are accused of murdering Umkhonto weSizwe fighter Nokuthula Simelaue.

Judge Cynthia Pretorius handed down judgment on June 5 after the gruelling litigation led to numerous delays in the trial of Willem Coetzee, Anton Pretorius, and Frederick Mong. All three were members of the apartheid security branch and have confessed to the Truth and Reconciliation Commission (TRC) to being involved in abducting and torturing Simelane in September 1983.

Simelane was just 23 at the time of her disappearance.

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Her family have waited decades to hear what became of her, but have since accepted she is dead. She is believed to have been abducted because the Security Branch wanted to recruit her. When she refused to join their ranks, she was brutally tortured.

Her body has yet to be found, and in the 33 years since her death, her family do not know how she died. Simelane's sister, Thembisile Nkadimeng, has led the battle for her family's justice.

In 2015, after being fed up with the National Prosecuting Authority's ineffectiveness in dealing with her sister's case, Nkadimeng obtained a court order which ordered the NPA to take action. It was only then that Coetzee, Pretorius, and Mong were indicted.

But their trial was postponed after the three were refused legal assistance by the Gauteng police commissioner Major-General Deliwe Suzan de Lange in May 2016. They then approached the Pretoria high court to have De Lange's decision reviewed and set aside and Pretorius, on Tuesday, agreed to their request.

In a bid to end the delays and finally get the court to commence the trial, Nkadimeng joined the litigation over legal fees, siding with the three security branch policemen who tortured her sister. She asked the court to order that the SAPS pay their legal fees. Her only motive for this request was to ensure the trial resumes as soon as possible after 33 years of waiting, she said.

"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 as it took the family many years to force the authorities of the democratic South Africa to consider a prosecution. This was the second betrayal of Nokuthula and everything she stood for. This betrayal cut the deepest as it seemed that even her own comrades, who are now in government, sought to sweep things under the carpet. This deprived me and my family of closure and our right to dignity," Nkadimeng, who is also the mayor of Polokwane, said in her affidavit.

Simelane's father and brother died before they could find out what happened to her. Her mother, Sizakele, is 76 and suffering with nervous tension, fearful that she too will die without knowing what happened to her daughter.

In her judgment, Pretorius had scathing words for the state and the manner in which it had treated the court. De Lange, in her capacity as police commissioner, had been late to file papers on numerous occasions, even when it was her own legal team that proposed the dates and times for deadlines.

Pretorius found that SAPS's disregard for the court time limits, which amounted to more delays, added further insult to the Simelane family's suffering.

"Not only did the respondents not adhere to the time limits and court rules, but the state machinery had, throughout, failed the deceased and her family abysmally," Pretorius said in her judgment.

"The fourth applicant [Nkadimeng] has been pleading for years, and had to resort to litigation to have the state institute criminal proceedings against the three applicants [the security policemen]," Pretorius said.

De Lange gave a number of reasons why she refused to allow funding for the security cops' legal fees. Her reasons included that only Mong remained a member of the SAPS, while Pretorius and Coetzee had left the police. Paying their legal fees would therefore add debt to the SAPS, because they were no longer under the SAPS' employ, she said.

De Lange also said that each of the apartheid policemen "exceeded his powers when executing his duties", meaning that, in the SAPS's view, they were not authorised to murder Simelane. Another reason for the refusal to pay the fees, she said, was that it would be against the state and public interest to do so. She gave more reasons , each of which were rejected by Pretorius.

The judge said that at the time of Simelane's murder all three were members of the police, and the police should therefore incur the costs of their former employees' litigation for charges they face as a result of actions they took on the job. Pretorius cited affidavits submitted by former TRC commissioner Dumisa Ntsebeza and investigator Frank Dutton, who both said that state-sanctioned extra-judicial killings had become part and parcel of the apartheid regime, particularly the police, during the 1980s.

Pretorius also rejected De Lange's claim that it would be against the public interest for the SAPS to pay legal costs for Mong, Coetzee and Pretorius.

"It would be in the public interest if this trial commences as soon as possible to ensure justice not only to the applicants, but to the fourth applicant and her family, and society as a whole. It is further in the public interest that the applicants should have proper legal representation and a fair trial as soon as possible," Pretorius said.

She found that the only way the three security policemen could obtain proper legal services was through funding from the SAPS.

The three security policemen could face jail time if they are convicted, because they do not have amnesty for murder. The three appeared before the TRC where they were granted amnesty for kidnapping Simelane. They denied murdering her, but the TRC found they were dishonest about the brutality of the torture they inflicted on her.

The loss of Nokuthula

Simelane was "viciously tortured and disappeared," said Pretorius. She was abducted outside the Carlton Centre in Johannesburg sometime during September 1983. It is clear that Coetzee, Pretorius and Mong were involved in her abduction. The security branch ultimately intended to recruit her and, when she refused, they attempted to beat her into submission.

"Nokuthula was detained at a safe premises, interrogated, tortured, and assaulted by the three applicants for a number of weeks," Pretorius said.

"Nokuthula was treated in the most reprehensible, inhumane manner while in the custody of these members. She was repeatedly punched, kicked, slapped, suffocated with a bag, electronically shocked and denied toiletries and basic medicine," the judge continued.

After the torture, Simelane could not walk without assistance, and her face was so brutally beaten that she was unrecognisable.

The three cops said that they dropped her at the eSwatini (then Swaziland) border once she agreed to help the Security Branch, but she was never seen again. Her family do not know what happened to her and her remains have yet to be found. They believe, however, that those involved in her death know where her body is.

"My mother is elderly and ill. It would assist if she died having buried the remains of her daughter and knowing that justice has been done," Nkadimeng said in her affidavit.

Ra'eesa Pather

Ra'eesa Pather is a general news journalist with the Mail & Guardian's online team. She cut her teeth at The Daily Vox in Cape Town before moving to Johannesburg and joining the M&G. She's written about memory, race and gender in columns and features, and has dabbled in photography. Read more from **Ra'eesa Pather** (https://mg.co.za/author/raeesa-pather)

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