

**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS
AND/OR PROSECUTIONS**

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

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| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
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| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |

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**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

18/01/2025.

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| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
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| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |
| SOUTH AFRICAN HUMAN RIGHTS COMMISSION | 7 th Respondent |

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SUPPORTING AFFIDAVIT – ALEGRIA KUTSAKA NYOKA

I, the undersigned,

ALEGRIA KUTSAKA NYOKA

do hereby make oath and state as follows:

Introduction

1. I am an adult female pensioner resident in Springs, Gauteng. I am the eldest sister of the late Caiphus Nyoka ("Caiphus").
2. I am the second Applicant in this application.
3. I am duly authorised to make this statement on behalf of the Nyoka family.
4. The facts contained in this affidavit are both true and correct.

Caiphus

5. Caiphus was born to Saroma and Moses Nyoka on 9 February 1964 in Daveyton, Benoni. He was the fourth born of my parents' seven children.
6. Caiphus was a talented, courageous, and altruistic son, brother, and patriot in the community of Daveyton. He was a likeable individual and well-respected by those who encountered him. Caiphus stood for equality for all and gave up his life for the cause of the struggle for freedom and justice for a democratic, non-racial, and non-sexist society in South Africa.

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7. During the 1980s, Caiphus was a student leader in the East Rand and the then Transvaal Province. He was a member of the Congress of South African Students ("COSAS"), the South African Youth Congress ("SAYCO"), Organiser of the Transvaal Students Congress ("TRASCO") in the East Rand, and President of the Student Representative Council ("SRC") at Mabuya High School in Daveyton, Benoni. COSAS and SAYCO were affiliates of the United Democratic Front ("UDF").
8. He opposed the apartheid government and mobilised masses of people and communities to protest against the apartheid regime and its discriminatory policies. Caiphus was not a violent person. He used his voice to express his socio-economic views.
9. Caiphus' opposition to the apartheid regime made our family home a target of the notorious Special Branch of the then South African Police ("the SAP"). Caiphus was arrested and detained on several occasions for offences that he did not commit. He was acquitted, at every turn whenever he was arrested, on every charge that was ever brought against him. Our home was frequently raided by the police at all hours of day and night.

Caiphus' murder

10. During the early hours of Monday 24 August 1987, Caiphus and three young men (Exodus Gugulethu Nyakane, Excellent Mthembu, and Elson Mnyakeni) were asleep in his room which was situated at the back of our family home. Caiphus and the three young men attended the funeral of one of our neighbours the previous day and socialised into the late hours of the night before they returned

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11. At or about 02:30 am, the police raided our family home. A large contingent of uniformed and casually dressed police officers entered our property; some took position in front of the main house and others made their way to Caiphus' room. Three police officers, Sergeants Marais, Stander and Engelbrecht, barged down the door to the room with their guns drawn. Engelbrecht removed the three young men from the room, except Caiphus who remained behind seated in his bed, in the presence of Marais and Stander. At no stage did Caiphus refuse or resist to cooperate with the police officers that were in his room.
12. Nine gunshots were fired by Marais and Stander moments after Engelbrecht, and the three young men left the room. Caiphus died at the scene. The fatal shot, presumably the one through Caiphus' forehead, was fired by Marais. The police whisked Caiphus' body from his room, without informing my father about the death of his son and the circumstances under which he was murdered. They detained and tortured the three young men and released them days later without bringing any criminal charges against them.
13. At daybreak, my father instructed me to go to the Daveyton Police Station to enquire about what had happened to Caiphus. I was referred to Major van Den Berg who was stationed at the Police Station at Harpur Square, Benoni ("Harpur Square").
14. Two days later, on 26 August 1987, my father was summoned to Harpur Square where Van Den Berg informed him that Caiphus was killed during an operation that was executed by a police unit that dealt with terrorists. Our father was only allowed to view Caiphus' body on 3 September 1987, some 10 days after his murder.

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15. We later found out that the three young men, who were with Caiphus just before he was murdered, were taken to the Daveyton Police Station where a police officer had inscribed the following chilling message on a chalk board: 999 LEMBA STREET, CAIPHUS NYOKA EXECUTED, SIX SHOTS, HANDS OF DEATH.

The botched inquest

16. Between 1988 and 1989, an inquest was held before the Benoni Magistrates' Court to determine the cause and identify of those responsible for Caiphus' death.
17. Marais, Stander and Engelbrecht testified that the police planned and executed an operation to arrest Caiphus because he had allegedly supplied hand grenades and limpet mines to two fellow activists, Daniel Ntsoseng ("Daniel") and Moses Mahlangu ("Moses"), who were arrested and detained hours before Caiphus was killed. Upon their arrest, Daniel and Moses informed the police that the explosives were supplied by Caiphus.
18. Marais and Stander testified that Caiphus allegedly reached for a knife moments after Engelbrecht removed the three young men from the room, and this caused them to fire nine rounds at him in self-defence. Marais fired four shots and Stander five. An autopsy conducted by the family pathologist revealed that there were twelve bullet wounds on Caiphus' body.
19. Our family presented evidence to show that Caiphus was executed by the police; he did not present any danger when he was seated in his bed before the shooting took place; and that the bullet inflicted wounds located at the back of Caiphus' right hand demonstrated that he had endeavoured to shield himself from the

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volley of bullets piercing his body. In all probability, the weapon that was allegedly found in Caiphus' left hand was planted by the police after their calculated, callous, and murderous deed.

20. As was common practice at the time, the inquest Magistrate, Mr JP Myburgh, rejected our family's evidence and sided with the version presented by the police. The Magistrate determined that the police officers justifiably acted in self-defence, and found that no one could be held responsible for Caiphus' death.

The effect of Caiphus' death on our family

21. Caiphus' death and the inquest outcome was a blow to our family. The continued pain and suffering that followed the inquest findings broke our parents, both physically and emotionally.
22. Our father never stopped pursuing the truth and dedicated the remainder of his life to finding out why his son had been brutally killed by the police. He believed that he failed his son because he could not keep him safe in his own home – and this rendered him helpless and distressed.
23. Our parents withdrew from the community and relatives who had turned their backs against them out of fear for their own safety from the brutality and harassment by the apartheid state and their agents. The finding of the inquest court, which we knew was baseless and without merit, did nothing to ease the pain and suffering that our parents endured.
24. Both our parents fell ill as a result of the death of their beloved son. They both developed hypertension and other health conditions. My father experienced severe body pains, and my mother suffered from clot formation complications.

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25. My father developed a lump, and he succumbed to kidney cancer in October 1992. The pursuit of the truth cost my father his life. My mother had her leg amputated after she was diagnosed with gangrene in 2006. She would later die in June 2010, after suffering a cerebral haemorrhage.
26. Caiphus' death caused severe pain and trauma to both our parents who died without any knowledge of the reasons behind the murder of their son by the police.
27. Four of my siblings, my two daughters and I have endured immense trauma and depression given the cruelty of the death of our brother and uncle, respectively. The psychological and emotional scars have been engraved into our beings as we battled in the past 37 years to come to terms with the brutality of Caiphus' death.
28. The fact that the truth behind Caiphus' murder has not been disclosed continues to haunt our family, to this day. We hold onto the hope that one day the truth will come out and that justice will not only be done, but also seen to done.

The Truth and Reconciliation Process

29. In 1995, the Centre for the Study of Violence and Reconciliation ("the Centre") started to mobilise and encourage victims of the apartheid state to speak out against its atrocities. The Centre afforded us a platform to express our pain in a setting with others who shared similar experiences. The Centre introduced me to the Khulumani Support Group, under the leadership of Maggie Friedman, which I joined during 1995. The Support Group played a critical role in assisting victims of the apartheid regime to share their stories.

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30. In 1996, and with the support of the Support Group, I submitted a statement to the Truth and Reconciliation Commission ("the TRC") to share Caiphus' story. The TRC invited the Nyoka family to present our story orally before the Human Rights Violation Committee ("the Committee"), which presentation I made, on 5 February 1997, with my mother by my side. None of the police officers involved in Caiphus' killing applied for amnesty.
31. At the conclusion of the TRC process, the Committee recognised Caiphus and I as victims of gross human rights violations. The Committee found that the Minister of Law and Order, the Commissioner of Police and the Apartheid State were responsible for Caiphus' death. This solace was short lived because the reason for Caiphus' death still remained a mystery.
32. As a family we used the statement of the Committee to advocate for accountability for Caiphus' death as we believed that Caiphus' death was a political act and conspiracy that was orchestrated and executed by, among others, Van Den Berg, Engelbrecht, Marais and Stander. We had hoped that the TRC would uncover the truth which the inquest failed to do.
33. We expected the democratic government, to act upon the recommendations of the TRC, to assist the victims of the apartheid state. We had great expectations that truth and justice would triumph over evil, and that the perpetrators of the diabolical apartheid crimes, like Marais, Stander, Engelbrecht, and Van Den Berg, would be held to account for the pain and suffering that their actions caused us and many other families.
34. We believed that the government would do its utmost best to pursue justice for those who lost their lives in South Africa's freedom struggle. We trusted that the

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policing and justice authorities would do what was necessary to ensure that these cases were brought to finality. This turned out not to be the case and for decades there has been no movement on the investigation into Caiphus' murder.

35. We genuinely believed that the policing and justice authorities would take the TRC cases forward. Unfortunately for us, our trust in the government and the policing and justice authorities was misplaced.
36. We never received any feedback from the policing and justice authorities after the TRC concluded its work.

Marais' confession in 2019

37. In October 2019, Marais confessed to a Rapport journalist that he murdered Caiphus on 24 August 1987.
38. Marais admitted that the version that the police presented under oath during the inquest in 1988 and 1989 was a lie. He stated that he was instructed to execute Caiphus, and that he was assured that the scene would be staged to make it look as if there was a struggle in the room that night to ensure that he would be protected from any repercussions.
39. The Foundation for Human Rights ("the Foundation") started investigating Caiphus' murder shortly after Marais made his confession. The Foundation did so on behalf, and at the behest, of the Nyoka family.
40. During March 2020, Colonel Hadebe of the Vaal Branch of the Directorate for Priority Crimes Investigation (DPCI) visited my house in Springs to obtain information. Unfortunately, his investigation did not progress, even though he submitted progress reports to the Director of Public Prosecutions in Pretoria.

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41. Colonel Hadebe was replaced by Lieutenant Colonel Beukman of the DPCI Germiston branch. To my understanding Lieutenant Colonel Beukman started the investigation afresh and he made great progress in locating Marais, Engelbrecht and Van Den Berg. His investigation led to Marais, Engelbrecht and Van Den Berg being indicted in August 2022. Stander was similarly indicted in April 2024. The criminal trial is set to commence in November 2024.

Conclusion

42. Whilst we are pleased that Marais, Stander, Engelbrecht and Van Den Berg will stand trial for Caiphus' murder, we are saddened by the fact that it took more than three decades to issue indictments against the perpetrators. This inordinately lengthy delay has taken its toll on our family, and it has broken our trust in the criminal justice system.
43. At the conclusion of the TRC process, we expected the imminent resolution of TRC related cases which were referred to National Prosecuting Authority ("NPA") for further investigation and prosecution of the crimes against humanity committed by the apartheid state and its agents.
44. Learning, via Nokuthula Simelane's and Ahmed Timol's cases, that officials at the highest level of the democratic government had taken measures to frustrate any investigations and prosecutions for TRC cases referred to the NPA was disheartening and a low point in our lives.
45. The prosecution of officials of the apartheid regime who made an attempt on Reverend Frank Chikane's life (former Director General and Cabinet Secretary in President Thabo Mbeki's administration) was one of the cases that presented

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the government with the horns of dilemma on its policy for the treatment of TRC cases referred to the NPA for investigation and prosecution.

46. Co-incidentally, Reverend Chikane (then General Secretary of the South African Council of Churches) had officiated and delivered a sermon at Caiphus' funeral service, in September 1987, held at the Free Methodist Church, Daveyton, Benoni.
47. Caiphus and many others sacrificed their lives for our democracy. Their sacrifices secured our freedom from bondage, oppression, and subjugation. We have a right to know why the deaths of our loved ones mattered so little to the government. The truth must come out and our constitutional rights must be upheld.
48. We wholeheartedly support the claim for constitutional damages to vindicate our deeply violated rights, to assist us to celebrate the lives ^{of} our loved ones and to continue with the struggle for human rights and social justice. We also support the order sought for the appointment of a commission of inquiry to uncover the truth behind the suppression of the TRC matters. We need to know what happened to avoid a recurrence of the same or similar human rights abuses and transgressions in our beloved country.

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Alegria Kutsaka Nyoka

ALEGRIA KUTSAKA NYOKA

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The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Johannesburg on this the 11 day of Oct 2024.

A. S. Mayet
COMMISSIONER OF OATHS

Full Names: Ahmed Shasir Mayet
Business Address:
Designation:

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11/10/2024

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

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| and | |
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| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

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COURT OF SUPPORTING AFFIDAVIT – BONAKELE JACOBS

I, the undersigned,

BONAKELE JACOBS

do hereby make oath and state as follows:

1. I am an adult male, born on 19 June 1969. In making this affidavit I represent the Jacobs family.
2. I am the third Applicant in this application.
3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
4. My brother, Mxolisi 'Dicky' Jacobs ("**Dicky**"), was born on 6 August 1966. We were both born in Upington. On 12 June 1986, my brother and I were detained under a state of emergency. After 129 days in detention, my brother was found dead in his prison cell. He was 20 years old when he died, I was only 17 years old at the time.
5. We were brought up by our grandparents. We attended primary school in Upington and high school in Fort Beaufort in the Eastern Cape. Our mother was working in Cape Town and later in Kimberley.
6. My brother's activism started in the Eastern Cape in the early 1980s. His activism was sparked by the lack of electricity and basic services in Paballelo Township in Upington where we grew up. We were greatly influenced by the Black

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- Consciousness Movement. We all joined drama clubs where we expressed our activism and distain for the political climate.
7. My brother was the founder of the Upington Youth Congress and a leader of the Upington Student Congress. I did not belong to these groups but I supported his activism. My brother was instrumental in the United Democratic Front's One million signatures campaign and the launching of the United Democratic Front. Dicky travelled frequently to Cape Town and brought back banned reading material for us to read. We would listen to Radio Freedom together and learn about the banned African National Congress. Dicky's strength was mobilising people. He would go to church groups and appeal to farm workers to join the movement.
 8. On 12 June 1986, members of the Upington Security Branch picked us up at 10pm at our home in Paballelo Township and were taken to the Upington Police Station. We were told that we were the first activists who were detained under the state emergency, which was to be declared at midnight. At midnight we were formally arrested in terms of the state of emergency. Dicky was taken to Groblershoop Police Station and I was taken to Upington Prison.
 9. About a month into our detention, Dicky was transferred from Groblershoop to Upington Prison. We were both kept in solitary confinement in two cells next to each other. We could not see each other but we could speak to one another.
 10. Dicky died on 22 October 1986 at the Upington Prison while he was in solidarity confinement. I was released on 17 November 1986, after Dicky's funeral which was held on 1 November 1986. I applied to attend the funeral but my application was rejected by the authorities.

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11. After I was released, the Security Branch told me that I must leave Upington because they did not want me in Upington. I relocated to Kimberley where my mother lived.
12. On 23 October 1986, my family was told that Dicky had committed suicide by hanging. My family was only allowed to see his body on the day of his funeral.
13. In May 1987, an inquest was held in the Upington Magistrates' Court to determine the circumstances surrounding Dicky's death. The testimony of the police and correctional services officers who were on duty the night my brother died was extremely inconsistent. They were unable to explain why they could not get into my brother's cell that night after they realised that he was apparently hanging himself. The police claimed that the only person who had the master key to Dicky's cell was not on duty. That same night I was told my brother hanged himself with his navy blue polo neck shirt, but there was no evidence of this in the inquest.
14. I remember vividly that my brother was high spirited the whole day. I cannot believe that he would then commit suicide in the evening. Dicky would have been looking forward to his release at some point in the near future because two of his comrades were released two days before his death.
15. In October 1996, my mother, grandfather and two aunts made statements to the Truth and Reconciliation ("TRC"). No one applied for amnesty for Dicky's death. The TRC recognised Dicky as a victim of gross human rights violations and my mother received a meagre R30,000 once-off payment. I never went to the TRC because I did not believe that anything would come from the process.

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16. Our family never stopped pursuing justice for Dicky. My grandfather, who was a veteran of the ANC, wrote several letters over the years to President Zuma and President Mbeki to tell them about Dickey's case. President Mbeki made promises that the authorities would look into the case, regrettably this never realised. During the early to mid 2000s, I approached the Scorpions to request assistance. At that stage I still had faith in the authorities, but this too faded with time as Dicky's case went nowhere.
17. My family has been negatively affected because of the refusal of the post-apartheid state to take up Dicky's case timeously. My grandfather died in 2015 without closure. My mother is presently 74 four years old and sickly. She too might never get closure for the death of her son.
18. When we heard about the political interference in the TRC cases, it opened our eyes as to why there was never any progress in Dicky's case. We are appalled and shocked that the government we supported closed down the investigations into our cases.
19. We want answers not just for us but also for all the other victims of apartheid-era crimes who have been denied closure. We want answers and the state must be forced to answer for their part in closing down the truth.
20. I agree that the State must be required to pay constitutional damages. Our rights to justice and truth, which have been seriously violated, must be vindicated. We must be supported to investigate Dicky's murder ourselves and to commemorate his life. Generations to come should hear the truth.

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- 21. We support the call for an independent and open commission of inquiry into the suppression of the post-TRC cases. This commission must have the necessary powers to compel testimony and the production of evidence. We want commissioners who are truly independent.
- 22. The ANC government and the presidency must take responsibility for their inaction. Those who suppressed our cases must be held to account. They trashed the rule of law, and the promise of a new South Africa based on equality and human dignity for all.

Bonakele Jacobs

BONAKELE JACOBS

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Johannesburg on this the 11th day of Oct, 2024.

A. S. Mayet

COMMISSIONER OF OATHS

Full Names: *Ahmed Sabir Mayet*
A. S. MAYET
 Business Address: **Commissioner of Oaths
 Practising Attorney
 401 Elizabeth House
 18 Pritchard Street
 Johannesburg**
 Designation:

11/10/2024

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

- | | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
BA Law (UP) - LLB (UP)
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18/01/2025



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| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
| TSHIDISO MOTASI | 18 th Applicant |
| NOMALI RITA GALELA | 19 th Applicant |
| PHUMEZA MANDISA HASHE | 20 th Applicant |
| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 22 nd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

FHM
R.R.

SUPPORTING AFFIDAVIT – FATIEMA HARON-MASOET

I, the undersigned,

FATIEMA HARON-MASOET

do hereby make oath and state as follows:

1. I am an adult female and the youngest daughter of the late Imam Abdullah Haron ("the Imam" or "my father") and Galiema Haron ("my mother").
2. I am the fourth Applicant in this application.
3. The facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, true and correct.
4. I make this affidavit on behalf of my brother, Muhammed Haron, and the extended Haron family. My elder sister, Shamela Shamis, died on ⁴10 January 2024.
5. My father was born in Claremont, Cape Town, on 8 February 1924. At the time of his death in 1969, he was the Imam (prayer leader) of the Masjid Al-Jaamia in Claremont. He was also the first editor of the Muslim News newspaper and a sales representative for Wilson Rowntree.
6. The Imam was a prominent leader in the Muslim community, committed to social justice and equality during the dark days of apartheid. He was not a political leader, but he associated with the leaders of the African National Congress and

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the Pan Africanist Congress in their struggle against the suppression of the black majority.

7. On 28 May 1969, the Imam was arrested by the Security Branch under the Terrorism Act. He was detained without trial and incarcerated initially at the Caledon Square Police Station and later at the Maitland Police Station. In detention he was subjected to severe interrogation and brutal torture by the security police. This endured up to his death on 27 September 1969, 123 days after his arrest. At the time, the Security Branch told us that the Imam died of his injuries arising from an accidental fall down a flight of stairs at the Maitland Police Station.
8. In 1970, an inquest was held in the Cape Town Magistrates' Court. The purpose of the inquest was to establish the circumstances surrounding my father's death. The inquest, like many other apartheid inquests, was a travesty of justice. The investigations that were done were a total farce, and the findings were preposterous. Despite being presented with evidence that my father was severely tortured, the Magistrate failed to critically question how he was killed. He found that my father's death came about as a result of trauma that was caused by an accidental fall down a flight of stairs. He concluded that no one was to blame for my father's death.
9. Our family, especially my mother who lost her husband and support system, was severely affected by my father's death. We were disturbed psychologically and unsettled by his untimely death. Most painful was that we never really knew what transpired whilst my father was detained. We could only imagine what he had to endure from stories of those who interacted with our father during his time in

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detention. The bruises, lesions and gashes that were discovered on his body at the ritual cleansing before his burial revealed the extent of the suffering at the hands of the Security Branch.

10. Shortly after my father's death, we were forced to move from our family home in Repulse Street in Crawford to live with my grandmother in her one-bedroom home. I vividly remember my mother telling me that "we lost the house" as we stood outside our home for the very last time, her eyes were filled with tears and sorrow. That moment marked the beginning of a new life for my dear mother and our family.
11. For the remainder of our upbringing, my mother fulfilled a motherly and fatherly role in the lives of each of her three children. It was an extremely difficult journey for her, one that I am still trying to fully appreciate.
12. With the turn of the democracy, which my father contributed significantly to, and the establishment of the Truth and Reconciliation Commission ("**TRC**"), we consciously decided not to participate in the TRC. In any event, none of the perpetrators involved in my father's killing applied for amnesty. The TRC, in considering deaths in police detention in the Western Cape, concluded that my father's death was "undoubtedly a gross violation of human rights, and his death was caused directly or indirectly by his experiences at the hands of the security police". The finding of the TRC came with a promise that the democratic government would pursue truth and justice for apartheid crimes that were not amnestied.
13. We remained hopeful that one day the highly problematic and unquestionably inaccurate findings of the 1970 inquest would be reversed and that the real truth

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behind my father's death in detention would be revealed. This hope remained but a dream for the first two decades of democracy.

14. On 4 December 2019, more than fifty years since my father's death and nearly three months after my mother passed away, our family, with the assistance of our pro bono lawyers and the Foundation for Human Rights, made detailed representations and provided new evidence to the National Director of Public Prosecutions ("**NDPP**"). We did so with the intention to reopen the 1970 inquest.
15. Nearly two and a half years after we approached the NDPP, the Minister of Justice, on 31 May 2022, finally requested the Judge President of the Western Cape High Court to designate a Judge to reopen the inquest. The reopened inquest was heard in November 2022 and April 2023. This was the fourth reopened inquest of an apartheid killing in South Africa's democratic dispensation.
16. On 9 October 2023, Judge Thulare of the Western Cape High Court delivered his judgment, overturning the findings of the 1970 inquest. Judge Thulare emphatically found that the Imam's cause of death was attributable to the cumulative effect of the injuries that he suffered under torture. In particular, the death was attributable to a combination of severe systemic physiological stresses, which included crush injury syndrome precipitated by complications of blunt soft tissue injury. The finding that my father died of his injuries following an accidental fall down some stairs, was something of the past.
17. The Judge held the Security Branch responsible for my father's death, and identified the following officers as the primary Security Branch members who were responsible for my father's torture:

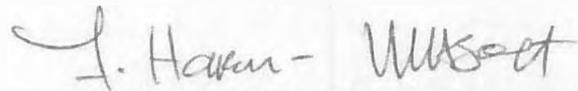
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- 17.1 Lieutenant Colonel Carel Johannes Freysen Pienaar, officer in charge of the Cape Town Security Branch since August 1969. Pienaar died on 5 July 1990.
- 17.2 Major Dirk Kotze Genis, who was in charge of the Imam's investigation. Genis died on 1 February 2003.
- 17.3 Major Kotze, a member of the Security Branch who interrogated the Imam. Kotze is deceased.
- 17.4 Captain Ebanis Jogiemus Johannes Geldenhuys. Geldenhuys died on 24 December 2012.
- 17.5 Sergeant Johannes Petrus Francois 'Spyker' van Wyk, the lead interrogator and investigator. Van Wyk died on 12 November 1990.
- 17.6 Sergeant Andries van Wyk, who participated in the interrogation. Van Wyk is deceased.
18. Only one of the junior officers, former Constable Johannes Hendrik Hanekom Burger, remains alive. We decided not to seek a prosecution against him.
19. The reopened inquest opened up our eyes to insights that we had no knowledge of and understandings that we lacked. It reignited our trust in truth and justice and finally changed the narrative surrounding the Imam's death.
20. The reopened inquest marked the completion of our family's quest for justice for our father, something that we yearned for decades. Our family inched our way towards some form of closure as a result of this process. Sadly, my late mother

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passed away before the reopened inquest commenced but we are certain that she would have been pleased with the outcome.

21. As thankful as we are for the reopened inquest, we are saddened by the decades that it took for the democratic authorities to seek truth and justice. It is heartbreaking to learn that political interference, perpetrated by officials in high office, was the cause of the delay in investigating and prosecuting apartheid atrocities.
22. However, when compared to many other families of victims of apartheid atrocities, we must recognise that our family has been privileged in this truth-seeking process. We think of many other activists who were killed by the apartheid regime, whose families, such as those who are joined in this application, have not found truth, justice or closure in the decades following the deaths of their loved ones. We feel their pain and suffering and we remain hopeful that one day they too will see the wrongs that were done to them put right.
23. I support the relief claimed in this application, and I too call for constitutional damages to be paid and for a commission of inquiry to be established to determine the truth regarding the political suppression of the TRC cases.



FATIEMA HARON-MASOET



The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at C. CARMONT on this the 21 day of OCTOBER 2024.



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| SOUTH AFRICAN POLICE SERVICE |
| PROVINCIAL DETECTIVES COLD CASE INVESTIGATION UNIT |
| 21 OCT 2024 |
| ORGANISED CRIME INVESTIGATIONS WESTERN CAPE |
| INKONZO YAMAPOLISA OMZANTSI AFRIKA |

COMMISSIONER OF OATHS

Full Names: D.D. PETERSFN ⁰⁶²²⁷³⁷⁻⁶

Business Address: 69 Imann Haron Street

Designation: LIEUTENANT COLONEL

F.A.M.

IN THE HIGH COURT OF SOUTH AFRICA
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TRYPHINA NOMANDLOVU MOKGATLE 5th Applicant

KARL ANDREW WEBER 6th Applicant

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MBUSO KHOZA 9th Applicant

NEVILLE BELING 10th Applicant

18/01/2025

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SARAH BIBI LALL 12th Applicant

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| SOUTH AFRICAN HUMAN RIGHTS COMMISSION | 7 th Respondent |

T.N.M
ASM

SUPPORTING AFFIDAVIT – COSAS 4 FAMILIES

I, the undersigned,

TRYPHINA NOMANDLOVU MOKGATLE

do hereby make oath and state as follows:

Introduction

1. I am an adult pensioner, resident in Kagiso, Gauteng. I am the eldest sister of the late Zandisile Musi ("**Zandisile**").
2. I am the fifth Applicant in this application.
3. The facts deposed to in this affidavit are within my knowledge, and unless otherwise stated or indicated by the context, are true and correct to the best of my knowledge. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be correct.
4. I depose to this affidavit on behalf of my family, and on behalf of the families of the late Eustace Madikela ("**Bimbo**"), Peter Matabane ("**Ntshingo**") and Fanyana Nhlapo ("**Fanyana**").
5. Zandisile, Bimbo, Ntshingo and Fanyana have come to be known as the COSAS 4, which nomenclature I will also use in this affidavit. Bimbo, Ntshingo and Fanyana were brutally killed by the Security Branch on 15 February 1982. Zandisile survived the attack but sadly passed away on 28 June 2021.

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The COSAS 4

6. The COSAS 4 were all born and raised in Kagiso. At the time of their killing and maiming, they were teenagers with ambitions of joining the liberation struggle against apartheid
7. The COSAS 4 were members of the Congress of South African Students ("**COSAS**"), which was established in the wake of the 1976 June student uprisings and was intended to represent the interests of Black students.
8. As intimated above, the COSAS 4 intended to join the liberation struggle. To this end, the COSAS 4 became acquainted with one Tlhamedi Ephraim Mfalapitsa ("**Mfalapitsa**"). Mfalapitsa, together with my other brother, Mbulelo Musi, received training in exile from the African National Congress' (the "**ANC**") military wing uMkhonto weSizwe (the "**MK**"), and it is for this reason that the COSAS 4 trusted Mfalapitsa.
9. Unbeknown to the COSAS 4, Mfalapitsa was no longer an ANC member and MK operative. Instead, Mfalapitsa had become a Security Branch informant. At the time, informants were known as askaris. Askaris would feed information to the Security Branch regarding anti-apartheid activities and anti-apartheid activists. Askaris were also deployed to commit heinous crimes against their former comrades
10. As far as we know, Mfalapitsa agreed to train the COSAS 4, particularly in weaponry. To this end, Mfalapitsa lured the COSAS 4 to a disused pumphouse at a mine near Krugersdorp on 15 February 1982.

T.N.M
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11. When the COSAS 4 got to the pumphouse with Mfalapitsa, he showed them hand grenades and excused himself, supposedly to fetch more grenades. Shortly after Mfalapitsa excused him, there was an explosion in the pumphouse. Eustace, Ntshingo and Fanyana all died from the explosion. Zandisile survived the explosion but was seriously maimed. Zandisile lost his hearing, he had burn wounds to his face and back, and with time he slowly lost his mobility and required assistance with daily tasks. While Zandisile was seemingly unaffected mentally, the explosion greatly affected him emotionally.

The aftermath of the killing

12. After the explosion, Zandisile was located by the police, who took him to Leratong Hospital for treatment. Thereafter, Zandisile was taken to a field and was interrogated and tortured, whereafter he was kept in detention without charge for about six weeks.
13. The police, however, told our families that Zandisile was the one behind the explosion. The police informed the families that Zandisile lured the COSAS 4 to the mine with the intention of killing them. Noting that the COSAS 4 were friends, the fabrications by the police caused deep resentment by the other families towards our family.
14. In the aftermath of the explosion, Zandisile could not speak to anyone about what had happened. It was only in 1996, at the Truth and Reconciliation Commission (the "TRC"), that Zandisile first spoke about the incident. It is only at the TRC that the other families actually met Zandisile and learned the truth of what happened to the COSAS 4

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The TRC

15. After Zandisile had told his story in 1996, the police officers involved in the explosion applied for amnesty at the TRC. They included Mfalapitsa, Jan Carel Coetzee, Abraham Grobbelaar, Christiaan Siebert Rorich and Willem Schoon. Rorich was the explosives' expert who rigged the pumphouse.
16. Ultimately, the TRC refused the applications for amnesty. The Amnesty Committee found that the murderous conduct of the amnesty applicants was wholly disproportional to the political objective pursued, especially since there were other means to prevent the COSAS 4 from joining the armed struggle.

Post the TRC

17. It was the promise of the TRC that those who were refused amnesty would be referred for prosecution. As such, it was our hope that the National Prosecuting Authority (the "**NPA**") would undertake this task without delay.
18. Instead of timeously prosecuting Mfalapitsa, Coetzee, Grobbelaar, Rorich and Schoon after the TRC, what followed was deafening silence from the NPA and the state. The killers of the COSAS 4 were allowed to roam free with impunity. Mfalapitsa, who led the COSAS 4 to their deaths, carried on with his life and assumed the role of a pastor.
19. Encouraged by the success of the reopened inquests, we approached the Foundation for Human Rights in 2019 who arranged pro bono legal support for the families. In September 2019 our lawyers requested the NPA and the Directorate for Priority Crime Investigation ("**DPCI**") to investigate the case. After a year of perceived inaction, we decided to take matters into our own hands and

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on 2 September 2020 we filed an application with the Krugersdorp Magistrate's Court seeking an order for the disinterment and forensic examination of the bodies. This prompted the NPA and DPCI to take action.

20. As a result of the NPA's inaction over decades, only Mfalapitsa and Rorich are still alive. In August 2021 the NPA belatedly took the decision to prosecute them for the kidnapping and murder of Bimbo, Ntshingo and Fanyana and the attempted murder of Zandisile. Our lawyers urged the NPA to include crimes against humanity charges, including apartheid as a crime against humanity, against the accused. We are very happy that the NPA has taken this important step, which is the very first time that crimes against humanity charges have been pursued in South Africa.
21. It bears mention that Mfalapitsa and Rorich are both elderly and further delays will undermine the interests of justice, as they could pass away at any time.
22. The prosecution has been plagued by delays. Most notable was the South African Police Services' ("**SAPS**") refusal to fund Rorich's legal defence. An application to intervene under High Court case no SS70/2021 was even brought before the above Honourable Court, sitting in Johannesburg, in an attempt to ensure that the SAPS would fund Rorich's defence. The Court ordered the SAPS to pay the legal costs. However, the trial remains pending as the defence legal teams have successfully employed Stalingrad tactics to delay the trial by launching parallel civil applications.
23. The long delay in the NPA and SAPS acting against the killers of the COSAS 4 has been deeply painful for our families. After the TRC we lost all hope that

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justice would ever be served. We became despondent and are deeply angered by the long delay.

24. It has therefore come as a deeply hurtful shock to us all, to learn that the TRC prosecutions have been politically suppressed, for reasons unknown to us. It was always Zandisile's hope to live to see those responsible face justice. He was robbed of seeing justice done as he died on 28 July 2021 at the age of fifty-seven.

Conclusion

25. We heartily support the application for constitutional damages and an order compelling the President to establish an independent commission of inquiry into the suppression of the TRC cases.

TRYPHINA NOMANDLOVU MOKGATLE

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

Johannesburg on this the 11th day of Oct 2024.

COMMISSIONER OF OATHS

Full Names: A. S. MAYET
Business Address: Commissioner of Oaths
Designation: Practising Attorney
401 Elizabeth House
18 Pritchard Street
Johannesburg

Ahmed Shabir Mayet
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K.A.W.
ASM

SUPPORTING AFFIDAVIT – KARL ANDREW WEBER

I, the undersigned,

KARL ANDREW WEBER

do hereby make oath and state as follows:

1. I am an adult male salesperson living in Gonubie, East London.
2. I am the sixth Applicant in this application.
3. The facts stated herein are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
4. I was born in Kalk Bay on 19 May 1956 and later my parents moved to Fort Beaufort in the Eastern Cape. My parents, my three sisters and I, had an unremarkable family life.
5. I am a victim and survivor of the Highgate Massacre which took place on 1 May 1993 at the Highgate Hotel in East London. At the time, I was employed by the SPCA in East London as a Senior Inspector.
6. The night of the massacre, I was asked to collect a colleague, Dougie Gates, at the airport in East London. Dougie was in town to do business. Two of my colleagues, Doreen Rousseau and Megan Boucher, accompanied me to collect Dougie and take him to his place of accommodation at the Dolphin Hotel in Nahoon. I was also asked to take Dougie for a social drink. We decided to take him to the bar at the Highgate Hotel.

K.A.W. - ASM

7. We arrived at the Highgate Hotel at around 21:30 and found a table near the entrance of the ladies bar seating four people. I approached the bar lady to order a round of drinks. As I returned to our table, the lights in the ladies bar went out. A man who was standing in the doorway started shooting randomly at the patrons in the ladies bar. Having knowledge from the military service (I completed compulsory military service in 1979), I immediately fell flat on the floor and turned my head towards the doorway to observe the gunman who was shooting wildly with an AK-47. I noted that the gunman was wearing a ski-balaclava and what looked like blue police issued combat boots. I judged him to be a professional shooter.
8. In those split seconds, I did not realise that I had been shot as my attention was on the shooter in the doorway, not knowing what was to happen next. While still in the same position on the floor, I heard something rolling towards me. I assumed that it might be a hand-grenade but this turned out to be a teargas cannister. At this stage, I closed my eyes and prayed for my life to be spared as I had a young daughter to care for. Little did I know that my life would change forever.
9. I was taken to Frere Hospital in East London where immediate surgery was performed. It was 72 hours after the massacre that I was informed that I had been shot through both arms at the elbows. The bullet penetrated at the right elbow, shattering it to pieces. It was then that I learned the devastating news that my left arm had been amputated above the elbow as it was beyond repair. My right arm was also shattered but thanks to the orthopedic surgeon they managed to save my right arm so that I might have a certain amount of use or

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ASM

movement going forward. Much painful reconstructive surgery over months had to be performed, which included bone grafts taken from my hip, inserting titanium plates and screws in my elbow. On top of this, I was unable to use my fingers. The tendons on my fingers were later rerouted but this left me unable to use the pinkie and ring finger. This was an extremely dark time in my life. The massacre rendered me invalid and totally dependent on the help of others to assist me with my daily living needs.

10. For years, we had been under the impression that the Azanian People's Liberation Army ("APLA") which was the military wing of the Pan Africanist Congress ("PAC"), had been behind the attack. This is what the police had told us when the massacre was investigated.
11. In 1996, I testified at the Truth and Reconciliation Commission ("TRC") hoping that the truth of what really happened and who was responsible for the massacre would be revealed. At the time, we were told that APLA members had applied for amnesty, but we later learned that their applications were for a different attack on the Highgate Hotel. No one applied for amnesty for the massacre. The TRC concluded that APLA was responsible for the attack but this left us with more questions than answers.
12. I received a once-off payment of R30,000 from the TRC but nothing further. I had thought that the TRC would assist me in getting a bionic arm as there had been several discussions about this kind of assistance. However, after the TRC proceedings, I was not contacted again about this kind of medical assistance.

KAW

ASM

13. To date, there has never been an inquest into our case. We received no further information from the TRC or the National Prosecuting Authority ("NPA"). We still believed it was APLA who had conducted the attacks.
14. In 2005, I learned that Neville Beling, a fellow survivor of the Highgate Hotel massacre, attended a mediation with Letlapa Mphahlele, the former APLA commander. Letlapa Mphahlele assisted us to try and make sense of what had happened that night.
15. Neville Beling informed us that Mphahlele told him about all the APLA attacks and their *modus operandi*. He explained that the massacre was not authorised by APLA. He also investigated with some of APLA's renegade groups to determine if the massacre was part of a rogue operation, but APLA did not have any knowledge of the massacre.
16. In 2006, we contacted Mthunzi Mhaga, an official at the NPA. We were told that the investigation into the massacre was reopened. Since then, the case has been passed on to various investigating officers with no results. We have been advised that over the years dockets and documents have gone missing. We have made little progress and have been frustrated with the lack of information that has been provided. We went as far as appointing two private investigators to look into the case because the authorities were not making any progress.
17. We feel that the authorities have blatantly disregarded our case. The NPA has never shown commitment or urgency to find the truth behind the massacre.

R.A.W.
ASM

18. If we had known that no investigations would emerge from the TRC process, we would have approached human rights lawyers immediately after the TRC wound up to assist us in our pursuit for truth and justice.
19. I strongly support the relief sought in this application. We were deeply saddened to hear that the TRC cases had been closed down by political interference following the closure of the TRC. We support the call for a commission of inquiry into the suppression of the post-TRC cases. We want answers as to why our case has suffered such gross neglect.
20. We want to see clear and decisive action being taken. We want an independent, transparent and open investigation with the proper powers to get to the truth. Those who obstructed our cases from going forward must be held to account.
21. We also want to know how it was that institutions meant to uphold the rule of law so easily succumbed to political pressure. This must never be allowed to happen again in South Africa.
22. I also ask that the state be required to provide constitutional damages to vindicate our rights that have been deeply violated by the suppression of our cases. These amounts can be used to further our struggle for justice, truth and closure and it can help us to commemorate the lives of those lost in the Highgate Massacre.



KARL ANDREW WEBBER

ASM

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

- | | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
BA Law (UP) - LLB (UP)
Commissioner of Oaths
Ex Officio / Practising Attorney R.S.A
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18/01/2025



Tayla Ilsley
TAYLA ILSLEY
Vice-Consul

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|--|----------------------------|
| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
| TSHIDISO MOTASI | 18 th Applicant |
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| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
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| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
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| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

Rayhana Salie
RAYHANA SALIE
Ice-Consul



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SUPPORTING AFFIDAVIT – KIM TURNER

I, the undersigned,

KIM TURNER

do hereby make oath and state as follows:

Introduction

1. I am an adult female, resident in California, United States of America. I am the daughter of the late Dr Richard Albert David 'Rick' Turner, who was murdered at his Durban home in 1978. He was 36 years old.
2. I am the seventh Applicant in this application.
3. The facts deposed to in this affidavit are within my knowledge, unless otherwise stated or indicated by the context, and are true and correct to the best of my knowledge.
4. I depose to this affidavit on behalf of my sister, Jann Turner and my late father's wife, Foszia Turner-Stylianou.

The life of Richard Turner

5. Richard Turner, to whom I will refer to as "my father" or "Rick", was born in Cape Town on 25 September 1941. He was the only child of Jane and Owen Turner. My father was raised by his mother in the Stellenbosch area and attended school at the St George's Grammar School in Cape Town.

Rayhana Salie
RAYHANA SALIE
Vice-Consul



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6. In 1962, my father graduated with a Bachelor of Arts degree from the University of Cape Town. He completed his Honours degree in 1963 and departed for Sorbonne University in Paris to further his studies. In 1966, he obtained a PhD in Philosophy (*tres honorable mentionne*) and returned to South Africa to work temporarily on his mother's farm.
7. My father was a career academic with a passion for philosophy, politics and worker's rights. He lectured Logic and Political Science at the Universities of Cape Town, Stellenbosch and Rhodes between 1967 and 1969 before joining the Department of Political Science at the University of Natal in 1971. He occupied a prominent role in the academic space, with students flocking to his lectures. He is still widely recognised as one of the most significant South African political philosophers and theorists for his teachings on the radical existentialist perspective and bottom-up popular democracy.
8. Shortly after arriving in Durban, my father met Steve Biko, the Black Consciousness leader, who was a medical student at Natal University's Medical School, which at the time was reserved for "Non-Europeans". In 1968, Biko had broken away from the National Union of South African Students ("NUSAS") to form the South African Student Organisation ("SASO"), the first organisation to espouse Black Consciousness, and which coalesced into the Black Consciousness Movement ("BCM"). My father's receptiveness to the BCM enabled him to act as a mediator between SASO's black students and the white students from NUSAS.

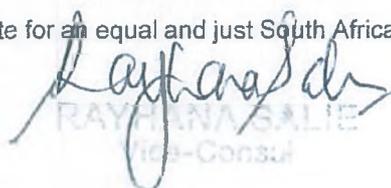
Rayhana Salte
RAYHANA SALTE
Vice-Consul



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9. My father's collaboration with Steve Biko triggered the "Durban Moment" which mobilised students and workers, as well as wider resistance against apartheid and the exploitation of working people.
10. My father was a guiding hand in the development of South Africa's trade union movement. He actively mobilised students to get involved in the unionisation of black workers, and this spurred the formation of various workers unions and labour groups such as the NUSAS Wages Commission, the Institute for Industrial Education and the South African Labour Bulletin.
11. Rick's teachings, his pragmatic approach to life, his ability to connect and engage people from different backgrounds and contexts, and his advocacy for a fair and just South Africa was unorthodox during the apartheid era. In 1972 he published his seminal book "*The Eye of the Needle*" which spoke of the 'necessity of utopian thinking' and articulated a vision of an 'ideally possible society.'
12. He had no political affiliation, but he took seriously the task of not only understanding the world but changing it. His knack for gentle persuasion, his profound effect on people, his ideals of a decentralised socialist society, and his vision for an equal South Africa made him a sworn enemy of the apartheid regime.
13. In March 1973, Rick and several other intellectuals and leaders from NUSAS and the BCM were placed under five-year banning orders by the apartheid state. The banning order made it unlawful for him to teach, hold meetings, publish or leave Durban. Despite these limitations and living under constant surveillance by the Bureau of State Security ("BOSS") and the Security Branch of the South African Police ("SB"), he continued to advocate for an equal and just South Africa for all.


RAYHANA GALIE
Vice-Consul



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Rick Turner's assassination by the apartheid state

14. My sister Jann and I visited our father during the December holiday in 1978. His banning order was still in place. I was 9 years old at the time, and Jann was 13 years old. We were alone with him at his home at 32 Dalton Avenue, Bellair, Durban on the fateful night of 8 January 1978 when he was killed.
15. Jann and I were asleep in our bedroom which was at the front of the house. Just after midnight, Jann was woken by the sound of my father walking in the hallway adjacent to our room. The house was dark. He repeatedly asked at the front door "who is it?". There was no reply.
16. He walked into our room and went over to the bay window that faced out onto the stoep. From there he would have been able to see who was at the front door. This was a long-standing habit of his given the threats and surveillance from the authorities over the years.
17. Jann watched as our father pulled the curtain aside to see who was outside. For a brief moment, surprise registered on his face before a deafening gunshot went off. He was hit. As he fell to the floor, he let out a muffled scream, writhing in pain. He managed to pick himself up and tried to move towards the back door. He lost consciousness and collapsed face down under the archway between the living room and the kitchen. He died in Jann's arms fifteen to twenty minutes after he was shot.

The botched investigations into Rick Turner's killing

18. The Durban Murder and Robbery Unit, which had a good record for solving crime during the 1970s and 1980s, launched an investigation into the murder. The

Rayhana Salie
RAYHANA SALIE
Vice-Consul



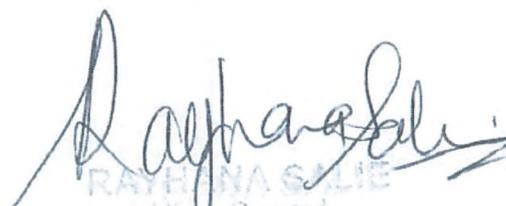
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11-year battle with the DOJ for the release of the transcripts, which were eventually released in a court settlement in 2015. Despite this, we knew for years that the Durban Murder and Robbery Unit was deliberately blocked from further investigating the murder of our father. We assume that this was in order to protect the responsible elements within the security forces from scrutiny and exposure.

The Truth and Reconciliation Commission

23. On 24 October 1996 our mother, Barbara Follett (née Hubbard), Foszia Turner-Stylianou, Jann and I appeared before the Truth and Reconciliation Commission's Human Rights Violations Committee to tell our father's story.
24. We hoped that the TRC would launch a proper investigation into his killing, and finally reveal the identities of the killers. We hoped that someone would come forward to tell the truth, even though we were aware that those who disclosed the truth could escape justice through the amnesty process. However, nobody applied to the TRC for amnesty for Rick's killing.
25. As stated above, the TRC subpoenaed former BOSS, SAP and SB members under section 29 of the TRC Act as part of their promise to pursue the truth. Earle, Groenewald, Dolincheck and Taylor gave evidence *in camera* at the section 29 inquiries. The evidence, which we only learned of in 2015, pointed to the killers being members of the security forces. The identity of the killer was not revealed. My father's murder was one of the cases referred by the TRC to the NPA for further investigation at the conclusion of the TRC's work in 2002.


RAYHANA GALIE
Vice-Consul



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26. In addition to the promise of truth, the TRC assured us, and many other victims, that reconciliation and restitution would follow the process. Our father was recognised on the TRC's list of victims of gross human rights violations, but unfortunately, nothing further transpired.

The post-TRC delays

27. Our family's pursuit for the truth never stopped. With the turn of democracy, we hoped and believed that the policing and prosecuting authorities under the democratic dispensation would revive the investigation into Rick's murder. But as far as we know this never happened and no investigation commenced after the TRC concluded.
28. Like many other TRC victims, justice remained out of reach as TRC cases remained cold cases. The failure to investigate and prosecute TRC cases constitutes a terrible injustice to the families.
29. For years there was no movement on the case, until August 2021 when the inquest into the 1977 death at Brighton Police Station of the late anti-apartheid activist Dr Hoosen Haffejee was reopened before the Pietermaritzburg High Court. On 16 September 2021, the Court heard evidence from Mohun Deva Gopal, a former SB officer from the Durban branch ("Gopal"). During his evidence, Gopal spoke of his role in the surveillance of our father.
30. The inquest transcripts reveal that Gopal testified that he was instructed to monitor Rick's movements in and around our Bellair home in December 1977, approximately two weeks before the killing. He carried out observations with his immediate superior, Lt VR Naidoo. Others involved in the surveillance included

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RAYKANG SAHIE
Vice-Consul



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Capt. Van Sittert and Lt Raju. On 7 January 1977, the day before the killing, Gopal was abruptly ordered by Maj Joseph Benjamin ("Benjamin") of the Durban SB to break off his surveillance.

31. He learned the following day that the subject of his surveillance had been murdered. Gopal mentioned that his surveillance notes were passed onto Captain James 'Jimmy' Taylor. He suspected that his surveillance records were used to help plan the murder. Gopal enquired from Benjamin what had happened and Benjamin advised him that they operated on a "need to know basis".
32. When probed under cross-examination by counsel for the Haffejee family as to who was behind the killing, Gopal indicated that it was likely done by an "internal killing squad" under Captain Jimmy Taylor. When asked about others who might have been involved, Gopal mentioned the following names: Andy Taylor, an operative by the name of Nel, Captains Louis Botha and Hentie Botha. He also mentioned the names of two Indian members who were involved in the gathering of intelligence, Sergeants Dan Pillay and Archery. As far as I am aware most or all of these persons of interest have passed on.
33. Counsel for the Haffejee family requested the Hawks officials who were present at court to take a statement from Gopal for purposes of a fresh investigation into Rick Turner's death. We learned about Gopal's revelations when it was published by the Mail and Guardian days after his testimony concluded.
34. Following Gopal's testimony in 2021, with the assistance of our legal representatives and the Foundation for Human Rights, we learned that the NPA was going to reopen the investigation into our father's killing. We were extremely

Rafiqah Salie
RAFIQAH SALIE
Vice-Consul

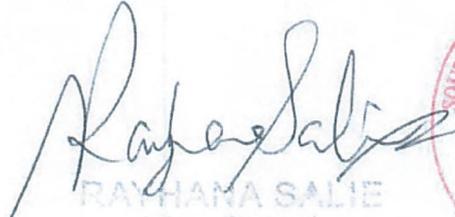


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happy as it was the first time in nearly 28 years that work was apparently being done by the authorities to investigate the murder.

35. Our initial optimism about the reopened investigation was short lived. Since 2021, the NPA and Hawks have worked at a snail's pace. To this day, after several meetings, it is still not clear to us what the authorities have actually done in this case. It seems that the meetings the NPA held with us were largely for public relations purposes. There appears to be little or no supervision or quality control over their work. Sadly, there seems to be no institutional will or interest to deal with this case properly and to give it the urgency that it requires.
36. The ongoing delays have severely affected our lives. It has been 46 years since our father was killed and we are no closer to truth and closure. We have been denied the opportunity to close this most painful chapter of our lives in peace. The failure by the post-apartheid dispensation to investigate and prosecute apartheid atrocities is a deep injustice that only the families of the victims can comprehend. The institutions that are constitutionally obliged to respect, protect and promote our fundamental rights have treated us with utter contempt.
37. The state's conduct gives the impression that our father's life, and that of many other men and women murdered by the apartheid regime, does not matter. We do not matter. We are mere pawns in their political game, to be tossed about, in the service of unknown agendas.


RAYHANA SALIE
Vice-Consul



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Conclusion

38. We have learned in recent years that our father's case, together with hundreds of others, were suppressed by various political machinations that began as soon as the TRC concluded its work.
39. We support the relief that is sought in this application. We have a right to know who was behind the conspiracy to kill off our cases. Since nobody is taking responsibility, we need an open and independent commission of inquiry to make official findings of responsibility. We have a right to see those who blocked the cases into the murders of our loved ones being held to account. We need to know why the fight for truth and justice was stopped. We will continue to pursue the truth until there is nothing left to pursue. We also endorse the claim for constitutional damages to vindicate the egregious violation of our fundamental rights. These damages will assist us to commemorate the lives of our loved ones and to pursue truth and justice, where this is still possible.



KIM TURNER

RAYHANA SALIE
Vice-Consul



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The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

SACCT, LOS ANGELES on this the 21 day of Oct 2024


COMMISSIONER OF OATHS

Full Names:

Business Address:

Designation:



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

- LUKHANYO BRUCE MATTHEWS CALATA 1st Applicant
- ALEGRIA KUTSAKA NYOKA 2nd Applicant
- BONAKELE JACOBS 3rd Applicant
- FATIEMA HARON-MASOET 4th Applicant
- TRYPHINA NOMANDLOVU MOKGATLE 5th Applicant
- KARL ANDREW WEBER 6th Applicant
- KIM TURNER 7th Applicant
- LYNDENE PAGE 8th Applicant
- MBUSO KHOZA 9th Applicant
- NEVILLE BELING 10th Applicant
- NOMBUYISELO MHLAULI 11th Applicant
- SARAH BIBI LALL 12th Applicant
- SIZAKELE ERNESTINA SIMELANE 13th Applicant
- SINDISWA ELIZABETH MKONTO 14th Applicant

TAYLA ILSLEY
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 Commissioner of Oaths
 Ex Officio / Practising Attorney R.S.A
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18/01/2025




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| THULI KUBHEKA | 16 th Applicant |
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| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
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| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |



SUPPORTING AFFIDAVIT – LYNDENE PAGE

I, the undersigned,

LYNDENE PAGE

do hereby make oath and state as follows:

1. I am an adult female, currently employed as a Bookkeeper and living in Amalinda, East London. I was born on 3 November 1967 in East London.
1. I am the eighth Applicant in this application.
2. The facts stated in this affidavit are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
3. My brother was Deon Harris, who was killed in the Highgate Hotel massacre on 1 May 1993. My brother and I were only 18 months apart and we were very close growing up. We had a normal, happy childhood together. We were not involved in politics when we were growing up.
4. My brother was a keen fisherman, and he also enjoyed camping. At the time of his death, he had just bought our grandparents' house and was completing a management course at the Mercedes Benz factory, where he was working.
5. On the day of the attack at the Highgate Hotel, my brother was 26 years old and in the prime of my life. He had gone to watch a rugby match and had then gone to the hotel for a drink.
6. The Highgate Hotel was a neighbourhood hotel. It had two bars, the men's bar for men only and the ladies bar, at which my brother sat that evening.

[Handwritten signature]

7. I learned after the massacre that around 22:00, a man entered the ladies' bar wearing a balaclava over his head and opened fire on the patrons with an AK-47.
8. My brother was shot only once. The fatal bullet entered the right side of his chest and went through both his lungs.
9. At the time of the attack, I was pregnant with my first child and about to give birth. My brother was so excited about becoming an uncle.
10. I never had the opportunity to properly grieve the death of my brother, as I had to focus on giving birth and ensuring the health of my newborn baby. I felt so conflicted as I mourned the death of my brother while celebrating the birth of my baby.
11. The death of my brother severely affected my parents who long searched for answers as to what had happened. They have since both passed away without learning who was responsible for my brother's killing.
12. Over the years I have stayed in regular contact with the survivors of the attack. I wanted to know the truth about what had happened to my brother.
13. For years we believed that the Azanian People's Liberation Army ("APLA"), the military wing of the Pan Africanist Congress ("PAC"), was responsible for the attack, because this is what the police had told us.
14. Neither I nor anyone from my family went to testify at the Truth and Reconciliation Commission ("TRC"). We did not believe that it would bring us any closure and my parents did not believe that the TRC would provide any assistance to our family. Knowing what I know now, I am glad we never went to the TRC, as the truth never came out of that inquiry.
15. We were told that APLA members applied for amnesty for the attack on the Highgate Hotel but we later learned that the amnesty applications were for a different attack on

the Highgate Hotel – a drive-by attack on 24 March 1994. No one came forward to apply for amnesty for the attack that killed my brother, but the TRC still ruled that APLA was behind the attack.

16. To date, there has never been an inquest into the case. During 2023 the NPA agreed to hold an inquest, but we still do not have any dates for the hearing, even though our attorneys proposed hearing dates for early 2025.
17. In relation to efforts to secure justice in the Highgate Hotel Massacre case I refer to the affidavit of Karl Webber, which I have read and endorse.
18. I support the relief claimed in this application. I was deeply upset to hear that the TRC cases, including the Highgate case, had been shut down by political interference following the closure of the TRC. I want a thorough, independent and open commission of inquiry into the suppression of the TRC cases. I also support the call for the state to pay constitutional damages to vindicate our rights that have been seriously violated by the suppression of our cases. These damages will help us to seek truth and justice, and such funds will help us to preserve the memory of those who lost their lives in the Highgate Massacre.



LYNDENE PAGE

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Fest London on this the 16th day of October 2024.



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COMMISSIONER OF OATHS

Full Names:

Business Address:

Designation:

Paige Riddin
Paige Riddin
Commissioner of Oaths Ex Officio
Practising Attorney RSA
Drake Flemmer & Orsmond (EL) Inc
Quenera Park, Quenera Drive, Beacon Bay
East London

HRB

1001

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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In the matter between:

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| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
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| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |
| SOUTH AFRICAN HUMAN RIGHTS COMMISSION | 7 th Respondent |

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SUPPORTING AFFIDAVIT – MBUSO KHOZA

I, the undersigned

MBUSO KHOZA

do hereby make oath and state as follows:

Introduction

1. I am an adult male Safety Inspector at the Amanzimtoti Fire Station, KwaZulu Natal. I am the son of the late Musawakhe 'Sbho' Phewa (hereinafter referred to as "**Sbho**" or "**my father**").
2. I am the ninth Applicant in this application.
3. The facts stated in this affidavit are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
4. In making this affidavit in support of the first applicant, Lukhanyo Bruce Matthews Calata, I act on behalf of my family, in particular my mother, Faith Mama Mntungwa, grandmother, Pali Getrude Phewa, and uncle, Vusi Samson Gama.

Musawakhe "Sbho" Phewa

5. My father was born on 18 January 1967 in Lamontville, KwaZulu Natal. During the mid-1980s my father was an active member of the United Democratic Front ("**UDF**"), the ANC in Lamontville and an underground uMkhonto we Sizwe ("**MK**") operative. He was closely associated with the likes of Nhlanhla Samuel 'Zimba'

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- Gumede, Bheki Cele, and Mvusi Simakade Ngubo who were all youth activists and members of the Masibonisane Lamontville Youth Organisation ("**MALAYO**") in the early 1980s.
6. My father also had ties to Ntombikayise Priscilla Kubheka ("**Ntombi**") who ran the ANC Cell in KwaMashu, KwaZulu Natal. Ntombi was abducted, tortured and murdered by the Port Natal Security Branch shortly after my father disappeared on 19 May 1987.
 7. During 1987, three Askaris (former ANC members who were recruited to work for the Security Branch ("**SB**") Xola Frank "Jimmy" Mbane ("**Mbane**"), Simon Radebe ("**Radebe**"), and Nicholas Dube ("**Dube**"), infiltrated the ANC Cell at the instruction of the notorious officer and head of the Terrorist Section of the Durban SB, Andrew Russel Cavill "Andy" Taylor ("**Taylor**"). The Durban SB worked with the SB's C1 unit that was based at Vlakplaas to identify and arrest trained members of the liberation movements. The Askaris gained Ntombi's trust and in the process, they were introduced to several MK operatives, including my father andimba Gumede.
 8. On 19 May 1987, my father disappeared. He was apparently abducted by Mbane, Dube and Radebe and handed over to the SB at their base in Winkelspruit. My father was never seen again.
 9. Days after my father disappeared, Mbane, Dube and Radebe lured Ntombi into a trap. She was abducted at Battery Beach by several members of the SB in an operation executed by Hendrik Johannes Petrus Botha ("**Botha**"), Salmon Johannes Gerhardus du Preez ("**Du Preez**"), Casper Adriaan van der

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Westhuizen, Roelof Brand Visagie ("**Visagie**"), JHA "Joe" Coetzer ("**Coetzer**"), and "Bossie" Basson ("**Basson**").

10. Ntombi was taken to the Railways and Harbours Police shooting range near Winkelspruit where she was tortured by Taylor, Botha, Lawrence Gerald Wasserman ("**Wasserman**"), Van der Westhuizen, Coetzer and Basson. Following her interrogation and torture, Ntombi was shot and her body was dumped near the Bhambayi informal settlement by Du Preez and Wasserman. Her body was recovered in 1997 when the Truth and Reconciliation Commission ("**the TRC**") launched an investigation into her death.

The Truth and Reconciliation Commission

11. Botha, du Preez, Van der Westhuizen, Wasserman, Visagie, Radebe and senior Vlakplaas officer Adrian David Baker ("**Baker**") applied to the TRC for amnesty for Ntombi's abduction, torture and murder. Radebe was granted amnesty for Ntombi's abduction and Baker received amnesty for defeating the ends of justice in relation to Ntombi's abduction and death as well as the disposal of her body.
12. My father's disappearance, as described above, was mentioned by Mbane in his testimony against the amnesty applicants in Ntombi's case which was presented to the TRC in 2000. The applicants denied having any knowledge about my father's disappearance and Mbane did not apply for amnesty for abducting my father.
13. The TRC investigators reached out to my mother to obtain information relating to my father's disappearance. The investigators informed us that Mbane disclosed the information about my father's disappearance to the TRC.

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14. We were hopeful that the truth behind my father's disappearance would be revealed and that the perpetrators would be held to account. Unfortunately, no one applied for amnesty for my father's disappearance, but we believe that the perpetrators who were responsible for Ntombi's abduction, torture and killing were also involved in his disappearance.
15. The TRC Human Rights Violations Committee recognised my father as a victim of gross human rights violations. I received the reparations that were paid by the TRC. We expected that my father's disappearance would be investigated by the policing and prosecuting authorities under the democratic government.

Post the Truth and Reconciliation Commission

16. In 2002, my aunt, Zama Phewa, submitted an application on my behalf to the Department of Finance so that I could benefit from my father's special pension. My aunt had to submit supporting documents, which included my father's certificate of service, and a biography that was authored by my father's close ally, Bheki Cele.
17. In the biography, Cele stated that he made enquires after my father disappeared and he heard that my father left for exile in Uganda or Nigeria.
18. This depiction never sat well with our family. We knew that my father never had any intention to go into exile. We were highly suspicious of this claim.
19. We suspect that Cele knows more about my father's disappearance, but he is not disclosing this information.

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20. Given the fact that my father was closely involved with comrades who climbed the ranks within the ANC, like Bheki Cele, Mvusi Ngubo and Zimba Gumede, we remained hopeful that when the ANC government came to power, time and resources would be allocated to find out what happened to my father. This turned out not to be the case.
21. Between 2003 and 2008, our family heard nothing from the SAPS or the NPA regarding my father's disappearance. We waited patiently hoping that justice would prevail for my father.

Our family's attempts to uncover the truth

22. In the late 2000s, my uncle, Vusi Gama, started to make enquiries about the investigation into my father's disappearance. My uncle had a close relationship with my father before his disappearance in 1987, and he always fulfilled a fatherly role during my upbringing.
23. On 13 August 2008, my uncle wrote to Bheki Cele, who was the MEC for Transport in KwaZulu Natal at the time, to request his assistance in establishing the truth about my father's disappearance. A copy of my uncle's email to Cele is attached as "MHK1".
24. My uncle was under the impression that Bheki Cele would come to the family's aid because of the close relationship that he had with my father. Cele had political influence and we were hopeful that he would use his high standing in the government and the ANC to help us get to the truth.
25. Cele never responded to my uncle's email, and we took this to mean that he did not have any interest in solving my father's disappearance.

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26. After my uncle's failed attempt to approach Cele, he reached out to a contact who was formerly employed by the Directorate of Special Operations ("the Scorpions") before its disbandment in January 2009. The contact referred my uncle to the National Prosecuting Authority's Missing Persons Task's Team (MPTT). The MPTT assists families to trace and recover the remains of loved ones who disappeared during apartheid.

26.1 My uncle had several engagements with the MPTT between February 2009 and June 2014 about their investigation into my father's disappearance. In an email dated 23 February 2009, Madeleine Fullard of the MPTT informed my uncle that my father's disappearance was on the MPTT's "lists of cases of missing persons to address" and assured him that the matter was "a priority case". Pule Zwane, a colleague of Fullard who was assisting her with KwaZulu Natal cases confirmed a meeting with my uncle to provide our family with an update on the progress of the investigation into my father's case. The email exchanges between my uncle and the MPTT on are attached as "MHK2".

26.2 The MPTT met with our family on 17 and 18 March 2009 and explained to us the progress that has been made in their investigation. After the meetings with the MPTT my uncle did not hear back from them despite several telephonic follow ups that my uncle tried to make.

26.3 On 8 October 2009, my uncle sent an email to Zwane and Fullard requesting feedback on progress since the meetings in March 2009. Zwane responded to my uncle on 11 and 12 October 2009, indicating that the MPTT experienced difficulties with the investigation, but he ensured that he

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would "communicate the details with [him] in due course". Zwane also indicated that my father's case was previously investigated by the former Gauteng Attorney-General, Dr Oliviera, and that the MPTT was trying to locate that docket. The email exchanges of 8, 11 and 12 October 2009 are attached as "MHK3".

26.4 Zwane met with our family again on a couple of occasions between November 2009 and August 2010. He informed us that a former Askari by the name of 'Myeza' was apparently willing to provide more information into my father's disappearance and death in exchange for deal with the prosecution. Zwane stopped communicating with us shortly after he informed us that Myeza wanted a deal with the state in exchange for the truth.

26.5 My uncle continued to communicate with Fullard and up to today, the MPTT has continuously been involved in the search for my father's remains, but results have not been forthcoming. In June 2014, Fullard acknowledged our frustration occasioned by the delays in locating my father's remains. She intimated to my uncle that the 500 other families that the MPTT was assisting also experienced the same frustration.

26.6 In the process of seeking the truth and frustrated by the decades long delay in getting to the bottom of my father's disappearance, my uncle also sought intervention from the offices of the Minister of Justice, Jeff Radebe, in August 2010, President Jacob Zuma in June 2011, and the National Director of Public Prosecutions, Mxolisi Nxasana, in June 2014. The Department of Justice's Deputy Director: Victim Support Services TRC Unit

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referred my uncle's requests for intervention to the Minister and NDPP to Fullard of the MPTT.

- 26.7 A copy of my uncle's affidavit to confirm the aforesaid is attached as "MHK4".
27. Around 2018 or 2019, I attempted to make contact with Mvusi Nguboto to establish whether he had information that could shed light on my father's disappearance. Mvusi, who was a close friend of my father, told me that he did not want to get involved in my father's case.
28. As a family we did not sit on our hands after Mbane made his statement about my father's disappearance to the TRC in 2000. We followed up and engaged with the authorities and those who were closely associated with my father before his disappearance to determine what had happened to my father in 1987. To our dismay, our attempts did not yield the desired results and till today my father's disappearance remains a mystery.

The current investigation

29. The Directorate for Priority Crime Investigation ("the Hawks") started to investigate my father's disappearance in 2021.
30. Col Masimetsa Johannes Mothle was appointed as the Investigating Officer, and he took various statements from our family and my father's friends who had information about his disappearance. He also took a statement from Mbane. For reasons unknown to us Col Mothle, who was extremely passionate about my father's case, was removed from the investigation in 2023.

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31. In October 2022, we were informed that the NPA was going to open an inquest into my father's disappearance. We questioned this decision because my father has not been declared dead, and we do not have a death certificate for him.
32. In December 2023, the NPA decided not to proceed with an inquest but to criminally charge former SB members who kidnapped and murdered my father. To date no one has been indicted. We have not been provided with any information on how the NPA reached the decision to launch a prosecution in my father's case. The NPA has failed to communicate effectively with our family regarding the inquest and subsequent criminal prosecution that has apparently been instituted.

The delay and the effect on our family

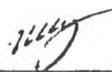
33. For 36 years our family has been waiting for the truth behind my father's disappearance to be told. My grandmother, Pali Getrude Phewa, turns 80 this year. She has been carrying my father's disappearance with her for the greatest part of her adult life. She does not know whether my father is still alive or if he is in fact deceased. She cries whenever she thinks of her son.
34. I grew up without a father present in my life, and my mother had to raise me as a single parent. This caused a grave disturbance in both our lives, but more so in mine because of my father's absence.
35. The delay on the part of the NPA and the SAPS to uncover the truth behind my father's disappearance and death has led to a situation where we have lost all trust in the criminal justice system.

MK
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36. Learning about the political suppression of the TRC cases, which we always believed was the reason behind the lack in progress in my father's case, confirms that the government has no intention to pursue justice for our fallen comrades who sacrificed their lives for our freedom and democracy.
37. Unfortunately, we do not know how or why the cases of our fallen heroes were suppressed. We demand to know the reasons and we demand to hear from those responsible.
38. The suffering that our family, and many other families of TRC victims, had to endure at the hands of the government that deliberately instructed the NPA and the SAPS not to pursue the TRC cases, is beyond reproach. We deserve truth, justice and accountability.

Conclusion

39. I support the relief sought in this application. We need an independent, strong and fully open commission of inquiry to get to the truth behind the suppression of our cases. My family and I also firmly agree that the state must pay constitutional damages to vindicate our rights which have been egregiously violated over so many years.



MBUSO KHOZA

A Sm

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

Johannesburg on this the 11th day of Oct 2024.

[Handwritten Signature]

COMMISSIONER OF OATHS

Full Names:

Ahmed Shabir Mayet

Business Address:

Designation:

A. S. MAYET
Commissioner of Oaths
Practising Attorney
401 Elizabeth House
18 Pritchard Street
Johannesburg

11/10/2024

[Handwritten Signature]

1014

"MHK2"

FW: The late Sbho Musa Phewa from Lamontville

Vusi Gama <Vusi.Gama@Kzntransport.gov.za>
12/12/2023 at 10:54:00

From: Vusi Gama <Vusi.Gama@Kzntransport.gov.za>
Sent: 12/12/2023 at 10:54:00
To: jos.venter@webberwentzel.com , nkosinathi.thema@webberwentzel.com
Cc: nicola.irving@nortonrosefulbright.com , mkhozer@gmail.com

From: Vusi Gama
Sent: 13 August 2008 15:12
To: Bheki Cele <Bheki.Cele@Kzntransport.gov.za>
Cc: Sharon Gaehler <Sharon.Gaehler@Kzntransport.gov.za>
Subject: The late Sbho Musa Phewa from Lamontville

Dear honorable MEC Cele

1. Today I unintentionally went through the Truth & Reconciliation Commission of South Africa Report.
2. The name of Sbho Musa Phewa from Lamontville is written amongst the list of the victims.
3. Sbho is a father to my only nephew Mbuso.
4. When Sbho decided to exile Mbuso was still in his mother's womb.
5. The mysterious circumstances under which Sbho died are a painful story that has turned Mbuso into a victim.
6. Mbuso is a victim because he does not know how & where his father died.
7. Zama, a sister to Sbho & my sister have tried to find closure to the matter but lately they are running out of steam.
8. It is because there seems to be no progress regarding the investigation.
9. I therefore humbly appeal to the MEC for assistance to discover what happened to my brother-in-law.
10. Seemingly time is not on our side.
11. Each time Sbho's son asks for financial assistance from me I always wish his father was here.
12. He is even battling to get funds so that he can further his education at a tertiary level.
13. South Africa is a free country today but some sons & daughters of the people who struggled & sacrificed with their lives are feeling the pain of growing fatherless & suffering from financial muscle. Therefore pain & tears is their story.
14. I am requesting for assistance from the MEC because of your will to assist where you can.
15. May Sbho rest in peace.

Regards,

Vusi Gama

Policy & Planning

033-3558747

nk
AS/m

1015

From: Madeleine M. Fullard [<mailto:mfullard@npa.gov.za>]
Sent: 23 February 2009 02:39 PM
To: Vusi Gama
Cc: dqueen@npa.gov.za; Deborah Quin; Tshiamo Moela; pule@phakwe.co.za
Subject: RE: Missing MK soldier-Sbho Phewa

Hi Vusi

Thank you for your email. The case of Sbho Phewa is on our TRC lists of cases of missing persons to address. [REDACTED]
[REDACTED] a priority case and also a very painful case, as you say.

However, it is also a difficult case because we are probably dependent on getting information from the perpetrators.

We are hoping that Deborah Quin will be able to transfer from the Scorpions to assist the Missing Persons Task Team in our KwaZulu Natal cases in April this year. We have had a lack of capacity in the KZN region as we are just a small Task Team of 3 people in Pretoria at present.

Deborah previously worked for the TRC and is well versed about Sbho's case and cases involving the Security Police in that region.

If you email your contact details and telephone numbers, I will call you to discuss it. Please feel free to call me on 012 - 845 6694 or my cell 082 576 9220 to discuss this. Or you can speak to my colleague Mr Pule Zwane on 084 5020 490. He will also be assisting with KZN cases.

Note that Deborah's surname is actually spelt Quin and so her email is dquin@npa.gov.za

I hope to speak to you soon. Are you part of the Phewa family?

Kind regards

Madeleine Fullard
 Missing Persons Task Team NPA
 Tel: 012 - 845 6694
 Fax: 012 - 845 6337
 Cell: 082 576 9220
 Email: mfullard@npa.gov.za

From: Vusi Gama [<mailto:Vusi.Gama@Kzntransport.gov.za>]
Sent: 23 February 2009 01:04 PM
To: Madeleine M. Fullard
Cc: dqueen@npa.gov.za
Subject: Missing MK soldier-Sbho Phewa

Hi Madeline

1. On the 04th February 2009 I spoke to Debra about Sbho Phewa who is a missing MK soldier.
2. On the 23rd of February 2009 I spoke to Debra Queen again regarding the developments about Sbho's case.
3. Queen informed me that her hands are tied down because of the disbandment of the Scorpions.
4. I am concerned about service delivery in this regard.
5. It is more than 20 years since Sbho allegedly died.
6. His story is so painful.
7. Last thing that a citizen like me could expect is an answer from government stating that we can't help you now try us later.
8. I therefore deserve an answer as to why we can't get service delivery in the case of Sbho?

Dissatisfied family member
 Vusi Gama

1016

"MK3"

Jos Venter

From: Vusi Gama <Vusi.Gama@Kzntransport.gov.za>
Sent: 02 September 2024 10:38
To: Jos Venter
Cc: mkhozer@gmail.com
Subject: FW: Missing MK soldier-Sbho Phewa

From: Vusi Gama
Sent: 11 November 2009 09:06
To: Sikhumbuzo Mdlalose <Sikhumbuzo.Mdlalose@Kzntransport.gov.za>; Siyabonga Mshengu <Siyabonga.Mshengu@Kzntransport.gov.za>
Subject: FW: Missing MK soldier-Sbho Phewa

From: Pule Zwane [mailto:pule@phakwe.co.za]
Sent: 10 November 2009 09:06 PM
To: Vusi Gama
Subject: RE: Missing MK soldier-Sbho Phewa

Mr Gama,

Thanks for the information. Clearly, we need to meet next week and discuss the case. The only person who mentioned Sbho Phewa during the TRC was Xolani Frank Mbane (Jimmy). I will confirm the date for our meeting. I need to give you some detailed brief report on the above case.

Regards

From: Vusi Gama [mailto:Vusi.Gama@Kzntransport.gov.za]
Sent: 10 November 2009 09:38 AM
To: pule@phakwe.co.za
Subject: FW: Missing MK soldier-Sbho Phewa

Hi Pule

1. The document herewith attached refers.
2. Your email below dated 12 October 2009 refers
3. I would like to bring this matter to your attention.
 - a. There is contradiction between your email and the letter from the Department of Justice and Constitutional Development
 - i. The letter dated 20 July 2004 herewith attached, from Department of Justice states that one of the perpetrators applied for amnesty
 - ii. Your email below dated 12 October 2009 states that the perpetrators did not apply for amnesty.
4. There are two versions of the story. Which one is the correct side to the story?
5. I must bring it to your attention that:
 - a. There was commitment from your side to point out where Sbho remains were scattered or buried
 - b. There have been delays regarding the identification of the alleged crime scene
 - c. There are different versions to the story
 - d. Hearsays and rumours could be flying around.
6. Through evidence the picture is becoming clearer
7. Hope to speak to you soon.

MK
ASM

1017

Vusi

From: Vusi Gama
Sent: 14 October 2009 10:21 AM
To: 'Pule Zwane'
Subject: RE: Missing MK soldier-Sbho Phewa

Hi Pule

Your disappearance left a vacuum that could be filled by serious hearsays. Those hearsays could be true or not. There is something that you need to comprehend. My nephew is now more than 20 years old. We need to also consider sensitivity on his part. His father disappeared when her mother was still 9 months pregnant. Pule lot of people have been hurt here

Sbho has a family that is deeply affected by this situation

Anyway Pule I am not interfering with your job. Talk to you later. You must know that **SBHO's** story really

HURTS.

Vusi

From: Pule Zwane [<mailto:pule@phakwe.co.za>]
Sent: 12 October 2009 05:00 PM
To: Vusi Gama
Subject: RE: Missing MK soldier-Sbho Phewa

Vusi,

There is something you need to comprehend. This case is very sensitive. Perpetrators did not apply for amnesty from the TRC. This means that they are exposed to possible criminal prosecutions should we find the remains of Sbho. The former Gauteng Attorney General, Dr Olivier, investigated this case. I am still trying to locate that docket. The docket will tell us who are the perpetrators, what they did they disclose about the site where Sbho was murdered and buried. The reason why I am not communicating this to you is precisely because of its sensitivity.

Please do understand the nature of this case. It is not like other cases where perpetrators approached the TRC and got amnesty.

Regards

From: Vusi Gama [<mailto:Vusi.Gama@Kzntransport.gov.za>]
Sent: 08 October 2009 03:50 PM
To: Pule Zwane; Madeleine M. Fullard
Cc: Tshiamo Moela
Subject: RE: Missing MK soldier-Sbho Phewa

Hi Pule & Madeleine

1. Pule you have disappointed me and Sbho's family.
2. Pule I cannot reach you on the phone.
3. Madeleine I have been leaving voice messages on your phone and on your colleagues as well but up to now you have not responded.
4. This situation makes mockery to service delivery
5. Were you guys employed to perform disappearing acts?
6. I am now going to refer this matter to the Presidential hotline.

Vusi

MK
 ASM

1018

From: Pule Zwane [<mailto:pule@phakwe.co.za>]
Sent: 24 February 2009 10:16 AM
To: Vusi Gama; 'Madeleine M. Fullard'
Cc: dqueen@npa.gov.za; 'Deborah Quin'; 'Tshiamo Moela'
Subject: RE: Missing MK soldier-Sbho Phewa

Vusi,

This is to confirm our telephonic communication earlier on today. I confirm that I will be travelling to Durban in the next two weeks to meet with yourself and family members and give you some briefing on this particular case. I will also discuss the status of this case with yourself.

I will confirm the exact date and possible venue for the said meeting.

Regards

Pule

From: Vusi Gama [<mailto:Vusi.Gama@Kzntransport.gov.za>]
Sent: 24 February 2009 09:15 AM
To: Madeleine M. Fullard
Cc: dqueen@npa.gov.za; Deborah Quin; Tshiamo Moela; pule@phakwe.co.za
Subject: RE: Missing MK soldier-Sbho Phewa

Hi Madeleine

1. Thanks for your response
2. I grew up with Sbho in Stanger (currently called Kwa-Dukuza) in the 1980's up to the late 80's when he disappeared.
3. He dated my sister called Mama Khoza whom he subsequently impregnated
4. When he disappeared in 1987 Mama was due for labour.
5. Mama gave birth to a baby boy called Mbuso in the middle of May 1987
6. I have learnt from the TRC documents that May 1987 is also the time when Lindiwe Kubheka was murdered who was later buried in a pauper's grave in Groutville. Her grave was dug up in 1997.
7. Therefore Sbho was my brother-in-law
8. Mbuso Khoza, Sbho's son who has never seen his father let alone to know the circumstances of his death & where he died in 21 years, (0794473667) is my nephew & Zama Phewa (0836176971) is a sister to Sbho
9. I would like to emphasise how the dragging of this investigation has badly affected my nephew in every formation.
10. His spirit & emotion have indelible scars.
11. Zama has told me that Jimmy Mbane from Cape Town who is alleged to be an Askari, who was also present during the TRC was willing to talk.
12. John who was a TRC investigating officer knows Jimmy Mbane.
13. Have you spoken to Jimmy & what did he said
14. Give us the names of the perpetrators we will talk to them.
15. After 21 years Sbho disappeared the last thing I could expect from officials is an excuse.
16. Guys Sbho case is so painful beyond imagination while your salaries are guaranteed every month.
17. You are not employed to look for excuses, passing the bark or put people on a run-around.
18. Madeleine your response is insensitive & lacks urgency
19. People are dying & case risk going cold
20. I have tried to make contact with Madeleine on the 24th of February 2009 in vain.
21. If you are under-resourced, please refer me to an official who is senior.

Extremely dissatisfied family member
 Vusi Gama
 0825515808

MK
 ASM

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

| | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |
| STEPHANS MBUTI MABELANE | 15 th Applicant |

VSG MK
ASM

THULI KUBHEKA 16th Applicant

HLEKANI EDITH RIKHOTSO 17th Applicant

TSHIDISO MOTASI 18th Applicant

NOMALI RITA GALELA 19th Applicant

PHUMEZA MANDISA HASHE 20th Applicant

GODOLOZI MKHONTOWESIZWE 21st Applicant

FOUNDATION FOR HUMAN RIGHTS 22nd Applicant

and

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA 1st Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA 2nd Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT 3rd Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS 4th Respondent

MINISTER OF POLICE 5th Respondent

NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE 6th Respondent

SOUTH AFRICAN HUMAN RIGHTS COMMISSION 7th Respondent

CONFIRMATORY AFFIDAVIT – VUSI SAMSON GAMA

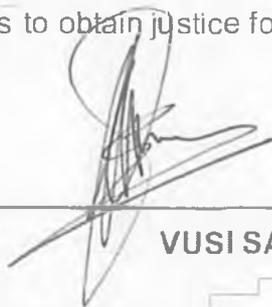
JSG *nik* *asm*

I, the undersigned,

VUSI SAMSON GAMA

do hereby make oath and state that:

- 1. I am an adult male and the uncle of Mbuso Khoza, the ninth Applicant in this application.
- 2. The facts stated herein are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
- 3. I have read Mbuso's supporting affidavit and confirm that its contents are true insofar as they pertain to me and my attempts to obtain justice for Sbho Phewa.



VUSI SAMSON GAMA

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at Pietermaritzburg, on this the 16 day of October 2024, 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.

V39 M/A ASM

1022

[Handwritten signature]
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CAPT

COMMISSIONER OF OATHS

| |
|--------------------------|
| SOUTH AFRICAN POLICE |
| COMMUNITY SERVICE CENTRE |
| 2024-10-16 |
| ALEXANDRA ROAD |
| KWAZULU-NATAL |

FULL NAMES: *Bhekuni Mkhawu*

DESIGNATION: *CAPT*

ADDRESS: *101 Alexandra Rd*

MR

039

1023

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

| | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |
| STEPHANS MBUTI MABELANE | 15 th Applicant |

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
BA Law (UP) – LLB (UP)
Commissioner of Oaths
Ex Officio / Practising Attorney R.S.A
THE LEONARDO
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18/01/2023



NB ASK

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| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
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| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 22 nd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |
| SOUTH AFRICAN HUMAN RIGHTS COMMISSION | 7 th Respondent |

NB ASM

SUPPORTING AFFIDAVIT – NEVILLE BELING

I, the undersigned,

NEVILLE BELING

do hereby make oath and state as follows:

1. I am an adult male, currently unemployed and living in East London.
2. I am the 10th Applicant in this application.
3. The facts stated in this affidavit are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
4. I was born on 30 November 1972 in East London. I was close with my sister and had a good childhood.
5. I completed my standard 8 at a practical school, after which I managed to get a job as a forklift operator at Da Gama Textiles and started doing courses, such as beginner safety courses applicable to that line of work, through my employer. After this, I was training to become a clerk in the tape sizing department. My manager wanted me to eventually go into a management position. I upskilled myself with that in mind.
6. On the day of the attack at the Highgate Hotel on 1 May 1993, I was 20 years old and in the prime of my life.
7. At that time, the Highgate Hotel was a neighbourhood hotel, with most of the clientele being working class men and a regular group of police officers. The

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Highgate Hotel had two bars, the men's bar for men only and the ladies bar for women and men, which was a smaller space than the men's bar. I was in the men's bar that evening with my cousin, Roland Parker.

8. After I had been at the bar for approximately ten minutes, a man entered the men's bar wearing a balaclava over his head. He threw a hand grenade and a teargas cannister before opening fire on the inhabitants with an AK-47. I had been hit with bullets multiple times. I could not see anything through the teargas, and I could not move. I thought the gunman was going to return to shoot me in the head, but he quickly departed.
9. The bullets from the AK-47 shattered my bones, and I was in intense pain after being shot and while lying on the floor. It felt like a very long time that I lay there. My eyes were burning from the teargas, and I was struggling to breath. My white shirt was drenched in blood.
10. Two men who had been at a nearby house having braai, Mark Bush and Steven Good, had heard the gunshots, and were the first on the scene. They dragged me out of the bar by my feet. I had serious injuries to my hip and legs and they struggled to drag me out.
11. My youth was robbed from me. I spent the rest of my twenties in and out of hospitals, and that has continued for the rest of my life. I have had close to 50 major surgeries, all related to the severe injuries I sustained during the attack.
12. At one point in my life, I was taking over 600 tablets a month. I have been to so many psychologists and psychiatrists. In the end I had to help myself because I was so dependent on medication.

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13. Since the day of the attack, I have not been able to work again. I have been fortunate enough to stay on my Discovery medical aid, which I had been on while working for Da Gama Textiles. If it had not been for my medical aid, I would never have been able to afford the surgeries and medication I received over the years. Since the attack, I have been living on a disability pension.
14. The attack forever changed my relationship with my family. My mom would work during the day and then come sleep by my bedside at night while I was in the hospital. I had so many drains and tubes attached to me that needed to be constantly monitored and she was concerned that the nurses might forget to change the tubes. She was my caretaker for many years as I still needed further assistance after all the surgeries and hospital stays. I have struggled with mobility issues throughout my life as a result of the attack and I am dependent on walking aids to help me move. At one point, I weighed over 200 kilograms because of the medication that I was on and my restricted mobility. I live in constant pain.
15. The attack emotionally drained my mother which contributed to her death in 2017. My father also took severe strain and suffered multiple strokes, before his death in 2016.
16. I have never married nor had any children. I now live entirely on my own and am struggling to look after myself. I would love to move to Cape Town to be closer to my specialist, but I cannot afford it.
17. For years, we had been under the impression that the Azanian People's Liberation Army ("**APLA**") which was the military wing of the Pan Africanist Congress ("**PAC**"), had been behind the attack. This is what the police had told us after the attack, and we had no further evidence to prove anything else.

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18. In 1997, I presented a statement to the Truth and Reconciliation Commission ("TRC") because I expected that we would learn the truth about what really happened and who had attacked us. I thought the men who had attacked us would come forward for amnesty so that we would at least know who they were.
19. We had been told that APLA members had applied for amnesty, and we were eager to learn the truth. However, we later learned that the APLA members had applied for amnesty for a different attack on the Highgate Hotel – a drive-by attack on 24 March 1994, and not for our attack. No one came forward to apply for amnesty for our attack, but the TRC still ruled that APLA had been behind the attack. We left the TRC with more questions than answers.
20. The TRC listed me as a victim of gross human rights violations. I received a once-off payment of R30,000 from the TRC and nothing further.
21. Following the attack, we received no further information from the TRC or the National Prosecuting Authority ("NPA"). We took it upon ourselves to investigate the attack on the premise that APLA was responsible.
22. In 2005, I attended a mediation with Letlapa Mphahlele, the former APLA commander. He assisted us to try and make sense of what had happened that night. He told me about the former APLA attacks and their *modus operandi*. Letlapa explained that the attack on the Highgate Hotel was not one that they had authorised. He also enquired with some of APLA's renegade members to see if the attack had been part of a rogue operation, but no one had any knowledge of the attack.
23. In 2006, I contacted Mthunzi Mhaga, an official at the NPA, and the investigation was apparently reopened.

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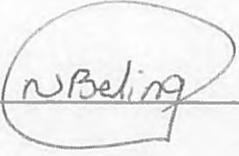
24. Since 2006, the case has been passed on to various police investigating officers. We have made little progress and have been frustrated with the lack of information that has been gathered. We are most upset to hear from the police that over the years many of our dockets and documents have gone missing. We feel immensely dissatisfied with the level of consideration our case has received from the police and the NPA. Our dissatisfaction with the police and the NPA led us to hire two private investigators to investigate the case on our behalf.
25. We feel that there has been a blatant disregard for our case. The authorities have never demonstrated any commitment to the Highgate Massacre or any urgency to get to the truth.
26. To date, there has never been an inquest into our case. During 2023 the NPA, at our urging, eventually agreed to hold an inquest. We still do not have any dates for the hearing, even though our attorneys proposed hearing dates for early 2025.
27. I was shocked and angry to learn of the political interference that blocked the investigation and prosecution of the TRC Cases, including my case. I want to know who was behind the interference as well as their motivations. Their actions have denied me closure over so many years.
28. I accordingly support the relief sought in this application. The President must be compelled to establish a commission of inquiry. However, the commission must be independent and public and have the powers to investigate decisively.
29. If we had known that the politicians would stop the post-TRC investigations of our cases, we would have approached our lawyers immediately after the TRC to

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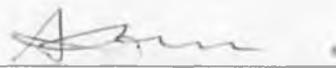
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take action on our behalf. However, we had faith in the post-apartheid order to do the right thing. This faith was misplaced. We have been horribly betrayed.

30. In the circumstances, I also support the claim for constitutional damages to vindicate our rights to human dignity, equality and the rule of law, which have been deeply violated. An award for constitutional damages will help us to reach the truth behind the Highgate Massacre, since we can no longer rely on the institutions of state. Such damages will also assist us to commemorate those who tragically lost their lives on 1 May 1993 in the Highgate Hotel.


NEVILLE BELING

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Johannesburg on this the 11th day of OCT 2024.



COMMISSIONER OF OATHS

Full Names: Ahmed Shabir Mayet

Business Address:

Designation:

A. S. MAYET
Commissioner of Oaths
Practising Attorney
401 Elizabeth House
18 Pritchard Street
Johannesburg

1031

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

- | | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
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| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
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Commissioner of Oaths
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18/01/2025 

NM ASM

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| THULI KUBHEKA | 16 th Applicant |
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NM ASM

SUPPORTING AFFIDAVIT – NOMBUYISELO MHLAULI

I, the undersigned,

NOMBUYISELO MHLAULI

do hereby make oath and state as follows:

1. I am an adult female, currently retired and living in Claremont, Cape Town
2. I am the 11th Applicant in this application.
3. The facts deposed to in this affidavit are within my personal knowledge, unless otherwise stated or indicated by the context, and are true and correct to the best of my knowledge.
4. My husband was Sicelo Mhlauli. He, together with Mathew Goniwe, Sparrow Mkonto and Fort Calata were abducted and murdered by Security Branch of the former South African Police on 27 June 1985 when they were on their way back to Cradock from Port Elizabeth after attending a meeting. They became known as the Cradock Four. Days after they had disappeared, their bodies were found, badly burnt with numerous stab wounds.
5. My deceased husband and I have two children, Nolubabalo and Ntsika. I make this affidavit on behalf of myself and my two children.
6. I met my husband when we were both teachers, and our relationship was always very strong. He later became the headmaster of a secondary school in Oudtshoorn, a community leader and an active member of the United Democratic

NM ASM

- Front ("UDF"). The students were always very close to my husband, and they had much love for him. He taught many of them about politics. His political activities brought him to the attention of the apartheid government.
- 7 I was involved in the struggle. I was initially too scared to get involved but I wanted to support my husband and our country. I attended the UDF's launch in Cape Town with my husband and went to meetings of the United Women's Congress.
8. When my husband and I lived in Dimbaza, it was hell. We were constantly harassed by the police, and he would often be picked up by the police to be interrogated. It became so bad that whenever there was a knock on the door, I would tell my husband to put on his coat in case they took him away again. It became part of our daily life.
- 9 The day my husband died still haunts me. Initially, I did not believe it. I thought he had just been picked up to be questioned and even wanted to take him some warm clothes. I had been in Port Elizabeth attending the Vista winter school programme. My husband was going to collect me, but he never arrived. I was told that they were missing but I assumed they had just been arrested and that I needed to find out which police station he was being held at.
- 10 My brother-in-law and his friend then came to collect me, and only when I got to Cradock, was I informed about what had happened to him. I immediately fainted when I heard that my husband was dead. When we buried him, his body was so mutilated and we had to bury him without his hand, which had been cut off. His whole face and body were disfigured. My father-in-law went to view the body,

NM ASM

- but I decided not to look at it after seeing my father-in-law's reaction. My father-in-law never recovered from seeing his son in that condition.
- 11 I have been retired now for 8 years. Before I retired, I worked many jobs to ensure my children were looked after. I started as a teacher on a very low salary, and also worked for a few non-profit organisations. There were also periods where I was unemployed, and we struggled to make ends meet.
 12. I worked at the Bellville's Teacher's College, Juta & Company, the South African Heritage Resources Agency and Jubilee South Africa. Most of the jobs I had paid low salaries, and I did not receive benefits and a pension from some of them.
 13. While I was at the South African Heritage Resources Agency, I worked with victims of human rights violations. I was encouraging communities to make peace with each other and erect monuments to commemorate those who had died. I travelled across South Africa, Zimbabwe, Tanzania and Mozambique meeting with organisations dealing with victims and their families. I eventually had to leave this work because it was becoming too dangerous and if anything had to happen to me, my children would have lost both their parents.
 14. My final job before retirement was with the South African Social Security Agency. I stayed with them until I reached the retirement age of 65, so that I could build up a little pension. It was not much, but it was all I had.
 - 15 My children were very young when my husband died. I struggled financially and emotionally to raise them, and I am still struggling. Our family lost our primary breadwinner, and my children lost the benefit of growing up with their loving father. My husband was a good father, and he always gave the family good

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16. I never remarried after losing my husband. We were supposed to grow old and retire together. Instead, I have been on my own for nearly 40 years. I had to look after myself and my children.
17. After years of struggle and non-responsiveness from the National Prosecuting Authority ("**NPA**"), the reopened inquest in the Cradock Four case was meant to start on 2 September 2024. However, because the NPA did not do its preparatory work on time it has been postponed for another 9 months to June 2025. We have been pushing for truth and closure for decades and we are deeply frustrated at the ongoing delays.
18. There were two previous inquests into the deaths of the Cradock Four, which left us with more questions than answers. The first one was held in 1987 before Magistrate De Beer and the second one was held in 1993 before Judge Zietsman. Neither of the inquests identified the murderers of the deceased.
19. However, Judge Zietsman found that the notorious "permanent removal from society" signal was a recommendation to murder. He also found that it has been established prima facie that the murderers were members of the security forces; and that a case of suspicion has been made out against SAP officers Colonels Harold Snyman and Eric Winter and against SADF members Brigadier Joffel van der Westhuizen, Colonel Lourens du Plessis and Major General Nicolaas Janse van Rensburg. Notwithstanding these findings, no steps were taken against these members.
20. We were all so excited when Nelson Mandela became president because we thought that change was coming, and that justice was imminent.

NM ASM

21. I went to testify at the Truth and Reconciliation Commission ("**TRC**") because I wanted to know what happened to my husband. I wanted justice for his death, but I never received any justice. I received R30,000 from the TRC, which was not enough to support my family or begin to fill the hole left by my husband's absence. I believe it is now time for a new approach.
22. In April 1996, at the TRC proceedings in East London, my daughter Nolubabalo testified and said that we want to forgive, but we do not know who to forgive, we do not know the killers of her father. She said that her father's murder has been a big loss because I had to play two roles, a mother role and a father role. After my daughter testified, Archbishop Desmond Tutu told me that he was proud of my daughter for her testimony.
23. Eight former Security Branch ("**SB**") police officers applied for amnesty before the TRC in the Cradock Four case. They were Harold Snyman, Eric Alexandra Taylor, Gerhardus Johannes Lotz, Nicolaas Janse van Rensburg, Johan van Zyl, Hermanus Barend du Plessis, Eugene de Kock and Jaap van Jaarsveld. Only Eugene de Kock and Jaap van Jaarsveld received amnesty for their role in the Cradock Four case.
24. The six SB officers who did not receive amnesty were never brought to justice for their role in my husband's death. They have all subsequently passed away and will never be held accountable for their crimes.
25. We have been waging a long struggle for justice. When the state sought to provide a backdoor amnesty for apartheid-era perpetrators we fought it. Together with the other widows of the Cradock Four, and Thembi Nkadimeng, the sister of Nokuthula Simelane, the young freedom fighter murdered by the SB

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in 1983, I went to court to challenge the NPA's prosecution policy in the matter of *Nkadimeng & Others v The National Director of Public Prosecutions & Others* (TPD case no 32709/07) (the Nkadimeng case). In 2008 the Pretoria High Court struck down the backdoor amnesty provisions that were contained in the policy, declaring it to be absurd and unconstitutional. Sadly, this victory did not open the door to justice.

26. In 2019, we asked the Foundation for Human Rights and Cliffe Dekker Hofmeyr attorneys to take up the Cradock Four case. It soon became apparent that the authorities were not taking our case seriously. Indeed, it appeared that the investigation docket had gone missing from the offices of the NPA in Pretoria and had to be reconstructed. After two years with little progress, our attorneys applied to court to compel the NPA and the Directorate of Priority Crimes Investigation to finalize the missing docket investigation and take a decision on the murder case. This application was launched on 20 July 2021, the 36th anniversary of the burial of the Cradock Four. After an exchange of papers, the application was held in abeyance when the authorities agreed to expedite the investigations. Sadly, the suspects against whom there was a *prima facie* case all died, forcing us in August 2023 to accept a third inquest.
27. We now know why there has been such long delays in advancing our cases. Post the TRC, political interference suppressed the cases and shut the doors of justice in our faces. I see our politicians becoming rich and powerful, but we, who were the victims of apartheid and continue to suffer from the long-standing effects, are ignored and made to feel insignificant.
28. I want the truth to come out and I want it to be heard. The African National Congress and the government must account for their disinterest in our case and

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our families. The Cradock Four laid down their lives for our democracy. It feels like their legacies have been discarded.

29. We thought we were going to get monthly stipends from the TRC or educational support for our children. But none of that materialised. Had I known that nothing more would come from the TRC process, I would not have put myself through the trauma of testifying. It feels like it was all wasted energy.
30. The Mhlauli family supports the relief sought in the application. The President must be compelled to appoint an open and transparent commission of inquiry into the suppression of the TRC cases. We want answers as to why there has been such a lack of progress with our case. We want to see clear and decisive action being taken. We have questions for those who decided behind closed doors to obliterate justice in our cases. Only an independent commission of inquiry can get to the bottom of the suppression and publicly hold those responsible to account.
31. We also support the claim for constitutional damages to vindicate our deeply violated rights. This will enable us to properly memorialise our loved ones who sacrificed everything for our freedom. It will also enable us to pursue truth, justice and closure in those cases where this is still possible. Finally, it will help us to monitor the conduct of the responsible departments.
32. Even today we have no faith in the authorities acting in our interests. We must take this struggle forward ourselves.



NOMBUYISELO MHLAULI

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

Johannesburg on this the 11th day of Oct 2024.

A. S. Mayet
COMMISSIONER OF OATHS

Full Names: Ahmed Shabir Mayet

Business Address:

Designation:

A. S. MAYET
Commissioner of Oaths
Practising Attorney
401 Elizabeth House
18 Pritchard Street
Johannesburg

11/10/2024

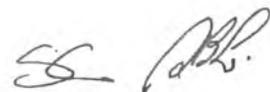
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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

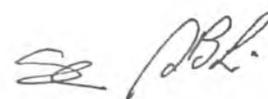
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| KIM TURNER | | 7 th Applicant |
| LYNDENE PAGE | TAYLA ILSLEY BA Law (UP) - LLB (UP) Commissioner of Oaths Ex Officio / Practising Attorney R.S.A THE LEONARDO 75 Maude Street, Office Level 12, Sandown, SANDTON, 2196 (011) 784-3310 Mobile: +27 (0) 72 839 9229 Email: tayla@ianlevitt.co.za | 8 th Applicant |
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| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |



SUPPORTING AFFIDAVIT – SARAH BIBI LALL

I, the undersigned,

SARAH BIBI LALL

do hereby make oath and state as follows:

1. I am an adult female and the sister of the late Dr Hoosen Mia Haffejee (hereafter referred to as "**Hoosen**" or "**my brother**").
2. I am the 12th Applicant in this application.
3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
4. My brother died at the hands of the Durban Security Branch of the former South African Police on 3 August 1977. He was 26 years old.
5. I make this affidavit on behalf of the surviving members of the extended Haffejee family.

Brief background of Hoosen Haffejee

6. Hoosen was born in Pietermaritzburg on 6 November 1950. He was the youngest of four siblings in a close-knit family. Our parents, Mohammed Essack Haffejee and Fathima Bibi Rahim, were married in Durban and resided in Pietermaritzburg. My two elder brothers were Yusuf and Ismail Haffejee. Ismail and I are the only siblings who are still alive.



7. Hoosen completed his schooling in Pietermaritzburg. My father borrowed money to send him to medical school in Nagpur, India. All our family members contributed financially towards Hoosen's education as we paid the money that my father had borrowed back in instalments. My father's belief was that by educating his youngest son, Hoosen would have paid it back by educating other members our family. We were not financially well off.
8. In 1968, at the age of 17, Hoosen left South Africa to study dentistry in Andheri, India. Because of the quota system that was imposed by the apartheid government, there were limited opportunities for non-white students to study at South African universities.
9. Hoosen remained in India for seven years, and upon his graduation in 1976 he returned to South Africa. He struggled to obtain employment after he returned because the South African government refused to recognise his 'foreign' qualification. After some time, he was employed at the King George V Hospital in Durban. As part of his duties, he also visited Tongaat and surrounding areas. He rented a flat at Antelope place in Overport, Durban which he occupied during the week. He returned to our parental home in Pietermaritzburg every weekend without fail.
10. The Saturday before my brother passed was away, I went to our parental home with my husband and children. Hoosen was happy and in good spirit as usual. Before I left on the Sunday, I prepared his favourite meals that he would take with him when he returned to Durban for the work week on Monday morning. I bade Hoosen goodbye before I left our parental home that Sunday, expecting to see him again the following Friday.

SS Bl.

Hoosen's mysterious death

11. I was at work on 3 August 1977 when I was told of Hoosen's death. I became hysterical and started screaming. I was so overcome with grief that at a stage, someone slapped me to bring me out of the hysteria. I remember telling my brother that the person who had told me of Hoosen's death joked badly with me. My brother simply responded by saying that it was not a joke but the truth.
12. My father was not present when my mother was told of Hoosen's death. He was in Transvaal collecting money for the Mosque and to send to the poor in India. My mother was a strong woman and so too was my father a strong man. They managed to stay calm when the news of their son's death broke.
13. We were told that Hoosen committed suicide, but we did not believe it. In our culture, suicide is not permissible. This was known to Hoosen. If one commits suicide, in Islam, it is a sin, and you are not permitted to be buried in the same section of the cemetery. There is a section reserved for those that commit suicide. Hoosen was buried inside the designated area, that is not outside the cemetery, after his body was bathed (Ghusi) as is required in our culture.
14. Hoosen's friend, Amena Motala, who identified his body at the government mortuary in Gale Street, Durban observed that Hoosen's face was severely swollen, he had many bruises on his body and head and burn marks underneath the soles of his feet. At the time we did not know that Hoosen was **arrested and tortured by the Security Branch. The injuries to Hoosen's body and the presence of the Security Branch raised questions about the circumstances in which he died.**

EC ABH

15. I remember shortly after Hoosen's death, the Security Branch raided our parental home one evening around midnight. They searched my mother's room and Hoosen's room. Yusuf, my eldest brother, refused to let them search his room. According to me, Hoosen was never involved in politics. I could not understand the Security Branch's interest in Hoosen and their involvement in his death.

The 1978 inquest

16. In 1977 and 1978 an inquest was held to ascertain the facts surrounding Hoosen's death ("**the 1978 inquest**"). Our family's lawyers made the case that Hoosen was severely and deliberately tortured. We argued that he died as a result of the torture because we did not believe that he committed suicide.
17. The version of the Security Branch was that Hoosen suffered the terrible injuries to his body because he resisted his arrest. They refuted the claims that he was tortured. They said that Hoosen was found hanging from the door of his cell at the Brighton Beach Police Station and that he had committed suicide.
18. The inquest court agreed with the Security Branch and concluded that Hoosen committed suicide. It found that nobody was responsible for his death. There was no justice for my brother.

The Truth and Reconciliation Commission

19. In 1997 my mother appealed to the Truth and Reconciliation Commission ("**TRC**") to investigate and establish the truth behind Hoosen's death because she did not believe that he committed suicide.

SC ABL

20. None of the Security Branch members who were involved in Hoosen's arrest, detention, torture or death applied for amnesty to the TRC. But in another matter, the killing of Dr Richard Turner, former Security Branch policeman, Mohun Deva Gopal, stated that he was present when Hoosen was interrogated, assaulted and tortured.
21. The TRC concluded that it was likely that Hoosen died in detention as a result of the assaults and torture that he endured. It found that his death was a gross violation of human rights.
22. The TRC legislation held the promise that police officers who committed crimes during apartheid, such as assault, torture and murder, that were not amnestied would be investigated and prosecuted. This should have applied to the Security Branch members who were responsible for Hoosen's death because they did not apply for amnesty for the crimes that they committed.

The impact of Hoosen's death on our family

23. Hoosen's death had a huge impact on our family. our family suffered tremendously.
24. Yusuf's focal point in life became the search for the truth behind Hoosen's death. Yusuf would hang photos of the Security Branch officials, Captain Petrus Lodewikus du Toit ("**Du Toit**") and Lieutenant James Brough Taylor ("**Taylor**") outside our shop window with a caption which read "Who killed Hoosen?". Du Toit and Taylor were involved in Hoosen's arrest, and they advanced the false narrative in the 1978 inquest that Hoosen committed suicide in detention.

EC ABL

25. Yusuf sued the Minister of Police on behalf of our family. The amount that was paid out was distributed to all those that assisted the family financially after my brother's death. The Professional Fund refused to pay out because the inquest court found that Hoosen committed suicide.
26. Yusuf changed completely as time passed. He became involved in politics but withdrew from society and his family. He made it his duty to investigate Hoosen's death. He explored every avenue that he could find. Sadly, he passed away in September 2009 without obtaining justice for Hoosen.
27. My father was a fit man before Hoosen's death. Everything changed when he lost his son. He died with a broken heart in May 1986 without knowing why his son was killed.
28. My mother's life changed as well. She became withdrawn and spent a lot of time reading newspapers and searching for articles about Hoosen. She wrote to newspapers editors to tell them about Hoosen. She made her feelings and suspicions about his death known and a series of articles about Hoosen's death was published. My mother passed away in 2011 at the age of 89 years without knowing the truth of how her son died in detention.

The continued pursuit for truth and justice

29. Yusuf led our family's quest to find truth and justice for Hoosen. He pursued this quest tirelessly until his death in 2009. My brother, Ismail, and I had to continue this quest. We owed it to Hoosen, my father, Yusuf and later my mother.



30. Despite the recommendation made by the TRC that apartheid perpetrators who were not amnestied should be held to account, the authorities of the democratic government failed us. Justice has remained out of reach. We attempted for decades to get the authorities to act in Hoosen's case because we knew that the finding of the 1978 inquest was a farce. In 2016 we submitted joint representations with the family of the late Dr Neil Aggett to the National Director of Public Prosecutions to have the inquests into Neil and Hoosen's deaths in detention reopened.
31. In October 2017, the National Prosecuting Authority ("NPA"), led by Adv Shubnum Singh, began an investigation into Hoosen's death. Adv Singh located several key witnesses, and with the help of an expert, conducted technical tests in the cell where Hoosen had died to determine if there was sufficient evidence to request the Minister of Justice to reopen the inquest.
32. The reopening of the inquest was approved on 18 September 2018 but the process was delayed and in August 2019, on the eve of the 42nd anniversary of Hoosen's death, the NPA informed our family that the inquest would not be reopened because it was in the process of conducting further investigations. Our lawyers had to threaten the the Minister of Justice NPA with litigation to have the inquest reopened. Families should not have had to take drastic steps like this.
33. On 16 August 2019 the Minister of Justice released a press statement announcing that the inquests into the deaths of Hoosen and Dr Neil Aggett would be reopened. James Taylor, the last surviving lead interrogator and torturer of Hoosen died 3 days later on 19 August 2019.

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'SC' or similar initials. The second signature is a more elaborate, cursive signature that appears to be 'ABH' or similar.

34. indeed, none of the leading role players behind the torture and murder of Hoosen lived long enough to appear before the reopened inquest. This was the terrible cost of delay.
35. The re-opened inquest commenced in the Pietermaritzburg High Court on 16 August 2021 and judgment was delivered by Judge ZP Nkosi on 23 September 2023.
36. Judge Nkosi overturned the findings of the 1978 inquest. The Judge found that:
- 36.1 Hoosen's death could be attributed to two possibilities. The first was that he died from a cardiac incident that occurred while he was tortured by the Security Branch members. The second was that he died from a cardiac incident that was caused by ligature constriction applied by the Security Branch members either while he was less conscious, unconscious or debilitated.
- 36.2 The police officers primarily responsible for the torture and murder of Hoosen were Du Toit and Taylor (the two members who convinced the 1978 inquest that Hoosen died by suicide).
- 36.3 The Security Branch members who were involved in the interrogation, torture and cover-up of Hoosen's death were Brigadier Steenkamp, Commander of the Durban Security Branch, Colonel Ignatius Gerhard Coetzee, second in command of the Durban Security Branch; Major Joseph Benjamin; Lieutenant Vic MacPherson; Warrant Officer Shunmugam (Schrewds) Govender; Sergeant Veera Ragalulu Naidoo



(VR Naidoo), and Mohan Deva Gopal (who made the statement to the TRC).

36.4 The members of the South African Police Uniform Branch at Brighton Beach Police Station who turned a blind eye and helped to facilitate the cover-up of Hoosen's death were Constables Johannes Nicolaas Meyer, Derek Hugh Naude and Shadrack Madlala.

37. Du Toit died on 15 April 2008; Benjamin died on 16 December 2010; MacPherson died on 20 April 2017; and Taylor died on 19 August 2019. Except for Naidoo and Gopal all the other Security Branch members have either died or could not be traced.

38. The Judge recommended that Gopal and Naidoo should be prosecuted for their role in Hoosen's murder and that charges of perjury should be proffered against Naude, Meyer and Matheevathinee Benjamin who handed Hoosen over to the Security Branch in 1977.

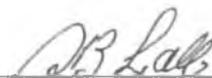
Conclusion

39. I support the relief that is sought in this application.

40. If the authorities had investigated Hoosen's murder at the conclusion for the TRC or any time shortly thereafter, as they were required to do by law, we could have seen justice done in his case. My mother and brother could have gone to their graves in peace knowing who was responsible for Hoosen's murder. They were all denied this closure.

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive mark that appears to be 'SB'. The second signature is more legible, appearing to be 'ABL' with a flourish underneath.

41. We could also have heard from the perpetrators who could have faced justice in their lifetimes. It is heart breaking to know that our family lived with the pain of Hoosen death engraved in our hearts while those responsible for the murder of a 26-year-old, who had his whole life left to live, spent the remainder of their lives living freely and without the slightest concern about their past crimes
42. We now know that the TRC cases were deliberately suppressed. The political interference by South Africa's post-apartheid government caused grave harm to our family and many other families. It is truly unacceptable that those in high office could deprive us of truth and justice. We demand to know why this abomination of justice happened.
43. We accordingly support the relief sought against the President compelling him to appoint an independent and open independent commission of inquiry, with all the necessary powers, to get to the bottom of the political suppression of the TRC cases.
44. We also support the claim for constitutional damages to vindicate the violations of our rights to human dignity, equality under law and the rule of law. These damages will help us to memorialise our loved ones who died at the hands of the apartheid regime. Constitutional damages will also assist other families to seek justice, truth and closure.



SARAH BIBI LALL



The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

Pietermaritzburg this the 15th day of October 2024.

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| SOUTH AFRICAN POLICE |
| MAGISTRATE COURT |
| 2024 -10- 15 |
| PIETERMARITZBURG |
| KWAZULU-NATAL |

Chetty L/Cob

COMMISSIONER OF OATHS Lt Colonel

Full Names: SURAYA CHETTY
 Business Address: Pietermaritzburg
 Designation: Lt Colonel

Abd. B

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA 1st Applicant

ALEGRIA KUTSAKA NYOKA 2nd Applicant

BONAKELE JACOBS 3rd Applicant

FATIEMA HARON-MASOET 4th Applicant

TRYPHINA NOMANDLOVU MOKGATLE 5th Applicant

KARL ANDREW WEBER 6th Applicant

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

KIM TURNER 7th Applicant

LYNDENE PAGE 8th Applicant

TAYLA ILSLEY
BA Law (UP) - LLB (UP)
Commissioner of Oaths
Ex Officio / Practising Attorney R.S.A
THE LEONARDO
75 Maude Street, Office Level 12,
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MBUSO KHOZA 9th Applicant

NEVILLE BELING 10th Applicant

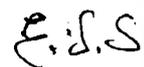
NOMBUYISELO MHLAULI 11th Applicant

18/01/2025


SARAH BIBI LALL 12th Applicant

SIZAKELE ERNESTINA SIMELANE 13th Applicant

SINDISWA ELIZABETH MKONTO 14th Applicant


K.C.

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| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
| TSHIDISO MOTASI | 18 th Applicant |
| NOMALI RITA GALELA | 19 th Applicant |
| PHUMEZA MANDISA HASHE | 20 th Applicant |
| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| MOGAPI SOLOMON TLHAPI | 22 nd Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 23 rd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

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SUPPORTING AFFIDAVIT – SIZAKELE ERNESTINA SIMELANE

I, the undersigned,

SIZAKELE ERNESTINA SIMELANE

do hereby make oath and state as follows:

1. I am an adult female pensioner and the mother of the late Nokuthula Aurelia Simelane.
2. I am the 13th Applicant in this application.
3. Nokuthula was my first child. I gave birth to her when I was 19 years old. I am now 84 years old. Nokuthula's father and my husband, Tiny Matthew Simelane, died in March 2001. He never found out what happened to our daughter. We still don't know what happened to her. We have endured daily agony since her disappearance in 1983.
4. Nokuthula operated as a courier for Umkhonto we Sizwe, the military wing of the African National Congress, between South Africa and Swaziland. In September 1983, she was abducted and brutally tortured by members of the Security Branch of the former South African Police. Nokuthula was never seen again.
5. We have not been able to bury Nokuthula's remains with the dignity and respect that she deserves. I desperately want to do this before I die. Until we can do this, we will have no closure.
6. We know that Nokuthula refused to collaborate with the apartheid security forces. We know they tortured her brutally. They ultimately murdered her and secretly

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disposed of her remains. We know that it was routine practice for the Security Branch to murder their captives if they refused to collaborate. They often concealed their remains in a manner that made discovery unlikely, if not impossible.

7. We feel deeply betrayed. Nokuthula was betrayed by one of her own cadres. The TRC's Amnesty Committee ("AC") granted the white officers amnesty for kidnapping even though they found that these same individuals had lied about what they did to her during her captivity, and they made false claims that Nokuthula was cooperating with them. This was an inexplicable betrayal of the full disclosure principle on the part of the AC.
8. We then expected the various post-apartheid governments to pursue justice in Nokuthula's case. They turned their backs on us. Prosecutors even refused to investigate those police officers who did not apply for amnesty for the kidnapping of Nokuthula. This included the Commander of Security Branch C1 Section, former Brigadier Willem Schoon, who authorised the crimes committed against Nokuthula. He has since died.
9. We expected that with liberation a new post-apartheid government would stand with us, and they would hold the perpetrators to account. We were wrong. Rather than standing with the victims, successive post-apartheid governments found ways to shield apartheid-era perpetrators from justice. This betrayal cut the deepest.
10. Our pleas since the mid-1990s for a proper investigation fell on deaf ears. When we gave up on a prosecution of the known suspects and sought an inquest in

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2013 this was refused. The refusal forced us to launch an application to court in 2015 to force the prosecutors to make a decision in Nokuthula's case.

11. Only when we launched this case, did the NPA act which resulted in indictments being issued in early 2016. Since then, two of the four accused have died and another claims he is mentally unfit to stand trial. Eight years later we are still waiting for the trial to begin. We fear that by the time trial starts, there will be nobody alive, or mentally fit, to stand trial.
12. I have suffered emotionally, psychologically and physically as a result of my daughter's disappearance. This suffering has been heightened by the duplicitous conduct of the police and prosecutors who ought to have upheld the rule of law, but, acting at the behest of politicians, deliberately blocked Nokhuthula's case from going forward, as well as other cases from the past.
13. I support the relief claimed in this application. Constitutional damages will help us commemorate Nokuthula and her sacrifices and will help other families reach truth and closure. I also support the relief requiring an independent and public commission of inquiry to be established to determine the truth regarding the political suppression of the TRC cases.

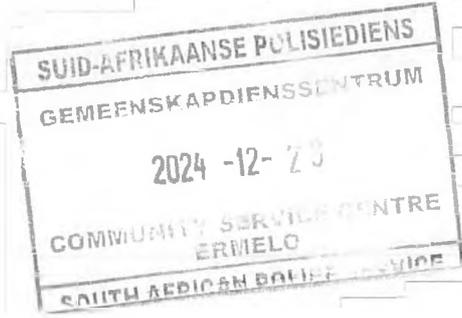


SIZAKELE ERNESTINA SIMELANE

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The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

Ermeelo on this the 23 day of December 2024.



Tommasi
[Signature]
COMMISSIONER OF OATHS

Full Names: *Lebucina Xolani*
Business Address: *24 JAN VAN RIEBEEK*
Designation: *SERGEANT*

S.E.S
X.C

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

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- ALEGRIA KUTSAKA NYOKA 2nd Applicant
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- SARAH BIBI LALL 12th Applicant
- SIZAKELE ERNESTINA SIMELANE 13th Applicant
- SINDISWA ELIZABETH MKONTO 14th Applicant

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
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18/01/2025



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| THULI KUBHEKA | 16 th Applicant |
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| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

SUPPORTING AFFIDAVIT – SINDISWA ELIZABETH MKONTO

I, the undersigned,

SINDISWA ELIZABETH MKONTO

do hereby make oath and state as follows:

1. I am an adult female pensioner currently residing in Cradock in the Eastern Cape. I was born on 1 September 1955. My husband is the late Sparrow Mkonto (hereinafter referred to as "**Sparrow**" or "**my husband**").
2. I am the 14th Applicant in this application.
3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
4. I depose to this affidavit on behalf of myself and my son, Lonwabo Mkonto.
5. On 27 June 1985, Sparrow, Matthew Goniwe, Sicelo Mhlauli and Fort Calata were abducted and murdered by members of the Security Branch of the former South African Police. Days after they had disappeared, their bodies were found, badly burnt with numerous gunshot and stab wounds. Sparrow, Matthew, Sicelo and Fort became known as the Cradock Four.
6. The story of the Cradock Four and our attempts to pursue justice in their case is dealt with extensively in the founding affidavit deposed to by Lukhanyo Calata. I confirm the contents of his affidavit in so far as they relate to

the Cradock Four, my husband and our decades long pursuit for justice. To avoid repetition, I will not repeat the story of the Cradock Four in this affidavit.

7. On 16 April 1996, I presented a plea for justice to the Human Rights Violations Committee of the Truth and Reconciliation Commission ("TRC"). I was supported by the other widows of the Cradock Four and they too presented statements on the same day.
8. In my statement, I told the Committee that my husband was everything to me. He did everything for me and my son. His murder rendered me a widow and left my son without a father. The impact that Sparrow's murder had on our lives is incomprehensible.
9. I requested that a thorough investigation into the Cradock Four case be conducted so that justice could be done. I asked the TRC to assist me with my son's education.
10. The TRC recognised Sparrow as a victim of gross human rights violations, and I received reparations in the meagre amount of R30 000.00. The reparations were wholly inadequate, and it failed dismally to elevate us from our suffering.
11. The pain, suffering and violation that we suffered in 1985 was not relieved with the passage of time. The turn of democracy brought with it the hope that our suffering, pain and violation would be vindicated. We expected that the truth would be pursued by the government, that those who murdered our husbands would be held accountable, and that justice would prevail. Sadly, justice remained out of reach for the Cradock Four in the thirty years of democracy.

12. We support the relief sought in this application. It was heartbreaking to learn that high ranking government officials were responsible for the suppression of TRC cases. We deserve to know why these officials thought that they could deny us justice. We demand to know how this happened. We also support the claim for constitutional damages to vindicate our deeply violated rights.

S. Mkonto

SINDISWA ELIZABETH MKONTO

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at CRADOCK SAPS on this the 22 day of OCT 2024.

*05348064
Mongiso Sizwe*

COMMISSIONER OF OATHS



Full Names: *MONGISO SIZWE*
Business Address: *1 SIKHULU STR CRADOCK S.A.P*
Designation: *WARRANT OFFICER*

1065

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

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ALEGRIA KUTSAKA NYOKA 2nd Applicant

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FATIEMA HARON-MASOET 4th Applicant

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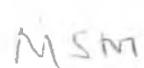

NOMBUYISELO MHLAULI 11th Applicant

SARAH BIBI LALL 12th Applicant

SIZAKELE ERNESTINA SIMELANE 13th Applicant

SINDISWA ELIZABETH MKONTO 14th Applicant

STEPHANS MBUTI MABELANE 15th Applicant



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SUPPORTING AFFIDAVIT - STEPHANS MBUTI MABELANE

I, the undersigned,

STEPHANS MBUTI MABELANE

do hereby make oath and state as follows:

Introduction

1. I am an adult male born on 5 April 1957. I am the brother of the late Matthews Mabelane ("**Matthews**" or "**my brother**") and the 15th Applicant in this application.
2. Matthews died in detention on 15 February 1977, whilst under interrogation by the notorious Security Branch ("**SB**"), at the John Vorster Square police station ("**JVS**"). He was only 22 years old at the time of his death.
3. The facts deposed to in this affidavit are within my knowledge, unless otherwise stated or indicated by the context, and are true and correct to the best of my knowledge.
4. I depose to this affidavit on behalf of the surviving members of the Mabelane family.

The life of Matthews Mabelane

5. Matthews was born in 1954 in Soweto. He was the third born of six children. In 1958, our family was forcefully removed from our home in Sophiatown under the Natives Resettlement Act of 1954. The apartheid government relocated our family to Zone 1, Meadowlands where Matthews grew up.

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6. Matthews attended Madibane High School in Diepkloof, Soweto and it was during his high school career that he became politically active. Together with other students from Soweto, Matthews vehemently opposed the apartheid regime and the policies that affected the daily living of black people in South Africa.
7. Matthews joined the Soweto Students Representative Council ("**SSRC**"). The SSRC then was led by Mr Tsietsi Mashinini who died many years later in exile under mysterious circumstances. The SSRC comprised of students from different schools in Soweto. At first, it was formed as an Action Committee of the South African Students Movement. The SSRC led the 16 June 1976 mass student demonstration in Soweto to which the apartheid government responded with brutal violence.
8. During the 1976 student uprisings in Soweto, Matthews and several other students from Madibane High School mobilised against the adoption of Afrikaans as compulsory medium of instruction in terms of the Bantu Education Act of 1953. On 13 June 1976, scores of students gathered at the Orlando Donaldson Community Hall in Soweto to discuss the imposition of the Bantu Education system. The students decided to protest peacefully on 16 June 1976. Over the ensuing days, hundreds of protesting students were gunned down by the South African Police ("**SAP**").
9. After the 16 June 1976 demonstrations, the apartheid police apparatus went into full swing in search of student leaders of the SSRC. Out of fear of arrest, Matthews went into hiding.
10. In late 1976, Matthews joined uMkhonto we Sizwe ("**MK**"), the armed wing of the ANC. He left Meadowlands for Botswana in October 1976 to undergo

military training. Matthews intended to join the liberation struggle to fight the apartheid government in a more direct and militant manner.

Matthew's death in detention

11. On 21 January 1977, my brother was apprehended by the police near Zeerust while crossing back into South Africa from Botswana. He was detained in terms of section 6(1) of the Terrorism Act. This was after the Minister of Police, Jimmy Kruger, announced that amnesty would be granted to children who left South Africa to join liberation movements.
12. After a few days which cannot be accounted for, Matthews was booked into JVS on 27 January 1977. No explanation has been provided by the police as to what they did with him between 21 and 27 January 1977. He was never charged with any criminal offence. Given the modus operandi of the SB, it is likely that Matthews was subjected to torture prior to his detention at JVS.
13. Matthews was detained, interrogated, and most likely tortured for 19 days before he fell to his death from the infamous 10th floor of JVS on 15 February 1977. According to statements made by SB members at the subsequent inquest, on 15 February 1977 at approximately 08h40, Matthews arrived at the interrogation room on the 10th floor for questioning. There were three officers in the room at the time, namely Warrant Officers Leana Viljoen and Petrus Daniel Jordaan and Sergeant Jacobus Johannes Cilliers.
14. Shortly after the commencement of the interrogation, the questioning was interrupted as Warrant Officer Jordaan was apparently summoned to the lifts by a telephone call. According to Jordaan's statement, he claimed that he told Matthews that he expected his father to be waiting for him at the lift, and that he "was going to quickly get his father".

15. Whilst the interrogation was adjourned, the police members alleged that Matthews tried to escape from police custody. They claimed that he dashed for the window, exited the window and began walking along a ledge on the outer wall when he lost his balance and fell. The police allege that the two police officials present in the office were unable to stop him. According to the police, Matthews fell and cleared the roof of the garage and landed on the bonnet of a vehicle in the car park some six meters away from the edge of the building.
16. When our family retrieved Matthews' body from the government mortuary, my father discovered a disturbing message on the lining of his trousers which Matthews had written for our brother, Lasch Mabelane. The message read:
"Brother Lasch, tell mother and my other brothers that the police will push me from the tenth floor. I bid you farewell."

Questions surrounding Matthews' death

17. An inquest into Matthews' death was held at the Johannesburg Magistrates Court on 30 May 1977, under inquest number 287/77. The inquest was presided over by Magistrate WP Dormehl. The prosecutor in the inquest was Mr NJ van Vuren. Evidence by the State comprised entirely of evidence from the police officials who participated in Matthews' arrest, detention and/or interrogation.
18. As the family, we were not afforded an opportunity to lead evidence during the inquest and the process was concluded within a day without any medical information being presented, aside from the state's post-mortem report. No cross-examination of the witnesses was conducted.

19. The Court accepted without question the version of events provided by the police. Accordingly, Magistrate WP Dormehl found that Matthews died of multiple injuries which he sustained after he accidentally fell to his death from a ledge on the 10th floor of JVS. He concluded that there was nobody to blame for the death.
20. Our family, in particular our father, never accepted the police version or the finding of the inquest. The manner in which Matthews passed away was similar to the deaths of other activists during detention under the Terrorism Act.
21. On 20 February 1979, the United Nations Special Committee against Apartheid reported on Matthews' death. The Special Committee rejected the inquest finding remarking that "it would be absurd to suggest that [Matthews] attempted to escape through a window of the tenth floor of a building".

The Truth and Reconciliation Commission

22. When the TRC commenced its work in 1996, we were hopeful that the police officers who were implicated in Matthews' death would apply for amnesty so that the truth could be revealed and that we could have justice for Matthews. This did not happen.
23. My father, Phillip Mabelane, presented his story before the TRC's Human Rights Violations Committee on 23 July 1996. My father testified that on 16 February 1977, two police officers, one white and one black, came to our home and instructed him to accompany them to JVS because, as they explained in Afrikaans, Matthews had misbehaved. My father testified that:

"We went to the tenth floor where they told me that my child was there and was interrogated and jumped through the window and fell down from

the tenth floor. I asked how did he come through because he was in your hands. No, we just saw him, suddenly we saw him going through the window.

"After that they told me that ... I do not have the right to take any steps regarding this matter, according to the law. All I could do is for them to release the corpse to me that I should bury it myself. Truly, I did that, I buried my son."

24. The TRC, at volume 3, chapter 6 of its final report, found "the former state, the minister of police and the commissioner of police at the time responsible for the death in custody of Mr Matthews Mabelane and for the gross violation of human rights."

The Family's Truth-Seeking Process

25. We do not believe the inquest finding that nobody was to blame for the death of Matthews, and we have been pushing to reopen the inquest for several years, without success. We were greatly encouraged by the historic reopening of the inquest into the death in detention of Ahmed Timol. My brother, Lasch, attended much of the hearing and asked the lawyers representing the Timol family to take up the case of Matthews.
26. Our struggle for truth and justice was spearheaded by my father, Philip Mabelane and Lasch. My father died on 9 May 2018, while Lasch died on 6 August 2020, without reaching closure.
27. We had hoped that after all these years those responsible for my brother's death would come forward with the truth. It is clear that unless they are forced to talk about what happened they will remain silent. Only a reopened inquest

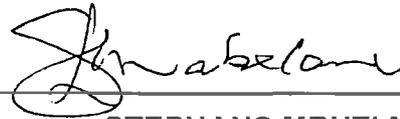
can do this, but time is running out. Some of those involved have already died and those still alive are now elderly.

28. Our lawyers have submitted formal submissions for the reopening of the inquest. For several years they have been applying pressure on the NPA and DPCI to finalise their investigations and to make a decision in my brother's case. However, some 47 years after my brother's death in detention there is still no decision. We see little urgency being applied to our case by the authorities. Indeed, we have the unfortunate impression that the investigations are being dragged out for as long as possible.

Conclusion

29. We were appalled and shocked to hear that political interference following the closure of the TRC suppressed hundreds of apartheid-era cases, including my brother's case. We want to know how such an abomination of justice could take place in the new democratic South Africa. We feel utterly betrayed.
30. If the death of Matthews had been investigated promptly after the closing of the TRC we could have received closure. More suspects and witnesses would have been alive, and leads could have been followed. There must be a reckoning for the deliberate decisions that have denied us truth and justice.
31. We accordingly endorse the application for an independent commission of inquiry with the necessary powers to get to the bottom of the suppression of the TRC cases. It seems clear that the government is deeply embarrassed about its role in closing down our cases, hence the refusal to establish an inquiry. If the President persists in refusing to help us get to the truth, he must be forced to do so.

32. We also support the claim for constitutional damages to vindicate our human rights which have been deeply violated by the suppression of our cases. Since the policing and justice authorities have proven themselves incapable or unwilling to pursue justice, we will use such funds to pursue truth and justice ourselves. We will also be able to properly commemorate the memory of our loved ones.

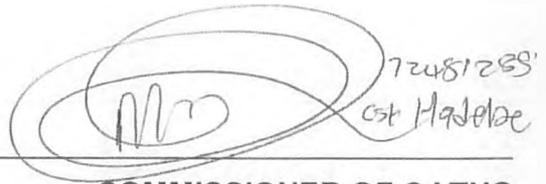


STEPHANS MBUTI MABELANE

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

JHB Central on this the 24 day of 10 2024.

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|-------------------------------------|
| SOUTH AFRICAN POLICE SERVICE |
| CLIENT SERVICE CENTRE |
| 2024 -10- 24 |
| JOHANNESBURG CENTRAL |
| SUID-AFRIKAANSE POLISIEDIENS |



COMMISSIONER OF OATHS

Full Names: Mbongiseni Mabele

Business Address: 1 commissioner Street

Designation: JHB Central

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA 1st Applicant

ALEGRIA KUTSAKA NYOKA 2nd Applicant

BONAKELE JACOBS 3rd Applicant

FATIEMA HARON-MASOET 4th Applicant

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KARL ANDREW WEBER 6th Applicant

KIM TURNER 7th Applicant

LYNDENE PAGE 8th Applicant

MBUSO KHOZA 9th Applicant

NEVILLE BELING 10th Applicant

NOMBUYISELO MHLAULI 11th Applicant

SARAH BIBI LALL 12th Applicant

SIZAKELE ERNESTINA SIMELANE 13th Applicant

SINDISWA ELIZABETH MKONTO 14th Applicant

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

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BA Law (UP) – LLB (UP)
Commissioner of Oaths
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18/01/2025

TK ASM

| | |
|--|------------------------------|
| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
| TSHIDISO MOTASI | 18 th Applicant |
| NOMALI RITA GALELA | 19 th Applicant |
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| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 22 nd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | • 6 th Respondent |
| SOUTH AFRICAN HUMAN RIGHTS COMMISSION | 7 th Respondent |

T.K
ASM

SUPPORTING AFFIDAVIT – THULI KUBHEKA

I, the undersigned,

THULI KUBHEKA

do hereby make oath and state as follows:

Introduction

1. I am an adult woman, resident in KwaZulu-Natal. I am the only remaining child of Ntombikayise Kubheka ("**Ntombi**" or my "**mother**").
2. I am the 16th Applicant in this application.
3. Unless the context indicates otherwise, the facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, both true and correct.
4. I depose to this affidavit on behalf of myself and generally on behalf of my family.

Ntombikayise Kubheka

5. My mother was born and raised in KwaMashu, Durban, KwaZulu Natal. She was politically active and believed greatly in the vision of democracy that compelled many to take up the fight against the apartheid regime. Ntombi was an operative for the African National Congress' armed wing, uMkhonto weSizwe.
6. Ntombi's activities aroused the suspicions of the Security Branch ("**SB**") of the then South African Police. In particular, the notorious Vlakplaas unit of the SB

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- (also known as "C1") sought to obtain information on Ntombi's activities involving MK operatives in and outside of South Africa.
7. Together with the Natal branch of the SB, askaris from Vlakplaas, were instructed to infiltrate Ntombi's networks in an effort to get her to divulge information regarding the liberation movement.
 8. Ntombi's network was infiltrated by Xola Frank Mbane ("Mbane"), Nicholas Dube ("Dube") and Spyker Myeza. They were askaris based at Vlakplaas under the command of the infamous Eugene De Kock.
 9. TRC documents record that Ntombi sought the assistance of the askaris to assist Musawakhe 'Sbho' Phewa ("Phewa") with the collection of firearms from Transkei. Unbeknownst to Ntombi, her plea for assistance would lead Phewa to his death.
 10. Ntombi never saw nor heard back from Phewa. The TRC records show that Ntombi grew increasingly suspicious of Mbane and Dube. This presented a problem for the SB and they sought to murder Ntombi.
 11. During May 1987 Ntombi was abducted. The operation was handled by Mbane operating with Dube, and other SB operatives who included Hentie Botha ("Botha"), Laurie Wasserman ("Wasserman"), Cassie van der Westhuizen ("Van der Westhuizen"), Joe Coetzee, Warrant Officer Basson, Salmon du Preez ("Du Preez"), Roelof Baker and Andy Taylor ("Taylor").

T.K
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The TRC

12. At the TRC, there were differing accounts as to what exactly happened after Ntombi was abducted. It appeared that after Ntombi was abducted at Battery Beach in Durban, and she was driven to an abandoned shooting range in Winkelspruit, on the South Coast.
13. At Winkelspruit, Ntombi was handed over to Taylor who then "interrogated" her along with his colleagues. I say "interrogated," because that is what is noted in the TRC records. It is, however, likely that Ntombi was tortured by Taylor and his colleagues for soon thereafter, she allegedly passed from an apparent heart attack.
14. In the TRC records, it is alleged that Du Preez and Wasserman were instructed to dump Ntombi's body in an area close to KwaMashu where she would be easily identified by passersby.
15. Ntombi's body was later buried in a paupers' grave for it was never identified. The TRC investigation unit exhumed Ntombi's remains, and forensic analysis revealed that the remains were indeed those of Ntombi.
16. Ntombi's skull was positively identified. In a twist from what was claimed by the SB, it was discovered that Ntombi's skull had a bullet wound. She had been fatally shot.
17. Ultimately, Botha, Du Preez, Wasserman and Van der Westhuizen were denied amnesty by the TRC.

T. R.
MSM

Post the TRC

18. It was the promise of the TRC that those who were refused amnesty would be referred for prosecution. Indeed, my mother's case and hundreds of other cases were referred by the TRC to National Prosecuting Authority ("NPA"). As such, it was our collective hope that the NPA would undertake this task without delay.
19. What followed the TRC, however, was a deafening silence and an all-consuming lethargy on the part of the NPA. There was no movement in the matter until 24 October 2022 when the NPA announced that it would open an inquest into the death of Ntombi. In November 2023 the Director of Public Prosecutions in KwaZulu-Natal decided to prosecute 5 persons in relation to the murder of my mother. As of August 2024, they had still not been formally indicted.
20. The inquest or prosecution of those perpetrators who are still alive is yet to commence. It has now been 37 years since Ntombi was brutally murdered and discarded like an animal.

Conclusion

21. I support the relief sought in this application.
22. I demand an independent and open commission of inquiry to get to the bottom of why my mother's case was suppressed post the TRC. I want to know why those behind the suppression saw fit to denigrate the memory of my mother who gave her life for South Africa's democracy.
23. I want to know why they treated the families who lost loved ones as second-class citizens not worthy of respect under the Constitution.

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24. I also support the call for constitutional damages to be paid to vindicate our deeply violated rights and, at long last, to properly commemorate my mother and her contribution to our freedom. We also need these damages to fight for truth, justice and closure because we do not trust the state to do so. The post-apartheid state has betrayed us.

TPubheka

THULI KUBHEKA

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

Johannesburg on this the 11th day of OCT 2024.

A. S. Mayet

COMMISSIONER OF OATHS

Full Names: Ahmed Shabir Mayet

Business Address:

Designation:

A. S. MAYET
Commissioner of Oaths
Practising Attorney
401 Elizabeth House
18 Pritchard Street
Johannesburg

11/11/2024

[Signature]

IN THE HIGH COURT OF SOUTH AFRICA
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- SIZAKELE ERNESTINA SIMELANE 13th Applicant
- SINDISWA ELIZABETH MKONTO 14th Applicant

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
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18/01/2025



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| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
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| NOMALI RITA GALELA | 19 th Applicant |
| PHUMEZA MANDISA HASHE | 20 th Applicant |
| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| MOGAPI SOLOMON TLHAPI | 22 nd Applicant |
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| and | |
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| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |


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SUPPORTING AFFIDAVIT – HLEKANI EDITH RIKHOTSO

I, the undersigned,

HLEKANI EDITH RIKHOTSO

do hereby make oath and state as follows:

Introduction

1. I am a pensioner and the sister of Ignatius 'Iggy' Mthebule. I am also the 17th Applicant in this application.
2. The facts deposed to in this affidavit are within my knowledge, and unless otherwise stated or indicated by the context, are true and correct to the best of my knowledge. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be correct.
3. I also depose to this affidavit on behalf of my family.

Ignatius Mthebule

4. As I will explain in this affidavit, I do not know whether my brother is dead or alive; and if he is dead, where his remains are.
5. Ignatius Mthebule, or Iggy as he was known and as I will refer to him in this affidavit, was born and primarily grew up in Tzaneen in Limpopo where he did both his primary and secondary schooling.
6. In the year 1974, Iggy enrolled at the University of the North, as it then was, where he read for a Bachelor of Commerce degree. The University of the North

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- was at that time one of few higher education institutions established exclusively for Black people.
7. It was during his time at the University of the North that Iggy became a student activist and one of the founding members of the Azanian Students Organisation ("AZASO"), which I understand was aligned to the African National Congress ("ANC"). In 1977, Iggy became formally involved in the underground operations of the ANC. He was eventually expelled from the university, whereafter he relocated to Johannesburg to live with me in or around 1979. At the time, Iggy worked full time for AZASO, and he had interactions with comrades who were exiled in Swaziland and Mozambique.
 8. In June 1981 Iggy left for Mozambique. He was supposed to return from this trip, but he did not realise that within his AZASO office someone was passing information about his activities to a journalist, Willie Bokala. Shortly after Iggy's departure, the Sowetan newspaper published an article which revealed that Iggy had skipped the country. We learned from the Sowetan Newspaper that Iggy had gone into exile.
 9. The public report about Iggy's departure from the country prevented him from returning. At the time, we did not know exactly where he was, until we received two unaddressed letters indicating that he was still alive. Through the ANC, we were able to clandestinely meet with Iggy and became privy to his activities. He underwent military training for the ANC and its armed wing, uMkhonto weSizwe ("MK") in Swaziland, Mozambique and Czechoslovakia.
 10. Despite being prevented from returning to South Africa, Iggy continued to secretly enter and exit South Africa. Everything pertaining to his movements and

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whereabouts was on a need-to-know basis. As such, we never questioned his whereabouts or activities.

11. We understand that around 1983, under the instructions of the ANC, Iggy established an underground unit known as the "Transvaal Urban Unit," code named the "Grace Unit," which was based in the East Rand of the then Transvaal (the "**Unit**"). The Unit consisted of about 15 members who were mostly trainees of the MK. Some surviving members of the Unit under Iggy's command are Peter Mangwane, JZ Cheela, Totsie Busisiwe Memela Khambula (current CEO of the South African Social Security Agency), retired South African National Defence Force Major General Ntshiki Memela-Motumi and current ANC and South African Deputy President Paul Mashatile.
12. The Unit reported to Sue Rabkin ("**Rabkin**"), a member of the ANC Regional Politico-Military Committee ("**RPMC**"), who in turn reported to former South African President Jacob Zuma ("**Zuma**") who was then the ANC's chief representative in Mozambique, based in Maputo.
13. Our understanding is that one Joy Harnden ("**Harnden**"), a former state security branch ("**SB**") agent under the command of one Alfred Oosthuizen ("**Oosthuizen**"), established connections with one Sheila Weinberg ("**Weinberg**"), the daughter of Eli and Violet Weinberg, both of whom were members of the ANC and the South African Communist Party. At the time, Weinberg was an executive member of the Transvaal Rural Action Committee of the Black Sash and she was banned. Oblivious to Harnden's SB connections, Sheila invited Harnden on a visit to see her ailing mother in Mozambique. The

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SB saw this as an opportunity to infiltrate the ANC in Mozambique because of Harnden's proximity to the then banned ANC.

14. In Mozambique and under the instructions of Zuma, Harnden was introduced by Weinberg as an activist and member of the Black Sash, and was linked to the Unit with the understanding that she will assist the Unit with much needed resources in its operations.
15. Iggy was one of the anti-apartheid activists who Harnden had been introduced to in Mozambique, and about six months later, around 1986, Iggy re-connected with Harnden in Johannesburg.* They met a few times, but Iggy failed to turn up for what would be his last pre-arranged meeting with Harnden.

Iggy's disappearance

16. Post the unbanning of the ANC, Iggy did not return along with the other political exiles. He was unaccounted for, and we enquired with the ANC's national, regional and provincial structures to establish details about his whereabouts.
17. In 1991 we secured a meeting with Zuma, Ngoako Ramatlhodi and Rabkin at the ANC's headquarters, then located at Shell House in Johannesburg. It was during this meeting that Zuma informed us of Iggy's interactions with Harnden. He told us that around February 1987, Iggy and Harnden arranged to meet at a bookshop in Hillbrow, Johannesburg. Iggy never arrived for the meeting and was not seen again.
18. In his book *Betrayal: The Secret Lives of Apartheid Spies*, author Johnathan Ancer writes that Harnden, who was in fact a Lieutenant in the SB and worked as a spy for the SB, revealed to him that she had enquired with her handler,

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Oosthuizen, about Iggy's whereabouts after his failure to arrive for their meeting in Hillbrow. Oosthuizen told Harnden that she did not "have to worry about him, and that he won't contact [her] again." Harnden understood that the SB had eliminated Iggy.

19. Zuma promised us that the ANC would investigate Iggy's whereabouts, and failing which the whereabouts of his remains. We never heard back from Zuma or the ANC despite following up again after the democratic elections in 1994.
20. In 1991, my brother Samuel Mthebule ("**Samuel**") decided to break the news about Iggy's disappearance and probable death to our mother. We held a memorialisation ceremony with the ANC in February 1992 to celebrate Iggy's life.
21. In 1994, and on the advice of the then Minister of Safety and Security, Sydney Mufamadi, we reported Iggy's disappearance at the Protea Police Station in Soweto and a missing person's case was opened. Nothing has come of that investigation.

The Truth and Reconciliation Commission

22. On 10 April 1997 Samuel presented a statement regarding Iggy's disappearance to the Truth and Reconciliation Commission's ("**TRC**") Human Rights Violations Committee. No one applied for amnesty for Iggy's disappearance.
23. Samuel told the Committee about Iggy's background, his role in the struggle for freedom, the facts that we had uncovered about his disappearance and our efforts to engage with various persons in the ANC government for assistance in locating Iggy's whereabouts.

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24. Samuel also lamented the family's pain of having to live on without having even had sight of Iggy's remains, or the location of his remains (assuming his demise). At the time of the hearings, our mother was over the age of 80. She has since passed without having had any closure on the whereabouts of her son. Samuel requested the Committee to make further investigations to at least locate Iggy's remains and bring them home to us to finally close that chapter of our lives.
25. The ANC also made brief reference to Iggy in its submission to the TRC, however, the submission (which was only one paragraph) did not contain any significant detail about Iggy's disappearance.
26. The TRC recognised Iggy as a victim of gross human rights violations. I received reparations in the amount of R30 000.00 which was divided equally between Iggy's two minor children at the time.

Post-TRC

27. It was certainly our expectation that Iggy's case would have been investigated when the TRC completed its work in 1998. This was, however, not to be the case and to date Iggy's case has not been concluded and his remains have not been found.
28. Around 2020, my nephew, Danny Mtebule, started his own investigation into Iggy's disappearance. He wrote to the Missing Person's Task Team ("**MPTT**") of the National Prosecuting Authority ("**NPA**") to enquire whether they were investigating Iggy's case but did not receive substantive feedback. Danny's confirmatory affidavit accompanies this affidavit.


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29. In 2021, Danny reached out to the Foundation for Human Rights to request assistance from the Unfinished Business of the TRC programme. Pro bono lawyers were appointed to assist us in taking the Iggy's case forward. Since then, the MPTT collected DNA samples from Iggy's family members, including myself. We were hopeful at the time that results would be forthcoming, but the progress has been extremely slow.
30. Iggy's matter is presently being investigated by the Directorate for Priority Crime Investigation ("**DPCI**") and the NPA with the view to open an inquest. We are told that the investigation reached a dead end because the members of the ANC with knowledge of Iggy's disappearance are not willing to cooperate.

Conclusion

31. The lack of progress in Iggy's matter, and the ANC's apparent refusal to provide information about Iggy's disappearance has left us with feelings of frustration, disappointment, anger, betrayal and defeat. The government and the authorities responsible for the investigation and prosecution of TRC case have not kept true to the promise of the TRC. Not only was Iggy violated by the apartheid regime, but we too have been violated by our democratic government.
32. For the reasons detailed above, I support the relief claimed in this application. Constitutional damages will help us to undertake further investigations so as to establish whether Iggy is indeed deceased; and if so, how he died, who was responsible for his death, and where his remains are. I also support the relief requiring an independent and public commission of inquiry to be appointed to determine the truth surrounding the political suppression of the TRC cases.



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Hlekani Edith Rikhotsi

HLEKANI EDITH RIKHOTSO

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Mondeor on this the 16 day of **JANUARY 2025**.

2025-01-16
[Signature]

COMMISSIONER OF OATHS



Full Names: Xolani Zungu
Business Address: 263 Royal Park dr
Designation: constable

[Signature]

1092

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

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| MOGAPI SOLOMON TLHAPI | 22 nd Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 23 rd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

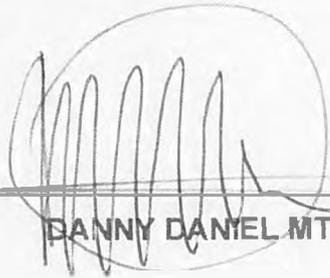
CONFIRMATORY AFFIDAVIT – DANNY DANIEL MTEBULE

I, the undersigned,

DANNY DANIEL MTEBULE

do hereby make oath and state as follows:

1. I am an adult man, and I am the nephew of Ignatius 'Iggy' Mthebule and the seventeenth (17th) applicant in this matter.
2. The facts contained in this affidavit are to the best of my belief both true and correct. They fall within my personal knowledge or are apparent from documentation under my control, except where the context indicates otherwise.
3. I have read the seventeenth (17th) applicant's supporting affidavit, and I associate myself therewith and confirm the contents thereof insofar as they relate to me.
4. For the reasons set out in the supporting affidavit of the seventeenth (17th) applicant and the other papers filed herein, I support the relief sought in the notice of motion.



DANNY DANIEL MTEBULE

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

PRETORIA on this the 16th day of **JANUARY 2025**.



**COMMISSIONER OF OATHS
HLANGANANI MUSHWANA
COMMISSIONER OF OATHS**

Full Names: PRACTISING ATTORNEY
MUSHWANA INCORPORATED RSA
Business Address: CHURCH SQUARE, 23 BUREAU LANE
SUITE 220 CENTENARY BLD PRETORIA
Designation: TEL: (012) 323 1898 FAX: (012) 325 6165

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA 1st Applicant

ALEGRIA KUTSAKA NYOKA 2nd Applicant

BONAKELE JACOBS 3rd Applicant

FATIEMA HARON-MASOET 4th Applicant

TRYPHINA NOMANDLOVU MOKGATLE 5th Applicant

KARL ANDREW WEBER 6th Applicant

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

KIM TURNER 7th Applicant

LYNDENE PAGE 8th Applicant

MBUSO KHOZA 9th Applicant

NEVILLE BELING 10th Applicant

NOMBUYISELO MHLAULI 11th Applicant

SARAH BIBI LALL 12th Applicant

SIZAKELE ERNESTINA SIMELANE 13th Applicant

SINDISWA ELIZABETH MKONTO 14th Applicant

TAYLA ILSLEY
BA Law (UP) - LLB (UP)
Commissioner of Oaths
Ex Officio / Practising Attorney R.S.A
THE LEONARDO
75 Maude Street, Office Level 12,
Sandown, SANDTON, 2196
(011) 784-3310
Mobile: +27 (0) 72 839 9229
Email: tayla@ianlevitt.co.za

18/01/2025


T.M. ASM

| | |
|--|----------------------------|
| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
| TSHIDISO MOTASI | 18 th Applicant |
| NOMALI RITA GALELA | 19 th Applicant |
| PHUMEZA MANDISA HASHE | 20 th Applicant |
| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 22 nd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |
| SOUTH AFRICAN HUMAN RIGHTS COMMISSION | 7 th Respondent |

T.M

A.S.M

SUPPORTING AFFIDAVIT – THE FAMILY OF IRENE AND RICHARD MOTASI

I, the undersigned,

TSHIDISO MOTASI

do hereby make oath and state as follows:

Introduction

1. I am an adult male, resident in Jabulani, Soweto, Gauteng. I am the only child of Tumelo Richard Motasi and Irene Busisiwe Motasi ("my **Parents**").
2. I am the 18th Applicant in this application.
3. The facts deposed to in this affidavit are within my knowledge, unless otherwise stated or indicated by the context, and to the best of my knowledge are both true and correct.
4. I depose to this affidavit on behalf of my family and, in particular, my grandmother, Sibongile Gloria Hlabangane, the mother of the late Irene Motasi.
5. My parents were shot dead in my presence at our home in Hammanskraal on 1 December 1987 by the Security Branch (SB) of the erstwhile South African Police (the "**SAP**"). I was five years old at the time.

Irene and Richard Motasi

6. My father, Richard, was a police officer and my mother, Irene, was a nurse. They were both stationed in Hammanskraal, Pretoria, and they lived there. From what

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we know, my parents were not involved in the political struggle against apartheid, despite the accusation that my parents were communicating with the ANC in Zimbabwe. As far as we know, my parents were living quite a normal life, and they had no political affiliations.

7. My mother was Zimbabwean by descent and had family ties in Zimbabwe. As such, the family travelled between South Africa and Zimbabwe for familial reasons not political reasons.
8. My father was based at the Police College at Hammanskraal. During August 1986 my father had been assaulted by his superior, Colonel Van Zyl, leaving him with a burst eardrum and other injuries. With the assistance of Savage Jooste & Adams, my father instituted a personal injury claim against Constable Vreugdenburg, Sergeant Raath and Warrant Officer Le Grange, which triggered a slew of abuse and torment at his workplace, and ultimately led to his suspension from the SAP. Unsuccessful efforts were made to pressure my father to withdraw the damages claim. It is likely that my father's refusal to drop the claim led to his murder.
9. According to the TRC Report, around this time the Northern Transvaal Security Branch ("SB") compiled a file on my father which falsely claimed that he was an ANC operative who was handing over sensitive information over to the ANC in Zimbabwe and Johannesburg. According to evidence led at the TRC, Brigadier Jacob Gabrielle Stemmet – the Divisional Commissioner of the Northern Transvaal Division – General Marthinus Dawid Ras, Brigadier Jack Cronje and Colonel Koos Kloppers decided that my father should be eliminated as he posed

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- a threat to national security. This order was given to Captain Philipus Johannes Corenelius Loots, Captain Jacque Hechter and Warrant Officer Paul van Vuuren.
10. According to the Amnesty Committee decision (AM5462/97), on the morning of 1 December 1987, Loots, Hechter and Van Vuuren met to plan the murder. They put together a team, which included the notorious askari from Vlakplaas, Joe Mamasela.
 11. On the evening of 1 December 1987, our house was invaded, and my parents were shot and killed. As I was an infant at the time, and given the massive trauma I suffered, I am not able to recall the events of that tragic night.
 12. My grandmother testified at the TRC that while she was in mourning, a police officer visited her demanding my father's police uniform. The manner in which my grandmother was approached caused her much hurt and torment. She was threatened with a gun, and she was intimidated. The week leading up to the burial of a loved one is a deeply solemn time in our culture. It is a time of ritual, remembrance and familial comfort. By bringing in an element of violence into that space, by intimidating my grandmother, and by bringing weapons, the police officers showed utter contempt for my grandmother and our family.

The TRC

13. Loots, Hechter, General Ras and Brigadier Cronje applied for amnesty. Ras and Loots were granted amnesty for both murders.
14. Joe Mamasela, Colonel Kloppers, Commissioner Stemmet and Mr Danny Selahle, who drove the perpetrators to our home, did not apply for amnesty.

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Hechter and Van Vuuren were granted amnesty for my father's murder, but not my mother's murder.

15. Following the TRC, we received reparations of about R30,000.00 (thirty thousand Rands), and my children received bursaries from the Presidential Fund, but this has not done little to heal the emotional wounds we bear as a family.

Post the TRC

16. It was our expectation that after the TRC, prosecutions would follow. We expected, in particular, that Commissioner Stemmet, Joe Mamasela, Colonel Kloppers and Danny Selahle would be prosecuted as they did not apply for amnesty. We expected Hechter and Van Vuuren to be prosecuted for the murder of my mother, as they were denied amnesty for her killing.
17. The political suppression of the cases has ensured that most of the suspects were allowed to go to their graves without facing justice. As far as we are aware, only Stemmet, Ras, Loots, Kloppers and Mamasela remain alive today. The authorities could have taken legal steps against Stemmet, Kloppers and Mamasela, as they did not apply for amnesty, but they have failed or declined to do so.
18. Instead, what followed was a long period of silence. It was only in 2018 that the Hawks approached us and informed us that they were now investigating the matter. This followed prompting by the Foundation Human Rights in early 2018, which urged the NPA and DPCI to investigate approximately 20 emblematic cases from our past, which included the murder of my parents. Unfortunately,

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nothing much has happened pursuant to this investigation, which is apparently ongoing. The investigation officers have been changed repeatedly.

19. It has been nearly 37 years since my parents were murdered. The inexcusable delay in the investigation and prosecution of this matter has been deeply hurtful for us. My grandmother who is now 92 years old has waited all these years for justice and truth. She has been denied closure, even in the twilight of her life. I too have also been deeply emotionally scarred by the murder of my parents. The subsequent failure to hold those responsible accountable has added insult to injury and exacerbated our trauma.
20. Living without parents, over all these years, has been extremely painful for me. My mental health has substantially deteriorated and I have even received treatment for depression and anxiety.
21. We now feel betrayed by the government for deliberately blocking justice that was due to us. The conduct of the post-apartheid state has been disgraceful and unforgivable. They have treated the victims of apartheid-era crimes with contempt and disdain. There must be a reckoning.

Conclusion

22. We support the relief sought in this application. An independent and open commission of inquiry is necessary to get to the bottom of the political interference. We need answers and we have a right to know who was behind the mass denial of justice to us. We also support the claim for constitutional damages to address the deep violation of our constitutional rights to human dignity, equality and the rule of law.

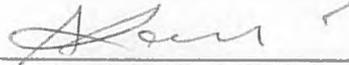
T.M. ASK

1103



TSHIDISO MOTASI

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Johannesburg on this the 11th day of OCT 2024.



COMMISSIONER OF OATHS

Full Names: Ahmed Shabir Mayet

Business Address:

Designation:

A. S. MAYET
Commissioner of Oaths
Practising Attorney
401 Elizabeth House
18 Pritchard Street
Johannesburg

11/10/2024

1104

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

| | | |
|---------------------------------------|--|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | | 2 nd Applicant |
| BONAKELE JACOBS | | 3 rd Applicant |
| FATIEMA HARON-MASOET | | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | | 5 th Applicant |
| KARL ANDREW WEBER | CERTIFIED A TRUE COPY OF THE ORIGINAL | 6 th Applicant |
| KIM TURNER | TAYLA ILSLEY | 7 th Applicant |
| LYNDENE PAGE | BA Law (UP) – LLB (UP) Commissioner of Oaths Ex Officio / Practising Attorney R.S.A THE LEONARDO | 8 th Applicant |
| MBUSO KHOZA | 75 Maude Street, Office Level 12, Sandown, SANDTON, 2196 (011) 784-3310 Mobile: +27 (0) 72 839 9229 Email: tayla@ianlevitt.co.za | 9 th Applicant |
| NEVILLE BELING | 18/01/2025 | 10 th Applicant |
| NOMBUYISELO MHLAULI |  | 11 th Applicant |
| SARAH BIBI LALL | | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | | 14 th Applicant |

| | |
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| THULI KUBHEKA | 16 th Applicant |
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| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

SUPPORTING AFFIDAVIT – NOMALI RITA GALELA

I, the undersigned,

NOMALI RITA GALELA

do hereby make oath and state as follows:

Introduction

1. I am an adult female pensioner resident in Gqeberha in the Eastern Cape. I am the wife of the late Twasile Champion Galela ("**Champion**" or "**my husband**").
2. I am the 19th Applicant in this application.
3. The facts contained in this affidavit are within my knowledge, and unless otherwise stated or indicated by the context, are true and correct to the best of my knowledge.
4. I depose to this affidavit on behalf of my family, and on behalf and with the support of the families of the late Siphon Hashe ("**Siphon**") and Qaqawuli Godolozzi ("**Qaqawuli**"). The supporting affidavits of the Hashe family and the Godolozzi family are attached hereto, marked as "**NRG1**" and "**NRG2**". The deponents to NRG1 and NRG2 are Phumeza Mandisa Hashe and Mkhontowesizwe Godolozzi, the 20th and 21st Applicants in this application.
5. Champion, Siphon and Qaqawuli were members of the Port Elizabeth Black Civic Organisation ("**PEBCO**"), an affiliate body of the then United Democratic Front ("**UDF**") which was aligned to the African National Congress ("**ANC**"). They were

kidnapped by the Port Elizabeth Security Branch ("the PE SB") of the former apartheid state on 8 May 1985. They were murdered a day or two after their kidnapping and their bodies were burnt and disposed. Champion, Siphon and Qaqawuli became widely known as the PEBCO 3.

Champion Galela

6. Champion was born on 24 October 1947 in Korsten, Port Elizabeth. His family relocated to KwaZakhele, a township in Port Elizabeth, in 1957 where he continued his education at Ebhongweni Primary School and Zikweni Primary School before he completed his schooling at KwaZakhele High School.
7. Champion and I married in 1975. Two sons, Tebogo Galela and Lehlohonolo Galela were born of our marriage. My children were two and five years of age when Champion disappeared in 1985.
8. During the late 1970s, Champion worked as a salesperson at Town Talk Furniture in Port Elizabeth. He was also a passionate photographer who took photographs at social events, and a sports fanatic who especially loved martial arts (he had a black belt in karate).
9. Champion was active in the struggle against the apartheid regime. Whilst employed at Town Talk Furniture, he was a member of the General Workers Union of South Africa. In 1984, he was co-opted to the PEBCO. He became the Organising Secretary under Qaqawuli Godolozzi, the President of PEBCO since 1980, and he also worked closely with Siphon Hashe, the fourth General Secretary of the PEBCO. The PEBCO 3 played a prominent role in organising and coordinating resistance activities in the Port Elizabeth area such as consumer

and bus boycotts, stay aways and protest marches. These activities were so effective that they forced the Port Elizabeth Chamber of Commerce to negotiate with the PEBCO leadership. Their demands included better housing and affordable rent for black residents of Port Elizabeth, better living conditions, better working conditions and wages, transport, education, schools, medical care and the abolishment of the bucket system. Some describe that the activities of PEBCO rendered the Eastern Cape in general and particularly Port Elizabeth ungovernable for the apartheid state.

10. The activities of PEBCO placed Champion on the radar of the PE SB. He was subject to constant harassment by the security forces, he was arrested, detained on several occasions and our family home was constantly raided.

The kidnapping and murders of the PEBCO 3

11. Some days before the murders, Sipho made telephone contact with Tozamile Botha, a co-founder and former member of the PEBCO who was exiled in Lusaka, Zambia. Sipho requested Botha to organise funding for the PEBCO, and Botha in return indicated that he would ascertain the possibility of obtaining funding from the British Embassy. The conversation between Sipho and Botha was intercepted by Colonel Gideon Nieuwoudt ("**Nieuwoudt**"), a notorious member of the PE SB who was monitoring Sipho's movements and activities.
12. On 8 May 1985, the PE SB lured the PEBCO 3 to the then Hendrik Verwoerd Airport in Port Elizabeth under the impression that they were to meet an official from the British Embassy who would give them funding for their political activities. When the PEBCO 3 arrived at the airport, they were swiftly kidnapped by the PE SB and a Security Branch unit from Vlakplaas that was deployed to the Eastern

Cape. The members of the PE SB unit who participated in the operation to kidnap the PEBCO 3 were Nieuwoudt, Captain Johannes Martin 'Sakkie' Van Zyl ("**Van Zyl**"), Sergeant Gerhardus Jacobus Lotz ("**Lotz**"), Colonel Hermanus Barend Du Plessis ("**Du Plessis**"), and Colonel Harold Snyman ("**Snyman**"). The Vlakplaas unit was deployed by Colonel Jan Hattingh 'Jack' Cronje ("**Cronje**") and consisted of Colonel Roelof Jacobus Venter ("**Venter**"), Warrant Officer Gerhardus Cornelius Beeslaar ("**Beeslaar**"), Sergeant Joseph Tshepo 'Joe' Mamasela ("**Mamasela**"), Warrant Officer Johannes Koole ("**Koole**"), and Askari Kimani Peter Mogoai ("**Mogoai**"). The security forces planned to kill the PEBCO 3 to weaken the PEBCO in its mass mobilisation campaigns.

13. The Security Branch transported the PEBCO 3 to the old disused Post Chalmers Police Station near Cradock where they were held. They were interrogated and tortured for extended periods before they were executed after on or about 9 and/or 10 May 1985. The weapon that was used to execute the PEBCO 3 was Van Zyl's private unlicensed .22 calibre firearm. Van Zyl confessed to the Truth and Reconciliation ("**TRC**") that he executed Siphon Champion was executed by Lotz and Qaqawuli by Nieuwoudt.
14. The executions took place after Du Plessis signalled to the Security Branch at Post Chalmers Police Station that "the coast was clear", meaning that the security forces had not been seen by anyone when they kidnapped the PEBCO 3 at the airport the previous day. The bodies of the PEBCO 3 were placed on a pile of wood and burnt with diesel.
15. Weeks after Champion disappeared, I was guarded by the Amabutho detachment who were comrades that had undergone military training. The

Amabutho detachment guarded me because my house was under constant threat and harassment from the PE SB. Collaborators of the SB would throw bricks through my windows because they thought that I knew my husband's whereabouts. Unbeknownst to me, my house was also used to store hand grenades. In June 1985, the security police raided my home and found the hand grenades in my roof. I was arrested, detained and interrogated over a period of a couple of days.

16. In 1990 a criminal case of kidnapping and murder in respect of the PEBCO 3 was registered as 'HF Verwoerd Airport CR 17/07 1990'.

The TRC process

17. On 11 November 1997, Nieuwoudt applied to the TRC for amnesty for the kidnapping and murder of the PEBCO 3. He implicated several members from the PE SB and the Vlakplaas unit. Nieuwoudt's amnesty application was followed by the applications of Du Plessis, Snyman, Van Zyl, Lotz, Beeslaar, Mogoai, Koole and Venter.
18. The brief facts surrounding the kidnapping, interrogation, assault, torture and murder of the PEBCO that I have outlined above is based on the information that was revealed during the amnesty hearings. Mamasela also testified about his involvement in the kidnapping and murders of the PEBCO 3, but he did not apply for amnesty.
19. The TRC refused the amnesty applications of Nieuwoudt, Van Zyl, Lotz, Du Plessis, Venter, Beeslaar and Koole. Snyman and Mogoai were the only SB members who were granted amnesty because the TRC found that they made full

and frank disclosures about their roles in the kidnapping and murders of the PEBCO 3.

20. The TRC held the promise that those whose crimes were not amnestied would be investigated and prosecuted by the policing and prosecuting authorities of the democratic government ("**the TRC cases**").

The failed prosecution of Nieuwoudt, Van Zyl, and Koole and the discovery of the remains of the PEBCO 3

21. During March 2003, the Priority Crimes Litigation Unit ("**PCLU**") was set up within the National Prosecuting Authority ("**NPA**") to investigate cases that were identified by the TRC and recommended for possible prosecution. The PEBCO 3 case was one of the identified cases.
22. On 11 February 2004, Nieuwoudt, Van Zyl and Koole were charged with the kidnapping and murders of the PEBCO 3. This was the first case that the PCLU brought in respect of perpetrators who had been denied amnesty by the TRC. Shortly after their bail hearings, Nieuwoudt and Van Zyl applied to the High Court to review the decisions of the TRC to refuse them amnesty. Nieuwoudt died in August 2005 before the review application was finalised.
23. The review was delayed for nearly five years because the Department of Justice failed to file answering papers. Eventually, in 2009 the High Court order the Department reconvene an Amnesty Committee to hear Van Zyl's amnesty application. The charges against Nieuwoudt, Van Zyl and Koole were provisionally withdrawn in 2009 because the NPA took the view that the prosecution could not proceed while there was an amnesty application pending.

The Department of Justice never reconvened the Amnesty Committee and the charges against Van Zyl and Koole were never reinstated. Koole is deceased and Van Zyl died in August 2011.

24. Around August 2007, the remains of 5 persons were discovered by the NPA's Missing Persons Task Team at Post Chalmers. The remains were excavated from a shallow fire pit that measured roughly 2m x 3m with a depth of approximately 20cm. On 12 September 2009, the Minister of Justice handed over the remains to our families.
25. Between 2011 and 2019 the PEBCO 3 docket was held by the PCLU at NPA's Head Office, under the control of Adv Chris Macadam. To our knowledge, no further work was done to investigate or prosecute the remainder of those who were refused and/or did not apply to the TRC for amnesty. These officers included Lotz, Du Plessis, Venter, Beeslaar, and Mamasela. Lotz died in March 2016 at the age of 56.
26. In August 2019, the PEBCO 3 families approached the Foundation for Human Rights (FHR) for assistance. In November 2019, the Foundation's investigator, Retired Brigadier Marion, provided the Directorate for Priority Crime Investigation of the South African Police Services ("**DPCI**") and the NPA with a suggested investigative task list with the intention to reopen the investigation into the kidnapping and murders of the PEBCO 3. We subsequently appointed pro bono attorneys who have been providing considerable support to the DPCI and the NPA.
27. Unfortunately, in the five years that the Foundation and our attorneys have been pressing the DPCI and the NPA to take the PEBCO 3 case forward, very little

progress has been made. On 16 May 2023 Du Plessis died. This was some 3 years and 8 months after we had asked the DPCI and the NPA to reopen the PEBCO 3 case.

28. On 1 December 2023 our legal team handed over a detailed 147 page analysis of the evidence to the NPA, which called for criminal charges to be preferred against the last three suspects who remained alive, former Vlakplaas members: Venter (aged 75), Beeslaar (aged 85) and Mamasela (aged 70). Our lawyers implored the NPA to act expeditiously given the advanced ages of the suspects. They asked for a meeting with the NPA to discuss the evidence.
29. The NPA offered to do a 'meet and greet' meeting with the families in early 2024 but said they would not respond to the analysis or talk about the substance of our case. We refused to meet with them if it was just going to be a courtesy call. Our lawyers suggested that they take another 4 weeks to consider the evidence and then meet with us. They did not respond to this proposal. Notwithstanding multiple follow up communications, we were only able to meet with the NPA on 3 December 2024. To the dismay of the families, the prosecutors said they were not ready to respond to the recommendations of our lawyers, even after being in possession of our lawyer's analysis for more than a year. They claimed that their hands had been tied by the NPA head office, which only gave them decision making powers in the case in September 2024.
30. Shortly before this meeting we learned that Venter died of "natural causes" on 28 July 2024. There are now only two surviving suspects, Mamasela and Beeslaar, who will soon be 87 years old. We are bitterly disappointed with the cavalier approach of the NPA to the PEBCO 3 case. We get the impression that

they have little or no interest in pursuing justice in this matter. We are left with the unfortunate view that the NPA, through design or negligence, delays cases like the PEBCO 3 to the point where suspects either die or can no longer stand trial.

Conclusion

31. At the conclusion of the TRC, we expected that the policing and prosecuting authorities would imminently investigate and prosecute the heinous crimes that were committed against the PEBCO 3 and many others who died during apartheid.
32. My children and I suffered greatly after Champion died, we relied heavily on the generosity of the church and welfare organisations to survive. The situation was dire, and poverty was at my door. I hoped that the democratic dispensation would ensure that justice would prevail for the PEBCO 3, but this turned out not to be the case. My sons, Tebogo and Lehlohonolo, passed away in 1996 and 2011, adding to the suffering that I endured after my husband's disappearance and death. I am taking care of Lehlohonolo's daughter who is almost in matric.
33. Learning that the TRC cases were deliberately suppressed by officials at the highest level of the democratic government was heartbreaking. We now know that the lives of the PEBCO 3 and many other activists who fought for freedom against the oppressive apartheid state never really mattered to the democratic government. The idea that justice will prevail does not apply to families of victims of apartheid-era crimes.

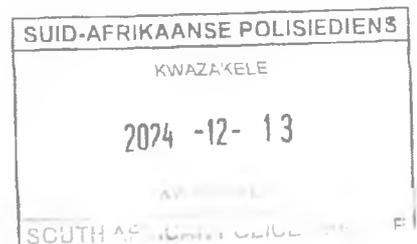
34. We wholeheartedly support the relief that is sought in this application. The claim for constitutional damages is necessary to vindicate our violated rights, to assist us to celebrate our loved ones and to continue with the quest for justice. We also deserve to know why the TRC cases were deliberately suppressed. The truth must prevail.

NRG Galela
NOMALI RITA GALELA

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at KWAZAKHELE SAPS on this the 13 day of 12 / 2024.

Nondabula
72710466
COMMISSIONER OF OATHS

Full Names: ZOLILE NONDABULA
Business Address: MBILINI ROAD KWAZAKHELE
Designation: COMPTROLLER



1116

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

| | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
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| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
BA Law (UP) - LLB (UP)
Commissioner of Oaths
Ex Officio / Practising Attorney R.S.A
THE LEONARDO
75 Maude Street, Office Level 12,
Sandown, SANDTON. 2196
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18/01/2025



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| STEPHANS MBUTI MABELANE | 15 th Applicant |
| THULI KUBHEKA | 16 th Applicant |
| HLEKANI EDITH RIKHOTSO | 17 th Applicant |
| TSHIDISO MOTASI | 18 th Applicant |
| NOMALI RITA GALELA | 19 th Applicant |
| PHUMEZA MANDISA HASHE | 20 th Applicant |
| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| MOGAPI SOLOMON TLHAPI | 22 nd Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 23 rd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
| PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 2 nd Respondent |
| MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3 rd Respondent |
| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

SUPPORTING AFFIDAVIT – PHUMEZA MANDISA HASHE

I, the undersigned,

PHUMEZA MANDISA HASHE

do hereby make oath and state as follows:

1. I am an adult female resident in Gqeberha in the Eastern Cape. I am the eldest daughter the late Sipho Samuel Charles Hashe ("**Sipho**" or "**my father**"). My father is one of the PEBCO 3.
2. I am the 20th Applicant in this application.
3. The facts contained in this affidavit are within my knowledge, and unless otherwise stated or indicated by the context, are true and correct to the best of my knowledge.
4. I have read the supporting affidavit of Nomali Rita Galela. I confirm the content thereof in so far as it relates to the kidnapping and murders of the PEBCO 3, the Truth and Reconciliation ("**TRC**") process, the failed prosecution of Gideon Nieuwoudt, Johannes Martin 'Sakkie' Van Zyl, and Johannes Koole, and the discovery of the remains of the PEBCO 3. I will not rehash those facts in this affidavit.
5. I depose to this affidavit on behalf of the Hashe family, in particular my sister Nontuthuzelo Hashe, my brother Malixole Charles and my brother Vusumzi Charles.

6. My father was born in 1934 near Middledrift in the Eastern Cape in a village called Ngcabasa. He left the village during the 1950s to look for greener pastures in Port Elizabeth. My father established himself in a location called Korsten, which was populated by both the Black and the Coloured communities, where he had met my mother Nondyebo (Nothobile) Elizabeth Ningiza. My mother was originally from a village called Hewu which was located near Queenstown. My parents married in 1955.
7. My parents were relocated under the Group Areas Act (the apartheid government's influx control legislation that designated certain geographic areas for use by a single race) to KwaZakhele township where they were allocated a four-roomed house. At that time, my father identified as Samuel Charles to avoid being sent back to Ngcabasa by the apartheid government.
8. My father's involvement in political activities started during the early 1960s. He was a member of the member of the African National Congress ("**ANC**") and Umkhonto weSizwe ("**MK**"), the military wing of the ANC. When the ANC was banned in 1961, he operated underground. He was arrested in 1962, charged with sabotage and sentenced to imprisonment on Robben Island where he remained for ten years.
9. In October 1973, my father was released from Robben Island and placed under a banning order for five years. He was restricted to our home in KwaZakhele and prohibited from being in the company of more than two people at a time. Being under house arrest did not deter my father my father from working underground to further the struggle against apartheid. When my father's banning order lapsed, he played a critical role in the formation of PEBCO in 1979. He

was the organisation's fourth General Secretary when he was kidnapped and murdered by the Security Branch in May 1985.

10. My father was a considerate person who had a good heart and wanted to support all those who were suffering during apartheid. He was a visionary man who stood for non-racialism and equality for all.
11. My father's disappearance in May 1985 had a devastating effect on my mother. She was totally shattered because this was the second time that she lost her husband (the first was when my father was incarcerated for ten years on Robben Island in 1962). My mother was financially dependent on my father. After his death she had to feed, raise, school, cloth and to provide a roof over the heads of her six children. She was strong woman, but she suffered emotionally and physically.
12. For years my mother struggled to come to terms with my father's murder. She lived hoping that one day he will come home and be reunited with his loved ones. As the years passed by, her hope diminished, and her health started deteriorating drastically. She developed multiple underlying health problems including a heart condition that led to her death on 11 March 2003. She died not knowing what had happened to my father, and without having the opportunity to bury his remains.
13. When the remains of the PEBCO 3 were found in 2007 and handed over to our families in 2009, we expected that the investigation into the murders would progress. We were hopeful that the police officers who were refused amnesty by the TRC would be prosecuted for kidnapping and killing of the PEBCO 3, and that this process would lead to the entire truth behind crimes being revealed.

Unfortunately, SAPS and the NPA did not pursue the case. Justice for the PEBCO 3 remained out of reach. To this day this position remains.

14. Our family is bitter about the treatment we received from the democratic government and the authorities responsible for the investigation and the prosecution of TRC cases. The very same government that my father sacrificed his life for has dismally failed us.

15. The Hashe family supports the relief that is sought in this application. Constitutional damages are necessary to vindicate our rights. The damages will enable us to commemorate the PEBCO 3 and pursue justice. The President must appoint an independent commission of the inquiry to investigate the suppression of TRC cases. We deserve to know who is responsible and why they believed that we do not deserve justice for our loved ones.

PHUMEZA MANDISA HASHE

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Kwazakhele Police station on this the 23rd day of December 2024.

COMMISSIONER OF OATHS



1122

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

| | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

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BA Law (UP) - LLB (UP)
Commissioner of Oaths
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18/01/2025



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| THULI KUBHEKA | 16 th Applicant |
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| MKHONTOWESIZWE GODOLOZI | 21 st Applicant |
| MOGAPI SOLOMON TLHAPI | 22 nd Applicant |
| FOUNDATION FOR HUMAN RIGHTS | 23 rd Applicant |
| and | |
| GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA | 1 st Respondent |
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| NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS | 4 th Respondent |
| MINISTER OF POLICE | 5 th Respondent |
| NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE | 6 th Respondent |

SUPPORTING AFFIDAVIT – MKHONTOWESIZWE GODOLOZI

I, the undersigned,

MKHONTOWESIZWE GODOLOZI

do hereby make oath and state as follows:

Introduction

1. I am an adult male resident in Gqeberha in the Eastern Cape. I am the son of the late Qaqawuli Godolozzi ("**Qaqawuli**" or "**my father**"). My father is one of the PEBCO 3.
2. I am the 21st Applicant in this application.
3. The facts contained in this affidavit are within my knowledge, and unless otherwise stated or indicated by the context, are true and correct to the best of my knowledge. I depose to this affidavit on behalf of the Godolozzi family, in particular my mother, Buyelwa Monica Godolozzi, and my sister, Nombeko Edith Godolozzi.
4. I have read the supporting affidavit of Nomali Rita Galela. I confirm the content thereof in so far as it depicts the facts relating to the kidnapping and murders of the PEBCO 3, the Truth and Reconciliation ("**TRC**") process, the failed prosecution of Gideon Nieuwoudt, Johannes Martin 'Sakkie' Van Zyl, and Johannes Koole, and the discovery of the remains of the PEBCO 3. For the sake of brevity, I will not repeat those facts in this affidavit. In this affidavit I pay tribute to my father by elaborating on his role in the struggle for our freedom and I

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describe the pain and suffering that our family had to endure because of my father's murder and the delay in investigating and prosecuting those security police members who perpetrated the crimes against the PEBCO 3.

Qaqawuli Godolozi

5. My father was born in Durban on the 26 July 1955 to Mbuyiselo Godolozi and Nobubele Jافتا. His family relocated to Peddie in the Eastern Cape where he grew up and spent his teenage life. He received his primary education at Hotorn Higher Primary School where he passed his standard six and then proceeded to Healdtown Boarding School where he matriculated.
6. After my father completed his schooling, he relocated to Port Elizabeth and began to work as a clerk at a construction company. He then joined the Port Elizabeth Black Civic Organization (PEBCO). PEBCO was an affiliate of the United Democratic Front (UDF). In 1980 and 1984 he was elected as the President of PEBCO. My father, Siphon Hashe and Champion Galela played a prominent role in organising and coordinating resistance activities such as consumer and bus boycotts, stay aways and protest marches. These activities were so effective that they forced the Port Elizabeth Chamber of Commerce to negotiate with the PEBCO. These activities led to my father's continued harassment by the security police.
7. On 8 May 1985, the PEBCO 3 were kidnapped by the Security Branch at the then Hendrik Verwoerd Airport, in Port Elizabeth. They were taken to Post Chalmers, an abandoned police post near Cradock in the Eastern Cape, where they were severely tortured and murdered. Their bodies were burnt, and their remains were disposed of.

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The effect that my father's murder and the delay to investigate and prosecute had on our lives

8. Our family learned of my father's gruesome murder during the Truth and Reconciliation Commission ("TRC") process. Shortly after my father's murder was disclosed before the TRC, my mother experienced a severe psychiatric disorder which led to her losing her employment. She was later diagnosed with chronic depression, and she takes chronic medication for her mental illness. My mother still suffers from constant psychological episodes and has lost all hope for enjoyment of amenities of life, her social appetite deteriorated and her emotional state is also unstable.
9. Summarily, my sister and I, as well as our children, suffered severe psychological, emotional and financial prejudice as a result of our father's loss. It was only in 2002 that our mother received a social grant which we all lived on. The social grant was insufficient to maintain all my mother's dependents. My sister had no choice but to drop out of school to hustle to maintain herself and to support our family.
10. We are very unhappy with the undue delay and/or failure to by the authorities to timeously investigate and prosecute the perpetrators who were involved in the kidnapping, torture and murder of the PEBCO 3. In addition to the violation and suffering that that the apartheid system caused to our family, we have been deprived of justice and fairness by the democratic state. Our fundamental rights to life and dignity have been violated. We are merely sojourning through the maze of life but without any meaningful living. The Godolozzi family still endures the pain occasioned by the loss of our father and the impossibility of justice

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worsens our lives' misfortunes. We are the victims of unfair and unjust treatment by the government and the policing and prosecuting authorities.

Conclusion

11. The Godolozzi family supports the relief that is sought in this application. Constitutional damages are necessary to vindicate our rights that have been violated by the deliberate suppression of TRC cases. The damages will enable us to celebrate the PEBCO 3 and to continue with our quest for justice. The President must be compelled to appoint an independent commission of the inquiry to establish why and by whom the TRC cases were deliberately suppressed. We deserve to know the truth.


MKHONTWESIZWE GODOLOZI

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at KARIEGA on this the 18TH day of DECEMBER 2024.



AJ 7009334 2561
ANUSKA DOUGLIS
COMMISSIONER OF OATHS

Full Names: SHANTALL DOUGLIS
Business Address: 13 CHURCH STR, CENTRAL, KARIEGA
Designation: Sgt. SA Police Service

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA 1st Applicant

ALEGRIA KUTSAKA NYOKA 2nd Applicant

BONAKELE JACOBS 3rd Applicant

FATIEMA HARON-MASOET 4th Applicant

TRYPHINA NOMANDLOVU MOKGATLE 5th Applicant

KARL ANDREW WEBER 6th Applicant

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

KIM TURNER 7th Applicant

LYNDENE PAGE 8th Applicant

MBUSO KHOZA 9th Applicant

NEVILLE BELING 10th Applicant

NOMBUYISELO MHLAULI 11th Applicant

SARAH BIBI LALL 12th Applicant

SIZAKELE ERNESTINA SIMELANE 13th Applicant

SINDISWA ELIZABETH MKONTO 14th Applicant

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SUPPORTING AFFIDAVIT – MOGAPI SOLOMON TLHAPI

I, the undersigned,

MOGAPI SOLOMON TLHAPI

do hereby make oath and state as follows:

1. I am an adult male resident in Ikageng, Potchefstroom. I am the brother of Nicholas Ramatua 'Boiki' Tlhapi. Boiki forcefully disappeared at the hands of the Security Police in March 1986. He was 26 years old at the time of his disappearance.
2. I am the 22nd Applicant in this application.
3. The facts contained in this affidavit are both true and correct.
4. I depose to this affidavit on behalf of my mother, Thalitha Makgomo Tlhapi and my four siblings Theledi Jacob Tlhapi, Motlagomang Selinah Magau, Raseiso Jacobus Tlhapi and Mathibane Dorothy Tlhapi. Boiki's children, Kamogelo, Oukat, Tshenolo, Tsholofelo and Mathapelo are also recognised in this affidavit.

Boiki Tlhapi

5. Boiki was born to Barileng James Tlhapi and Thalitha Makgomo Tlhapi on 22 January 1960 in Ikageng Township, Potchefstroom. He was the eldest of six children. Boiki was schooled in Nanogeng Primary School, Keagile Higher Primary and Tlokwe Secondary School. He left school when he completed form 3, the equivalent of grade 10.

6. Boiki was a loving, caring and intelligent son and brother who was well known and respected in Ikageng. He cared deeply for his family and his community and wanted to see them free from the oppression of the apartheid regime.
7. We knew that Boiki was an activist, but we never participated in his political involvement. Our father was conscious of the threat that political activism posed to our safety and security, and he tried to shield us from potential harm. Boiki became a member of the ANC Youth League. He was resolute in his fight against the apartheid government. His political involvement placed him on the radar of the security police. He was arrested on several occasions but never charged.
8. On 20 March 1986, Boiki and a number of his friends left Ikageng for Klerksdorp to attend the funeral of various comrades of the Jouberton Youth Congress who were killed by the police during unrest. On their way to Klerksdorp, the kombi that the group was travelling in was stopped at a roadblock by the police. Boiki and several other members of the group were arrested in Jouberton and subsequently detained at the Joubert and Stilfontein Police Stations. Boiki never returned home.
9. Boiki's comrade, George Mangoeyane, who was also arrested on 20 March 1986 but released shortly thereafter, informed our father of Boiki's arrest. George told my father that Boiki was viciously assaulted by the police. He saw Boiki lying motionless on the floor in the passage at the Stilfontein Police Station, bleeding from his mouth and nose.
10. My father investigated Boiki's disappearance with the assistance of my mother's employer, a white man from Potchefstroom who we knew as Mr Strauss. They

went to the Stilfontein Police Station to make enquiries about, but it came to nought. My father was told that the police had no record of Boiki being detained at Stilfontein Police Station, however, the police later conceded that Boiki had been arrested on 20 March 1986 but that he was released the following day.

The 1994 inquest

11. In 1993, a former police officer who was stationed at the Stilfontein Police Station, Constable George Mbathu, deposed an affidavit in which he revealed that he had knowledge of Boiki's disappearance. Mbathu stated under oath that Warrant Officer Willem Petrus Viljoen, Sergeant Itumeleng Moses Matiti and Constables Tseladimitlwa, April Tswaedi, Majaja and Tsetsi John Mano had been involved in the arrest, interrogation and torture of Boiki and his friends. He also alleged that Boiki was killed by the police and that his body had been dumped down a mine shaft near Stilfontein. Mbathu later pointed out the infamous James Shaft, which had been abandoned at the time. The James Shaft has since been closed with a large concrete seal.
12. Lawyers for Human Rights, our family's lawyers at the time, accompanied the South African Police and the Independent Board of Inquiry to James Shaft in 1993. The police lowered a camera down the shaft to establish whether there were bodies dumped in the shaft. At the time, the same police officers who were responsible for Boiki's arrest and disappearance were the ones who conducted the investigation at the shaft. The video footage revealed a number of shadows but there was no conclusive proof that Boiki's body had been dumped there.
13. Our lawyers demanded a further investigation and in 1994 an inquest docket was registered (GO 49/94) at the Klerksdorp Magistrates' Court. Despite obtaining

several statements from Boiki's friends and the police officers who were stationed at the Stilfontein Police Station on the night of Boiki's arrest, the Inquest Magistrate returned a finding that it could not conclude that Boiki was deceased. It took nearly a year for the Magistrate to deliver the ruling.

The Truth and Reconciliation Commission

14. Our father continued to pursue Boiki's disappearance. On 29 September 1996, my father presented a plea for justice to the Truth and Reconciliation Commission's ("TRC") Human Rights Violations Committee. During my father's testimony, my mother continuously wept and ultimately collapsed and was rushed to hospital as my father related what he had gone through in search of Boiki.
15. None of the police officers who made statements during the inquest applied for amnesty for Boiki's disappearance. On the strength of my father's statement, the Human Rights Violations Committee declared Boiki a victim of gross human rights violations. The Committee found that Viljoen, Makiti, Tseladimitlwa, Tshwaedi, Majaja and Mano assaulted and tortured Boiki. It also found the Jouberton Security Branch, together with the Commissioner of Police, the Head of the Security Branch and the Minister of Law and Order responsible for Boiki's disappearance.
16. Our family, and in particular my father, expected that the police and prosecuting authorities under the democratic government would continue the search for Boiki. My father hoped that an investigation would lead to the arrest of those responsible for Boiki's forceful disappearance and he wished that his son's

remains would ultimately be returned to our family so that we could hold a proper burial for Boiki.

The toll on our family

17. My father never stopped pursuing Boiki's disappearance. He dedicated the rest of his life to searching for his missing son and this affected him greatly. He was never really the same again after Boiki disappeared. In some way one could say that a part of our father left us when Boike disappeared.

18. In March 2017, 30 years after Boiki's disappearance, my father, in response to a question from a journalist said:

"How can I sleep at night knowing my son's body, which was last seen battered and bloodied in some office at a police station, is possibly lying at the bottom of a disused mine shaft for the past 30 years?"

My father carried the pain of Boiki's disappearance with him to his grave when sadly he passed away in September 2020 at the age of 80, without knowing what happened to his son. The City Press article titled "'I must bury my son's bones before I die': Activist's parents plead for closure" in which my father is quoted is attached as annexure **"MST1"**.

19. My mother also suffered severely from Boiki disappearance. She is now 82 years old and struggles with her hearing. The pain and hurt that she suffered when Boiki disappeared 38 years ago is still extremely raw. Her biggest fear is that she will depart this earth without knowing what happened to her son and without giving him a proper burial. This is a pain that no mother deserves to endure, let alone for a continuous period of 38 years.

20. My siblings and I, and Boiki's children, were also affected by his disappearance. We miss our brother dearly and we do not have closure. We were deprived of a life with Boiki, who we believe would have had a bright future. He could have taken care of us, but because of the horrendous acts of the apartheid police and the regime, we were left to fend for ourselves and to take care of Boiki's children.

Conclusion

21. The police are currently investigating Boiki's case with a view to reopen the 1994 inquest into his disappearance. This investigation has been ongoing since November 2022 and has been conducted at snail's pace. Without the assistance of the Foundation for Human Rights and our pro bono lawyers we do not believe that the case would have progressed to this stage. We recently learned that the Minister of Justice is considering a request to re-open the inquest into Boiki's death.
22. The harsh reality for our family, and so many others whose loved ones were killed or disappeared under apartheid, is that the democratic government has failed us over the past three decades. The politicians and government officials who suppressed TRC cases know why they decided to deprive us of truth, justice and closure. This truth has not been forthcoming, and the time has come for it to be told - the government must do what is right. Our rights to human dignity have been deeply violated. We deserve to know why our cases were neglected for decades after the conclusion of the TRC in 1998. The truth must prevail, and justice must be done.
23. I support the relief claimed in this application. Constitutional damages will help us to commemorate Boiki's life and to continue pursuing truth and justice. An

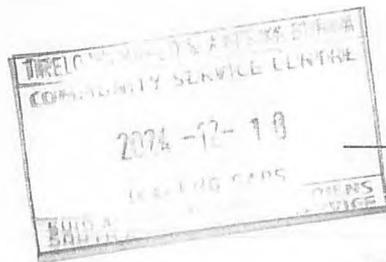
independent and public commission of inquiry must be established to investigate the political suppression of the TRC cases.



MOGAPI SOLOMON TLHAPI

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at

Fragweyane on this the 10 day of 12 2024.



COMMISSIONER OF OATHS

Full Names: R. W. Mphahlele
Business Address: 3335 Jephthah
Designation: WARRANT OFFICER

15 Mar 2017

Share

'I must bury my son's bones before I die': Activist's parents plead for closure

City Press

Poloko Tau

Comments



Barileng and Thabitha Tlhapi, the parents of Boiki Tlhapi, who went missing in custody of the South African Police in the 1980s. Picture: Tebogo Letsie

The family of struggle activist Ramatha Tlhapi say they have been let down by the National Prosecuting Authority's missing persons task team, which has not recovered his remains believed to be at the bottom of a disused mine shaft for the past 30 years.

"How can I sleep at night knowing my son's body, which was last seen battered and bloodied in some office at a police station, is possibly lying at the bottom of a disused mine shaft for the past 30 years?" said Barileng Tlhapi, the father of Ramatha.

Affectionately known as Boikie, Tlhapi's son was a struggle activist who never made it back home after he was arrested with several others while on their way from Potchefstroom to a night vigil of a fellow activist in Klerksdorp, North West, on March 20 1986.

On Monday March 20, it will be exactly 30 years since Tlhapi saw his son alive. The family's last hope of finding his remains relies on claims made by a former apartheid policeman, George Mbathu, that he saw a badly injured Boikie at Stilfontein police station where he worked at the time. He also claimed that Boikie's body was later loaded into a police van and dumped in the infamous James Shaft – an abandoned mine shaft nearby.

The Tlhapi family have been hoping that someone in the NPA would at least give Mbathu's statement some attention and the benefit of the doubt by going down the shaft to Boikie's body and that of other activists that disappeared in the small town.

Not convinced

The authorities, however, do not seem convinced. They have not rushed to explore the shaft in search of the bodies despite the information coming from Mbathu.

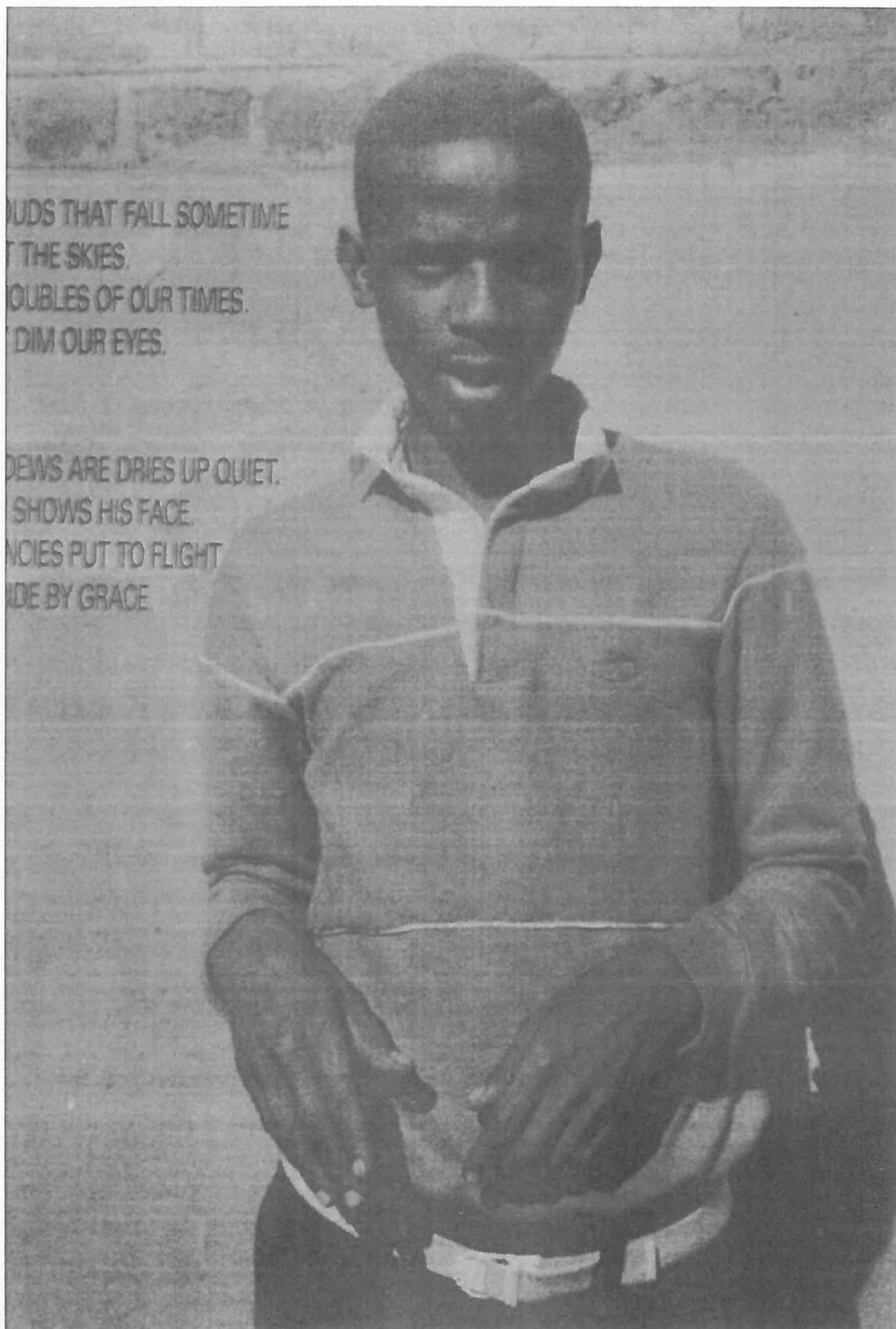
The missing persons task team told City Press they were aware of Boikie's disappearance and claims around what happened to his body. The task team's head, Madeleine Fullard, said Mbathu's statement was only "hearsay" and that "something concrete" was needed to trigger such enormous work at the shaft, believed to be more than 2 000 metres deep.

"We need conclusive facts and not just hearsay but we have been working on the case and our investigation continues. I am not saying we will never go search the shaft," Fullard said.

Her statement has given the family some hope even though they have ran out of patience with authorities.

Desperate for closure

1139



Boikie Tlhabi, who went missing in custody of the South African Police in the 1980s. Picture: Tobogo Letsie

Back in Ikageng township in Potchefstroom, the Tlhapi family is desperate for closure. The mood was sombre inside the family lounge where Boikie's framed picture is still hanging on the wall.

"We're desperate for closure. Who in our shoes would not believe Mbathu?" Tlhapi senior said.

If he could, he said, he would go down the shaft himself and retrieve his son's remains. But this is a dangerous mission that requires experts with specialised equipment, he lamented.

Boikie's 75-year-old mother Thalitha remained silent during the interview. Her face shiny, with sunken eyes, she often nodded in agreement with her husband as she shared the heart-rending tale of her family's three decades of torment and endless questions about what could have happened to their child.

Thalitha was rushed to hospital 20 years ago after she fainted at the Truth and Reconciliation Commission (TRC) hearings while her husband was giving testimony on the disappearance of their son. No police officer applied for amnesty or confessed to killing or disposing of Boikie's body.

Tlhapi told the TRC: "The people involved are Viljoen and April [two police officers] and this other one who witnessed the electrocution of my son. I would appreciate it if they come to tell exactly what they did to him. If my child is alive, please bring him back. If he is dead, it is still okay; bring him back and I will bury him."

Key man dead

City Press has since learnt that April Tshwaedi – who has been named by Tlhapi and Mbathu as one of those who last saw Boikie – died earlier this year possibly taking the secret to the grave with him.

The Hawks spokesperson Brigadier Hangwani Mulaudzi told City Press they found out that the "central person who knew about the allegations was Tshwaedi, who unfortunately allegedly committed suicide".

Fullard said her task team has tried to make contact with Tshwaedi but said he had been "evasive". It was not clear where the other policeman last seen with Boikie, "Viljoen", was.

"Around 2007 or 2008 our team unsuccessfully tried to interview an implicated former police officer Tshwaedi. We then interviewed Mbathu in 2013 and also made some inquiries on the shaft looking for details like owners, its depth and so on," Fullard said.

"The challenge is we don't have anything from any of the alleged perpetrators. Going down the shaft would be a huge and dangerous operation that we would like to do [if we had] conclusive facts. We appeal to anyone with information to come forward even if it means doing so anonymously to ourselves," she said.

Dad's visits

Nothing will make Tlhapi, now 77, happier than dying knowing he gave his missing son a decent burial.

"We're about to die having not seen our son's bones. We are hugely disappointed. But we still hope that someone in government somewhere would move to our side and help us find closure.

"Individuals within the police service have failed us by not telling the truth and not applying for amnesty. Some of them have taken it to the grave and thus denied us justice and closure," he said.

Tlhapi said he had twice been to James Shaft where divers went on a "search for about four minutes and came back empty handed".

"When we went back few months later, I think in the early 90s, surprisingly the shaft was covered with concrete. A remote-controlled camera was lowered into the shaft and we watched on a monitor from the surface. I saw some black things and lots of water," Tlhapi said.

"Later a white man came to me and said: 'Are you satisfied now. There are no bodies down there.' He threw his hands in the air and walked away when I said to him, I saw black things and we're told bodies were covered in black plastic bags before they were thrown in there."

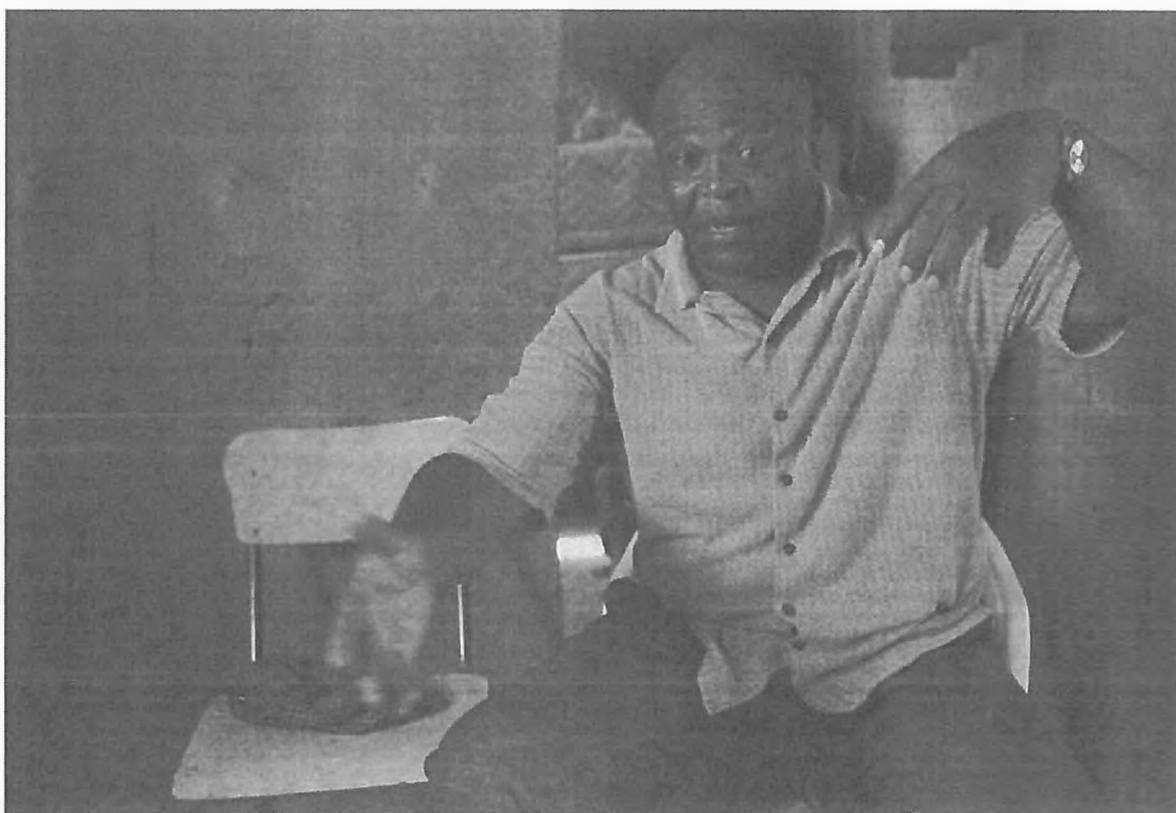
Tlhapi said he was not satisfied with these efforts. "Technology has now advanced and I ask myself why police come to take statements from us almost every year but nothing is happening. Mbathu has provided information ... why can't they act on it and retrieve my son's body?" he asked.

Fullard noted work done by the Lawyers for Human Rights on Boikie's case in the late 80s and 90s.

"It went as far as inquest, which I think was inconclusive. We also did not get any report or footage from the time when a camera was lowered into the shaft," she said.

Charge me if I lied

Mbathu remains unyielding in his belief that the bodies are down the shaft. He has put his head on the block saying: "Please charge me if you go there and return empty-handed. I am saying Boikie Tl'hapi's body was thrown down James Shaft and many other bodies have ended up in there."



George Mbathu a former police officer in the 1970's until early 1990s, says he knows where political activists' bodies were discarded during the apartheid struggle in Klerksdorp and Potchefstroom. Picture: Tebogo Letsie

He told City Press he had an office not far from the one Boikie was kept.

"I went to that office on March 21 1986 and when I could not open the door I walked around and through the window, I saw Boikie lying there covered in blood which was also coming out his mouth and nose ... he had been badly beaten."

"There were two officers, April Tshwaedi and Viljoen, in the office and the next day records showed that Boikie was released and I ask myself how they released him when he did not look like he was alive," he said.

He said he also saw officers loading a black plastic bag in the bakkie and I knew very well that was Boikie's body. One officer later came to me and said: "We're done with those people. You will sleep in peace; that boy has been thrown in the shaft".

Mbathu said the "sleeping in peace" referred to him not having to worry about his house in the township being stoned or torched after it had happened several times before.

Meanwhile, Fullard said her team was also aware of claims made by Mbathu that the body of another struggle activist, Nokuthula Simelane, ended down the same shaft. She said a probe into Simelane's disappearance was also continuing.

Simelane, an uMkhonto weSizwe member, was abducted in 1983 at the age of 23 and the TRC heard of how she was beaten and tortured by the security police. There were contradicting statements of her body buried somewhere around Rustenburg while others claimed the body was last seen in Potchefstroom.

Mbathu claimed to have seen her body at Stilfontein police station where he worked – which is about 35km away from Potchefstroom. Simelane's body was never found and her sister, who is now the mayor of Polokwane in Limpopo, Thembu Nkadimeng, said the "search continues".

Meanwhile, a friend of Boikie, George Magwejane, corroborated Mbathu's version, suggesting they saw Tlhapi's son lying injured on the floor at the police station.



George Magwejane a friend of Boikie Tihapi, who went missing in custody of the South African Police in 1980s.

Picture: Tebogo Letsie

"We were arrested together and the following day I was being led to another office for my turn to be tortured when I saw him lying motionless on the floor. I can't say if he was alive or not but I noticed blood coming out of his mouth, ears and nose," Magwejane said.

"I was severely beaten and tortured but my injuries were nothing compared to what Boikie looked like." He said.

The missing persons task team has unearthed the remains of apartheid victims from all over the country and beyond borders. It remained unclear whether the "notorious" shaft is ever going to be searched for any possible human remains.

The Hawks said they were dealing with separate TRC matters. They referred City Press to North West provincial detective offices.

The provincial police spokesperson, Brigadier Sabata Mokgwabone, did not respond to City Press enquiries.

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

| | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |
| STEPHANS MBUTI MABELANE | 15 th Applicant |

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

TAYLA ILSLEY
 BA Law (UP) – LLB (UP)
 Commissioner of Oaths
 Ex Officio / Practising Attorney R.S.A
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18/01/2025



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THULI KUBHEKA 16th Applicant

HLEKANI EDITH RIKHOTSO 17th Applicant

TSHIDISO MOTASI 18th Applicant

NOMALI RITA GALELA 19th Applicant

PHUMEZA MANDISA HASHE 20th Applicant

MKHONTOWESIZWE GODOLOZI 21st Applicant

MOGAPI SOLOMON TLHAPI 22nd Applicant

FOUNDATION FOR HUMAN RIGHTS 23rd Applicant

and

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA 1st Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA 2nd Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT 3rd Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS 4th Respondent

MINISTER OF POLICE 5th Respondent

NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE 6th Respondent

SUPPORTING AFFIDAVIT – DR ZAHEED KIMMIE

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I, the undersigned,

DR ZAHEED KIMMIE

do hereby make oath and state as follows:

1. I am an adult male and the Executive Director of the Foundation for Human Rights ("FHR" or "the Foundation"), registered as a non-profit company, situated at the 7th Floor, Metal Box Building, 25 Owl Street, Braamfontein, Johannesburg.
2. I have a PhD in Mathematics from the University of Cape Town and a Master's in Public Health from Harvard University. Prior to joining the FHR I was a Senior Statistician and Group Manager for Planning with the Council for Scientific and Industrial Research.
3. I am duly authorised to depose to this affidavit on behalf of the FHR.
4. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
5. I have read the notice of motion, the founding affidavit of Lukhanyo Calata and the supporting affidavit of Yasmin Sooka. I confirm the contents thereof insofar as they relate to the FHR.
6. In amplification thereof, and in what follows, I set out:
 - 6.1 a brief history of the FHR's involvement in seeking justice for victims and families of victims of apartheid-era gross human rights violations;
 - 6.2 the need for this application.

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About the Foundation for Human Rights

7. The FHR is a non-profit human rights organisation based in Johannesburg working to protect and promote human rights and the values and commitments enshrined in South Africa's Constitution. One of the FHR's flagship programmes has been the "Unfinished Business of the Truth and Reconciliation Commission Programme", which works towards criminal accountability for apartheid-era crimes, in particular for gross human rights violations where amnesty was refused by the Truth and Reconciliation Commission ("TRC") or not applied for.
8. The FHR was established in 1996 by the European Union and the Government of South Africa to address the historical legacy of apartheid, to promote and advance transformation in the country, and to build a human rights culture based upon the principles of the new Constitution.
9. Over the past two decades, the Foundation has consistently pursued the unfinished business of the TRC using a variety of intervention strategies. FHR has played a leading role in promoting the rights of victims of apartheid-era crimes by supporting the recommendations of the Truth and Reconciliation Commission, particularly those related to accountability for gross violations of human rights, reparations for victims, and public access to the records of the TRC currently with the state archives.
10. After the winding up of the TRC, the FHR helped to establish a new government unit to trace the remains of activists who were disappeared or murdered by apartheid security forces – the Missing Persons Task Team located within the National Prosecuting Authority ("NPA"), through the provision of seed funding. The grant enabled the unit to recruit its first staff

members and begin work. The work of the unit has led to the discovery, recovery, and reburial of the remains of former activities killed by the apartheid regime.

11. The Foundation has a long history of advocating for criminal accountability for the TRC cases and supporting the efforts of victims seeking justice. The TRC cases involve gross human rights violations such as killings, torture, kidnappings and enforced disappearances. Many of these violations are likely to amount to serious international crimes such as crimes against of humanity under customary international law.
12. In 2002, the FHR assisted the Khulumani Support Group to bring a court application against 20 large corporations in the USA under the Alien Tort Claims Act seeking compensation for the companies' role in aiding and abetting the oppressive and criminal system of apartheid.
13. The FHR supported the court applications opposing the 2005 amendments to the NPA's Prosecution Policy and President Mbeki's 2007 Special Dispensation on Political Pardons, which were aimed at introducing "backdoor amnesties" for apartheid-era gross human rights violations, and which were successfully stopped in the courts.
14. The Foundation commissioned an analysis of all the amnesty cases that came before the TRC in order to identify which cases ought to be investigated further with a view towards future prosecutions. The TRC recommended investigations into several hundred cases arising out of the amnesty process.
15. The FHR engaged the services of a human rights investigator, the late Frank Dutton, the former police detective who investigated notable cases such as the Trust Feeds and KwaMakutha massacres and who conducted investigations

for the Goldstone Commission. Dutton reviewed all of the amnesty cases, which included 76 deaths in detention, and identified priority cases for further investigation and prosecution by the NPA.

16. One of the Foundation's most important objectives is to ensure that cases against alleged perpetrators who were denied amnesty or who did not apply for amnesty, are prosecuted to the fullest extent under the law. To this end, the FHR has established a dedicated programme, known as the Unfinished Business of the TRC ("UBTRC"), which is aimed at ensuring criminal accountability for apartheid-era crimes through:

- 16.1 supporting victims' families to pursue their matters through the courts,
- 16.2 advocacy efforts on behalf of these families as well as in the public interest.

17. The FHR works in close collaboration with the South African Coalition for Transitional Justice, an umbrella body of organisations and individuals working to advance the rights of victims of apartheid era gross human rights violations and to hold the South African government accountable to its obligations. The Coalition focusses on issues that impact the rights of victims including pardons, prosecutions, reparations, and torture and disappearances.

18. Between 2015 and September 2024, the FHR has spent a total of **R8 482 232** on direct support to the TRC cases including on investigations, legal fees and expert fees. See **Table 1** attached to the memorandum titled "Estimated Costs" annexed hereto marked "**ZK**". If requested by this Honourable Court we can supply the invoice analysis, methodology employed and underlying documentation.

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19. This amount includes disbursements such as transport, accommodation, lunches, refreshments, printing and other incidental costs incurred by victims' families, investigator and counsel. However, this amount excludes the cost of FHR staff, as well as associated administrative, communication, logistical support costs, and other disbursements incurred on behalf of the FHR.
20. This amount also does not include the time contributed by the lead counsel on the TRC cases, who between 2005 and 2023 worked on all cases pro bono, which included more than 100 days in court, not counting time spent in preparation. Some of the technical experts who provided expert reports and testified in the reopened inquests also worked without charge or on the basis of discounted fee.

Supporting victims' families to pursue their matters through the courts

21. For the past twenty years, the FHR has advocated for the completion of the unfinished business of the TRC. The FHR supports many of the families who went through the TRC process who are still seeking truth, justice and closure.
22. Victims of human rights violations and their families are at the heart of the UBTRC. They are the key drivers behind the pursuit of justice and the quest for truth behind long standing apartheid era crimes.
23. A primary focus of the FHR has been to assist families in their engagements with the Directorate of Priority Crime Investigations ("DPCI") and the NPA to take their cases forward.
24. In 2005, the FHR was first approached by Thembi Simelane to assist with the case into the disappearance and murder of her sister, Nokuthula Simelane, as

described in the Founding Affidavit, and the supporting affidavit of Ernestina Simelane.

25. In 2017, the historic reopened inquest into the death in detention of Ahmed Timol took place. It culminated in Judge Mothle's judgment, which found that Ahmed Timol was tortured and murdered by the Security Branch of the South African Police. The FHR supported the efforts of the Timol family in their endeavours to seek truth and closure. Encouraged by the success of the Timol inquest, other families approached FHR for assistance.
26. Subsequently, other inquests into the deaths in detention of Dr Neil Aggett, Ernest Dipale, Dr Hoosen Haffejee and Imam Haron were reopened. In the Aggett judgment delivered in March 2022, the court overturned the suicide findings of the 1982 Inquest Court. It rejected the finding of "suicide", and ruled that Dr Aggett was tortured and murdered by the Security Branch of the South African Police. In 2023, courts delivered judgments in the reopened inquests into the deaths in detention of Dr Hoosen Haffejee and Imam Haron, also overturning the initial findings of suicide and implicating Security Branch members in their deaths.
27. In January 2024, the Minister of Justice announced the reopening of a third inquest into the murders of the Cradock Four activists. However, the commencement of the inquest was further postponed to June 2, 2025. The collapse of the inquest occurred notwithstanding strenuous efforts made on behalf of the families to ensure a timely start. Legal representatives of the former SAP and SADF witnesses complained that they were notified too late to prepare for the inquest and have not been able to secure state funding for their legal costs.

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28. In 2023, FHR has also been informed that inquests into the 1993 Highgate Massacre and murder of Dr Rick Turner would be reopened. The Highgate Massacre inquest has been set down for hearing on 27 January – 7 February at the High Court in East London. Unfortunately, despite the efforts to push the matter forward, the Turner inquest is yet to be set down for hearing at the Durban High Court.
29. In October 2022, the NPA opened inquests into four other matters, namely the murders and enforced disappearances of the ANC activists and MK operatives in Kwa-Zulu Natal: Ntombikayise "Ntombi" Kubheka, Musawakhe "Sbho" Phewa, Zamukwenzani Bright Mlobeli/Sokhulu, and Jameson Ngoloyi Mngomezulu. The Kubheka and Phewa families have since instructed the FHR to assist with their matters. The inquests into these matters are now held in abeyance, pending criminal prosecutions of the alleged perpetrators, which appear to have stalled.
30. The FHR and its legal teams are also supporting families in the few cases that are subject to prosecution, including the murders of anti-apartheid activists Nokuthula Simelane and the COSAS Four. As at the time of writing these cases, regrettably, remain stalled. However, on a positive note, Johan Marais, one of the four former police officers accused in the 1987 murder of anti-apartheid activist Caiphus Nyoka, pleaded guilty to the murder charge in the Pretoria High Court on 12 November 2024.
31. In November 2024, the NPA confirmed in writing that the Minister of Justice has formally reopened an inquest into disappearance of Ramatua Nicholas Tlhapi and requested the Judge President of the Hight Court to appoint a judge to preside over the inquest.

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32. All the cases described above have progressed largely due to consistent pressure from the families, legal representatives and the FHR. In virtually all the TRC cases before the courts today, the victims' families, supported by FHR and their legal teams, had to litigate or threaten litigation to force the NPA and the DPCI to act.
33. The FHR currently provides active assistance to victims' and victims' families in 24 TRC cases.

FHR's advocacy efforts

34. In addition to pursuing justice on behalf of victims' families, the FHR has attempted to address the systemic challenges within the NPA by focusing on concentrated strategic interventions. The FHR has also established a website on the Unfinished Business of the TRC, which monitors all key developments.
35. A key intervention has centred on advocacy to set up dedicated capacity to deal with the TRC cases within the NPA and the DPCI. In order to address the lacklustre delivery in respect of the TRC cases the FHR since 2019 has been pressing the state to introduce a specialist capacity to investigate and prosecute crimes from the apartheid era. This included providing an opinion on how this could be done within existing legal frameworks, such as establishing an investigating directorate. These efforts led to the establishment of the TRC Components within the NPA and DPCI in 2021, with their operationalisation following in 2022. However, the powers, functions, and composition of these bodies fall significantly short of the recommendations made by the FHR.
36. In addition, the FHR has made proposals around the need to set up a liaison structure between the NPA and interested parties (i.e., FHR, victims' groups

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etc.) to create a permanent communication channel for regular progress reporting and information sharing about the TRC cases. To date, these efforts have not been successful with no regular liaison, and only occasional meetings with the NPA's TRC Component, typically only once a year.

37. Since 2005, the FHR and legal teams representing the families of anti-apartheid activists, have had numerous interactions with the NPA aimed at convincing them to include serious international crimes under customary international law as per section 232 of the Constitution in the indictments of accused. With the exception of the COSAS Four case these attempts have been unsuccessful.
38. The FHR first raised the issue of international criminal charges with the NPA in 2005 and revisited the matter following the indictment issued in the Nokuthula Simelane case in 2016. In total the FHR has submitted 6 legal opinions and memoranda on this issue.
39. Since 2022 the FHR has been advocating for the creation of dedicated courts (like the Sexual Offences Court and the Special Commercial Crime Courts) to deal expeditiously with the TRC cases.
40. The Foundation has also supported the civil society call to the President to set up an independent and public commission of inquiry with the necessary powers under the Commissions Act 8 of 1947 to investigate the suppression of the TRC cases and the political interference in the work of the NPA and the police.
41. The FHR continues to advocate for:
 - 41.1 Closure, truth and healing for victims and victims' families;

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- 41.2 Access to state information and archives related to apartheid era human rights violations;
- 41.3 Successful prosecutions through new independent and specialist investigations;
- 41.4 Effective and capable state law enforcement agencies to pursue these crimes;
- 41.5 Meaningful reparations as recommended by the TRC under the Promotion of National Unity and Reconciliation Act, No. 34 of 1995,
- 41.6 Greater public awareness about the TRC and post-TRC processes and developments.

The need for this application and the court's intervention

- 42. Prosecution of perpetrators is a necessary legal step in line with the Constitution and envisaged in the Promotion of National Unity and Reconciliation Act 34 of 1995 ("the TRC Act") and recommended in the Final Report of the TRC published in 2003.
- 43. The persistent, long-term failure of the South African government to complete the unfinished business of the TRC has led to a whole series of consequences at different levels.
- 44. At the level of victims and their families, there has been a lack of justice, truth and accountability for human rights violations of the past. At the level of the perpetrators of these crimes, there has been impunity for the commission of gross violations of human rights. At a wider societal level, this has contributed to a culture of impunity for committing serious crimes and a diminution in

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respect for the rule of law in post-apartheid South Africa. The finalisation of these cases remains extremely urgent.

45. Given the wholesale suppression of the TRC cases over some two decades, and the dire failure of the state to pursue its constitutional obligations, the FHR endorses the orders sought compelling the President to establish an independent commission of inquiry, as well as the payment of constitutional damages to the families to vindicate their deeply violated rights.
46. The FHR has provided guidance to the legal team in determining the quantum sought under the constitutional damages claim. This process has been informed by decades of experience working on TRC cases. A detailed narrative substantiating the amounts requested under the "Advance Truth, Justice, and Closure" component of constitutional damages is attached to this affidavit marked as annex "ZK".
47. I further confirm that the amounts listed under the head of constitutional damages titled "Memorialisation, commemoration and public education" in the founding affidavit are consistent with the amounts that FHR has granted for similar or equivalent projects over the years.
48. Accordingly, the Foundation is in strong support of the relief sought in the Notice of Motion and prays for the granting of these remedies to the families. We wish to place on record that should a fund to support the legal and other costs of families of victims be established as a result of this action, the Foundation will not access any monies from that fund for its own staffing or administrative costs.

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DR ZAHEED KIMMIE

Signed and sworn to before me at SANDTON on this the 17 day of JANUARY 2025, the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, the provisions of Government Gazette R1478 of 11 July 1980 as amended by Government Gazette R774 of 20 April 1982, concerning the taking of the oath, having been complied with.

Nicola Grace Irving

COMMISSIONER OF OATHS

Full Names:

Business Address:

Designation:

Capacity:

Nicola Grace Irving
15 Alice Lane
Sandton
Commissioner of Oaths Ex Officio
Practising Attorney
Republic of South Africa

Annex "ZK"

Estimated costs of investigations, inquests and prosecutions

Purpose of the document

The document has been prepared by the Foundation for Human Rights and provides estimations of costs needed to cover three sets of cases:

- A typical inquest
- A typical prosecution
- A case that has advanced neither to an inquest nor to prosecution (an investigative case).

This document has been prepared to substantiate the amounts requested under the "Advance Truth, Justice, and Closure" component of constitutional damages.

General comments about the estimates

1. The figures below draw on the actual expenditure for the TRC cases incurred by the Foundation for Human Rights and Webber Wentzel, as well as their experience supporting the TRC cases. However, they represent estimated costs for 'a typical inquest', 'a typical prosecution' and 'a typical investigative' case.
2. The administrative costs have been calculated based on what would be a reasonable fee for managing the case. They do not reflect the level of support provided by FHR's staff for the TRC cases, which at times included an enhanced level of assistance that will not always be required in the administration of such cases.
3. The estimated costs below do not include media & communication costs, which the FHR would typically incur as part of its mobilisation, advocacy and raising awareness work but which are not necessary to successfully conduct an inquest.
4. For the purposes of these estimates and this document, "investigation" encompasses all investigation-related activities, including but not limited to investigator fees, tracings, background checks and research or analysis of evidence.

A typical inquest

Inquest's length

5. The inquest days range from 8 days in Haron, to 16 days in Timol, 18 days in Haffejee and 44 days in Aggett [**See Table 1 annexed**]. We have estimated that a typical inquest would therefore run for 15 days (3 weeks) for the purpose of the calculations below.

Investigation

6. We have considered the costs incurred by the FHR in the previous inquests (particularly in Timol, Haffejee and Aggett) and have established that investigations in a typical inquest would cost approximately R400,000.

Legal costs

7. Our experience shows that a typical inquest would require one lead counsel, two junior counsel and three attorneys.
8. In addition to 15 days in court, we have calculated two additional days per court day to estimate the time that would be typically required by attorneys and counsel to prepare for an inquest. We have used 45 days as a baseline for a typical inquest.
9. Counsel and attorneys' fees:
 - 10.1. We have used a daily tariff (Scale A) of R11,500 as prescribed by the High Court Rules. We have used the lowest rate, which seems the most reasonable in our case.
 - 10.2. We have used an FHR-reduced rate of R6,000/day to calculate the costs of junior counsel for a typical inquest **[See Table 2 annexed]**. The R6,000/day is the FHR's highest daily rate for a junior counsel with 2-10 years of experience in the bar.
 - 10.3. We have used an FHR-reduced rate of R12,000/day to calculate the costs of senior or experienced counsel for a typical inquest **[See Table 2 annexed]**.

Expert fees

11. Our experience shows that a typical inquest would require experts' reports (e.g., forensic pathology, ballistic, architectural and/ or aeronautical engineering). Based on the FHR's actual expenditure and experience, we have estimated a cost of R60,000 per expert report.

Disbursements

12. These include all inquest-related disbursements e.g., transport and accommodation for the legal team, accommodation and transport for witnesses and families, lunches, refreshments, printing, etc.
13. The cost of disbursements depends on various factors, such as whether the legal team and the families are based in the location where the inquest takes place. As a result, the level of disbursements will vary from one inquest to another, making it difficult to estimate accurately.
14. Drawing on the expenditure incurred by the FHR and Webber Wentzel on disbursements, we have estimated approximately R400,000 for these costs.

Administrative costs

15. These costs include all administrative, financial, logistical and coordination support of conducting a successful inquest.
16. We have adopted an approach of estimating these costs based on reasonableness, proposing that 15% of the total costs be allocated to administrative expenses.

A typical prosecution**General observations:**

17. The role of victims and their lawyers in the criminal process is more limited than a typical inquest. However, given the numerous legal and practical challenges involved in prosecuting historical crimes, as well as the defence's potential use of delay tactics, the legal support required by victims and their families may demand significant resources.
18. It is very difficult to outline a typical prosecutorial case, as various factors—such as the length of proceedings and the presence or absence of interlocutory matters—can greatly affect the nature of the case.
19. None of the TRC-related trials in which the FHR and Webber Wentzel have been involved have reached a conclusion yet.

Investigations

20. A private investigator conducted initial investigations in both the Simelane and Nyoka cases, supported by FHR and Webber Wentzel, which are now at the trial stage. Similarly, the private investigator carried out an initial investigation in the COSAS 4 case, another FHR-supported matter. Based on the expenditure incurred in the Simelane case, we have estimated R200,000 for investigations.

Legal costs

21. Our experience indicates that a typical prosecutorial case requires two attorneys and a lead counsel. Additionally, in some instances, the case may require the support of a junior counsel, particularly when interlocutory proceedings are initiated.
22. The length of trials will vary. Since 2015 and 2019, respectively, the attorneys from Webber Wentzel spent approximately 153 days working on the Simelane matter and approximately 66 days on the Nyoka matter.¹ Hence, we estimate that attorneys will spend approximately 70 days on a trial case.
23. Lead and junior counsel typically become involved if interlocutory or associated civil proceedings are initiated, such as presumption of death proceedings,

¹ These have been back calculated using the Webber Wentzel numbers. The calculation is for a 8-hour day.

amicus briefs, legal costs litigation, or reviews of amnesty decisions. Assuming one interlocutory proceeding per case, we have estimated the counsel's time spent on the trial as follows:

- 23.1. Lead counsel: 10 days
- 23.2. Junior counsel: 15 days
- 23.3. Counsel and attorneys' fees: We have used the same fees as for the inquests.

Disbursements

24. Webber Wentzel has incurred R221,839 in disbursements in the Simelane matter, and R24 747 in the Nyoka matter. The FHR expenditure towards the disbursements in the cases at the trial level have not been significant. Hence, we have estimated R200,000 towards disbursements in relation to cases at the trial level.

Administrative costs

25. These costs include all administrative, financial, logistical and coordination support of conducting a successful inquest.
26. We have adopted an approach of estimating these costs based on reasonableness, proposing that 15% of the total costs be allocated to administrative expenses.

A private prosecution

27. For the purposes of the funding affidavit, we assume that private prosecutions require twice the funding of typical prosecutions to account for the need to put up security for costs.

A typical case that has advanced neither to an inquest nor to prosecution

General observations

28. In some instances, a case has prospects of success but there is no decision regarding a potential inquest or prosecution, or at some point, the NPA declines to prosecute. Such cases will require largely 'investigative' and expert support, and some minimal level of support from the counsel.

Investigations

29. We estimate that an investigative case will require the same level of funding as a trial case, and therefore, project the cost to be R200,000.

Legal costs

30. Our experience indicates that a typical case requires two attorneys and, in some circumstances, (see below), a counsel or an expert.

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31. We estimate that attorneys will spend approximately 35 days on an investigative case, which is half the time for a typical trial case.
32. In some instances, the involvement of an expert or counsel might be required at the investigative stage to provide an analysis of evidence or a legal or expert opinion. Based on our experience, we have estimated two expert/legal reports/opinions per case at R60,000 each. This amount corresponds to 10 days of work of a senior counsel at the FHR's rate of R12,000/day.

Disbursements

33. We estimate non-significant expenditure towards the disbursements in such cases. Hence, we have estimated R100,000 towards disbursements.

Administrative costs

34. These costs include all administrative, financial, logistical and coordination support of conducting a successful inquest.
35. We have adopted an approach of estimating these costs based on reasonableness, proposing that 15% of the total costs be allocated to administrative expenses.

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Table 1: Summary of FHR UBTRC Program expenses : 1 Aug 2015 to 12 Sept 2024

| | |
|--|------------------|
| 1. Simelane matter | 509 233 |
| Investigations | 208 517 |
| Legal fees | 299 437 |
| General disbursements | 1 279 |
| 2. Timol inquest | 551 568 |
| Investigations | 357 885 |
| Legal fees | 85 500 |
| General disbursements | 108 183 |
| 3. Rodrigues | 123 103 |
| Legal fees | 123 103 |
| General disbursements | 0 |
| 4. Aggett inquest | 1 528 378 |
| Investigations | 756 369 |
| Legal fees | 635 513 |
| Expert fees | 76 902 |
| General disbursements | 59 594 |
| 5. Haffejee inquest | 499 070 |
| Investigations | 171 255 |
| Legal fees | 230 660 |
| Expert fees | 0 |
| General disbursements | 97 155 |
| 6. Haron inquest | 397 729 |
| Investigations (carried out by Webber Wentzel) | 0 |
| Legal fees | 160 473 |
| Expert fees | 83 258 |
| General disbursements | 153 998 |
| 7. Cradock 4 | 834 935 |
| Investigations | 508 861 |
| General disbursements | 30 067 |
| Legal fees | 206 425 |
| Support to Cradock 4 families to engage with the NPA | 89 582 |
| 8. TRC Programme - Other cases than above | 4 038 216 |
| Legal fees | 1 266 884 |
| Investigations | 2 197 607 |
| Watching briefs | 172 325 |
| Expert fees (other than above) | 141 750 |
| General disbursements in support of the TRC cases | 259 650 |
| TOTAL | 8 482 232 |

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Table 2: Estimated cost of typical inquest and prosecution

| A typical Inquest | | | | |
|--|-------------|---------------------|--------------------------|------------------|
| | <i>Unit</i> | <i>No. of units</i> | <i>Value of the unit</i> | <i>Total</i> |
| Investigation | Lump sum | 1 | 400 000 | 400 000 |
| Legal costs | | | | |
| 3 Attorneys' fees | Day | 135 | 11 500 | 1552500 |
| Junior counsel fees | Day | 45 | 6 000 | 270000 |
| Senior counsel fees | Day | 45 | 12 000 | 540000 |
| Expert fees | Report | 3 | 60 000 | 180000 |
| Disbursements | Lump sum | 1 | 400 000 | 400000 |
| Administrative costs (15% of all cost) | Percentage | 1 | 501375 | 501375 |
| Total | | | | 3 843 875 |

| A typical prosecution | | | | |
|--|-------------|---------------------|--------------------------|----------------|
| | <i>Unit</i> | <i>No. of units</i> | <i>Value of the unit</i> | <i>Total</i> |
| Investigation | Lump sum | 1 | 200 000 | 200000 |
| Legal costs | | | | |
| 2 Attorneys' fees | Day | 70 | 11 500 | 805000 |
| Junior counsel fees | Day | 15 | 6 000 | 90000 |
| Senior counsel fees | Day | 10 | 12 000 | 120000 |
| Disbursements | Lump sum | 1 | 100 000 | 100000 |
| Administrative costs (15% of all cost) | Percentage | 1 | 197250 | 197250 |
| Total | | | | 1512250 |

| A typical case that has advanced neither to an Inquest nor to prosecution | | | | |
|--|-------------|---------------------|--------------------------|---------------|
| | <i>Unit</i> | <i>No. of units</i> | <i>Value of the unit</i> | <i>Total</i> |
| Investigation | Lump sum | 1 | 200 000 | 200000 |
| Legal costs | | | | |
| 2 Attorneys' fees | Day | 35 | 11 500 | 402500 |
| A legal/expert opinion | Opinion | 2 | 60 000 | 120000 |
| Disbursements | Lump sum | 1 | 100 000 | 100000 |
| Administrative costs (15% of all cost) | Percentage | 1 | 123375 | 123375 |
| Total | | | | 945875 |

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

| | |
|--------------------------------|----------------------------|
| LUKHANYO BRUCE MATTHEWS CALATA | 1 st Applicant |
| ALEGRIA KUTSAKA NYOKA | 2 nd Applicant |
| BONAKELE JACOBS | 3 rd Applicant |
| FATIEMA HARON-MASOET | 4 th Applicant |
| TRYPHINA NOMANDLOVU MOKGATLE | 5 th Applicant |
| KARL ANDREW WEBER | 6 th Applicant |
| KIM TURNER | 7 th Applicant |
| LYNDENE PAGE | 8 th Applicant |
| MBUSO KHOZA | 9 th Applicant |
| NEVILLE BELING | 10 th Applicant |
| NOMBUYISELO MHLAULI | 11 th Applicant |
| SARAH BIBI LALL | 12 th Applicant |
| SIZAKELE ERNESTINA SIMELANE | 13 th Applicant |
| SINDISWA ELIZABETH MKONTO | 14 th Applicant |
| STEPHANS MBUTI MABELANE | 15 th Applicant |

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THULI KUBHEKA 16th Applicant

HLEKANI EDITH RIKHOTSO 17th Applicant

TSHIDISO MOTASI 18th Applicant

**CERTIFIED A TRUE COPY
OF THE ORIGINAL**

NOMALI RITA GALELA 19th Applicant

PHUMEZA MANDISA HASHE 20th Applicant

MKHONTOWESIZWE GODOLOZI 21st Applicant

MOGAPI SOLOMON TLHAPI 22nd Applicant

FOUNDATION FOR HUMAN RIGHTS 23rd Applicant

and

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA 1st Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA 2nd Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL 3rd Respondent

DEVELOPMENT

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS 4th Respondent

MINISTER OF POLICE 5th Respondent

NATIONAL COMMISSIONER OF THE 6th Respondent

SOUTH AFRICAN POLICE SERVICE

TAYLA ILSLEY 20th Applicant
BA Law (UP) - LLB (UP)
Commissioner of Oaths
Ex Officio / Practising Attorney R. S. A.
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(011) 784-3310
Mobile: +27 (0) 72 839 9229
Email: tayla@lanlevitt.co.za

18/01/2025


SUPPORTING AFFIDAVIT

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I, the undersigned,

ODETTE HELENA GELDENHUYS

do hereby make oath and state as follows:

1. I am an adult female attorney and the head of the Webber Wentzel pro bono team ("the pro bono team"), based in Cape Town.
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, true and correct.
3. I have read the founding affidavit of Lukhanyo Bruce Matthews Calata, and I confirm the content thereof in so far as it relates to the pro bono legal services that the pro team has and continues to provide to families of victims of apartheid-era human rights violations.
4. The purpose of this affidavit is to explain and contextualise the basis of the sum of damages that the applicants are claiming under the first head of the claim for constitutional damages, namely, advancing truth, justice and closure.

The Webber Wentzel pro bono team

5. Webber Wentzel is a corporate law firm that is committed to serving our community and upholding our duties as members of the legal profession. The pro bono team was established in 2003 as a dedicated team within the firm whose mandate it is to provide free legal services to poor and/or vulnerable members of the public.
6. The focus of the pro bono team is to provide pro bono legal assistance on matters that serve to uphold the values set out in the Constitution, particularly related to the enforcement, advancement and protection of rights contained in

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the Bill of Rights and to protect and advance the rule of law. Over the more than last two decades, our team has worked on many key public interest matters that have positively impacted on the lives of many thousands of people.

7. As part of our commitment to the Constitution and the rule of law, the pro bono team provides legal services to several families of victims of apartheid-era human rights violations. We assist the families in their quests to secure justice for their loved ones and to find closure in the pain, suffering and injustice that they have endured over many decades.
8. Since about 2015, the pro bono team has assisted the families of some key anti-apartheid and pro-democracy individuals who had died at the hands of the apartheid-era security forces, among others: Ahmed Timol, Dr Neil Aggett, Nokuthula Simelane, Imam Abdullah Haron and Caiphus Nyoka.
9. Below we provide a high-level description of the legal assistance that the pro bono team has provided to each of the families, together with the details of hours worked, the commercial monetary value of the attorneys' fees and necessary disbursements incurred, which include counsel fees (but excludes our lead counsel's time, who also worked pro bono on those matters). The purpose hereof is to give this Honourable Court insight into the untaxed legal costs that the families would have incurred to advance the cases of their loved ones had they not been legally assisted by the pro bono team.
10. The details of the hours worked are based on actual time recordings and the value of the fees is based on our commercial rates. We similarly record the disbursements incurred and charges paid in each matter. The disbursements and counsel fees were primarily paid by the Foundation for Human Rights.

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Ahmed Timol

11. The pro bono team provided legal assistance to the Timol family from November 2015 to November 2022. During this time, we acted on the family's behalf in:
 - 11.1 the reopened inquest into the 1971 death in detention of Ahmed Timol;
 - 11.2 the Rodrigues stay of prosecution litigation in the High Court, the Supreme Court of Appeal and the Constitutional Court;
 - 11.3 the watching brief in relation to the prosecution of Joao Rodrigues and the process to obtain a prosecutorial decision against Neville Els and Seth Sons following the reopened inquest.
12. In the reopened inquest, the pro bono team worked a total of 1 153.20 hours. This amounts to R2 685 755.00 in attorneys' fees. The time sheets can be made available to the Court on request.
13. In the Rodrigues stay of prosecution litigation, the pro bono team worked a total of 442.60 hours. This amounts to R1 401 245.00 in attorneys' fees. The time sheets can be made available to the Court.
14. In the Timol watching brief, the pro bono team worked a total of 71.40 hours. This amounts to R268 110.00.00 in attorneys' fees. The time sheets can be made available to the Court.
15. The total disbursements and charges incurred in the three matters referred to in paragraph 11 amounted to R360 489.82.

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Dr Neil Aggett

16. The pro bono team provided legal assistance to the Aggett family from March 2017 to January 2023. During this time, we assisted the Aggett family in securing the decision to reopen the inquest into the 1982 death in detention of Dr Aggett and we acted on their behalf in the reopened inquest proceedings.
17. In this process, the pro bono team worked a total of 3 957.30 hours. This amounts to R8 423 235.00 in attorneys' fees. The total disbursements and charges incurred were R735 816.65. The time sheets can be made available to the Court.

Nokuthula Simelane

18. The pro bono team has provided legal assistance to the Simelane family since June 2015. During this time, we acted on behalf of the Simelane family in:
- 18.1 the process to compel the National Director of Public Prosecutions and the Minister of Justice to open a formal inquest into the 1983 disappearance of Nokuthula Simelane;
- 18.2 the litigation to compel the Minister of Police to pay the legal fees of the former Security Branch officers who have been indicted for the murder of Nokuthula Simelane;
- 18.3 the litigation to declare Nokuthula Simelane deceased;
- 18.4 the prosecution of Msebenzi Timothy Radebe (deceased), Willem Helm Johannes Coetzee, Frederick Barnard Mong (deceased), and Anton Pretorius as a watching brief (the instruction in the watching brief includes

a watching brief in the investigation and possible prosecution of the 1991 murder of Adriano Louis Bambo).

19. In the process to compel the opening of a formal inquest, the pro bono team worked a total of 89.70 hours. This amounts to R281 660.00 in attorneys' fees.
20. In the legal fees litigation, the pro bono team worked a total of 249.50 hours, which amounts to R585 210.00 in attorneys' fees.
21. In the presumption of death litigation, the pro bono team worked a total of 190.30 hours. This amounts to R501 435.00 in attorneys' fees.
22. In the watching brief, the pro bono team worked a total of 1 231.03 hours. This amounts to R2 459 992.00 in attorneys' fees. The time sheets can be made available to the Court.
23. In the four matters referred to in paragraph 18, the total disbursements and charges incurred to date is R223 133.51.

Imam Abdullah Haron

24. The pro bono team has been providing legal assistance to the Haron family since April 2019. During this time, we assisted the Haron family in securing the reopened inquest into the 1969 death in detention of Imam Haron and we acted on their behalf in the reopened inquest proceedings.
25. In this process, the pro bono team has worked a total of 1 738.80 hours. This amounts to R6 283 530.00 in attorneys' fees. The total disbursements incurred was R338 029.36. The time sheets can be made available to the Court.

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Caiphus Nyoka

26. The pro bono team has been providing legal assistance to the Nyoka family since October 2019. We hold a watching brief on behalf of the family in the murder prosecution of Johan Marais, Leon Louis van den Berg, Abraham Hercules Engelbrecht and Pieter Egbert Stander.
27. To date the pro bono team has worked a total of 530.70 hours. This amounts to R1 604 075.00 in a attorneys' fees. The total disbursements incurred to date is R24 746.66. The time sheets can be made available to the Court.

Conclusion

28. The total number of hours worked by the pro bono team on these cases amounts to 9 654.53 hours, which amounts to a total of R23 233 247.00 in attorney's fees (had such fees been charged).
29. While Webber Wentzel will continue to act on a pro bono basis to assist similarly situated families, we understand that there are law firms that are willing to also represent such families, but that they cannot do so on a pro bono basis.



ODETTE HELENA GELDENHUYS

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Signed and sworn to before me at CAPE TOWN on this the 17th day of JANUARY 2025, the deponent having acknowledged in my presence that she knows and understands the contents of this affidavit, the provisions of Government Gazette R1478 of 11 July 1980 as amended by Government Gazette R774 of 20 April 1982, concerning the taking of the oath, having been complied with.



COMMISSIONER OF OATHS

Full Names:

Business Address:

Designation:

Capacity:

Curwin Pokpas
 Commissioner of Oaths
 Practising Attorneys, Cape Town
 Dale Mogashoa Attorneys
 9th Floor, Convention Tower
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