

IN THE MAGISTRATE COURT OF SOUTH AFRICA
(KRUGERSDORP)

CASE NO 2300/2020

In the application between:

MAIDE CHRISTINA SELEBI

PATIENCE NHLAPO

AND

DIRECTOR OF PUBLIC PROSECUTION, SOUTH
GAUTENG: ANDREW CHAUKE

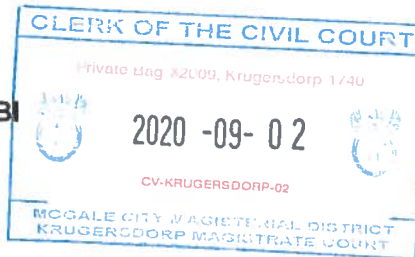
NATIONAL DIRECTORATE HEAD OF THE
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION: SESWANTSHO GODFREY
LEBEYA

HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM:
MADELEINE FULLARD

MOGALE CITY LOCAL MUNICIPALITY

FORENSIC PATHOLOGY SERVICES,
ROODEPOORT

GAUTENG PROVINCIAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE:
LIEUTENANT GENERAL E MAWELA.



First Applicant

Second Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicants intend to make application to this court for
an order in the following terms:

1. declaring that an examination of the remains of Eustice Madikela, Ntshingo Mataboge and Fanyana Nhlapo must be conducted in terms of section 3(2) of the Inquest Act, 58 of 1959;
2. that the fourth respondent is ordered to grant a permit for the disinterment of the remains of Eustice Madikela, Ntshingo Mataboge and Fanyana Nhlapo which are buried at Kagiso Cemetery in graves V8881 V8882 and V8883 for the purpose of removal for a forensic examination of the deceased and to conduct a criminal investigation in terms of section 3(4) of the Inquest Act, 58 of 1959, read with regulations 26(3)(d) and (f) of the Regulations relating to the Management of Human Remains published in Government Notice R363 in Government Gazette 36473 of 22 May 2013;
3. that the fourth respondent is ordered to issue a reburial permit so that the disinterment can take place, in accordance with regulations 26 and 27 of the Regulations relating to the Management of Human Remains published in Government Notice R363 in Government Gazette 36473 of 22 May 2013;
4. that the fourth respondent, with the support of third and sixth respondents, is ordered to arrange the disinterment of the remains of the deceased described in prayer 1 from the grave sites described in prayer 2, within 30 days of the date of this order;
5. that fifth respondent is ordered to carry out a postmortem examination of the said disinterred remains, together with any other necessary medical examination, and to compile a postmortem report and provide same to the

applicants and first and second respondents within 14 days of the date of the disinterment;

6. that a medical practitioner and/ or a forensic pathologist nominated by the applicants shall be permitted to be present for the disinterment and medical examination of the remains of Eustice Madikela, Ntshingo Mataboge and Fanyana Nhlapo, in terms of section 3(5) of the Inquest Act, 58 of 1959 and to carry out his or her own examination for purposes of compiling an independent report;
7. that no costs are to be awarded unless there is opposition to this application, in which event applicants pray that the costs of the application be awarded to the applicant and be payable by the respondents opposing this application, the one paying the other to be absolved ; and
8. Any further and or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying founding affidavit of **MAIDE CHRISTINA SELEBI**, together with annexures, will be used in support of this application, as well as the confirmatory affidavit of **PATIENCE NHLAPO**.

TAKE NOTICE FURTHER THAT the applicants have appointed **Webber Wentzel** of 90 Rivonia Road, Sandton, Johannesburg, 2196 as their attorneys of record.

TAKE NOTICE FURTHER THAT the applicants will accept service of notices and other process at at **C/O Fick Attorneys** at the below mentioned address.

TAKE NOTICE FURTHER THAT if any respondents intend opposing this application, such respondents must:

- (a) within 20 days of service of this application, deliver the notice of intention to oppose, and thereafter deliver its answering affidavit within 15 days of the notice of intention to oppose; and
- (b) appoint an address in the notice of intention to oppose at which the respondent will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT if no such notice of intention to oppose is given, application will be made on _____ 2020 at 10h00 or so soon thereafter as counsel may be heard.

Dated at JOHANNESBURG on 27 AUGUST 2020.



WEBBER WENTZEL

Applicants' attorneys

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samantha.robb@webberwentzel.com

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C/O

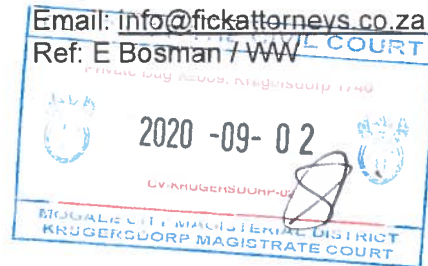
Fick Attorneys

Heritage Office Park, Unit C,

corner of Trezona & Ontdekkers Road,
Mindalore North,
Krugersdorp, Gauteng
Tel: 011 412 7121

Email: info@fickattorneys.co.za

Ref: E Bosman / WW



To:
THE REGISTRAR
Magistrate's Court
Krugersdorp

BY HAND

And to:
**MR ANDREW CHAUKE: DIRECTOR OF PUBLIC PROSECUTIONS,
GAUTENG**
First Respondent
6th Floor
C/o Pritchard & Von Brandis Streets,
Johannesburg, Gauteng

BY SHERIFF

And to:
**LIEUTENANT-GENERAL DR SESWANTSHO GODFREY LEBEYA: HEAD OF
THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATIONS**
Second Respondent
A5 Promat Building,
1 Cresswell Road, Silverton,
Pretoria, Gauteng

BY SHERIFF

And to:
**MADELEINE FULLARD: HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM**
Third Respondent
VGM Building (Corner Westlake & Hartley) 123 Westlake Avenue,
Weavind Park,
Silverton,
Pretoria, Gauteng

BY SHERIFF

And to:
**PRINGLE RAEDANI: MUNICIPAL MANAGER OF THE MOGALE CITY
LOCAL MUNICIPALITY**
Fourth Respondent
corner of Commissioner and Market Street,
Krugersdorp, Gauteng

BY SHERIFF

And to:

**ANDRE STANDER: MANAGER OF FORENSICS OF FORENSIC
PATHOLOGY SERVICES, ROODEPOORT**

Fifth Respondent

4 Raath Street,

Horizon,

Roodepoort, Gauteng

BY SHERIFF

And to:

**LIEUTENANT GENERAL E MAWELA: GAUTENG PROVINCIAL
COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Sixth Respondent

6 Empire Road

Parktown,

Johannesburg, Gauteng

BY SHERIFF

**IN THE MAGISTRATE COURT OF SOUTH AFRICA
(KRUGERSDORP)**

CASE NO

In the application between:

MAIDE CHRISTINA SELEBI

First Applicant

PATIENCE NHLAPO

Second Applicant

AND



**DIRECTOR OF PUBLIC PROSECUTION, SOUTH
GAUTENG: ANDREW CHAUKE**

First Respondent

**NATIONAL DIRECTORATE HEAD OF THE
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION: SESWANTSHO GODFREY
LEBEYA**

Second Respondent

**HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM:
MADELEINE FULLARD**

Third Respondent

MOGALE CITY LOCAL MUNICIPALITY

Fourth Respondent

**FORENSIC PATHOLOGY SERVICES
ROODEPOORT**

Fifth Respondent

**GAUTENG PROVINCIAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE:
LIEUTENANT GENERAL E MAWELA.**

Sixth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

MAIDE CHRISTINA SELEBI

state under oath that:

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1. I am an adult female with ID number 5701230806083, residing at 22 Van Alkmaan Street, Witpoortjie, Roodepoort. I am unemployed. I am the first applicant in this application.
2. I am duly authorised to make this affidavit on behalf of the second applicant. The facts contained herein are within my own knowledge, unless the contrary appears from the context, and to the best of my belief are both true and correct.
3. Where I make submissions of law, I do so on the advice of my legal representatives.

PARTIES

4. I am the first applicant. I am the sister of Eustice "Bimbo" Madikela who was murdered on 15 February 1982, the full details of which are described below.
5. The second applicant is Patience Nhlapo with ID number 49042202380802, residing at 6549 Sebenzisa Drive, Kagiso 2, Gauteng. Patience is the cousin through marriage of Fanyana Nhlapo who was murdered on 15 February 1982, the full details of which are described below. The second applicant's confirmatory affidavit is filed evenly herewith.
6. The First Respondent is the Director of Public Prosecutions, South Gauteng, Mr Andrew Chauke, cited in his official capacity, with his head office situated at 6th Floor C/o Pritchard & Von Brandis Streets,

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Johannesburg. The First Respondent is cited as an interested party and no order is sought against him.

7. The Second Respondent is the Head of the Directorate for Priority Crime Investigations, Lieutenant-General Dr Seswantsho Godfrey Lebeya, situated at, A5 Promat Building, 1 Cresswell Road Silverton, Pretoria, 0186. The Second Respondent is cited as an interested party and no order is sought against him.
8. The Third Respondent is the National Prosecuting Authority Missing Persons Task Team, headed by Madeleine Fullard, cited in her official capacity, with its head office situated at VGM Building (Corner Westlake & Hartley) 123 Westlake Avenue, Weavind Park, Silverton Pretoria. The Third Respondent is cited as an interested party and no order is sought against it, apart from providing a support role in the disinterment.
9. The Fourth Respondent is the Mogale City Local Municipality, the Municipal Manager of which is Pringle Raedani, cited in his official capacity, with its primary office situated at corner of Commissioner and Market Street, Krugersdorp.
10. The Fifth Respondent is the Forensic Pathology Services, Roodepoort, with the Manager of Forensics being Andre Stander, cited in his official capacity, with its head office situated at 4 Raath street, Horizon Roodepoort, Gauteng
11. The Sixth Respondent is the Gauteng Provincial Commissioner of the South African Police Service, Lieutenant General E Mawela, cited in his

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official capacity, with his head office situated at 16 Empire Road Parktown, Johannesburg, Gauteng. The Fifth Respond is cited as an interested party and no order is sought against him, apart from arranging the SAPS to support the disinterment.

JURISDICTION

12. The above Honourable Court has jurisdiction to hear this matter as it is the Magistrates Court in the area in which the deceased, who are the subject of this application, are buried. Such jurisdiction is established in terms of section 3(4) of the Inquest Act, 58 of 1959 ("**Inquests Act**").

PURPOSE OF THIS APPLICATION

13. The purpose of this application is to obtain a court order for the remains of Eustice Madikela, Ntshingo Mataboge and Fanyana Nhlapo (collectively "**the deceased**") to be disinterred, in terms of section 3(4), read with section 3(2), of the Inquests Act and regulation 26(1)(b) of the Regulations relating to the Management of Human Remains published in Government Notice R363 in Government Gazette 36473 of 22 May 2013 under section 68(1)(b) read with section 90(4)(c) of the National Health Act, 61 of 2003 ("**the Regulations**").
14. Such disinterment is to be performed so that an examination by a medical practitioner can be performed on the remains of the deceased and a post mortem report issued as to the cause of death of the deceased in order to satisfy the requirement under section 3(2) of the Inquests Act that an examination by the district surgeon (now the Forensic Pathology Services)

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or other medical practitioner is required when a death has occurred other than by natural causes.

15. The declaration of the cause of death will be used to further the investigation into and possible prosecution of those responsible for the murders of the deceased.

FACTUAL BACKGROUND

The Conspiracy to murder and the murder of the COSAS 4

16. This application concerns the murders of the deceased (known, together with a 4th person, collectively and popularly as the "COSAS 4"). Their death certificates are attached as annexure **"MS1"**. I note that the copies of the death certificates are very faint. These are the copies that were provided to my legal representatives by the South African Police Service ("**SAPS**") and so I am unable to provide more legible copies.
17. The factual details behind the murders of the deceased are common cause. Such details were placed before the Truth and Reconciliation Commission ("**TRC**") in evidence given by former SAP Security Branch member Thlamedi Ephraim Mfalapitse ("**Mfalapitsa**") held in Johannesburg on 4 May 1999 in the amnesty application hearing of Jan Carel Coetzee, Willem Frederick Schoon, Abraham Grobbelaar, Christiaan Siebert Rorich and Mfalapitsa in terms of section 18 of the Promotion of National Reconciliation and Unity Act in Case Number AM3592/96 ("**Amnesty Application**"). The transcript from the hearing of Mfalapitsa's evidence is attached and marked annexure **"MS2"**.

18. The Amnesty Application was in respect of the conspiracy to murder and the actual killing of the deceased and one Zandisile Musi ("**Musi**"), who was severely injured but survived the incident. The four victims have become known as the "**COSAS 4**".
19. The amnesty decision (AC/2001/198) of the Amnesty Committee of the TRC ("**Amnesty Decision**") relating to the Amnesty Application is attached as annexure "**MS3**". As appears from the Amnesty Decision, amnesty was refused to all applicants. The case was referred by the TRC to the National Prosecuting Authority ("**NPA**") for further investigation and prosecution shortly thereafter, but has been neglected for more than 20 years. I am informed that this neglect is attributable to political interference which saw the suppression of virtually all cases referred by the TRC to the NPA.
20. The incidence of the murder is described in full in both the Amnesty Decision and the testimony of Mfalapitsa. I summarise below the key facts that led to the murder of the deceased and the severe injury of Musi:
- 20.1 This incident occurred on Monday, 15 February 1982 in Krugersdorp.
- 20.2 Mfalapitsa went into exile in the mid-1970s. He received military training in exile under the Command of the African National Congress ("**ANC**") in Zambia and other countries. After some dissatisfaction in exile he returned to South Africa and became an askari - he joined the Security Branch at Vlakplaas. Askaris were those members of the resistance who switched sides and informed

on their former cadres and/ or fought against them. Before his defection he had a close relationship with two of Musi's elder brothers who served with him in Umkhonto we Sizwe (the military wing of the ANC).

20.3 When Mfalapitsa joined the Security Branch he reported to Captain Jan Carel Coetzee who was then Commander of the Security Branch's counterinsurgency unit based at Vlakplaas (known as C10, later C1).

20.4 Mfalapitsa was in contact with Musi (who thought he was still with the ANC) and Musi informed him that he and 3 of his comrades wished to leave the country to join the ANC in exile for military training. When Musi told Mfalapitsa this, Mfalapitsa informed Captain Johan Coetzee, his superior, who instructed him to try to dissuade them from attending military training and find out if they had a specific reason for doing so. Mfalapitsa was also instructed to offer them military training locally, to stop them from trying to join the ANC in exile.

20.5 One of the COSAS 4 informed Mfalapitsa that they intended to attack warrant officer Nkosi and a man by the name of councillor Matsidisa. Mfalapitsa made the offer to train them locally and the COSAS 4 accepted.

20.6 Mfalapitsa reported back to Captain Coetzee who in turn reported to his senior, Willem Schoon. A plan was devised whereby they would

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use the 'training' to set a trap for the COSAS 4. They intended to 'train' them in a pump house near a mine in Krugersdorp and blow them up with explosives. The explosion would be made to look as if they had blown themselves up. Coetzee arranged with Christiaan Rorich, who was an explosives expert to place the explosives inside the pump house and to detonate them on the signal of Coetzee. Abraham Grobbelaar was to accompany Coetzee on the mission and act as a look-out. The plan as devised was subsequently carried out.

20.7 Mfalapitsa and Joe Mamasela (a fellow askari) collected the COSAS 4 at Kalafong at around 8 am on 15 February 1982. Mfalapitsa, Mamasela and the COSAS 4 then drove to a mine in the West Rand and Mamasela left Mfalapitsa with the four victims. Mfalapitsa and the COSAS 4 entered a pump house where Mfalapitsa was supposed to give them training. The pump house was rigged with explosives. Mfalapitsa took out hand grenades and showed the COSAS 4 how they worked. Mfalapitsa then told them he was going to fetch some more equipment and left the pump house. Upon leaving he locked the door and once he was clear of the pump house Coetzee and Rorich detonated the explosives, killing the deceased and leaving Musi severely injured.

21. There is no dispute as to the cause of death of the deceased. The evidence under oath of the 5 policemen who applied for amnesty in the Amnesty Application is that they arranged for the COSAS members to be blown up and that the order came from their superiors in the Security

Branch. An extract from the Amnesty Decision (at the bottom of page 2) reads

"this offer was unsolicited and was a ruse intended to lure the group to a secluded spot where they would be killed with explosives. Within a few days after Mfalapitsa's first discussion with Musi, three of the youths were killed and Musi very seriously injured in a planned explosion caused by some of the Applicants under the guise that the victims were being given military training."

22. I found out about the murder of my brother the weekend after it happened. I was training as a nurse at Thembisa hospital at the time and I received a call from my mother telling me to come home. She did not tell me why I needed to come home. As I was arriving home on that weekend, I saw that there were a lot of people at my house. Only when I actually arrived at my house did my mother tell me that my brother was dead.
23. My mother found out the news from the police who came to our house after the incident. They showed my mother a piece of paper that had my brother's name and address on it (which was my parent's address) and they asked her if she knew this person. When she replied yes, they told her that he and two others had blown themselves up and that this piece of paper had been found at the warehouse where they blew themselves up.
24. My mother was asked to identify his body at the morgue, which she did. She said that his body was badly blown up. I was not privy to the conversations that my mother had with the police about my brother's death. My mother died in July 1986.

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25. The funeral took place the same weekend that I arrived home (the first weekend following his death). My brother, Ntshingo Mataboge and Fanyana Nhlapo were buried next to each other, at the same time, in Kagiso Cemetery, which is located at New Krugersdorp Road and Maimane Drive, Krugersdorp, Gauteng 1753.
26. The grave site numbers for the deceased are marked V8881 V8882 and V8883. This information was provided to my legal representatives by the investigating officer in the investigation that is referred to below, Officer J Tjiane.
27. The death certificates indicate that the deceased had "multiple injuries." There was never a post mortem conducted on any of the deceased and no post-mortem reports exist nor was there ever an indication that an examination of the bodies was conducted by the District Surgeon at the time. The absence of such reports is further indication of a cover-up

Interactions with the NPA and SAPS

28. A fresh investigation was revived in 2019 at the request of the Foundation for Human Rights ("FHR") and is being led by Advocate Deon van Wyk of the NPA, assisted by Advocate Jabulani Mlotshwa. FHR and my attorneys, Webber Wentzel, are assisting the NPA with the investigation on behalf of the applicants.
29. I attach as Annexure "**MS4**" a letter from FHR to the NPA on 4 September 2019 requesting a status update on the matter. This prompt from FHR was the beginning of a new investigation into the murders.

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30. I am informed that three meetings have taken place between representatives from FHR, Webber Wentzel, the NPA and SAPS, as follows:

30.1 On 29 October 2019 a meeting took place between Webber Wentzel, Brigadier (Ret.) Cliffy Marion, the investigator for FHR, Advocate Mlotshwa and Sergeant Tjiane, the investigating officer on the case. The main purpose of the meeting was to determine a way forward in the investigation of the matter. This was the first time that the need for an exhumation application was discussed. The minutes of this meeting are attached as annexure **"MS5"**.

30.2 On 4 December 2019 a meeting took place which included Advocate Van Wyk. No real progress had been made in furthering the investigation into the murder of the COSAS 4. The issue of exhumations was not discussed at this meeting.

30.3 A third meeting was scheduled for February 2020, which was postponed by the NPA to 11 March 2020. At this meeting it was clear that no further progress into the investigation had been made by the investigating officer. The need for an exhumation of the remains of the deceased was once again discussed and Advocate Van Wyk mentioned that it was necessary for exhumations of the deceased to take place in order for an inquest finding to be made. I note that my legal representatives dispute the need for an inquest to be held. However, this is not relevant for the present proceedings and so I will not go into it further.

31. On 23 March 2020, Webber Wentzel sent a letter to the NPA concerning the matters that were raised at the 11 March 2020 meeting. This letter is attached as annexure "**MS6**". As part of this letter Webber Wentzel noted that the Inquest Act requires that a post-mortem be performed where a death from other than natural causes occurs. The letter requested that an exhumation take place without further delay and that the Deputy Public Prosecutor (Gauteng) provide the necessary written permission in terms of section 3(2) of the Inquests Act; and that once such exhumation has taken place that a prosecution of the known suspects proceed. No response was received to this letter.
32. On 8 April 2020 Webber Wentzel sent a letter to Advocate Chauke, the Director of Public Prosecutions in Johannesburg ("**DPP JHB**") to act in terms of section 3(4) of the Inquests Act to arrange for the exhumations of the bodies of the deceased for purposes of a post mortem. The letter is attached as annexure "**MS7**". No response was received.
33. Given that there has been no response from the DPP JHB and that the NPA and SAPS have not pursued exhumations of the deceased, it has fallen on the applicants to bring this exhumation application. The matter of the COSAS 4 was handed over by the TRC to the NPA in 1999. The applicants have thus had to wait 21 years for justice for their loved ones and the process cannot reasonably be delayed any longer.

THE LAW

The Inquests Act

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34. Section 3(2) of the Inquests Act provides that *"if the body of a person who has allegedly died from other than natural causes is available, it shall be examined by the district surgeon or any other medical practitioner, who may, if he deems it necessary for the purpose of ascertaining with greater certainty the cause of death, make or cause to be made an examination of any internal organ or any part or any of the contents of the body, or of any other substance or thing."*
35. Section 3(4) of the Inquests Act provides that *"a body which has already been interred may, with the written permission of the magistrate or the attorney-general within whose area of jurisdiction it has been interred, be disinterred for the purpose of any examination mentioned in subsection (2)."*
36. Section 3(5) provides that *"at any examination conducted by a medical practitioner in terms of subsection (2), no person other than -*
- (a) a policeman; or*
- (b) any other medical practitioner nominated by any person who satisfies the magistrate within whose area of jurisdiction such examination takes place, that he has a substantial and peculiar interest in the issue of the examination,*
- shall be present without the consent of such magistrate or the medical practitioner conducting the examination."*

Regulations relating to the Management of Human Remains

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37. The Regulations, in terms of section 68(1)(b) read with section 90(4)(c) of the Health Act 61 of 2003, provide for the management of human remains.

38. Regulation 26 provides for the authorisation for exhumation on human remains, which provides as follows:

- (1) *No exhumations and reburials of human remains shall be done unless:*
 - (a) *authorized by the relevant sphere of government and permitted by the relevant local government in whose jurisdiction the exhumation and reburial will take place; or*
 - (b) *A court order issued by a magistrate and shall be permitted by the relevant local government in whose jurisdiction the exhumation and reburial will take place.*
- (2) *Exhumation approval shall not be issued without a reburial permit issued by the relevant local government in which the reburial will take place, or without a cremation permit, in cases where the exhumed body will be cremated.*
- (3) *No person shall exhume any human remains, unless for the: -*
 - (a) *removal from the original grave to a new grave acquired in the same cemetery;*
 - (b) *removal for burial in another cemetery;*
 - (c) *removal for cremation;*
 - (d) *removal for forensic examination of the deceased;*
 - (e) *transfer from a public grave to a private grave;*
 - (f) *for legal reasons, such as crime related investigations; or*
 - (g) *for archaeological reasons.*
- (4) *The local government shall grant a permit for an exhumation on condition that the exhumation of the human remains shall only be done by a registered undertaker, such undertaker shall be based in the jurisdiction of the local government issuing the exhumation permit referred to in this regulation.*

39. Regulation 27 provides for exhumation requirements, as follows:

- (1) *The following are the exhumation requirements:*
 - (a) *whenever an exhumation is to take place, the officer-in-charge must inform the Provincial Commissioner of the South African Police Services.*

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- (b) *a member of the South African Police Services must always be present when an exhumation is being conducted.*
- (c) *an exhumation must not take place when the cemetery is open to the public and must take place under the supervision of the officer-in-charge.*
- (d) *the disinterment or removal of human remains shall be carried out under the supervision of an Environmental Health Practitioner of the relevant health authority in whose area of jurisdiction the human remains are buried, provided that if the relevant health authority concerned does not have the services of an Environmental Health Practitioner at the time, such authority may request the services of an Environmental Health Practitioner of another health authority, or an environmental health practitioner in private practice, registered with the HPCSA as an Environmental Health Practitioner to perform the duties as referred to in this regulation;*
- (e) *only persons with direct involvement may be present at the disinterment or removal of human remains and no dogs or other animals maybe allowed at the grave site; and*
- (f) *an Environmental Health Practitioner must monitor the exhumation process to ensure that no health nuisance or hazard is caused, by ensuring that at the exhumation site:*
 - (i) *the grave and the human remains are treated with a disinfectant after exhumation and any other protective measures as he/she may deem necessary;*
 - (ii) *an adequate supply of water, soap and disinfectants for cleansing purposes shall be available at the grave for cleansing of persons handling the human remains;*
 - (iii) *the correct grave is re-opened;*
 - (iv) *human remains are placed in a non-transparent and closely sealed container immediately after it has been disinterred and be handled in a way that no nuisance or health hazard is caused;*
 - (v) *a new approved container is supplied by the undertaker, or if the existing container is to be reused, that it is secured and leak proof;*
 - (vi) *human remains exhumed and all pieces of the original coffin are placed in the new coffin;*
 - (vii) *a new coffin is properly sealed and identified;*
 - (viii) *the health and safety of the workers is maintained by use of approved protective equipment;*
 - (ix) *the grave is not left unguarded, and*
 - (x) *Immediately after the remains have been removed, that such grave is covered or sealed with approved top soil.*



GROUND FOR RELIEF SOUGHT

40. The Regulations do not restrict who can apply for an exhumation as long as such exhumation is validly ordered by the relevant sphere of government or a court. Nonetheless, I am advised that the second applicant and I have the requisite legal standing to bring this application by virtue of our familial relationship with two of the deceased.
41. Section 3(2) of the Inquests Act creates a mandatory requirement that any death, other than from natural causes, shall be examined by the district surgeon (now the Forensic Pathology Services) or other medical practitioner.
42. As aforementioned, there was no examination of the deceased when they died, despite the fact that they clearly died from unnatural causes. There is no dispute as to the deceased's unnatural cause of death as the former security branch officers admitted under oath at the TRC to blowing them up. The TRC found that their deaths were attributable to these former security branch officers. The exhumation and forensic examination of the deceased are required for purposes of a crime investigation, as per regulations 26(3)(d) and (f) of the Regulations.
43. Section 3(4) of the Inquests Act empowers this court to make an order that the bodies of the deceased be disinterred so that a medical examination of their remains can be conducted in order to fulfil the mandatory requirement in section 3(2) of the Inquests Act.

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44. Section 3(4) of the Inquests Act must be read with regulation 26 of the Regulations which makes it clear that an exhumation cannot take place unless it has been authorised by the relevant sphere of government or it has been ordered by a court.
45. Regulation 26(3)(d) and (f) specifically mention as valid reasons for exhumation "*removal for forensic examination of the deceased*" and "*for legal reasons, such as crime related investigations*", respectively. Both these sub-regulation apply to this application as it is necessary for the remains of the deceased to be disinterred so that they can be examined by a medical practitioner to confirm their cause of death. The post-mortem report of the medical practitioner will be used in furtherance of the investigation, and possible murder prosecution of the responsible suspects. In this regard, the applicants request the above Honourable Court to order that a post-mortem report must be compiled by the attending medical professional from the Forensic Pathology Services, Roodepoort after he or she has carried out a post-mortem examination of the disinterred remains
46. I am advised that in order for an exhumation to take place under the current circumstances, regulations 26(2) and (4) of the Regulations require that the Mogale City Local Municipality issue both an exhumation permit as well as a reburial permit. Such permits must be executed in line with the procedures provided for in terms of section 26 and 27 of the Regulations.



47. Finally, the applicants make a request to the above Honourable Court that the court orders that a medical practitioner and/ or forensic expert nominated by the applicants be permitted to be present at both the disinterment and medical examination of the remains of the deceased. The purpose would be for a family's expert to monitor the proceedings and generate an independent expert report. Such powers are vested in the above Honourable Court in terms of section 3(5)(b) of the Inquests Act.

THE CASE OF NTSHINGO MATABOGE

48. My legal representatives went to considerable lengths to locate the family members of the late Ntshingo Mataboge, the third member of the COSAS 4 who was murdered by the Security Branch on 15 February 1982. Although my attorneys were able to obtain an address and a telephone number for the sister of Ntshingo Mataboge, she did not respond to the multiple calls made by my attorneys.
49. Nonetheless I submit that it would be contrary to the interests of justice to exclude the exhumation of the remains of Mataboge. Mataboge was part of the COSAS 4 and it would count as an historic injustice to exclude him from these proceedings. His family and community are equally entitled to truth and justice.
50. This Honourable Court enjoys authority in terms of the provisions of the Inquest Act to order the disinterment of the remains of Mataboge. This is because a post-mortem examination of his body was a mandatory requirement of s 3(2) of the Inquests Act and to date it has not happened.

AK Mb

Section 3(4) of the Inquest Act does not confine the authority of a Magistrate to order disinterment on request of family members. Similarly, regulation 26 of the Regulations imposes no such requirement.

CONCLUSION

51. I submit that I have made out a justifiable case for the exhumation of the remains of the deceased in terms of section 3(2) and 3(4) of the Inquests Act and that the Mogale City Local Municipality should be ordered to issue the requisite permits for such exhumation to take place.
52. This is necessary in order for my family and the families of Fanyana Nhlapo and Ntshingo Mataboge to find peace and closure. We have been forced to take matters into our own hands. We can no longer be expected to wait for the NPA and SAPS, who have already delayed this matter for some 21 years, to act.

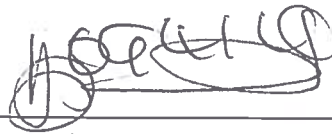
WHEREFORE I pray for an order as set out in the notice of motion.



MAIDE CHRISTINA SELEBI

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at 25 on 14 August 2020, 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.





Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

Karl Wouterus Willem
WCE
SA P.S. [Signature]



190/32/367

W. K. C. C. C.

W. K. C. C. C.

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W. K. C. C. C.

DEPARTMENT OF HOME AFFAIRS	
PRIVATE BAG X2012	
KRUGERSDORP 1740	
1997-07-09	
KRUGERSDORP (19)	

190/32/367

190/32/367

1. Reference book/Passport number Bewysboek - Paspoortnommer	MIF	1903037	50
2. Surname Van	MATEBANE	NDHLOU	N
3. First name Voornamen	PETER	MAPULA PAULINA	M
4. Date of death Datum van afsterwe	16-2-82	8-2-82	9
5. District of death Distrik van afsterwe		FRANCISTOWN	KR
6. Ethnic group Etniese groep	BLACK	BLACK	B
7. Sex Geslag	MALE	FEMALE	F
8. Date of birth Geboortedatum	29-10-61	65 yrs	3
9. Marital status Huwelikstatus	SINGLE	WIDOW	W
10. Residential address Woonadres	593 KASIND	89 KAMPVILLE K'CORP	86 K
11. Causes of death Oorsake van dood	MULTIPLE INJURIES	HAEMATEMESIS (DESC-VARICES)	h GALD
12. Name of medical practitioner Naam van geneesheer	DR. E. R. BUCHANAN	DR. J. M. MESSIERE	DR
Entry No. Insrywingsno.	190/82/363	190/22/364	19

MC

11/1	11/1	11/1	11/1
STYB	MAN BA	NZUNZY	NIADIKELA
YOSSES	JACOB	PETER	EUSTICE
18-2-82	16-2-82	12/2/82 25/2/1982	16/2/82
B. KRUGERSDORF	UGERSDORF	UGERSDORF	
BLACK	BLACK	XHOSA	TSWANA
MALE	MALE	MALE	MALE
61 yrs	40 yrs	21 yrs	17 yrs
MARRIED	MARRIED	SINGLE UNMARRIED	SINGLE
Muldersdorp	565 Mchabane Landfontein	1719 Gaborone Kerepepe	1530 KALWA 2, 15/1 DORP
GASTROENTERIC ITIS AND COLITIS 561	care for vascular accident	Stekwen LART	MULTIPLE Injuries
B. A PATEL	B. A PATEL	DR. E. R. Buchman	DR. ER Buchman
190/82/339	195/82/340	190/82/341	190/82/342
There	There	There	There

n/c

GP-S 017 015.

RI 21

REPUBLIEK VAN SUID-AFRIKA
 REPUBLIC OF SOUTH AFRICA
 (Ungeregtigde W. B. van 1967)

REPUBLIC OF SOUTH AFRICA
 ABKRIJFDE ZIEKTEKORT
 (Issued in terms of Act 1967)

Identiteitsnommer
 Identity number

Van
 Surname

Volle voornam
 Forenames in full

Gebortedatum
 Date of birth

Jaar
 Year

Maand
 Month

Daag
 Day

Geslag
 Sex

Bevolkingsgroep
 Population group

Huweliksstaat
 Marital state

Datum van afsterf
 Date of death

Jaar
 Year

Maand
 Month

Daag
 Day

Plek van afsterf
 Place of death

Oorsaak van dood
 Causes of death

DEPARTMENT OF HOME AFFAIRS	
PRIVATE BAG X 112 KRUGERSDORP 1740	
1997-07-09	
Official date of birth	


Kielly
 Director-General, Department of Home Affairs
 Director-General: Home Affairs

nk


NAME	MANYAPOLU	NHLAPO	LEBETSA	Moisheng
DATE	JUSTICE	ALITAM	ALPHOTIA	WILLE
2-82	24-02-82	16-02-82	16-2-82	24/2/82
KRUGERSDORP	KRUGERSDORP	KRUGERSDORP	KRUGERSDORP	BLACK KRUGERS
MALE	MALE	MALE	FEMALE	MALE
56 YRS	30 YRS	2827 18915	6 months	1902
W.F.I.E.D.	INTIMACY	SINGLE	INFANT CHILD	MARRIED
2/3 ZERDE	110	2827	PLOT 17 Groenplaats	Henningh
W.F.T.O.	110	18915	Randfontein	K/BOFT
W.F.T.I.E.	STAB	MULTIPLE	GASTRO-Enteritis	NATURAL
W.F.T.I.E.	CHEST	INTEREST		
W.F.T.I.E.				
W.F.T.I.E.	Dr. A.P.	Dr. A.P.	Dr. S. VERRILLAN	S.A.P. Rep
W.F.T.I.E.	Buchanan	Buchanan		
90/82/383	190/82/384	190/82/385	190/82/386	190/82/
W.F.T.I.E.	W.F.T.I.E.	W.F.T.I.E.	W.F.T.I.E.	W.F.T.I.E.
W.F.T.I.E.	W.F.T.I.E.	W.F.T.I.E.	W.F.T.I.E.	W.F.T.I.E.


W.F.T.I.E.

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Amnesty Hearings

Type AMNESTY HEARINGS

Starting Date 04 May 1999

Location JOHANNESBURG

Day 2

Names W F SCHOON AND OTHERS

Case Number AM3592/96

Matter COSAS FOUR

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ON RESUMPTION

CHAIRPERSON: Good morning. We want to start, we ran slightly late this morning. As I have indicated yesterday, I had an urgent matter to attend to which delayed me. We want to apologise for the delay in starting.

Now, for the record, today is Tuesday the 4th of May 1999. It is the continuation of the amnesty hearings of W S Schoon and others and in this particular part of the hearing, we are dealing with the incident relating to the COSAS 4. Now, we adjourned yesterday in order to take the evidence of Mr Mfalapitsa and it has been indicated to me that he is present and available. Mr Jansen, is that correct?

MR JANSEN: That is correct, Mr Chairman.

CHAIRPERSON: You intend to call him now.

MR JANSEN: Yes, Mr Chairman and honourable members, if I could then refer to the amnesty application of Mr Thlamedi

Ephraim Mfalapitsa. I then want to call Mr Mfalapitsa as a witness in his amnesty application. He'll be giving his evidence in English, Mr Chairman. Thank you.

CHAIRPERSON: Thank you, Mr Jansen.

THLOMEDI EPHRAIM MFALAPITSA: (sworn and states)

CHAIRPERSON: Mr Jansen.

EXAMINATION BY MR JANSEN: Thank you, Mr Chairman.

Mr Mfalapitsa, I think just put on your microphone again. Mr Mfalapitsa, before you, you have your, a copy of your original amnesty application, which is in a bundle. It starts on page 221 and you also have a supplementary affidavit that you made in respect of your amnesty application which is marked Exhibit H. Do you have those documents before you?

MR MFALAPITSA: Yes, Mr Chairman.

MR JANSEN: Now, just a formal aspect first. In your original amnesty application, if you could just turn to page 233 thereof. This affidavit of yours was attested to by one T Mfalapitsa. Can you just identify to the Amnesty Committee who this person is?

MR MFALAPITSA: That is correct, Mr Chairman. Talitha Mfalapitsa, she is a minister to the church to which I belong. Is also my wife and at the particular stage in point when I was making this application I could not afford the services of a lawyer and since the Act prescribed that ministers could preside in such matters, I then approached my wife to attest this.

MR JANSEN: In any event, that is not yourself. That is not you yourself attesting to your own affidavit, is that correct?

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: And this following affidavit, the subsequent affidavit that you made on the 15th of April this year, you confirm that, that is a copy of the affidavit you have in front of you, which is marked Exhibit H, in which you also confirm the content of your amnesty application. Is that correct?

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: Good. Now, at the moment we are dealing ... (intervention)

INAUDIBLE INTERVENTION BY CHAIRPERSON

MR JANSEN: Sorry, Mr Chair, are you referring to - H. Oh, that, it has a 15 of April of this year, yes Mr Chairman, three weeks ago.

Yes, Mr Mfalapitsa, you drafted your amnesty application by yourself, without the assistance of anybody.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: Now, at the moment we are dealing with your amnesty application in respect of one incident only and that is the death of three COSAS members and the injury to another person named Musi. You understand that that was what the proceedings are about today?

MR MFALAPITSA: Yes, Mr Chairman.

MR JANSEN: Now, just in general, your amnesty application deals with both incidents of gross human rights violations which you were a party to as a member of the African National Congress and also later as a member of the South African Police Services.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: Now, you deal with the background, your background, your personal background to some extent in your amnesty application and to a greater extent in the additional affidavit filed as Exhibit H. Is that correct?

MR MFALAPITSA: That is correct.

MR JANSEN: And you confirm the content of those documents as far as it relates to your background?

MR MFALAPITSA: Yes, I do, Mr Chairman.

MR JANSEN: And, I then want to pick up at round about the end of 1981. That is the period when you left the ANC and returned to South Africa. Is that correct?

MR MFALAPITSA: That's correct.

MR JANSEN: Can you just state to the Committee when, more or less, was that in 1981?

MR MFALAPITSA: Can you repeat that question again, Mr Chairman?

MR JANSEN: More or less when was it in 1981 that you returned to South Africa?

MR MFALAPITSA: I think it was round about, it was round about November, Mr Chairman.

MR JANSEN: And you then surrendered yourself to the South African Police.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: When did you arrive at Vlakplaas?

MR MFALAPITSA: I think it was early 1982, Mr Chairman.

MR JANSEN: Well, this specific incident we're testifying about today, I think it's common cause, happened on the 15th of February, 1982. Can you, in relation to that date, maybe give a more accurate indication when you arrived at Vlakplaas?

MR MFALAPITSA: I cannot precisely state an actual date, but it was January '82, Mr Chairman.

MR JANSEN: Now, at that stage, were you already a member of the South African Police?

MR MFALAPITSA: No, I was just, I think, a source or informer, whatever they called it. I was not a formal member of the SAP.

MR JANSEN: Were you referred to as an askari at that stage?

MR MFALAPITSA: Yes, I was referred as an askari or a former terrorist or a source, or - all those names, Mr Chairman.

MR JANSEN: Now, when, can you remember when you formally became a salaried member of the South African Police?

MR MFALAPITSA: I think it must be towards the end of 1982, Mr Chairman.

MR JANSEN: Now, before you left South Africa into exile as a young, as a young person in the 70s, you were resident in Kagiso. Is that correct? Sorry, I think that may be wrong.

MR MFALAPITSA: Yes, at that stage I was residing in Krugersdorp, Mr Chairman.

MR JANSEN: Now, did you have - and Kagiso is a township next to Krugersdorp?

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: And in February 1982, where were you working at that time?

MR MFALAPITSA: We used to be deployed around Soweto, Mr Chairman.

MR JANSEN: And what was your connections with Krugersdorp and Kagiso at that stage?

MR MFALAPITSA: At that stage I used to, immediately after my arrival in South Africa, I visited all the places where I was formerly staying, as a form of reconciliation in such areas.

MR JANSEN: So who did you know in Kagiso?

MR MFALAPITSA: I had an uncle who stayed in Kagiso, Mr Chairman.

MR JANSEN: Now, can you tell the Committee how it came about that you made contact, or came into contact with, Mr Zondisile Musi at that time?

MR MFALAPITSA: After I visited my uncle's place at Kagiso for the first time, when I visited again for a second time, I received a message from my uncle's daughter, youngest daughter, I think she was 9 years. The information was that Musi wanted to see me. And then I said if they see him, they must tell him I'm available, I will be ready to see him.

MR JANSEN: Now how did you know Mr Musi at that stage?

MR MFALAPITSA: I know him brothers. They only said that they are not brothers to Lumgisa, that is his elder brother.

MR JANSEN: How did you know his elder brothers?

MR MFALAPITSA: Is the one who I have - I have grown up with him in the first place.

MR JANSEN: Did they leave - were they together with you - did you have contact with them through ANC structures outside of South Africa?

MR MFALAPITSA: Yes, I was with them in exile but they left before me. I mean, they left after me. Sorry, Mr Chairman.

MR JANSEN: And Musi, when you left the country, was he still a young child or was he also an acquaintance of yours?

MR MFALAPITSA: Yes, he was a young man. I could not have recognised him when I saw him after I returned to South Africa.

MR JANSEN: And I think it's a matter of public record that he was 18 years old in February 1982. Is that correct?

MR MFALAPITSA: That is myself?

MR JANSEN: No, sorry, no, Mr Musi.

MR MFALAPITSA: When I, I cannot assist in that. That was not something I enquired much about, Mr Chairman.

MR JANSEN: All right. Then, did you then in fact have contact with Mr Musi?

MR MFALAPITSA: I did subsequently have contact with Mr Musi.

MR JANSEN: Where did this contact take place?

MR MFALAPITSA: It took place at Kagiso, just outside my uncle's place in - Naulada Street there, in an informal sense, Mr Chairman.

MR JANSEN: Outside your uncle's house?

MR MFALAPITSA: Yes.

MR JANSEN: Did Musi stay in, Mr Musi did he stay nearby?

MR MFALAPITSA: Yes, he stayed just front opposite my uncle's place, Mr Chairman.

MR JANSEN: Now, what transpired between you and Mr Musi in that first meeting?

MR MFALAPITSA: Well, Musi informed me that since I was from exile, he and his friends are intending to leave the country.

MR JANSEN: Yes, and what else?

MR MFALAPITSA: And that they suggested that I must help them to leave the country.

MR JANSEN: Yes, and then?

MR MFALAPITSA: And then, I foresaw that something dreadful was supposed to happen.

MR JANSEN: Well, can we just come to this. When you say they wanted to leave the country, did you gain some impression about Mr Musi? Did you, did you, was there a discussion about what his, whether he was involved in any organisations, whether he was involved in any politics of any kind?

MR MFALAPITSA: Well, momentarily, those were not my immediate concern. My immediate concern was that things of this nature could lead to dangerous end.

MR JANSEN: No, but let's get back to the discussion.

INAUDIBLE INTERVENTION

MR JANSEN: Maybe you can just, maybe just, you don't need to speak quite so loud, Mr Mfalapitsa.

MR MFALAPITSA: Okay.

CHAIRPERSON: Mr Mfalapitsa, it might help, are you, are you listening to the questions in English, I assume? No, no, hold on, hold on. Listen, Mr Mfalapitsa, are you listening to the questions in English?

MR MFALAPITSA: Yes, I'm listening in English ...(indistinct)

CHAIRPERSON: Why don't you take it off, why don't you take the headphones off? You don't really need the headphones if you're hearing ... (intervention)

MR MFALAPITSA: Can I take them off?

CHAIRPERSON: Yes, you can listen directly to the advocate speaking in English and you can answer and perhaps then you will also hear the volume of your own, sort of, voice. All right?

MR JANSEN: Just press your microphone.

MR MFALAPITSA: Thank you.

MR JANSEN: Did Mr Musi at that stage tell you anything more about him and his friends?

MR MFALAPITSA: No, he only specifically talked about his intention to get his friend to leave the country and he suggested that I must help them to leave the country.

MR JANSEN: Yes. Now what would it have, at that stage, what did it mean if when young people said they wanted to leave the country? What did that mean?

MR MFALAPITSA: That is a serious decision for anybody to make, Mr Chairman, and I knew for sure because I was in exile, I knew what the implication of such a decision is, Mr Chairman.

MR JANSEN: Yes, but is it true that it meant that young people wanting to leave the country, young black people wanting to leave the country at that stage, meant that they wanted to join the ANC or they wanted to join ...(intervention)

MR MFALAPITSA: When they specifically, Mr Chairman, talks about, they said they actually receive a military training. To help them to leave the country, it was to receive a military training.

MR JANSEN: And, right. And what did you do after this first meeting?

MR MFALAPITSA: After this first meeting, seeing that in my own personal feeling, I thought maybe because I was just, I have just recently arrived at Vlakplaas and somebody was a suspicion that I was sent in for the South African Police, and I thought perhaps Musi, he's sent by the South African Police to trap me and if I don't report the incident or my meeting with him, and the contents of our meeting, may then works against me and I end up being assassinated.

And the other thought was that I could either leave the country because I didn't want to involve myself in this incident in which a person would be killed or either harmed. But South Africa was a neighbouring, had neighbours who were friends of the ANC, who could, if I returned to such countries, would return me to the ANC and that would be a dreadful experience, seeing that I have first and foremost left the ANC on my own personal reasons.

So I sort of lamented between me that something very bad was supposed to happen, and the only alternative I had was to report it to the people who were actually in charge of me at Vlakplaas.

MR JANSEN: And who did you report it to?

MR MFALAPITSA: I reported to Captain Coetzee.

MR JANSEN: And what did you report to him?

MR MFALAPITSA: I told that I met a few chaps who want to leave the country for military training and she, they knew that they left the country. The impression I got from them is that they thought I was still a member of the ANC and therefore in a position to facilitate their leaving the country for military training.

MR JANSEN: And what did, what did Captain Coetzee, this is now Johan Coetzee, what he did then tell you?

MR MFALAPITSA: When I, he told me that I must, in a way, I must, I must dissuade them from leaving, but I must make an attempt to find out if they have a specific, you know, reason for receiving military training and if there were any target already which they have identified which they sought to attack. And if so, then I must offer them to train them for military training.

MR JANSEN: Right, now. So, as you recollect, Coetzee told you to convince them not to leave the country.

MR MFALAPITSA: Yes, in order to get them actually, to get an evidence as to their really having specific information about specific target to which they want military training for. And if so, then I must offer them to train militarily.

MR JANSEN: Alright. If I can just come, I just want to make that part of your evidence clear, see whether it's clear. There was Coetzee, is it correct that Coetzee told them to tell them or to dissuade

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them from leaving the country on the one hand.

MR MFALAPITSA: Yes.

MR JANSEN: But also on the other hand, he told you to report on whether they had any specific plans or whether they were involved in specific activities?

MR MFALAPITSA: That is correct.

MR JANSEN: Now, did you then again have contact with them?

MR MFALAPITSA: Yes, we have, at that stage that, a second meeting I think at the railway station Industrial, Industria Station, around I think its Joburg, or Krugersdorp, but I think Joburg line, railway line station, where me met for a second time with Musi.

MR JANSEN: What did you gain from Musi on that occasion?

MR MFALAPITSA: Well, he then after, giving my point of view that I could not, it is dangerous to assist them in leaving the country, and therefore after I requested as to if they have any specific target which they would, they wanted military training for, and then I offered them to train them locally and they agreed, as was arranged with me and Captain Coetzee.

MR JANSEN: Yes, but let's take it one by one. After you had told them that you won't be assisting them at that stage to leave the country, or told Musi that you won't be assisting him and his friends to leave the country, at that stage.

MR MFALAPITSA: Yes.

MR JANSEN: Did you then make any further enquiries about their other activities or was that volunteered to you?

MR MFALAPITSA: Yes, I asked if they have any specific target and they said yes. And then I said if you are agreed that I may train them locally, then they agreed.

MR JANSEN: Did they give you any further information? Did Musi give you any further information about these targets of his?

MR MFALAPITSA: Yes, he spoke about the man, a warrant officer, a policeman called Nkosi, Warrant Officer Nkosi and a man by the name of, a councillor by the name of Matsidisa, whom they wanted to attack.

MR JANSEN: They wanted to attack.

MR MFALAPITSA: Yes, sir.

MR JANSEN: Did you know any of these gentlemen, Nkosi or Matsidisa.

MR MFALAPITSA: No, I know Matsidisa from my primary school period, when I was in Krugersdorp. He was all over a teacher at the school where I attended, at my primary level.

MR JANSEN: And what did Musi say, why did they want to attack this Matsidisa person?

MR MFALAPITSA: Well, Matsidisa was supposedly a councillor and this other one was a warrant officer, I think, who were -I don't know where they was impeding them to the activities to which we were designed for or aligned to the African National Congress or UDF at that stage, I was not sure.

MR JANSEN: Now, did it appear to you that Musi was quite serious with these plans of theirs?

MR MFALAPITSA: Yes, he was certainly serious about them.

MR JANSEN: What was the mood of the average - of, or not the average but many of the black youths such as Musi at that stage? Were they, were they, were they keen to be involved in the struggle against the government?

MR MFALAPITSA: Yes, the situation actually was beginning to be volatile at that stage, politically internally. And with my experience of ... (indistinct) before I was assigned some assignment by the ANC in Botswana we had many contacts we made in South Africa and many young people were in fact ready to assist, either with military or information or whatever assistance they could offer to African National Congress activities. Or military operations.

MR JANSEN: Now, this issue of training, what was this, the training supposed to be for? What was the purpose of the training?

MR MFALAPITSA: The purpose of the training was actually military training with the objective aims of handling military weapons, and all other assortment of weapon used in guerrilla warfare attacks, of hit and run in non-military or conventional manner.

MR JANSEN: And as you said, Musi was under the impression that you were still involved with Umkhonto weSizwe.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: Now, did this, did you again report this conversation or information to your superiors?

MR MFALAPITSA: That is correct, yes.

MR JANSEN: And again to whom did you report this?

MR MFALAPITSA: I reported to Captain Coetzee.

MR JANSEN: And what happened thereafter?

MR MFALAPITSA: He suggested that I must therefore arrange a specific date thereby agreeing that I will train them and arrange specific date and to which we shall then trap them in the process.

MR JANSEN: And, that then, in fact, happened. Is that correct?

MR MFALAPITSA: That is what subsequently happened, Mr Chairman.

MR JANSEN: And just, very briefly, did that, that entailed you and Mr Joe Mamasela picking up Mr Musi and his three friends.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: And driving to a mine in the West Rand.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: And, just again, fairly briefly, can you just tell the Committee what happened at that, at the place where they were eventually ... (intervention)

MR MFALAPITSA: Subsequently, it was arranged me and Joe picked them up at a agreed spot at Kalafong and then we picked them up at around 8 o'clock. We drove to an agreed spot and Joe left us at the spot and then we entered the place where I was supposed to give them training, which was trapped by explosives. And we entered there, and I locked and we sat down and I took out a handgrenade, offensive and defensive handgrenade, and then I showed them how it works. And that is when I told them I was going to fetch some other equipment and I went out. That is when I locked the door according to how I was instructed to do.

MR JANSEN: And just again, did you, you apparently then left that, that small pump installation and you joined up with Mr Coetzee and Mr Rorich then, at that stage I think a Lieutenant and a Captain.

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MR MFALAPITSA: That is correct, Mr Chairman. But first before I found out one must also appreciate that it was not easy for me to enter into a place which was trapped like that, because I was also suspected to be possibly a member of the ANC infiltrating the South African Police, and I thought they could actually destroy us together, because it was not known as to whether I was arrested. It was not published in media and I thought maybe I will enter there and - I will not come back. But in the particular circumstances, one could not object to anything because we were in the circumstances of war and conflict in which either both groups ...(indistinct) each other through and we, as full soldiers, we were the recipient and ...(intervention)

MR JANSEN: We'll get to the political stuff just now. Let's just stick to the facts.

MR MFALAPITSA: Yes.

MR JANSEN: You left that little structure there where the four youths were and you joined up with the other policemen and then it was detonated.

MR MFALAPITSA: That is correct, your Worship.

MR JANSEN: Now, can you maybe just explain to the Committee the, the sort of peculiar political position that an askari such as yourself found yourself in, both at that stage, both politically and operationally? What exactly was your position?

MR MFALAPITSA: Yes, to put this question in perspective. When immediately I arrived in South Africa, I told the South African Police that I am not interested in joining either side of the conflict. I wanted them to debrief me and set me free because there was no where else to go and this is my country. And it was my experience and my arrest in Botswana, I saw many people who were stateless, who had no place to go. I wouldn't want to go into a situation where I was kept in prison, because any country ready to take me. So I told them ...(intervention)

MR JANSEN: Sorry, can you just speak slightly slower, so that the interpreters can follow, and the Committee members most probably.

MR MFALAPITSA: I told them I came to South Africa because this was, this was the land of my birth, but I do not want to get involved in any way with either side in this conflict. So this was first and foremost the base from which or the premise from which my plan of demilitarising myself was based. And then, they refused me. They said they could not let me, after having been in military structure in which Joe Modise is the Chief of the armed forces of the MK was the head, and then they decided just to say no I won't debrief you and be left alone. They said that could not happen.

So I helped and I was forced to join the South African Police under such circumstances which was also a climate of war, because previously there were a lot of conflict in which I was involved in preparation to such conflict along the Botswana border. And ... (indistinct) police knew I was ... (indistinct) conduct some people died in such conduct. Those were military excursions and in ... (indistinct) I was caught in a quagmire of political conflict which I do no longer wanted to involve myself with.

My political point of view at that stage was actually an evolutionary process in which change could be, could occur without any military inducement. And though that was not there well-pronounced, my political premise, but I had a very intense distaste for conflict, either as emanating from the ANC or the government. But in those circumstances, there was nothing I could do because I realised that the conflict was becoming broader and broader and involving large number of people in the process.

MR JANSEN: Now, in 1982, you were, you also in fact went to the United States of America and you testified before the Denton Senatorial Committee.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: And at that stage, that's now 1982, were you asked about your, as a black South Africa, about your political persuasions at the time?

MR MFALAPITSA: Yes, the journalists did ask me if I was against armed struggle as it was launched by the ANC and what was my view about the status quo for the fact that apartheid in their own terms was continue and the black, the large number of black masses were not happy about it. And then I said I pointed out to them that I was actually not in any way supportive of military or violent solution to the question of South Africa. I personally felt that evolutionary process was the right way to go since in the process, mistake of killing people were made either from both side. It is something that naturally evolved, something to which one would have no simple objection to it, unless if one held serious political ideology as they pertain.

MR JANSEN: And so, you became, if I may summarise to some extent, you changed from a revolutionary political standpoint to one that believed that evolutionary measures were better.

MR MFALAPITSA: Precisely, and also my view, intensely religious, because at the stage when I decided to leave the ANC, there was a quest, a religious quest for me in which I longed for the days of my ... (indistinct) where I said if community of my people in the church where the humanity, the humanity of people is celebrated and where wrongs were amended in terms of Christ's mediation between God and man. And those were also views which actually largely influence me, because I felt that I was personally bound by deeds that were committed by previously in the ANC and subsequently in South Africa, and I felt that only religion could set my humanity free. And I can again regain my personhood and my humanity.

MR JANSEN: Just again, back to the politics of the time. Did you, did you remain committed to the, to the goodwill and interests of the people of your fatherland, South Africa as a whole?

MR MFALAPITSA: Yes, religious views are not the neutral views. They are views that address the problems as well. My view was that apartheid will have to go. And in many instances, where we addressed on the orders of South African Police, and the officers in various camps, they emphasised that they should unban the ANC and in the process, then the unrest and violence will come to an end, and that politics is better done in an atmosphere of dialogue rather than an atmosphere of war and killing one another.

MR JANSEN: Alright. Again, I don't want to put words in your mouth, but could I just try and summarise again that your political views again at that stage, and at some stage was strongly influenced again by your religious views.

MR MFALAPITSA: Yes, in so far as the bondage that arose out of my involvement in politics as concerned, because I knew that only religion could personally set me free and lead me into a way in which I could again be part of my people. Stop the sundered nature in which I was, I felt I was sundered from God, from my people, from myself and that I needed desperately.

MR JANSEN: Now, you received some money for this incident involving the four youths. Is that correct?

MR MFALAPITSA: That's correct, Mr Chairman.

MR JANSEN: Can you remember how much it was?

MR MFALAPITSA: I think it was round about R1 000, Mr Chairman.

MR JANSEN: Yes, as you stated in your amnesty application.

MR MFALAPITSA: That's correct, Mr Chairman.

MR JANSEN: Were you aware of the fact, at any stage before receiving this money, that you would be receiving it, or that there would be a possibility of you receiving it?

MR MFALAPITSA: I was not aware, Mr Chairman, since with my background from the ANC, for five years, almost five years, I was, I did not have the money, I was not, I was cared for in terms of my clothing, my, they food me, they medical me, so I have actually lost a sense of money. And the

complex situation in which I was particularly the fear for my life, and the situation in which others like me found themselves in, in such a conflict situation. Money meant very little for me at that stage.

MR JANSEN: Yes, but there was no mention of money before this incident?

MR MFALAPITSA: There was no mention of money before that.

MR JANSEN: Did you have any, was there at any stage, any personal animosity between yourself and Musi and/or his family or any of these other people involved here?

MR MFALAPITSA: The fact that I longed to my religious upbringing where human love was celebrated, meant that after moving away from the ANC I could not afford to indulge in some kind of animosity with people. Actually, I was almost like in heaven on earth. You know, in a situation where I meet people and celebrate their life, meet them as friends, visit them without any form of animosity or hatred or suspicion or fear. So that, that could not have been my attempt to go back to the bondage which I ran away from. So I was not entrusted in any entertain an animosity with anybody who was ... (indistinct).

MR JANSEN: Now, you asked the Committee to grant you amnesty for the murder of those three people mentioned at the top of Exhibit H as well as the attempted murder of Mr Musi and any other crimes flowing from this specific incident on the 15th of February 1982.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: As far as Mr Musi is concerned, and the families of the other victims, it is so that you've expressed the wish to say something to them.

MR MFALAPITSA: That is correct, Mr Chairman.

MR JANSEN: I think the Committee will afford you that opportunity. What do you want to say to them?

MR MFALAPITSA: Yes, I want to say something to them, Mr Chairman. First, I want to address back as people to which I belong. I'm a black man, you are a black man. And I do appreciate that you are, you are intensely and profoundly aggrieved by what subsequently aspired from my involvement in the struggle of the past and my subsequent involvement in the situation in South Africa.

But I would like to appeal that you look at this from a broader context and from the point of view of the situation in which I was at that point. I belonged to the family of the African people, the African National Congress had then to have been my family up to a point where dreadful thing happened. Some of my comrades were suspected of being ... (indistinct) were arrested. And my circumstances I was forced to partake in their torture and even the killing of one of them and that affected me profoundly to a point where I felt I could no longer participate in anything that has to do with arbitrary causing of pain to people who were actually our fellow combatants.

So I left the ANC and under ... (indistinct) circumstances. I didn't want to do anything to harm anybody when I came to South Africa, but in South Africa I was forced also to join the South African Police. And coincidentally this again led me to this dreadful and painful incident which lingered in my nature for, it has never stopped to dwell in my being, both at the level of my human existence and at the level of my religion. And they also the victim who paid such a high price in such a painful circumstances, they were in a context in which they carried out their beliefs to free you as the case was. They died in the context of struggle not for their own personal gain.

I was also caught up in this paradox of history. I was caught up in this situation in which the youth of South Africa were finding it difficult to make sense of their existence.

I made a dreadful mistake, nobody can take it away from me. I sought solution in religion, in African customs. I studied theology in order to get some answer to my personal problem, but all my efforts led me to a point that you alone can help to restore me. For me, it is not just a question of acquiring

amnesty it is also a question of reconciliation of my people, so that my unity of my being can be restored.

Paradoxically I have that from you but there are contradictions but I ask that you look at it from the context to which I have just outlined now, and, help to restore me. That's all.

MR JANSEN: Thank you. Mr Mfalapitsa, I think there're just some four matters that are omitted to deal with. Your involvement in this incident, did you regard yourself as following the orders of your superiors at that stage?

MR MFALAPITSA: Yes, at a military level, I was following orders. But at a political level I was caught up in a conflict which I did not want to involve myself any more. But due to circumstances that prevailed at that point, I had no power to address that to the power that be.

MR JANSEN: And did you regard your efforts as part of the effort against the armed struggle of the ANC at that stage?

MR MFALAPITSA: Well, I regarded that as a phase that occurred in this ugly world in which we live in and things that induces fear, things that debilitate human, human spirit, but these were things that were not happening in isolation, they were happening in a broader context of political struggle in this country and I understood that my involvement with the ANC meant well, but something dreadful went wrong in the ANC and if a child expresses severe relation problem from his family and he run away from his family. Indeed minding alien teachings and practices, and in the process I was involved in a conflict to which my way were no longer comfortable with.

And that is how I understood myself at - my feeling were also that I was a victim. A concept such as askari, former terrorist, you know, all those concepts they bring a multiple of danger and feeling of helplessness and alienation to those who were so named. So, in a sense I knew that no one wanted conflict, no one want to live in a country that embraces hate to his self. But here was the circumstances in which I was and I could no longer run away from this country because far from Netherlands or America, or any other country could give me refuge. My only refuge was in my subjective self I sought salvation to my religion.

MR JANSEN: And you realised at the time when reporting to the, to your superiors about these youths, these youths, Mr Musi and his three friends, that they would be regarded as a security risk by the, by your superiors.

MR MFALAPITSA: Precisely, as the military one when the news was broken to me I thought of running away, because I foresaw that dreadful thing could happen with this unfolding episode. But as I say where could I have run to and what could I have done under the circumstances. I thought if I kept quiet they may attempt to run away and be arrested and confess and that will be the end of me. And if I report also it was a situation which was casted, it was a situation I was between a hard places and the rock and nothing in the circumstances I could have done other than what I have done which made sense at that point.

MR JANSEN: Thank you, Mr Chairman, I have no further questions.

NO FURTHER QUESTIONS BY MR JANSEN

CHAIRPERSON: Yes, thank you Mr Jansen. Mr Visser, have you got any questions?

CROSS-EXAMINATION BY MR VISSER: Yes, thank you, Mr Chairman. Mr Mfalapitsa ...

MR MFALAPITSA: Yes, Mr Chairman.

MR VISSER: As I understand your written application at page 227 of bundle 1, you spent, and in your Exhibit H, you spent the years between 1976 and the end of 1981 abroad.

MR MFALAPITSA: Yes, Mr Chairman.

MR VISSER: And that included various countries, inter alia, it included an Eastern Bloc country where you received military training.

MR MFALAPITSA: Yes, Mr Chairman.

MR VISSER: What country precisely was that?

MR MFALAPITSA: It was first country of my landing after leaving South Africa was Botswana, then on transit was Zambia, destined to Dar es Salaam, Tanzania on transit to Angola and finally to GDR, East Germany for training.

MR VISSER: The East German Republic?

MR MFALAPITSA: That is correct, Mr Chairman.

MR VISSER: Did you receive any military training in Botswana?

MR MFALAPITSA: No, Mr Chairman.

MR VISSER: Anywhere else, except the GDR?

MR MFALAPITSA: Yes, except in GDR. Well, in Tanzania we have just physically training to keep us busy while we were in transit to Angola and finally to GDR.

MR VISSER: Yes, alright. And when you came back, you say at one stage you were in Lusaka in Zambia. Were you attached to the military operation, operational unit there? Have I got the expression correct? The military component you referred to in paragraph 12. Is that correct?

MR MFALAPITSA: That was after my span with events that led me to my infiltration in South Africa several before the arrest of 1997, middle of 1976, I mean. '77, sorry. And then in '78 also and later I was withdrawn and assigned reconnaissance and ordinance responsibility in Botswana. And I was arrested subsequently and sent off to train in Botswana and I was deported, PI'd and deported to Zambia. That is when I was attached to the military component in which Joe Modise was the Commander.

MR VISSER: Perhaps we misunderstood each other. I'm just trying to follow, to follow the chronology of what happened to you. After your training, did you then come back to Botswana first and then go to Zambia. Is that correct?

MR MFALAPITSA: After my training I was sent to Botswana. I was sent to Zambia, given final preparation for front area, which was Botswana, and which implied that I would be virtually deployed in South Africa. That did happen, '77 I was employed in South Africa. And then I went back, our mission didn't succeed.

I was redeployed again in South Africa the same year, and our mission did not succeed in the way our weapons were discovered by the police and taken away. And then 1977, '78, I was assigned as a reconnaissance in charge in the operational area of Botswana and then that was the time when we were infiltrating people, making sure that they are safe through the borders to their various destinations.

And it was 1979 I was assigned in charge of ordinance, weapons that were intended for underground mission in Botswana. And that was when after a prolonged period I was arrested with weapons and I was sentenced to three and a half years and I was eventually discharged through the judicial process, and I was PI'd and sent to Zambia.

In Zambia, that is when I joined the headquarters of MK, responsible for the front between South Africa and Botswana and Zimbabwe.

MR VISSER: Yes, thank you. That's a very full explanation. In short, you were a member of MK?

MR MFALAPITSA: That is correct.

MR VISSER: Did you have an MK name?

MR MFALAPITSA: That is correct, Mr Chairman.

MR VISSER: What was that?

MR MFALAPITSA: My name was Francis Tladi.

MR VISSER: Francis ?

MR MFALAPITSA: Tladi.

MR VISSER: Jani?

MR MFALAPITSA: Francis Tladi.

MR VISSER: Tladi?

MR MFALAPITSA: That's right.

MR VISSER: Yes, thank you. The - I'm not going to ask you about the operations which you spoke about, I'm only going to ask you this. Were they military operations into South Africa?

MR MFALAPITSA: Yes, they were all military operations.

MR VISSER: And were the objectives of that military operation, people or things or both? People or objects or both?

MR MFALAPITSA: The specific objective was military personnel, okay and arms and strategic installations.

MR VISSER: Installations?

MR MFALAPITSA: Installations, yes.

MR VISSER: Yes, yes, thank you. And you say that in Zambia you were under the direct command of Mr Joe Modise and Mr Keith Mokwabe.

MR MFALAPITSA: That is correct.

MR VISSER: Mokwabe, in Lusaka. All right. Thank you for that background, Mr Mfalapitsa. Now, you came back to South Africa and you've explained to us why you wanted to come back and you felt compelled, because of the situation, to join Vlakplaas. The situation which you encountered when you came back to South Africa in 1982, in your view, was there then already an undeclared war raging?

MR MFALAPITSA: I think, in an understanding of our side, but in my own view it was not an undeclared war, it was a declared war.

MR VISSER: I see, yes, well, you probably referring to the declaration of war by the ANC in 1960.

MR MFALAPITSA: No, no, not really referring to the formality of such war in terms of treaties and what but I think in terms of my involvement, my history, involvement in the ANC, there was war that raging in Zimbabwe, we were involved in many fronts we were at war. So in terms of the practicality of what we did, that was war and no doubt about it.

MR VISSER: Yes, certainly. It wasn't a declared war but it was a war situation. Yes.

MR MFALAPITSA: Yes, in that sense, yes.

MR VISSER: Now, in this war situation, what was the position when you came back in 1982, in a place for example, such as Kagiso, in Krugersdorp and Soweto and surroundings? Were there attacks

on people and on buildings going on, frequent attacks?

MR MFALAPITSA: Well, there were some frequent bombs attacks in various installations and even incidents of attack on specific people who were not in tune with the ANC's objectives. Yes, there was.

MR VISSER: Yes, those people not in tune were specifically members of the police.

MR MFALAPITSA: They could be anybody who actually was a member of the ANC or was in his action, you know, showing some hostility to the liberation forces.

MR VISSER: Yes, I'm not sure that I understood that, but would you agree that specific targets would have included members of the police?

MR MFALAPITSA: Yes.

MR VISSER: And all people, persons who were considered to be supportive of the government.

MR MFALAPITSA: That is correct.

MR VISSER: Like black councillors.

MR MFALAPITSA: That is correct.

MR VISSER: And it was precisely in that regard that matters were considered in regard to Musi and these three others?

MR MFALAPITSA: That is correct.

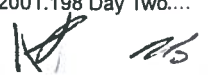
MR VISSER: You've already said so. Now if I may come to that issue. You were unfortunately not hear yesterday when evidence was given by Mr Johan Coetzee. He has a slight, slightly different recollection from the sequence of events and from what exactly happened in what was said by you or by him or whoever, and bearing in mind that it is 17 years ago, and that one's memory fails one about facts and details, I still want to ask you, if you'll permit me, somethings, some of the aspects that he remembers and perhaps we can jog your memory or vice versa.

Now, as it turns out, he had forgotten or he doesn't remember the aspect which you mentioned that you were asked by Mr Musi to assist him and his friends to leave the country, to go and undergo military training. Just to show, you know, that memories fail. But, as far as the sequence is concerned, his evidence was that first of all, you came to report to him that you'd met Musi whom you knew and he had three friends and that they in fact intended to attack Warrant Officer Nkosi. He says that he discussed that aspect with his immediate commanding officer, whom I am sure you will remember, Brigadier Schoon. And that Brigadier Schoon suggested to him that he should tell you to try to dissuade these people from attacking Warrant Officer Nkosi.

Now, I know that is slightly different from what you say and you've also stated and your Counsel has put that you again don't remember that you were given an order to go and dissuade them from attacking Nkosi. Do I understand your evidence correctly?

CHAIRPERSON: Well, Mr Visser, I think we must put it objectively to this witness. You see, Mr Mfalapitsa, Mr Coetzee testified that Mr Musi and others approached you in order for you to give them military training and to give them weaponry. It was also indicated to you that they intended to attack Mr Nkosi and this councillor. That you reported this to Mr Coetzee, he then, the superior to Coetzee, suggested that these youths should be persuaded not to continue with their intention of getting military training.

MR MFALAPITSA: Mr Chairman, I think here we are talking about the fact that culminated in this incident. We are not talking about the chronology of events as I've outlined them here. And pointing to perhaps some memory loss in terms of Sarge, I think any human being, anybody who is a human being dealing with painful history he might not actually give the attention to minute details. Which, under present circumstances, may be absolutely necessary. The sociologist speaks of, you know, amnesia and all those kind of things as a means of dealing, not as a deliberate act, but as a means of



dealing with painful memory and history. But, as I said, they requested military training and upon which I reported and their prime aim was that we must get the actual immediate, their actual immediate threat against South Africa. Hence, I was entrusted to ask them as to whether they have any immediate target which they want to attack, and to which they indicated yes, and they named them to me and where subsequently the decision was taken to, for me to agree to offer them training in order to trap them in the process.

CHAIRPERSON: Now, what was the situation? Did they want the military training in order to execute their intention to attack these two people? Or what was the situation, how did you understand it?

MR MFALAPITSA: Well, I think that might have been their broader perspective in view of the fact that they were not trained by them, but as a person come from training, he has a broader perspective of what the conflict in which he is engaged and he might also be assigned in a different area as to not to be detected according to secrecy rules and so on. So they might not have been sent after, if they were to have received military training, they might not have went to the specific area to which they originate. But I believe if they were to have received military training, and went back, they would definitely start with the target they indicated.

CHAIRPERSON: Yes, but now let me, can you try just to be, just give me a succinct and straight answer. What did you understand, did, for what purpose did they want the military training?

MR MFALAPITSA: Well, military training as I know it from my own experience, anybody be it a person, military person or civilian person, who is consciously against the idea of liberation struggle as it was prosecuted by them, was a military one.

CHAIRPERSON: Yes, I'm sorry, I'm going to ask you to be crisp. Did you understand that they wanted the military training in order to attack the targets?

MR MFALAPITSA: Precisely, all targets.

CHAIRPERSON: No, no. I'm speaking specifically of these two people, of Nkosi and this councillor.

MR MFALAPITSA: Well, I assume that in the process if they had a chance of military training they would carry their desire.

CHAIRPERSON: Yes, Mr Visser.

MR VISSER: Thank you. Can I just come back to what I'm busy with. Your recollection, Mr Mfalapitsa, was ... (inaudible intervention) Thank you. Your recollection was that, if I understood you correctly, and please stop me if I'm wrong, you were asked by Coetzee to try to dissuade them from going for military training. Did I hear you correctly?

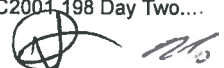
MR MFALAPITSA: That's correct.

MR VISSER: Yes. You see, that really explains the apparent contradiction, because the way he remembers it again, was that you were asked to go and dissuade them from attacking Nkosi. But whatever, whatever the dissuasion was about, there was an attempt at dissuading them from acting militarily, either for going for military training, or from attacking people.

MR MFALAPITSA: I think perhaps that point is understood out of my own frame of, you know, putting it. I put it in such a way that the dissuasion, the effort to dissuade them was, I think, followed by the need to get the information about the target that they wanted immediately to attack. So immediately I asked them if they have any other target that they want to attack. And after they agreed they said yes, I said no, okay, it was agreed with me and Captain Coetzee, I would then agree to offer them training internally as it was dangerous for them to leave the country.

MR VISSER: Yes.

MR MFALAPITSA: I think that is how ...



MR VISSER: No, I understand that. I understand that. The fact is, we know from your evidence that they spoke about attacking two targets. Whether it happened at the first meeting or the second meeting, really is of no consequence. So, I'm not arguing with him about that. Now, the only thing is this. There was a suggestion in your evidence here today that Mr Jan Coetzee, and please again stop me if I'm wrong, suggested that you should offer to give them training in the sense of where it hasn't been discussed at all that you should actually suggest to them. Was that what you intended to say or was it something different?

MR MFALAPITSA: Yes, yes. That is exactly what he said.

MR VISSER: Well, you see, at page 230 of bundle 1, I don't know whether you have that in front of you, it's your hand-written part of your attached statement to your amnesty application, you talk about this meeting which you had and one must assume from your, from a reading of your statement that, this is the first meeting you're talking about, with Musi, with Mr Musi. You say that "a person known to me only by surname Musi, a youth from Krugersdorp, address Bick Street, Kagiso No whatever, approached me in Krugersdorp. He did not know that I was no longer a member of the ANC. He suggested that I must train them in the use of light arms, etc, Musi and the other three."

MR MFALAPITSA: I think you must understand the context in which that was written. This thing was written primarily to disclose an act which was deemed by the Head of TRC to be either commission or volition. So it was not done to actually serve your chronological fact as an interested outside person, you know, to make some logical inferences. So I think you must understand that here the primary aim of this was made with the purpose of disclosing what ultimately happened, not what chronologically makes sense to you as an outsider.

MR VISSER: Yes, what you're saying is I shouldn't be blinded by the details, I should look at the broader picture.

MR MFALAPITSA: No, no, you have freedom to do that, but I am saying you must also look at the context which influenced our actions, because those gives you a window through which you can make logical inferences.

MR VISSER: Yes, but the fact remains, does it not, that when you wrote your statement, what you remembered that Musi made a request to you, and that is to be trained. Now, isn't it probable that is the true situation?

MR MFALAPITSA: Well, I think you must understand that I am first narrator here. I'm not second narrator. I'm narrating what is my primarily my experience. And what I have said today here is chronologically actually amounted, okay, to what transpired during this process. And taking into account that it was not an atmosphere in which you were sitting like as we are sitting here now peaceful, peace of mind or something. It was very turbulent times, it was a very painful thing to have occurred to me and all those things meant that really this was no just an issue to be either deducted or added by mere an unsympathetic perhaps or maybe an approach which amount to a logical desire to make a logical order.

MR VISSER: Yes. Could I, at the time when you wrote this application, you were sitting at home. Is that correct? There was nobody watching you, nobody disturbing you, so that in fact was a peaceful situation there.

MR MFALAPITSA: I don't agree with you, Mr Chairperson, because the announcement of TRC itself was almost like an apocalyptic events. It was an episode which my own view was created by my own striving to see this coming to an end. I prayed for, very fervently, to a point of requesting God to take my life away, but ... (indistinct). So when I was writing this, I was, I was terribly not in a state of peace. I was terribly affected by the fact that at the end of this 20 years length period of history we were to face all things. But, okay ... (intervention)

MR VISSER: Yes, that pain was relief to you in order to empty your soul, sort of.

MR MFALAPITSA: Yes. The issue was not about emptying my soul. The issue was about admission and fulfilling the requirement of the Act and that which I did, the issue was me coming forward to the

Commission, that which I sincerely did. But about chronological order, that did not occur to me because those were actually, let me put it in my own words, were not my primary concern. My primary concern was to disclose an incident profound as this one. And painful as this one.

MR VISSER: Can you help me with your finger on the microphone again, please? Would you at least, I want to step off this thing. Would you at least agree with me that what you said in your statement differs what you said here today in regard to where the idea of the training came from, is concerned?

MR MFALAPITSA: I think you are missing the point, Mr Chairman, because as I said before your argument is based on the need for chronology and at the point to which I was making the statement, my concern was a disclosure which was actually the requirement of the ... (indistinct) Act and that I did, and I'm here today. And about the chronology perhaps if I sought legal advice who could remind me of some need for chronological imperative when the hearing was to come. Perhaps I could have made that, corrected that. But at that time, as I say, I was moved by the need to disclose this case and to face it, publicly and I think you must understand it is not, it is no mean act to stand here facing this nation to admit to acts like this one, without putting extraneous circumstances of the history of this country.

MR VISSER: I have sympathy with what you say and I don't argue with you, Mr Mfalapitsa. I'm just suggesting to you that you said in your statement, "he, that is Musi, suggested that I must train them in the use of light arms" and here you said today that it was Coetzee who suggested that you should suggest it to them.

MR MFALAPITSA: You see, as I say we are driven by different forces. You are driven by the forces of making logic out of this report. I was driven by the forces of disclosing all about this thing. And that I did. ... (intervention)

MR VISSER: Yes, I don't want to interrupt you, but you have told us that. I want to step off this thing. Where you at any stage requested by Musi and his friends to provide them with firearms or weapons?

MR MFALAPITSA: They didn't specifically speak about being provided with firearms.

MR VISSER: Well, was it implied then?

MR MFALAPITSA: The fact of training a person implies that one will be provided with firearms.

MR VISSER: Yes, did you ask them whether they had firearms with which to train them?

MR MFALAPITSA: I understood them, their need for training as saying to me they don't have weapons.

MR VISSER: Yes. So, directly or indirectly, and you say indirectly, they asked you to provide them with weapons.

MR MFALAPITSA: That's correct.

MR VISSER: And you reported this to Mr Jan Coetzee.

MR MFALAPITSA: That's correct.

MR VISSER: And you also said that, as far as you can remember, you gave them two grenades the day in the little house, one offensive and defensive.

MR MFALAPITSA: That's correct.

MR VISSER: Handgrenade. Was there a question of a pistol involved?

MR MFALAPITSA: Yes, I carried a personal pistol with me, Mr Chairman.

MR VISSER: A Makarov, wasn't it?

MR MFALAPITSA: A Makarov, Mr Chairman.

MR VISSER: Yes. And that would also be used as training?

MR MFALAPITSA: Well, I just demonstrate, I just actually expose it to them, but that was not part of what I showed them in ... (intervention)

MR VISSER: Okay, fair enough, all right. Now, we know whatever the sequence of events was, that at one stage it was agreed that they be taken to this building on a deserted mine and that they would be blown up.

MR MFALAPITSA: That is correct.

MR VISSER: You were at pains to tell this Committee that you considered your participation as an act in a state of war where this was done because of the fact that it was a state of war with a political objective.

MR MFALAPITSA: That is correct, Mr Chairman.

MR VISSER: Do I derive from that, that you agreed at the time that there was no other way out, than eliminating these people?

MR MFALAPITSA: That was not my, the domain of my indulgence, Mr Chairman. We worked in military establishment, we worked through orders and through hierarchies of orders. So, that was not the domain to which or which belongs to be primarily.

MR VISSER: Yes. But when you receive an order you can either agree with it or you can disagree with it, as long as you still follow the order, I understand that. But my question is, did you agree that in that situation, in that situation, there was really nothing else to do?

MR MFALAPITSA: Subjectively, yes, without expressing it. I thought of it as something, you know, hit me, hit my humanity. But as I say, in the circumstances in which we are, in the climates of war, and in the circumstances in which I meant in terms of an entity in the social establishment.

MR VISSER: Yes, because one of the witnesses here said yesterday, sitting here today he would never do that. Because circumstances have changed. We understand what you are saying.

MR MFALAPITSA: And for information again, I handle weapons for many, many years and I have never shot a person with my pistol or with a gun in my hand, even though at a certain stage of my life I could have done that. One, when I, it was ... (indistinct) infiltrate South Africa and I found that my mother died when I was in exile. I was very angry, I went to a point where I could have shot a person. But I said to myself, the interests of this conflict is not a narrow sense of revenge or my own venting of anger to anybody and then I dissuade myself from ... (indistinct). For it was not a question of really me gaining anything from a situation which I could have objected, if the situation was normal, I could have objected. If the situation was not normal, I could not have objected. That I could not have objected, and I still maintain under such circumstances you would not have objected.

MR VISSER: Mr Mfalapitsa, I notice in you a desire to make, to clear your conscience and to clear your heart here today, but may I ask you, as the Chairman has done before, when you're asked a question, for the sake of progress, that you try to keep your answers as short as you can.

MR MFALAPITSA: I think those aspect you are mentioning, my emotions, my desires, they were part of what happened today and I am speaking through them, I can't suspend them. I can't obstruct what actually affected my entire humanity.

MR VISSER: Yes, I'm only asking you to try to be a bit briefer if you don't mind. At page 223, you mentioned the names of, in paragraph c(3), Chairperson. You say the names and addresses of the victims' next of kin, you say Lumkisa Umkusi and the address, Kagiso. Now that name is, are you certain that is Mr Musi's name? I don't know, what does it say? It says Lumkisa, I think.

MR MFALAPITSA: No, Lumkisa is his brother, Mr Chairman.



MR VISSER: Page 223?

INAUDIBLE INTERVENTION BY CHAIRPERSON

MR VISSER: Oh, I'm sorry, I misread it. It's the next of kin. I'm terribly sorry, I terribly sorry. Thank you.

Well, we know that Mr Musi, well, he's alive and he can give evidence and I understand he will give evidence so maybe I should ask him this question. I'm going to leave it.

You said at, also at page 223, that as far as you were concerned, Mr Musi was an ANC member at the time.

MR MFALAPITSA: This was far as he expressed his desire to receive military training from the ANC, yes, I made such conclusion.

MR VISSER: Yes. And apart from that, was it not also a fact known to you that he was a member of COSAS?

MR MFALAPITSA: Well, I was not interested in local political structures as to what this victim announced or expressed as a desire to receive military training.

MR VISSER: Were you aware that the three friends he had were members of COSAS?

MR MFALAPITSA: I was not aware of that.

MR VISSER: But you were aware that COSAS was a political organisation? That's what you just said.

MR MFALAPITSA: Well, in my view, COSAS was portrayed to us in exile as a very specialised student movement that should undertake specialised internal political reconstruction work. So I, because some of their members did come to exile and were very, you know, they were people who were in the leadership and they portray COSAS as an internal political mission of the ANC. So that is how I understood COSAS.

MR VISSER: I'm sorry, I'm not sure whether I understand your answer. Was COSAS a political organisation?

MR MFALAPITSA: It was a student movement aligned to the ideologies of the ANC.

MR VISSER: To the ideologies of?

MR MFALAPITSA: Supportive to the ideologies of the ANC. Ideologies of the ANC.

MR VISSER: Of the ANC, thank you. When did you meet the three friends of Mr Musi for the first time?

MR MFALAPITSA: I met them at the night when we picked them up at Kalafong.

MR VISSER: Was that the first time?

MR MFALAPITSA: That was the first time.

MR VISSER: On the previous occasions, you had only spoken to Musi alone.

MR MFALAPITSA: That is correct.

MR VISSER: And he had told you nothing about his friends?

MR MFALAPITSA: I said at the beginning, that when he disclosed his intention to acquire military training, he also disclosed that he had these friends.

MR VISSER: Yes.

MR MFALAPITSA: Yes.

MR VISSER: Alright. So that's all ... (intervention). That's all you knew about ... (intervention)

MR MFALAPITSA: And he told me, he told me that, he told me that he is keeping them abreast of the development of our discussion between me and him.

MR VISSER: But were you - so we know that the three friends, from what you were told by Musi, wanted to go for military training. Were they also interested therefore in the weapons training that you would be giving them?

MR MFALAPITSA: Well, he said he will go and discuss it with them and if they agree then he'll come back to me and inform me as to what is their consent about it.

MR VISSER: Mr Chairperson, this is obviously going to take time but I don't know whether you want to take you tea adjournment now.

CHAIRPERSON: Yes, in fact, I was perhaps optimistic, I was hoping that you were coming to the end of your questioning.

MR VISSER: It's going, it's taking too long.

CHAIRPERSON: Yes, well, in that case, if you're not going to finish in the next few minutes, then there's no sense. Very well, we'll adjourn for tea for 15 minutes.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Mr Mfalapitsa, you are reminded you are still under oath. You understand?

MFALAPITSA: (s.u.o.)

MR MFALAPITSA: Yes.

CHAIRPERSON: Mr Visser.

CROSS-EXAMINATION BY MR VISSER: (cont)

Thank you, Chairperson. Mr Mfalapitsa, I just want to remind you of a bit of evidence which you gave this morning and then I want to ask you a question about that. If I have my notes correct, you said that Mr Musi was serious with their plans. They felt they wanted to do something for the struggle and you also said that the mood of these black youths were that they were keen to get involved in the struggle. Is that correct?

MR MFALAPITSA: That is correct.

MR VISSER: So, the picture which you are painting is that they were militant.

MR MFALAPITSA: That is correct.

MR VISSER: Yes. Now, flowing from that, I want to ask you this question. What do you think would have happened, what would they have done or not do, if you simply never reported the conversations which you had with Mr Musi and nothing was done to eliminate them. What do you think might have happened?

MR MFALAPITSA: Well, I assume they could have succeeded in their, in either getting to exile for military training because he also hinted to me that Mayor Masulu, Ms Masulu could help them to cross the country. But then they preferred me since I was a trained person.

MR VISSER: Yes. But what you're saying to summarise, is that you think what might have happened was that they would have attacked Mr Musi and - Mr Nkosi and Mr Maditsa, sorry, Matsidisa, and they would probably have left the country in any event to go and receive military training. Is that what you're saying?

MR MFALAPITSA: In a broad sense, I think they could have actually, their aims, and ... (indistinct) really be favouring them. They would have done that if situation was to favour them at that stage.

MR VISSER: And if they didn't receive weapons from you, what would they have used, do you think?

MR MFALAPITSA: Well, during those times, petrol bombs were used. But then I think the youth were eager to engage themselves in military training as a form of pride boosting also in the process.

MR VISSER: When you reported to Mr Jan Coetzee that they were serious, do you remember, and perhaps I can jog your memory, you were not here yesterday, do you remember anything about a sketch plan which Mr Musi showed you on which ...(intervention)

MR MFALAPITSA: Yes, they subsequently showed me a sketch plan.

MR VISSER: He showed you a sketch plan.

MR MFALAPITSA: Yes.

MR VISSER: Can you remember what that sketch plan was about?

MR MFALAPITSA: I think it was the two houses where the supposed, or where the alleged, or where those people were supposed to be attacked were residing.

MR VISSER: I see. Thank you. Did that bring you under the impression that they were very serious?

MR MFALAPITSA: Well, you know, with my previous experience, I knew that if a person wanted to go to military training and in the circumstances in which we were back then, he was serious about this.

MR VISSER: He was serious. Alright. Just one last question, if I may, or last aspect. You said at page 225 of your application, under paragraph e and at page 332 in your statement, did I say 332, 232, I'm sorry. In your statement you made reference to the Commissioner of Police, then Johan Coetzee. Will you accept that he wasn't the Commissioner of Police, he was in fact the Chief of Security at the time. General Johan Coetzee.

MR MFALAPITSA: Yes, I think that is, that was a confusion of facts there. But I met him several times. Yes, yes.

MR VISSER: But, would I be correct to say that when you say that he must have known about it, it's an inference that you draw.

MR MFALAPITSA: Yes, that was just an assumption, because from my past experience in exile, you couldn't take a decision like that without a higher authority.

MR VISSER: Yes. So it was an assumption.

MR MFALAPITSA: It was my own assumption.

MR VISSER: I see you are a man of the cloth, Mr Mfalapitsa. Should I have been addressing you as Father or the Reverend, or what?

MR MFALAPITSA: No, I am a pastor, sir.

MR VISSER: A pastor. Well, Pastor Mfalapitsa, thank you very much.

MR MFALAPITSA: Thank you sir.

MR VISSER: I have no further questions.

NO FURTHER QUESTIONS BY MR VISSER

CHAIRPERSON: Yes, thank you, Mr Visser. Ms van der Walt?

CROSS-EXAMINATION BY MS VAN DER WALT: Mr Mfalapitsa, how old were you when you received your military training?

MR MFALAPITSA: I think I was 30.

MS VAN DER WALT: 13?

MR MFALAPITSA: 30.

MS VAN DER WALT: 30? 30 years old. Thank you very much. Thank you.

NO FURTHER QUESTIONS BY MS VAN DER WALT

CHAIRPERSON: Mr Tshabalala.

CROSS-EXAMINATION BY MR TSHABALALA: Thank you, Chair. Mr Mfalapitsa.

MR MFALAPITSA: Yes sir, Mr Chairman.

MR TSHABALALA: How well did you know the Musi family before you went into exile?

MR MFALAPITSA: I knew them very well. I was actually like a member of the family in Musi's family.

MR TSHABALALA: And, Sandisile Musi, did you know him?

MR MFALAPITSA: I think I did know him well, because he was young, but there was more association with his brother than him, sir.

MR TSHABALALA: And what was, how was the relationship between his brothers and yourself?

MR MFALAPITSA: Well, it was very intimate because we went outside the country together, we were in prison in Botswana together, we were, his other brother, when I departed from Zambia I was staying with him in Zambia. We were together in the regiment in Zambia. So it was very cordial.

MR TSHABALALA: So when you returned from exile, did you visit them at any stage, as people you knew?

MR MFALAPITSA: Yes, actually under such circumstances I was not keen to visit them, because many questions could have been posed in relation to their children who were still in exile. So I didn't want them to pose such piercing question about their sons who were still in exile.

MR TSHABALALA: You testified that you went to Soweto, Kagiso and other areas to reconcile yourself with those areas. What did you mean by that?

MR MFALAPITSA: Basically area where you know, your upbringing originate, where you, they are part of your upbringing. They are very critical in your personality. So I just wanted to see myself walking the street of, you know, the areas where I grew up and see people who, especially my peers, whom I have grown up with. And I saw many of my peers, whom I have grown up with.

MR TSHABALALA: So the Musi family will be the people whom you like to meet, to reconcile yourself with the places which you were, you used to go to.

MR MFALAPITSA: Well, my peers was the two brothers who was in exile, so I had no, anyone whom I was intimately close with at Musi's family then.

MR TSHABALALA: But you regarded them as part of family?

MR MFALAPITSA: Precisely, as I, you know, as I left to exile I was still in, just a member of the family. And even when I came back I felt that I was a member of the family but I was not ready to answer the whereabouts of their children.

MR TSHABALALA: So you testified that whilst in exile you had this very good relationship with the Musi brothers.

MR MFALAPITSA: That's correct.

MR TSHABALALA: Were they ever involved in any actions which disappointed you with the ANC?

MR MFALAPITSA: Not at all, sir.

MR TSHABALALA: So when you left, you were still in good, you were having good relations with them.

MR MFALAPITSA: That's correct.

MR TSHABALALA: I put it to you that you visited the Musi family at some stage.

MR MFALAPITSA: Well, I think that is your own assertion, sir. But I did not visit them, sir.

MR TSHABALALA: Who approached ... (intervention)

CHAIRPERSON: I couldn't follow. "I put it to you that you ...?"

MR TSHABALALA: That you visited the Musi family.

CHAIRPERSON: Miss?

MR TSHABALALA: Musi family.

CHAIRPERSON: What did you do to them?

MR TSHABALALA: He visited the Musi ...

CHAIRPERSON: Visited.

MR TSHABALALA: Yes. After you came back from exile.

MR MFALAPITSA: (indistinct) assertion, sir, but I never visited them after I came back from exile.

MR TSHABALALA: How many times did you meet with?

MR MFALAPITSA: If my memory serves me well, it's about three times or four times.

MR TSHABALALA: And during your meetings with him, what did you discuss with him?

MR MFALAPITSA: Well, the question of training, sir.

MR TSHABALALA: Who came up with the question of training?

MR MFALAPITSA: They wanted to leave for military training and they wanted me to assist them to leave the country.

MR TSHABALALA: You mean they wanted to leave the country?

MR MFALAPITSA: That's correct, sir.

MR TSHABALALA: And what was your suggestion to this?

MR MFALAPITSA: As I said that was also influenced by factor that was outside my own decision about the issue at question.

MR TSHABALALA: What was your suggestion at the time when they said they want to leave the country?

MR MFALAPITSA: I think I made it clear that I was, I was, that such matter fell under the category of security of South African Police by that stage, and since I was under Vlakplaas I said I'll consider that.

MR TSHABALALA: You testified this morning that as soon as you hear that, you felt that there would be something horrible which will happen to these youths. Do you remember testifying to that effect.

MR MFALAPITSA: You know, as I said, when I heard about the training, immediately when this young man announced that he wanted to go training, I felt really, really profoundly moved and affected. Because I either thought he is either a trap since I was suspected to be ANC infiltrator to Vlakplaas or he indeed wanted to go to training and if he do want to go to training what is ultimately going to happen to me. Because I am now involved in Vlakplaas as fence boy at that stage. That is why I was profoundly pained by such annunciation.

MR TSHABALALA: As you were profoundly moved, did you check about his age and his comrades' age.

MR MFALAPITSA: At that stage, in point, the information that concerned the security of the state had not relative age. My mother was so old he was arrested after my departure and interrogated. There was no question of age or what. It was a question of the imperative of information, sir.

MR TSHABALALA: Did I hear you correctly saying your mother was arrested?

MR MFALAPITSA: Yes, was taken in for questioning about my whereabouts.

MR TSHABALALA: When was that?

MR MFALAPITSA: I think 1977.

MR TSHABALALA: Oh, not during the time which you are talking about.

MR MFALAPITSA: No, not that time. I was just supporting the fact that information is information whether it come from an old person or a young person or whatever. At that particular stage no one could really say a person of such age ... (indistinct) as he say he wanted to go to military training. It was a ... (indistinct) time information. I could not take it in a licence.

MR TSHABALALA: Did you at this stage, did you suggest any other thing to him?

MR MFALAPITSA: As I said, I said I would consider it.

MR TSHABALALA: You just said you would consider it.

MR MFALAPITSA: Yes, I said I would consult some of my underground members, because I didn't want him to know that I was no longer with the ANC.

MR TSHABALALA: Did you ever discuss with him his involvement with any organisation?

MR MFALAPITSA: No, sir.

MR TSHABALALA: You just assumed that he's a member of the ANC?

MR MFALAPITSA: I just assumed that he's, he's an aspiring, you know, a person to be a member of the ANC as such.

MR TSHABALALA: So what happened when you told Mr Coetzee about your discussion with Zandisile Musi?

MR MFALAPITSA: Well, as I said, his response was that I must dissuade them to leave, but if they offer information that lead to a specific target which posed danger to the security of the country, then we must offer to train them locally.

MR TSHABALALA: So he specifically said to you, you should dissuade them from leaving the country.

MR MFALAPITSA: Yes.

MR TSHABALALA: And who came up with the plan to kill the COSAS Four?

MR MFALAPITSA: Well, it finally came from me, I think subsequently from other security officers.

MR TSHABALALA: I mean who, who told you ... (intervention)

MR MFALAPITSA: Captain Coetzee.

MR TSHABALALA: And what did you say to him?

MR MFALAPITSA: Well, in military circumstances, cases of that nature, and taking into account my circumstances, there was nothing I could really object to. Though, subjectively, I, you know, I realised that what happened to exile is now repeating itself with me, when after running away from the ANC.

MR TSHABALALA: What was that?

MR MFALAPITSA: I realised that what's happened to exile is repeating itself ... (intervention)

MR TSHABALALA: Well, what happened in exile?

MR MFALAPITSA: In exile we were instructed to kill one chap who was close to ... (indistinct) his commanders. And other who was tortured in my presence. So those things were repeated, repeating themselves even though I ran away from such things.

MR TSHABALALA: So, I take it that you didn't like that. You didn't want to do that.

MR MFALAPITSA: You see, an individual has his own judgement and that is coupled with his circumstances and in context, but under, if I was placed in a situation in which I was to make a decision, I don't think I could have ... (indistinct) the same decision because the forces that influenced people who took decision were not the force of that influence in a general sense.

MR TSHABALALA: When you, the other two youths, have you ever met them before?

MR MFALAPITSA: Not, no, no, Mr Chairman.

Mr TSHABALALA: In your second meeting with Musi, at the Industria Station, how many people did you meet?

MR MFALAPITSA: Only him.

MR TSHABALALA: I put it to you that there were two.

MR MFALAPITSA: Well, perhaps that is your own assumption, as I say again. But from our personal experience, it was me and him and I made the point that no one around because I was also concerned about my security at that stage.

MR TSHABALALA: So, when you said when you were thinking that something terrible would happen to this youths if you, you provide them with the assistance of going outside of the country to receive military training, you testified that you've heard that something terrible will happen to them. But at the same time, when you came up with this plan, did you ever think, the plan to kill the four youths, did you ever think that something terrible would happen to the four?

MR MFALAPITSA: I think you are not phrasing exactly what I said, sir. I said if I consider one alternative, if I allow them, I help them to go and receive, help them to go leave the country, they might be intercepted and I might then be revealed as a person who helped them. That was one option. And I also knew that things being as they were, this, what they were saying to me, was very profoundly serious. And again, talking about the plan I didn't, as I said, that did not fall within our domain as a person was non-officer in the force at the circumstances.

MR TSHABALALA: But you knew that something terrible would happen to them.

MR MFALAPITSA: Of course in politics, particularly as they were conducted at that time. Anything that endangered either side of the people in the conflict was profoundly dangerous.

MR TSHABALALA: Can you just go back to Mr Nkosi, ... (indistinct) Nkosi. When you talked to Zandisile Musi, did they ever show you a sketch plan?

MR MFALAPITSA: The sketch, I think they showed me the day, the last day when we were at the decoy place.

MR TSHABALALA: No, not when they were ... (intervention)

MR MFALAPITSA: The date when they were at the decoy place. ... (intervention)

MS VAN DER WALT: Sorry, I'm sorry, I just want clarity on that. Which place, which place are you calling the decoy place? The pump, hold on a minute. Is it the pump house at the mine dump? The day that they were killed, that's the day you saw the sketch plan.

MR TSHABALALA: Thank you. Did they ever hand you that sketch plan.

MR MFALAPITSA: Yes, they, they showed it to me.

MR TSHABALALA: Did they ever hand it to you?

MR MFALAPITSA: Yes, I handled it and I looked at it and I told them to keep it in the meantime.

MR TSHABALALA: Oh, it was not handed over to you?

MR MFALAPITSA: No, it was not handed over.

MR TSHABALALA: It was only shown to you.

MR MFALAPITSA: It was hand - shown to me and I said they must keep them.

MR TSHABALALA: Did you ever persuade them from not attacking Mr Nkosi?

MR MFALAPITSA: I think that could have created a contradictions because they perceived me as a trained member of the ANC who will have interest in attacking any policeman, or any person opposing the ANC.

MR TSHABALALA: You knew that Musi trusted you at the time.

MR MFALAPITSA: That's correct.

MR TSHABALALA: Did you ever try and talk to Musi about providing information other than being active?

MR MFALAPITSA: I don't think, at the same time, I was at liberty to either turn Musi into something else, because as I said I was not in a capacity to do that, I was just an ordinary person who has been moved in Vlakplaas for a few weeks and who was actually confused about his circumstances. And uncertain about the circumstances.

MR TSHABALALA: Did Captain Coetzee, at the time, say that you should trap the youths and use explosives to eliminate them? Did he specifically say to you?

MR MFALAPITSA: Yes, he said we'll trap them, after, he will arrange, you know, yes, he said that.

MS VAN DER WALT: Sorry, if you could just complete that. He said you should trap them.

MR MFALAPITSA: He said we'll use explosives in a process to trap them.

MR TSHABALALA: And what was the response?

MR MFALAPITSA: I said it was only subjective, something that happened within me alone, but I could not express, at liberty, any matter of objection or ... (indistinct) at that point in time in the particular stage of my history.

MR TSHABALALA: At the scene, at the scene, at the mine dump, when you went with the youths into this room, were you not worried that you could be blown up too?

MR MFALAPITSA: I was, I was, I suspected, you know, I debated this thing very much in, in, you know, within me and felt that things can go either way. And in my circumstances I had no choice. I have resigned myself to the fact that I could be blown, you know, like one chap he told me that in certain events, he was, you know, told to take a car bomb to a target and that car was blown up with him. So that possibility was always there. That could have happened and as part of the conflict or the past, to such occurrences as these, okay.

MR JANSEN: I don't understand this. He was told by somebody that he had to take a car bomb to a car.

MR MFALAPITSA: You know, you know, somebody in a discussion atmosphere, he said to me are you a Christian? I said yes. Then he said how can you be a Christian in this conflict. Just for example, one of, a person I know, he didn't name the ... (indistinct) details. He was said, he was told to take the car to a target place and then to leave the car there and run away. But after putting the car there, the car was detonated with him inside. So he said, but where is God in that situation? It was when I told him I am a Christian, you see.

MR JANSEN: So he was talking about another bloke ... (intervention)

MR MFALAPITSA: Another incident elsewhere, you know, in ... (intervention)

MR JANSEN: Taking a car bomb, not he himself taking the bomb.

MR MFALAPITSA: Yes, yes. Not, no, no. So a question of me having to fear that I might have been blown there, it was a genuine concern. It was a genuine concern.

MR TSHABALALA: And you decided just to go inside.

MR MFALAPITSA: Under the circumstances ... (indistinct) endangering yourself consciously. When you are powerless and hoping for something that is human and that is what I did.

MR TSHABALALA: Alright. When you left the ANC, you. When you left the ANC, you changed into a deeply religious person.

MR MFALAPITSA: That's correct.

MR TSHABALALA: And I gather rejected violence at the time.

MR MFALAPITSA: Yes.

MR TSHABALALA: And yet you, you went ahead to plan the killing of the Four?

MR MFALAPITSA: As I said at the time when I felt much more strong by the motivation, my motivation to leave the ANC, I did raise the question of me leaving all the forces, I did say that I didn't want to join the SAP. I talked this thing with them very rigorously, but at the end they told me you can't just fool us. You can't come here and then you tell us you don't want to be involved in either side of the conflict. You might be sent by the ANC, how, how do we know. You see, so I did made an attempt, but at that stage in point I was weak, and I could not raise that point objectively.

MR TSHABALALA: What was the purpose of doing the ... (indistinct) thing then?

MR MFALAPITSA: I think any person in any circumstances, even if he cannot save anyone's life, will grieve to reflect his foundations of humanity. Or that may even be said to be the grieving for the loss of one's humanity. Or the genealogy, the loss of one's, the - grieving the genealogy of the loss of one's humanity.

MR TSHABALALA: As an askari or source as he told us this morning. Were you getting paid?

MR MFALAPITSA: Yes, as I said, we're giving remuneration as informers first and as appointed member of force subsequent.

MR TSHABALALA: Was the payment standard or according to the work you have done?

MR MFALAPITSA: Well, it was standard. It was a standardised salary payment.

MR TSHABALALA: So, after the operation of which you carried for the COSAS Four, did you get any remuneration?

MR MFALAPITSA: Yes.

MR TSHABALALA: How much?

MR MFALAPITSA: They gave me R1 000.

MR TSHABALALA: Did they tell you what was it for?

MR MFALAPITSA: No, they didn't just specify it then, and also as I say, they couldn't reject culture that controls you.

MR TSHABALALA: Were you commended for the operation?

MR MFALAPITSA: Not, you know, in military terms, things were not formalised where a person, you know, being given all honours and things like that. That was a war situation.

MR TSHABALALA: I don't think you answered my question. Were you commended?

MR MFALAPITSA: No. No, sir.

MR TSHABALALA: Thanks. You testified this morning, that Musi was an ANC member and yet again you hadn't discussed other political particulars with Musi when you met him. How do you, what's your comment on this?

MR MFALAPITSA: According to the underground rules, you don't indulge in political leisure, when military imperatives are at issue. So you could not, that question was secondary. But the question of military training was primary. Or, that question was presupposed.

MR TSHABALALA: I have no further questions, Mr Chair.

NO FURTHER QUESTIONS BY MR TSHABALALA

CHAIRPERSON: Thank you, Mr Tshabalala. Ms Thabethe?

CROSS-EXAMINATION BY MS THABETHE: Thank you, Mr Chair. Mr Mfalapitsa.

MR MFALAPITSA: Yes, Mr Chairman.

MS THABETHE: When you were involved with Vlakplaas, where were you staying at the time?

MR MFALAPITSA: Barracks at Vlakplaas where we were sleeping.

MS THABETHE: And how long did you intend to work as an askari?

MR MFALAPITSA: Well, that was an indefinite type of situation, but I thought as soon as the conflict get better, as soon as I get an opportunity, I'll try to leave Vlakplaas peacefully, without me fighting them, because I could not do that.

MS THABETHE: So, is it correct for me to say that you were hoping in the end you won't be found, like you won't be suspected or discovered to have been an askari?

MR MFALAPITSA: You see, I might have buried that question in my subconscious mind, but my religious involvement, my serious religious involvement, moved it back into my conscience and I had to live with it every day of my life.

MS THABETHE: You said you received a message, coming back to the incident in question, you said you received a message that Zandisile Musi wanted to see you. Who gave you that message?

MR MFALAPITSA: It was the little girl, that's the daughter to my uncle.

MS THABETHE: Where did they approach you from? You were staying in Vlakplaas. How did they get hold of you?

MR MFALAPITSA: As I said, I used to visit Krugersdorp after my coming to the country.

MS THABETHE: So whereabouts were you since you did not visit, you said you never went ... (intervention)

MR MFALAPITSA: I visit Kagiso and I went to my uncle's place which is opposite Musi's place.

MS THABETHE: When you received the message, was the deceased's brother still in exile?

MR MFALAPITSA: Yes.

MS THABETHE: Okay. When you went to report the message to your superiors and you've testified that a decision was taken to kill the victims.

MR MFALAPITSA: That is correct.

MS THABETHE: What was your response to that decision since you were the one who came with the information in the first place?

MR MFALAPITSA: As I said, that question I subjectively, it was a difficult question which could not be a matter of just a response, but under circumstances, I could not object and I didn't.

MS THABETHE: So, what did you say? You said, fine I agree.

MR MFALAPITSA: Yes, just like that.

MS THABETHE: So you're saying the basis of your agreement is that there was nothing else you could do. Would that be correct?

MR MFALAPITSA: That is correct.

MS THABETHE: You've also testified that you were advised to dissuade the victims. Is that correct?

MR MFALAPITSA: That is correct.

MS THABETHE: Did you?

MR MFALAPITSA: Yes, to the point that they then agreed for me to train them in the country. Which means that I managed to dissuade them not to leave the country.

MS THABETHE: Okay. You, besides the fact that they wanted to leave the country, and besides the fact that you dissuaded them not to leave the country, and you decided to train them inside, what did you know about them?

MR MFALAPITSA: I didn't know anything about either their background in terms of politics or anything, because they were young people. As I say, my peers were their brothers whom I left with five years back.

MS THABETHE: Now, I just want to understand something here, with regard to motive. So, on what basis were they killed then? Because they wanted to skip the country, you dissuaded them not to skip the country. Right? You had not started training them as yet. Right? Did you know anything about them? You didn't know whether they were ANC or COSAS, that was your evidence. On what basis were they killed?

MR MFALAPITSA: I think that the fact that they agreed to be training, to be locally training, internal training militarily, and by me, whom they perceived as an ANC member, and the, I know, identifying the target, peoples which are attacked and the sketch they subsequently draw, I think on the basis of that, it was inferred that, that posed a security threat to South Africa. And I think the people who have the integrity to take such a responsibility, to take such decisions, I assumed they based their political motive on that thing.

MS THABETHE: Ja, but I still don't understand. What I don't understand is they hadn't done anything yet. So, are you saying, by the fact that they requested you to train them, they were posing a threat? I just want to understand that aspect.

MR MFALAPITSA: Ja, because an act of training itself in situation of war, amounted to an act of war. So, I think you must look at it from the point that you were not involved, I was involved. There might be many other situation that I may bring forth here which point to the fact that involving yourself in military training with the prime purpose of overthrowing the government is very serious and it was serious then.

MS THABETHE: You have applied for amnesty, is that correct?

MR MFALAPITSA: That's correct.

MS THABETHE: For the murder of the three victims ... (intervention)

MR MFALAPITSA: That's correct.

MS THABETHE: And attempted murder of the one.

MR MFALAPITSA: That's correct.

MS THABETHE: So, on what basis are you personally applying for amnesty?

MR MFALAPITSA: I am applying for amnesty because in the first place, I was involved in the ANC and the eventual circumstances of the South African government and it was not a situation in which the conflicts of the past was ensuing and there was no prospect of it ending, and I was caught up in that history. And I was a product of that history, and that history made me. And I am here because of that history today.

MS THABETHE: Last question. Is this incident the only incident you are applying amnesty for? Is this incident?

MR MFALAPITSA: No, there are other cases of incident which might not, which might be pertinent to another hearing, I think.

MS THABETHE: Okay. No further questions, Mr Chair.

NO FURTHER QUESTIONS BY MS THABETHE

CHAIRPERSON: Yes, thank you, Ms Thabethe. Mr Mfalapitsa, let's try this exercise again. Switch yours off. You can leave it off now, it will stay on. You were really compelled to participate and to assist the police. Would that be correct?

MR MFALAPITSA: Yes, I was compelled. That's correct.

CHAIRPERSON: You had no intention after returning from exile, you had no intention to engage in the political struggle on any side?

MR MFALAPITSA: That's correct.

CHAIRPERSON: Did you regard any structure as your political enemy at that time?

MR MFALAPITSA: No, actually as I say, my aim was to dissociate myself from either ANC or the government and therefore both of these structures did something which imprisoned me personally and I felt

objectively I became a religious, at that point in time. And I was very narrow in terms of my own political understanding. My interests were only, you know, that I will disengage in any form of violence, any form of politics if I be given a chance and gain an employment and pursue a civil life.

CHAIRPERSON: So, would it be fair to say that your position, subjectively, your position was really one of neutrality at that time?

MR MFALAPITSA: That's correct.

CHAIRPERSON: You didn't regard the ANC as your political opponent to be now specific, neither did you regard them as your political ally at that time. And likewise, you didn't regard the South African government as your political enemy, neither did you regard them as your political ally. Would that be correct?

MR MFALAPITSA: I think, yes, my answer will be that it was a complex situation because I knew that the ANC does not leave people, who, or did not leave people who left them, at peace. One of the persons whom I know was also shot with his wife and so on. And also with the government, I think I knew that if I was to be persistent and insist on my leaving them, they will still impose that on me.

CHAIRPERSON: Yes. No, I think I understand what you are saying. That is from their perspective. I'm talking from your perspective.

MR MFALAPITSA: Sir, from my own perspective, I was indeed subjectively intending in leaving them in peace, but I know that they will not leave me in peace. So they engaged me in turn again in worries that will hunt me down, they will want to kill me, they will want to assassinate me ... (intervention)

CHAIRPERSON: Yes.

MR MFALAPITSA: And that was also my relationship in which I was formed by fear again of this people.

CHAIRPERSON: Yes, but that was from their side. From your side, you were really neutral.

MR MFALAPITSA: From my side, really I was neutral and I hope to begin there to reconstruct myself.

CHAIRPERSON: And, subjectively speaking, have you ever changed that stance? Subjectively, in your heart.

MR MFALAPITSA: Presently, as I have, the day after I upgraded my education and I did my matric and then I went to University for theology, I've gained other views, of course, pertaining to basically to the centre from which I stand now, religious point of view, which actually discourage or exclude violence as a means of government or as a means of control ... (indistinct).

CHAIRPERSON: Yes. Let me, perhaps I left the question too open-ended. After your return from exile and you adopted subjectively this stance of neutrality, have you ever subsequent to that, subjectively speaking, changed that situation?

MR MFALAPITSA: No, fundamentally it was no change. It is still like that. Fundamentally I regard myself much as a middle man done any other political alliance.

CHAIRPERSON: That is now subjectively.

MR MFALAPITSA: Yes.

CHAIRPERSON: But objectively, we know you say that there were circumstances that got you into, like for example, this incident?

MR MFALAPITSA: That's correct.

CHAIRPERSON: Now, when it became apparent that the police were going to kill these children, how did you regard that subjectively? I know you said objectively there was very little you could do. But I'm talking subjectively. How did you respond to this intention to kill these young children, young, youths?

MR MFALAPITSA: I think I responded very badly because after that my normal behaviour changed. I resorted to extreme use of alcohol, that was prior my conviction. And I was, my conduct was unacceptable to a point where I was warned seriously. You know, even to a point of danger. But then I, things got better and I converted to Christianity in 1983.

CHAIRPERSON: And subjectively, did you agree with, with this plan in your heart? Did you think it was necessary and justified to do this?

MR MFALAPITSA: Subjectively, I didn't agree entirely with them, just as I did not entirely agree with the killing of the policeman and the councillor. Because in my view, those people were human and in spite of political climates. But under social circumstances I just sort of blocked, and I was swimming in that footpool of confusion, fear and uncertainty and so on.

CHAIRPERSON: Subjectively, did you think that there were other ways of dealing with this, with these youths? Instead of blowing them up?

MR MFALAPITSA: Well, in my own view, I might have been biased because may be I was involved in things eliminated people in exile. Perhaps I might have feared doing that again, I don't know. But as I say, the forces that influence them, were not the forces that influenced me. But, I think under different circumstances, I have believed that I could have perhaps reached a different conclusion, based on the humanity I know I develop as I grew up.

CHAIRPERSON: You, we understood you to say that you really didn't have an input or an influence on the decision making process ... (intervention)

MR MFALAPITSA: That's correct.

CHAIRPERSON: In, within the ranks of the police, the superior officers in deciding on a particular course of action, in this case, blowing up these four ... (intervention)

MR MFALAPITSA: That's correct, that's correct.

CHAIRPERSON: Attempting to blow up the four.

MR MFALAPITSA: That's correct.

CHAIRPERSON: So you regarded yourself as being really left with no choice in a sense. I think, I think you've said you were between a rock and a hard place, is that correct?

MR MFALAPITSA: That's correct.

CHAIRPERSON: Is that the expression you used?

MR MFALAPITSA: That's correct, sir.

CHAIRPERSON: You were not a policeman at that time, were you?

MR MFALAPITSA: I was not a policeman ever.

CHAIRPERSON: You were, you were a source or ... (intervention)

MR MFALAPITSA: That's correct.

CHAIRPERSON: Commonly referred to as an askari.

MR MFALAPITSA: That's correct, sir.

CHAIRPERSON: So you're not, you're not in the official structure, command structure of the police.

MR MFALAPITSA: No, sir.

CHAIRPERSON: So, already technically speaking, they were not in a position to give you any orders, but practically speaking, you had little choice.

MR MFALAPITSA: Yes, practically, that's correct, sir. That's correct, sir.

CHAIRPERSON: You also said, I think, that you really had almost no background in regard to the three who got killed eventually.

MR MFALAPITSA: I didn't get the question properly, Mr Chairman.

CHAIRPERSON: You had no knowledge about the background of these three that got killed.

MR MFALAPITSA: That's correct.

CHAIRPERSON: Apart from what Musi told you, you gathered that they were sort of in contact with him.

MR MFALAPITSA: That's correct.

CHAIRPERSON: Did you convey all this to the, the police, to Coetzee?

MR MFALAPITSA: That's correct, sir.

CHAIRPERSON: You prepared this amnesty application on your own, you had indicated to us.

MR MFALAPITSA: That's correct, sir.

CHAIRMAN: How did it come about that you actually decided to apply?

MR MFALAPITSA: Prior to that, some of the journalists came us before this Commission was instituted, formally instituted and then we made an interview in which I wanted to meet the family.

But due to legal implications, it was not ... (indistinct) and I could not meet the family. But after that, the Commission was instituted and I decided I must apply for amnesty.

CHAIRPERSON: So it's just a decision that you took entirely on your own?

MR MFALAPITSA: It's a decision that I took entirely on my own. That's correct, sir.

CHAIRPERSON: Did you have any contact with these erstwhile later colleagues of yours, with Mr Coetzee and whoever they were?

MR MFALAPITSA: No, sir.

CHAIRPERSON: Are you, you said that you're a pastor at this time?

MR MFALAPITSA: That's correct, sir.

CHAIRPERSON: Is that in the same church, is that The New Life in Christ?

MR MFALAPITSA: That's correct, sir.

CHAIRPERSON: Since when have you been a pastor?

MR MFALAPITSA: Since 1994. All the time I was a layman in the church in which I belong. Or a lay pastor, sir.

CHAIRPERSON: Yes. Are there any other questions from the Panel?

ADV DE JAGER: Yes. When did you first see this sketch plan?

MR MFALAPITSA: The day at the bunker place, or the decoy place.

ADV DE JAGER: For what purpose did they bring this sketch plan?

MR MFALAPITSA: Well, I think I requested it, prior that point, I want to see even the sketch.

ADV DE JAGER: Why did you request it?

MR MFALAPITSA: I think Captain Coetzee demanded something tangible to indicate that these chaps are serious about their intention.

ADV DE JAGER: Didn't you expect them to be serious?

MR MFALAPITSA: Yes, under the circumstances with my experience I know a person who is, who had a commitment, political conviction and a person who is just a perhaps, you know, ... (indistinct) or something.

ADV DE JAGER: Were you convinced that they were serious with their plans?

MR MFALAPITSA: Yes, I was convinced that they were serious with their plan.

ADV DE JAGER: When did you become convinced?

MR MFALAPITSA: Immediately as they were telling me. I knew that they were convincing.

ADV DE JAGER: Did you think the lives of Mr Nkosi and the other one was in serious danger?

MR MFALAPITSA: Yes, I also felt that this people and their family were in serious danger.

ADV DE JAGER: Immediate danger?

MR MFALAPITSA: To the point that I didn't know their background, but I thought they wanted to either attack them with military training. I don't know if they either had other plans which I came into



my mind like petrol bombing or something.

ADV DE JAGER: But if they wanted to go for military training outside the country, that would involve them being out of the country for, say, six months or maybe a year or longer?

MR MFALAPITSA: That's correct and other people were never actually trained formally in the camps. They were only prepared in underground bases in Botswana with 10 weeks before they were discovered that they have left the country and they will be returned back to operate as normal citizen. So in that case they will still be a danger to ... (intervention)

ADV DE JAGER: How many weeks?

MR MFALAPITSA: Two weeks, or sometimes even one week. A person is just trained a pistol and is returning back before the police discover he left the country, so that his cover may not be blown up.

ADV DE JAGER: So they could have gone for one week, came back, having been trained with a pistol and then they could kill people.

MR MFALAPITSA: That is one other possibility, particularly if they were familiar with military selection target.

ADV DE JAGER: What did they tell you? What are they intending to do? Or what did Mr Musi actually told you what are they intending to do?

MR MFALAPITSA: Well, after asking them if they have any intention of attacking any target, yes, they said they had specific target.

ADV DE JAGER: And they told you who the targets were?

MR MFALAPITSA: Yes, they told me the Warrant Officer Nkosi and councillor.

ADV DE JAGER: And did you ask them when are you going to attack these targets?

MR MFALAPITSA: No, I didn't want to pose such question, because it will pose suspicion, that I'm concerned for them, or something.

ADV DE JAGER: Didn't you offer to assist them?

MR MFALAPITSA: I then said I could train them to carry that question effectively. That target effectively. Or that mission effectively.

ADV DE JAGER: So

MR MFALAPITSA: As it was agreed.

ADV DE JAGER: So, before the ultimate day, you already knew that these two people, Mr Nkosi and the other one, was being targets and they would be attacked.

MR MFALAPITSA: That's correct.

ADV DE JAGER: Did they tell you where these people are living?

MR MFALAPITSA: Well, as I said, according to the sketch of their target and they said, they gave me the sketch of their houses where they were inside.

ADV DE JAGER: Yes, but I'm now talking of before the day of the actual killing of the four young men.

MR MFALAPITSA: I didn't know where the officer precisely resided but I presumed he was at the area of Barracks Village and then I thought that the warrant, the councillor stay amongst the locals in the township.

ADV DE JAGER: Did they tell you the one is a policeman and the other a councillor?

MR MFALAPITSA: Yes, that is correct.

ADV DE JAGER: And they gave you the names.

MR MFALAPITSA: That's correct.

ADV DE JAGER: You having grown up there, didn't you know these people?

MR MFALAPITSA: I know only Mr Matsidisa, he was a teacher at my school, at the primary levels.

ADV DE JAGER: So he was your own teacher, and you know, you then know that they're going to kill him.

MR MFALAPITSA: Yes, he was teaching a different class, but he was part of teaching staff at my school ... (indistinct)

ADV DE JAGER: What was the purpose of the sketch plan? They could have given you the addresses?

MR MFALAPITSA: Yes, that was requested by us as a certainty of their intent, sir.

ADV DE JAGER: So was it discussed that before you should kill them, you should make certain that they had the intent?

MR MFALAPITSA: Yes, and that they have actually the sketch that they could provide tangible sketch about where these people stay.

ADV DE JAGER: But then wouldn't you have received the sketch plan before the vital day?

MR MFALAPITSA: Yes, I did not insist on that because I then knew that they would provide a sketch and then it was agreed that they would come with the sketch at the day of training.

ADV DE JAGER: And did you see that sketch any way?

MR MFALAPITSA: Yes, I saw it.

ADV DE JAGER: Later, after the ...

MR MFALAPITSA: No, I never saw it then.

ADV DE JAGER: So what would the use have been of seeing it there?

MR MFALAPITSA: They are seeing that with the intention amounted to serious breach of internal security of South Africa. Then that was taken that was enough, I think, for the proof of their intention to attack those two people.

ADV DE JAGER: But the proof of the intention would now come after you already decided to kill them at that very moment.

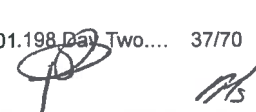
MR MFALAPITSA: Yes, well I saw it, but I think the end, the end results was that they were to receive training. I was to instruct them in the use of weapons and that was the end product of what they were intending to do.

ADV DE JAGER: Mr Musi told you about his three colleagues.

MR MFALAPITSA: That's correct.

ADV DE JAGER: What did he say about them?

MR MFALAPITSA: He said they are a group of four.



ADV DE JAGER: But you've grown up there, weren't you interested in getting to know who these people may, may be it could be your brother or some of your family?

MR MFALAPITSA: I didn't want to get involved in that, because I might have, at the same time, got, bumped into a person who was with me in exile or who is some way connected with them and then who knows that I ran away from the ANC. So I didn't want to.

ADV DE JAGER: But you could have asked the names?

MR MFALAPITSA: Yes, I did not do that.

ADV DE JAGER: You could have asked whether they were members of a political organisation or, or COSAS?

MR MFALAPITSA: Yes, I did not do that because in terms of military combat work, our training to facilitate military actions which composed of secrecy compartment and so on. You don't just enquire into background of a person, because that will would be amounting enquiring his biography which can amount to his security risk to his situation and his life. And which could raise suspicion ... (intervention).

ADV DE JAGER: He could have been a security risk for yourself, if you didn't know anything about their background.

MR MFALAPITSA: Well, my life has been at risk all along and in that circumstances, a risk factor was eventually unconscious, unconsciously getting at the back of my mind.

ADV DE JAGER: On questions of my colleague, the Chairman, you said that you were neutral at that stage?

MR MFALAPITSA: That's correct, Mr Chairman.

ADV DE JAGER: But as a neutral person, you were prepared to kill members who had sympathy, to put it at the lowest, with the ANC?

MR MFALAPITSA: Objectively, I was controlled by circumstances, circumstantial forces in which I find myself and if I had the power, under such circumstances, to object, I think I must have expressed my objection. But, as I have said, my objection would have amounted to my assassination. Or the suspicion that can lead to assassination.

ADV DE JAGER: Right. When you had objections to the way the ANC were treating people, you absconded and come back to South Africa.

MR MFALAPITSA: Yes, I knew that the ANC would never give me any more, and I knew if they gave me, they would kill me.

ADV DE JAGER: Couldn't you go back to the ANC?

MR MFALAPITSA: I could not. Actually, the thinking of taking back to the ANC as some other threat, people used to say, some other people who were taken back to Mozambique or what, you know, the rumours like that. But that struck me very terribly because I knew ANC will not spare me after running away from them. I saw people who were killed. Some of ... (indistinct) and there was, I participated in which people were killed just for indiscipline and grievances, genuine grievances.

ADV DE JAGER: I don't want to discuss it, but you're applying for amnesty for some of those deeds too?

MR MFALAPITSA: That's correct, sir.

CHAIRPERSON: I'm sorry, do you think on that ... I just want to know, Mr Mfalapitsa, was there a signal that you had to give to these policemen at the scene?

MR MFALAPITSA: No, Mr Chairman. They said I'll go to them and tell them that they are inside.

CHAIRPERSON: So you had to leave the, this room and to go to where the police were.

MR MFALAPITSA: That's correct, sir.

CHAIRPERSON: And then you had to tell them it's fine to carry one.

MR MFALAPITSA: That is correct, sir.

CHAIRPERSON: And you did that.

MR MFALAPITSA: That is correct, sir.

CHAIRPERSON: And they just, did you regard these four persons as your political enemies?

MR MFALAPITSA: Not necessarily then, at that stage. I regarded them as people who want to enter military training and the conflict. But I have seen pity also for them, because I knew that the history of engagements and such things was littered with profound pains.

CHAIRPERSON: Yes, and I mean, would it be correct to say, it wasn't such an unusual occurrence for some of these young people to show an interest in leaving the country at that time in 1982?

MR MFALAPITSA: Yes, in a sense, since I also left in that way, but I knew that it was caught. Anything could have happened to me when I crossed the Botswana border at Pitsane Moloto, Molopo. I was told that if the patrols see me they can shoot me. So that I knew that it carries grave consequences.

CHAIRPERSON: Ja. Yes, no, I do understand that you obviously viewed it from your own experience.

MR MFALAPITSA: That's correct.

CHAIRPERSON: But when you left the first time, obviously you didn't have any of those experiences.

MR MFALAPITSA: Yes, I managed to follow the instruction, I observed the military patrols and in a particular point in time, I plunged into the border and ran fast into the village inside Botswana.

CHAIRPERSON: And one assumes, motivated by idealism and an intention to get involved in, in the liberation struggle and that sort of thing?

MR MFALAPITSA: Yes, that, that is correct.

CHAIRPERSON: Yes. Yes, Leah?

ADV GCABASHE: Thank you, Chair. A few aspects, Mr Mfalapitsa. Just, just press, press? Thank you. If you could just clear this for me very quickly. You were asked a question by Adv de Jager about whether the four youths presented an immediate or imminent danger to Mr Nkosi and Mr Matsidisa.

MR MFALAPITSA: That is correct.

ADV GCABASHE: I am still not sure that I quite understood your answer and I'll tell you why.

MR MFALAPITSA: That is correct.

ADV GCABASHE: I understood your evidence earlier to be that because these young people had asked for military training abroad, outside the country, you saw the target issue as a broad issue, but when they came back they would then deal with the target issue. It was not an immediate issue at all.

MR MFALAPITSA: It could have immediate, because I know of people who are tagged targets here so that they could be easily accepted, particularly at that time because the young kids were suspected of being spies. So what they would normally do, they would attack a target here and then carry it over and say, look we have attacked this and you can check with the police and then they will be accepted. You know, their credential in the ANC will be accepted much more easier than if they didn't do anything.

ADV GCABASHE: But that's not the impression you had at the time, because as I recall your evidence, and please correct me if I'm wrong, your evidence was they wanted to have military training, then deal with the target.

MR MFALAPITSA: Well, that is what they said to me, but I knew that this could happen and at the same time, my conscience was battered at that stage. I did not know if they could have carried out their trap and attack these two people. How, what if this have done to me, I'm not sure.

CHAIRPERSON: I'm sorry, just to, whilst you are on that point. In any case, the question of establishing credibility couldn't really have been much of an issue, because Musi's brother was already in exile. Not so?

MR MFALAPITSA: Yes, but we have people who were arrested together with their brother. In fact, when I left Zambia, there were some rumours that his brother is somehow against the ANC and one of his fellow associates, he was arrested and tortured and, I think, killed. So, I think in that respect no one could guarantee any one's right to join the ANC at that particular point, because there were a lot of rumours and of course misplaced and unfounded which was spreading around. Nobody felt safe in the ANC at that stage, especially the young people.

CHAIRPERSON: But was there any question of this establishing credibility aspect?

MR MFALAPITSA: Well, there were many young people who come with ... (intervention)

CHAIRPERSON: No, no, no. In this instance, Musi that knew you, he approached you. He knew that you were from exile, had gone with his brother.

MR MFALAPITSA: That's correct.

CHAIRPERSON: Was there any question between you and him of this, these two targets serving as establishing credibility with the ANC?

MR MFALAPITSA: Well things could go either way, because as I say, again attacking a target at that particular point, it was psychology of young people. It was actually a pride. And I think given chance, they could have done it or not done it, but anything could have happened. They could have chose anything.

CHAIRPERSON: Yes, thank you.

ADV GCABASHE: Thank you, Chair. If you could press your mike again. Then just a couple of other matters. Where were you between November and February when this incident occurred. I know you were based at Vlakplaas.

MR MFALAPITSA: That is correct.

ADV GCABASHE: But what were you doing in that time?

MR MFALAPITSA: I was, I was undergoing debriefing, I was detained in Zeerust, all the time. But Christmas they released me to go home.

ADV GCABASHE: So you were home from Christmas up to ... (intervention)

MR MFALAPITSA: I think just after New Year.

ADV GCABASHE: Just after New Year.

MR MFALAPITSA: That is correct.

ADV GCABASHE: Then you went back to Vlakplaas.

MR MFALAPITSA: No, I went back to Zeerust. I did not know Vlakplaas by then.

ADV GCABASHE: So you went to Zeerust ... (intervention)

MR MFALAPITSA: To Zeerust.

ADV GCABASHE: Where you had been debriefed.

MR MFALAPITSA: That is correct.

ADV GCABASHE: And you spent all of your time there until this incident.

MR MFALAPITSA: Until when they took me to Vlakplaas. It was after they took me to Vlakplaas that I decided to, I started now to be free to go to various places, but initially I was only allowed to go home.

ADV GCABASHE: And that would have been in January when you went to Vlakplaas.

MR MFALAPITSA: That is correct.

ADV GCABASHE: Now tell me, between the time you were at Vlakplaas, that's January and the 15th, which I think is the date of this incident.

MR MFALAPITSA: That is correct.

ADV GCABASHE: Were you sent out as part of your duties, to go and identify ANC activists who you knew?

MR MFALAPITSA: That's correct.

ADV GCABASHE: And did you in fact do this?

MR MFALAPITSA: Not before that, the incident in question.

ADV GCABASHE: So this was the first incident.

MR MFALAPITSA: That's correct.

ADV GCABASHE: That you actually reported.

MR MFALAPITSA: That's correct.

ADV GCABASHE: And even with this particular incident, you just happened to have visited your uncle when you got the message.

MR MFALAPITSA: That's correct.

ADV GCABASHE: One thing I thought I'd ask you to explain. You talked about front opposite to your uncle's house, the Musi house.

MR MFALAPITSA: That's correct.

ADV GCABASHE: You are basically saying the two houses faced each other.

MR MFALAPITSA: That's correct. Almost.

ADV GCABASHE: Okay. So if you were at home, they'd be able to see you looking out of the window, if they were in the yard.

MR MFALAPITSA: That's correct, that's correct.

ADV GCABASHE: And the same with you.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Thank you. Okay. The next note I have here. You locked the door as you left the pump house.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Because you were instructed to do that.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Who instructed you to do that?

MR MFALAPITSA: That was Captain, I think, Captain Coetzee instructed me.

ADV GCABASHE: Then, what was the essential distance from the pump house to the Kombi where the other officers were waiting.

MR MFALAPITSA: I think it was about 10 metres.

ADV GCABASHE: I want to come back to, just, the issue of money. This was the first payment you received, the R1 000.

MR MFALAPITSA: That's correct.

ADV GCABASHE: How did you survive before that?

MR MFALAPITSA: Before that, I was, I was provided with clothing when I arrived at Zeerust and subsequently at Vlakplaas and then we were also offered food rations.

ADV GCABASHE: Pocket money?

MR MFALAPITSA: Yes, when I went home, I was given some, some few hundred Rands.

ADV GCABASHE: For, for Christmas?

MR MFALAPITSA: That's correct.

ADV GCABASHE: When you came back, how did you plan to survive? I mean you had spent your R1 000, I beg your pardon, you spent your money, your Christmas money.

MR MFALAPITSA: That's correct.

ADV GCABASHE: You didn't know that you would get particular monetary payments for any reports that you tendered.

MR MFALAPITSA: That's correct.

ADV GCABASHE: How did you plan to survive?

MR MFALAPITSA: When I was taken to Vlakplaas as I say we were given food and clothing and we were also told that we'll get some remuneration monthly.

ADV GCABASHE: Did you get money at the end of January?

MR MFALAPITSA: That's correct.

ADV GCABASHE: How much did you get at the end of January?

MR MFALAPITSA: I think it was R600 to R700.

ADV GCABASHE: And that was just subsistence, really.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Then at the end of February, you got the R1?000, or did you get it after the incident?

MR MFALAPITSA: After the incident.

ADV GCABASHE: Directly after the incident?

MR MFALAPITSA: That's correct.

ADV GCABASHE: Did you get another stipend at the end of February?

MR MFALAPITSA: That's correct.

ADV GCABASHE: And at the end of March.

MR MFALAPITSA: That's correct.

ADV GCABASHE: And so on until you were incorporated into the Force?

MR MFALAPITSA: Yes, yes. Every month we get that stipend until we incorporate in the Defence Force.

ADV GCABASHE: Now, in terms of that extraordinary payment of R1 000, was that the only time you got that extraordinary payment?

MR MFALAPITSA: Yes, yes, until that incident.

ADV GCABASHE: Thank you.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Now, the last aspect I'd like just a bit of assistance on.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Is that of your political motive slash political objective.

MR MFALAPITSA: That's correct.

ADV GCABASHE: In applying for amnesty for this particular act.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Now just help me with this. Because when I listened to your evidence, I am left with the impression that really you acted in this particular manner out of fear, rather than out of promoting the interests of your employer at the time. ... (intervention) Can I finish? I need assistance in, in just finding out exactly. Was it fear? So was it just self-preservation or were you doing this because you believed that you were actually promoting the interests or are you assisting in the promotion of the interests of your employer and therefore of the State of that particular political leaning?

MR MFALAPITSA: I think fear in this position a part of human nature and there could not absolute to be motivation for having inspired to act the way I acted. But there were integrity forces, but objectively, as I said I got involved in ANC. It was not my business. It was a business of me being concerned about the blacks in South Africa. And eventually something went wrong in the ANC. I came back.

In that context of conflict I joined South African Defence Force. I requested that they relinquish me and debrief me only. They could not. Under the circumstances I think I will also understand that, because there was factors of security risk. And even me, if I was in that position, I would not allow it as a rule just come after having been in the ANC, even to the high, even to the point of working with executive members of ANC and then claiming to be apolitical. So, I think they were justified to refuse that I leave the Force and become apolitical. But in the circumstances, that motivated me not even to fear the fact that they could have endangered me. I was convinced, convicted that you'll hear my story and see what I am as a person who want really to leave conflict. And that motivated me and overcome this, all other ... (indistinct) of fear.

But, suddenly when I was moved from Zeerust Special Branch, after spending my debriefing process, went to Vlakplaas. The whole ball game changed moved. That Vlakplaas was a different circumstances. Was a place which I cannot explain it now, but initially Vlakplaas was not what it became eventually. It became a little better eventually and then that is perhaps why we have survival to now. And that is why I could be a preacher even while I was in Vlakplaas eventually.

But initially, it was not like that and of course, things evolve, they don't just start being good. Or either they start being bad then good and or they start being bad and eventually good. So that is ... (indistinct) what happened. I was not motivated by my personal self-preservation only, because self-preservation is also part of human disposition. Every human being wants to preserve themselves in the circumstances and people in normal circumstances will express their ethical viewpoint in order to also acquire higher values.

But with me, illiterate as I was, the three was not an education to arm me with an intellectual power to confront ethical issues and so on. I was ignorant of such issues. I was coming from a fear background. You know where, I involved myself in things or I was got involved with things that I fear for.

And then in Vlakplaas I saw the condition of what was in the ANC and objectively, I will say, what they could have done if they were fighting the ANC, they did what they did also, because in the present circumstances they were at war with the ANC. So I don't judge them for what they did because they were also objectively involved in a conflict of the past. And as I say forces that motivated them are forces that did not motivate me.

ADV GCABASHE: Yes. You see that's, that's exactly what you said earlier.

MR MFALAPITSA: That's correct.

ADV GCABASHE: That the forces that motivated them are not the ones that motivated you.

MR MFALAPITSA: That motivated me. Yes.

ADV GCABASHE: And that's where I have again, I'm left the understanding, I don't quite understand you.

MR MFALAPITSA: As I say, ma'am, my background started in the ANC. That background was ... (intervention)

ADV GCABASHE: Yes, yes, I understand.

MR MFALAPITSA: People who were in South Africa's worst people ... (intervention)

ADV GCABASHE: Mr Mfalapitsa, I understand all of that. I'm trying to narrow this down to the political objective you say you acted under when you assisted in the killing of the three youths, plus the injury to Mr Musi ... (intervention)

MR MFALAPITSA: I said the broader context of this issue should also be kept in mind. It was between the conflict context of the past and as I said it is not something that I went to become a criminal as for indulging in criminal indulgence. It was something that a history. Actually, here I'm setting straight a history which was my part, which began as political history and which meant where and which gone terribly wrong. And its not my own problem alone. There are many people in South

Africa who have this historical problem with their past, some being leaders in this country. Even though perhaps they might be exonerated in terms of their status. But in a sense, we all to grapple with this history and this history we didn't invent it, invent it somewhere in the ghettos or in the backyard of my mother. It was invented in the arena of politics in South Africa.

ADV GCABASHE: Mr Mfalapitsa, it's not that broad history, you know, that I'm looking at. I am really trying to understand, you know. My understanding of your evidence was had you not reported on Mr Musi's approach to you, you thought you might be putting yourself in danger.

MR MFALAPITSA: That's correct.

ADV GCABASHE: Yes. Now that to me spells self-preservation. This is why I am asking. Let me finish. This is why I am asking you just to help me understand it. That spells self-preservation. The fact that you didn't really believe in their cause, your cause was not the same. You were subjectively apolitical and forced to do particular things because of your objective circumstances. That again spells to me self-preservation, no alternative in the sense that you had no where else to go essentially. But it doesn't say to me that you were doing this because you were committed to a particular political cause, to promote a particular interest, to ensuring, you know, that the internal security of the State should not be breached by these four youths who you knew were just youths who had no military training. I don't know if you understand my dilemma?

MR MFALAPITSA: I think that your problem is that you are, you are dissecting, you are, you are, you are mutilating my history.

ADV GCABASHE: It's my job to do that.

MR MFALAPITSA: Yes, it's your job, I understand that point of view, but also you must bear in mind that you are mutilating ... (intervention)

ADV DE JAGER: Could I, for a moment, interrupt? The problem is far more serious. The problem is that if it's not dissected, like my colleague is doing, you have no chance of getting amnesty. ... (intervention)

MR MFALAPITSA: Sir, sir.

ADV DE JAGER: So listen to what she is asking you, because it's our duty to help you people ... (intervention)

MR MFALAPITSA: Yes, yes.

ADV DE JAGER: And listen to her questions and don't interrupt her because she's asking you cardinal questions that could affect your amnesty, that it may be because of your answers you wouldn't get amnesty or you can get the amnesty.

MR MFALAPITSA: That I understand quite well, and I don't say she must not interrogate me, as it is her right. But I have a problem when she want to run away with one part of my integrity, sir, and make it my motive. Once she want to say I was, you know, inspired by my self-preservation. I don't think that is right.

I was inspired by all forces taken together. I was one person. I was one person who had fear. I was one person who was inspired by motivation to come to South Africa and tell them I don't want politics any longer. I was one person who came and tell them I don't want to join Security Forces ... (indistinct) I don't want to join the ANC. I was one person who did not choose to go to Vlakplaas in the first place.

All this integrative views taken with the broader context, they were not invented by me. I didn't invent them behind guilt or somewhere. They were part of the history of South Africa and one thing also, coming up to face this Commission, it was for better for worse. But I also saw I want to reconcile me with my black people here, and I want also to ask amnesty.

So I am not only motivated by the interests of amnesty at expense of reconciliation. I am a person who want to, who live in both this aspect, just as all this aspect of fear and determination, of self-preservation, as they will apply to anybody including yourself and the Chairman. Involve, affected me together as a unitary disposition of any human being. Not only one aspect motivated me. That could have, I could not have if I was motivated by self-preservation, I could have been shot along the border of South Africa when I crossed there.

But I crossed, knowing that what I was doing, even if I was to be shot, when I was walking into the police station. It was right. What I was doing was right. I detested violence at that point and that motivated me.

So it was not just a question of fear as you say here, it was all this integrative forces as a human being, I express them in a level of my total wholeness and my total unity.

ADV GCABASHE: Thank you, Mr Mfalapitsa. Thank you, Chair.

CHAIRPERSON: Yes. Mr Jansen, I assume you would have re-examination, would you ... (intervention)

MR JANSEN: No, I don't. I don't.

CHAIRPERSON: Oh, you don't.

MR JANSEN: No, I don't.

CHAIRPERSON: Oh. Well, have you got any questions. You don't have any questions.

MR JANSEN: No, I have no questions.

FURTHER CROSS-EXAMINATION BY MR VISSER: Mr Chairman, if you would allow me. I have two brief matters I just have to raise and place on record with this witness if you will allow me.

CHAIRPERSON: You want to ask him further questions?

MR VISSER: Yes. Just two issues. It arose from his evidence ... (intervention)

CHAIRPERSON: That impact on your case?

MR VISSER: Pardon?

CHAIRPERSON: That impact on your case?

MR VISSER: Yes. It arose from his evidence in cross-examination.

CHAIRPERSON: Yes, Mr Visser, I hope it's going to be crisp questions. I'm not prepared to re-open this evidence to canvas, you know, at length things that have already been canvassed.

MR VISSER: Chairperson, I will not re-open the cross-examination. I have two issues which have now been mentioned which I have to place on record, because it does not agree with my instructions.

CHAIRPERSON: Two issues that you want to place on record.

MR VISSER: Through this witness, yes.

CHAIRPERSON: Two?.

MR VISSER: Two.

CHAIRPERSON: Well, go ahead.

MR VISSER: Mr Mfalapitsa.

MR MFALAPITSA: That's correct, Mr Chairman.

MR VISSER: Can you just press the button again please. I put it to you that the sketch plan was given, was shown to you before the day on which the four people were taken to the house where the explosive was detonated.

MR MFALAPITSA: That is incorrect, Mr Chairman.

MR VISSER: Okay. I also put it to you that the door on the room in which they were in the pump house had no lock on it.

MR MFALAPITSA: That is incorrect. It was, something like a piece of wood which was put there. A piece of wood which was put to the keyhole in the doorframe.

MR VISSER: A piece of wood?

MR MFALAPITSA: Yes, or ja.

MR VISSER: Thank you.

MR MFALAPITSA: That's it.

CHAIRPERSON: Have you got anything arising from that, Mr Jansen?

MR JANSEN: None, Mr Chairman, thank you.

CHAIRPERSON: Thank you. Mr Mfalapitsa, you are excused. We will adjourn for lunch and reconvene at 2 o'clock.

WITNESS EXCUSED

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Yes, Mr Tshabalala, have you got any witnesses?

MR TSHABALALA: Thank you, thank you, Chairperson. Chairperson, in an effort to assist the Committee in coming to a decision, we have decided to Zandisile Musi, who is a survivor of the incident.

CHAIRPERSON: Yes, very well, Mr Tshabalala. Is Mr Musi present? Will he come forward please.

MR TSHABALALA: Mr Chairperson, I have handed over a statement made by Mr Musi. It is entitled "Submission of my tragic experience to the Truth and Reconciliation Committee". I have handed it to all my colleagues and I was made to believe that we have that statement.

CHAIRPERSON: Yes, yes, Mr Tshabalala. We do have it.

MR TSHABALALA: With your permission, sir, can you allow Mr Zandisile Musi to talk on this statement?

CHAIRPERSON: Yes, in fact, I just wanted to, we all have the statement, I wanted to mark it. It will be Exhibit I on our list.

MR TSHABALALA: Yes, can we, can we mark it as Exhibit I, Chair.

CHAIRPERSON: Certainly.

MR TSHABALALA: The other thing, Chair, is Zandisile Musi will give his evidence in Xhosa.

CHAIRPERSON: Yes, Mr Musi, can you hear the translation.

Yes, would you, just switch it on. Okay. Do you, we must just make sure that you've got a proper translation. If somebody can just indicate on what channel Xhosa is written. Yes, it will be channel 3. Yes, is, is that better? Do you hear now.

MR MUSI: Yes, I can hear.

CHAIRPERSON: Can you hear now? Very well.

ZANDISILE MUSI: (sworn and states)

CHAIRPERSON: Yes, Mr Tshabalala.

EXAMINATION BY MR TSHABALALA: Zandisile Musi, how old are you?

MR MUSI: I am 35 years old.

MR TSHABALALA: I will repeat the question. How old are you, Zandisile?

MR MUSI: I am 35 years old.

MR TSHABALALA: Where did you grow up?

MR MUSI: I was born Kagiso, Krugersdorp.

MR TSHABALALA: Where did you go to school?

MR MUSI: I was schooling in Thembilo Primary School and I then went to Sandile Higher Primary School and from there to Kagiso Junior Secondary School in 1980.

MR TSHABALALA: In Kagiso Junior Secondary School. I take it that's where you started to be politically involved?

MR MUSI: Yes, that is correct.

MR TSHABALALA: In, during, on or about 15th February, you were involved in a, in a bombing incident where you were severely injured. Is that correct?

MR MUSI: Yes, that is correct.

MR TSHABALALA: Will you relate to this honourable Committee what happened. Let me just interject you, please relate to them the events leading to the incident, and the incident them, itself.

MR MUSI: What events are you talking about?

MR TSHABALALA: Will you please relate to this honourable Committee what happened on the day, but please relate the events leading to, to the day.

MR MUSI: One night, Mr Thlamedi came to my home. When he arrived, it was late in the evening at about six or seven. He came to greet our family. We knew that he's been in exile and he used to be my brother's friend. It was myself and my grandmother and a third person. He came to tell my mother that he was around. And then my grandmother asked, enquired about my other brothers. And we used to call him Weston. He said he last saw one of my brothers in Zambia and he knew nothing about Lumgile.

I was with the other comrades in COSAS, who always had the intentions of crossing the border and joining the liberation movement and later become members of ANC.

We saw him as, we saw this occasion of his visit, as an opportunity for a person whom we could trust and I told him that we had intentions, we having some intentions to cross the borders. But on that particular day, he was in a hurry, so he said we can only have short discussion.

INTERPRETER: Excuse, excuse me, Chairperson. Isn't there, isn't it possible to have a witness closer and get a better view of the witness, because it is very difficult to interpret because you cannot see the face.

CHAIRPERSON: Yes, it will help the interpreters if you were take up a seat here where Mr Wagener is taking his things up now.

(WITNESS CHANGED SEATS)

CHAIRPERSON: Try that microphone, just switch it on. Yes. Yes, that's better.

MR TSHABALALA: Sorry, Mr Chair, I was just about to request the witness to speak slowly, so that, you know, it can help the interpreters. Thanks.

ADV DE JAGER: Mr Tshabalala, and he's been telling - we told him, if ever he is speaking in the plural, could he perhaps, could you point out to him, with whom was he and so on. If he said, "we told him".

MR MUSI: I told him, it was myself. I told Mr Thlamedi. I told him. He said there was no need for us to cross the borders, because ANC had some structures inside the country. He said I can go and tell the other comrades that information. He said our next meeting would be on a Saturday. I told the comrades. They said there's no problem if we cannot go across the borders, if we cannot cross the borders. We had to remain inside the country.

MR TSHABALALA: Can you continue, please.

MR MUSI: I told them that he said there was no reason to go out. On a Saturday I went with Bendi, I went to Bembo Matabata. We went to meet with Thlamedi at Industria Station. We met him at about 2. I told them, I told him that the other comrades had agreed to that training inside the country as we were comrades of COSAS and we wanted to familiarise ourselves with the Freedom Charter and ANC politics. And he promised to bring that information for us. And he set another appointment for a Monday and he would bring us some reading material and the equipment that he would use during the training. I went back myself and Bembo to tell Phanya and the others that we had a meeting at 8 o'clock at the Leratong Hospital.

He came with a Kombi with a gentleman with a scar on his face. We went next to, we went to a spot that was next to a mine. The Kombi was parked far from the venue. We walked from the Kombi and we went through the forest to that particular venue. We told to rush into that place. We got into a room in the mine. He opened the door. We got inside. He was the first one to get inside and we followed him, the three of us followed him. After getting in there, he closed the door. He told us that he was in a hurry, he did not waste time. He took out a grenade in his pocket and a firearm and then he put them down. And he connected the detonator to the grenade and after that he demonstrated to us as to how to pull this detonator. And then he told us that he was coming back. He said he was going to fetch some weapons in the Kombi.

After he had left, within a short time, there was a box that I didn't know what was inside in that box. When I looked at the box I heard an explosion. We fell. I could even see the clothes on this guy. I thought that what had exploded was the object that we had in the hand. We thought that perhaps the person made a mistake by detonating the grenade or something like that. I couldn't walk, I couldn't see. I tried to cry for help. I, in that process, I was unconscious and I woke up in the morning and I was feeling cold and even my clothes were torn. I tried to, tried to shout for help.

At about 8 in the morning, the police came. Mr Nkosi was also there. I could not see, but I tried to open my eyes. Mr Nkosi asked me what is it that I was doing there. I told him that we were going to ... (indistinct). Someone took us from Leratong Hospital with a Kombi. And then he asked who was that person. I said we don't know who that person was. He took us in his Kombi and took us to that place. And then, he gave us something that looked like a pineapple.

I was taken to Leratong Hospital. After getting treatment, some stitches and some plaster on my leg, even my face, it was burnt and they gave me treatment for that. And they took me out of the hospital.

I was taken to a place that looked like a veld. I remember that the car was driving on the grass. A white policeman came out and he put a firearm in my mouth and then he demanded me to tell him who that person was. The one who took us. And I told him that I did not know the person. And he said I was lying, I knew the person. And I told him that we were going to ... (indistinct), we did not know that person. But they did not shoot me. They took me to Krugersdorp Prison.

When I arrived there I was put inside a cell. The police would come, even in the evening, they were assaulting me. They demanded the name of this person who gave us the bombs, the explosives. I told them that I did not know the person. They were always assaulting me, all the time asking the same question and I used to give them same response. I think I spent the whole month in there.

And I was taken to court. I was bailed, I was granted bail for R500, but I did not go home. I went straight to the hospital because the plaster was removed on my leg, but my leg was not yet fit. I went there, I stayed there at Leratong and after that I was acquitted in the court.

MR TSHABALALA: After your acquittal, did you ever experience any harassment from the police?

MR MUSI: Yes, they used to frequent my place and harassing me and they said they were looking for my brothers. I was also arrested during the curfew and they would take me to Krugersdorp Police Station and ask me about my brothers. And I was arrested in 1986 and I was sentenced.

MR TSHABALALA: Just, can I, can I interrupt you. Just before you were arrested, how long did it take you to heal from your injuries which arose from the bombing incident?

MR MUSI: My wounds were healed, because, you know, I was discharged from Leratong. When the plaster was removed, everything was healed.

MR TSHABALALA: You have previously said you, you had to undergo an operation. Can you relate which led to the operation?

MR MUSI: They said my bone, the bone on my leg was broken and two bones were detached and therefore they were trying to connect the bone. And my ears, I think the explosion damaged my ears. Therefore I had to be operated for that problem, too.

MR TSHABALALA: So you even underwent an ear operation?

MR MUSI: Yes, both ears were operated.

MR TSHABALALA: Okay, thank you. What effect did this incident had on you?

MR MUSI: It had a great effect, because I couldn't continue with my schooling, because I would, everything would flash on my mind just before writing the exam. I couldn't remember everything after studying. And even my ears, it's very difficult for me to hear a person. I had to look at a person's lips before I could hear what he or she was saying.

MR TSHABALALA: You told me, you told me before that some journalists came to you after the change in the Council. What did they say to you, these journalists?

MR MUSI: He said to me he had met with Joe Mamasela and Joe Mamasela told him that there were boys that were killed in Kagiso and killed by them, and one of them had survived, but he did not know who he was. Joe Mamasela told Reggie that information that they killed boys. They killed boys in Kagiso, but one of them had survived.

MR TSHABALALA: How did they know that one of them had survived? Did they tell you, the journalists?

MR MUSI: The journalist contacted the Shell House, because I got that information from Titus, my leader. He phoned me, he was telling me that he was going to send people to pay me a visit. I think they got that information from him, Titus.

MR TSHABALALA: Yourself, what did you say to the journalists?



MR MUSI: Reggie and Leslie came to my place. They had names and they told me about things that were done by Joe Mamasela and they asked me if I knew him. I told them that I did not know Joe Mamasela. The only person that I know was Ephraim Mfalapitsa and the person that I saw in Rustenburg. He was joking. I was on my way from Rustenburg. I saw him joking on the road that was going to the taxi rank and I told them back home that I saw Mfalapitsa. I Weston joking down the road. They said they were going to look for him, they would go and look for him. And they phoned me and they told me that they found Reggie. They found him there, that was Reggie, and the other guy. They found Mfalapitsa there.

MR TSHABALALA: So, in other words, you are saying you told the journalists where is, where to look for Mfalapitsa.

MR MUSI: Yes. I told them that if they could go to Rustenburg, they could find him there.

MR TSHABALALA: Okay. Just, just to go back to your other evidence. There is somewhere where you mentioned that you said to Mr Mfalapitsa that you were going to tell your comrades of COSAS. Which comrades were you talking about?

MR MUSI: I was referring to Bimbo Matabate, Elijah Phanya Nthlapo and Eustace Madigela, Peter Matabane and Phanya Nthlapo.

MR TSHABALALA: Okay, thank you. And the other one, I don't know whether it was, they didn't hear you correctly. You said Bimbo Matabate. Did you mean Matabate or Matabane, or Madigela.

MR MUSI: Bimbo is Madigela. Eustace Madigela is Bimbo.

MR TSHABALALA: Thank you, Chair.

NO FURTHER QUESTIONS BY MR TSHABALALA

CHAIRPERSON: Yes, thank you, Mr Tshabalala. Mr Visser, any questions?

MR VISSER: Chairperson, with respect I believe my learned friend, Mr Jansen, ought to go first. It's his witness, so he's more specifically implicated.

CHAIRPERSON: Yes. I suppose it doesn't really matter. Mr Jansen, are you ready to go.

MR JANSEN: Yes, I am.

CHAIRPERSON: Well, then, please.

MR TSHABALALA: Can I, may I interrupt, Chairperson? I just want to converse one issue. Zandisile, with regard to Mr Nkosi, did you ever talk to Mr Mfalapitsa about attacking Mr Nkosi and Matsidisa?

MR MUSI: No.

MR TSHABALALA: The other thing is, did you ever show him a sketch plan for attacking Mr Nkosi and Matsidisa?

MR MUSI: No.

MR TSHABALALA: Thank you, Chair.

CHAIRPERSON: Yes, Mr Tshabalala. Mr Jansen?

CROSS-EXAMINATION BY MR JANSEN: Thank you, Chair. Mr Musi, you were a member of the Congress of South African Students at the time. Is that correct?

MR MUSI: Yes, that is correct.

MR JANSEN: And your three friends who were killed in this incident, were also members of COSAS?

MR MUSI: Yes, that is correct.

MR JANSEN: Now, is it correct to say that at the time in 1982, the business of COSAS was politics?

MR MUSI: Yes, that is correct.

MR JANSEN: And we can take it that you were a supporter of the African National Congress, even at that stage?

MR MUSI: A supporter, yes, that is correct.

MR JANSEN: And I suppose we can infer, and to the extent that you may have knowledge thereof, can we accept that your other three friends were also supporters of the African National Congress?

MR MUSI: Yes, that is correct.

MR JANSEN: Now, as a, in 1982, as an 18 year old person, I suppose you were quite well aware that the struggle between, and the battle between the ANC and the government of the day, the apartheid government, was a violent one?

MR MUSI: Will you please repeat?

MR JANSEN: In 1982, you must have been aware of the fact that the struggle between the ANC and the apartheid government was a violent struggle.

MR MUSI: We did not have enough information as far as politics is concerned. But that is why we wanted to get out of the borders and get more information about ANC politics.

MR JANSEN: Did you want to, was part of your intentions of going outside the borders of the country to receive military training?

MR MUSI: Yes, that was among our intentions.

MR JANSEN: And it must have been general knowledge among young black people at the time, that they could leave the country and join and receive military training in, on foreign soil and then join the military struggle.

MR MUSI: Yes, that is correct.

MR JANSEN: Now, in Kagiso, were you ever a witness to public protests or public violence?

MR MUSI: Yes, that happened in 1976.

MR JANSEN: Yes, and from time to time, there was disruptions almost continuously or continually.

MR MUSI: Yes, there would be disruptions.

MR JANSEN: Well, was there, was there any, these disruptions, did it involve, in Kagiso now, did it involve, did it involve violence and did it involve destruction of property?

MR MUSI: Will you please clarify your question?

MR JANSEN: Okay, maybe I should start at a, from a different angle. Were you, as a member of COSAS, involved in any public protests or public disruptions organised by COSAS?

MR MUSI: COSAS was more concerned about the problems of the students. It was never a cause of problems, violence in Kagiso at the time.

MR JANSEN: You were still at school at the time, is that correct?

MR MUSI: Yes, that is correct.

MR JANSEN: Now, did COSAS organise any protests of any kind at school?

MR MUSI: No. We were still organising the SRCs. We were never involved in the protest march.

MR JANSEN: So what protest marches are you referring to?

MR MUSI: I am saying we were never involved in the protests. We were still organising the SRC. We wanted to establish the SRC and we used to have meetings. We were never involved in the protests.

MR JANSEN: Well, are you saying that as far as student problems were concerned, surely COSAS was not involved in, in negotiations with the Education authorities, or am I wrong in saying so?

MR MUSI: It was still new, we were still establishing structures that would liaise between the parents, the students and the Education authorities. We were still busy with those structures.

MR JANSEN: Now, what would have been the, or what was your purpose with wanting to receive military training outside the country?

MR MUSI: We wanted to fight apartheid government.

MR JANSEN: Were you involved in any other structures other than COSAS in 1982 now?

MR MUSI: I was involved in the Krugersdorp Residents Organisation.

MR JANSEN: Was this a typical type of civic that one found in townships at the time which professed to form alternative structures to the local authorities?

MR MUSI: It was established to look at the problems of the residents in the townships.

MR JANSEN: Now, how did you know of Mr Nkosi, the policeman?

MR MUSI: Among the people who used to come to my home, he was one of them. He used to pay us a visit regularly.

MR JANSEN: And, was, did he ask, did he ask questions about your brothers, or what was the purpose of his visits?

MR MUSI: You mean, asking me about my brothers? He was looking for that information. That is why he used to pay us a visit from time to time.

MR JANSEN: And would it be true to say that you would have regarded somebody like Mr Nkosi as a sell-out or a traitor to the cause of black liberation?

MR MUSI: We used to see him just like any other ordinary policeman.

MR JANSEN: Did you know that he was attached to the Security Branch of the police?

MR MUSI: Yes, I knew that.

MR JANSEN: So, how did you regard ordinary policemen?

MR MUSI: We used to regard them as the people from our own community who used to help solve our problems. We never had problems with them.

MR JANSEN: And the municipal councillors, how did you regard them?

MR MUSI: We never used to have problems with them.

MR JANSEN: Did you also regard them as people that solved, that assisted you in solving your problems?

MR MUSI: Yes, they used to help us a lot.

MR JANSEN: Now, Mr Musi, in fairness, I want to put it to you that the picture which you are sketching of yourself in 1982 and of Kagiso in 1982, is an unrealistic one and in fact, untrue. And maybe to explain my statement even better, or a little more, I want to put it to you that Kagiso was a place filled with tension, sporadic public disturbance, and intense distrust by the community of public officials, more particularly policemen and councillors. Do you have any comment on that statement of mine?

MR MUSI: I have a problem with that statement. I cannot say that, I cannot say what happened, because we were people who were concerned about people's, we were not concerned about the problems in the community, we were only concerned about the problems in our schools. Those were our concerns, that is why we wanted to get out. We wanted to get out so that we can be able to solve our problems.

MR JANSEN: What were the problems you were experiencing at school?

MR MUSI: We wanted to establish the SRC structures.

MR JANSEN: What was the SRC supposed to do?

MR MUSI: It was going to help if there were problems, financial problems. It was there to address the financial problems and try to meet, to be, to go in between the parents and the school authorities.

MR JANSEN: Now, did you ever attend meetings of COSAS, general meetings of COSAS, let's say, in, of the region or the area?

MR MUSI: Yes.

MR JANSEN: Just to make sure that we understand each other correctly. You know the meetings where more than one's schools' students were involved.

MR MUSI: We were trying to arrange that. The SRC was going to be mandated to do such things.

MR JANSEN: No, but my question is, initially was, did you ever attend such meetings? In 1982, or 1980, 81, in that period?

MR MUSI: Perhaps I attended only once. I only remember one meeting that was attended at Faith Mission Church, that is the only meeting I can think of.

MR JANSEN: And did you ever become aware of such political and social slogans and statements of, that South Africa must be made ungovernable, was one. The other one that people, or students must first be liberated before they are educated, in other words, liberation now, education later. Did you ever hear those?

MR MUSI: Yes, I used to hear such statements.

MR JANSEN: And would you agree with me that those statements represented the programmes of organisations such as COSAS?

MR MUSI: COSAS was not the only student movement. There were other organisations, there were other organisations like AZAPO. COSAS was not the only one. Those organisations were not the same.

MR JANSEN: No, that is true, but that is exactly why I am asking you whether these slogans accorded with the programme of COSAS.

MR MUSI: There was PASO with their own slogans and other organisations, therefore I cannot say that they were in the same line with COSAS.

MR JANSEN: Well, can I put it to you again that the underlying programme of COSAS at that stage was confrontational.

MR MUSI: Will the speaker please repeat the first part of the question?

MR JANSEN: The programme of COSAS at that stage was mainly aimed at disruption and was aimed at forming part of the broader process of social disruption. It was not aimed at trying to solve, in a constructive way, the education problems.

MR MUSI: That is not true.

MR JANSEN: Well, I'll tell you why I say so, because COSAS as most other student organisations and most other liberation organisations, at that stage no longer believed that there could ever be legitimate solutions in an illegitimate political dispensation. Do you have any comment?

MR MUSI: No, I do not understand that.

MR JANSEN: In any event, it's a matter for argument. What I want to put to you is that a youth like yourself, who wanted to leave the country and wanted to become part of the military structures of the ANC, would, in 1982, would have necessarily have had a confrontational attitude towards political and social conditions in South Africa. Would that be correct? In other words, what I am putting you is that you were part of the angry black youth of that time.

MR MUSI: I was not that angry but I wanted to join, I wanted to join the liberation movement to liberate my country.

MR JANSEN: And I want to put it to you that somebody like you would, of necessity, or as a matter of fact, have regarded somebody like Mr Nkosi and municipal councillor, as enemy No 1, or then as a major part of the enemy.

MR MUSI: That is not true. I used to know him very well and even his house. There's a lot of things that would be done if he was an enemy. We used to greet one another, we used to greet each other. Even today, we are still on good terms with Mr Nkosi, even after I was arrested he gave me a lift, he took me home.

MR JANSEN: Now, explain something to me. What do you mean by "a lot of things could have happened to him if he were enemy"? What could have happened to him if he were an enemy?

MR MUSI: If he was my enemy, I should have shot him. If I wanted to regard him as my enemy, if I wanted to attack him, as the people who were testifying here before said I don't think we would have a problem, because that was not in our minds to kill him. The idea of killing him was not in our minds, that is why we wanted to go outside and get training, because we were oppressed.

MR JANSEN: Was he part of the policemen that tortured you when you were in Krugersdorp Prison?

MR MUSI: He used to accompany them, he used to be an interpreter. He never touched me even in a single day.

MR JANSEN: Now, when you had such good relations with him, did you call upon his help when the other policemen were torturing you?

MR MUSI: Yes, I was trying to do that.

MR JANSEN: And, did he come to your assistance, or could you not get hold of him or what?

MR MUSI: He would come and talk to me afterwards, because he wanted me to tell him who is that person who took us there to the scene of the accident.

MR JANSEN: Now, did you, did you, did you tell him that you are being tortured?

MR MUSI: That was obvious to him, there was no need for him, to tell him that.

ADV DE JAGER: Wasn't he present and interpreting? I understood that to be the answer.

MR JANSEN: Just, just let me understand your evidence correctly. Was Mr Nkosi present when you were being interrogated, physically there? I'm referring specifically to ... (intervention)

MR MUSI: Yes, he used to be present.

MR JANSEN: At times when you were actually being tortured or assaulted?

MR MUSI: Yes, he used to be present.

MR JANSEN: And, he was a good friend of yours?

MR MUSI: No, he was not a good friend of mine.

MR JANSEN: I, then I misunderstood your evidence just now. You said you had good relations with him.

MR MUSI: I said I never used to have problems with him. I never had a problem with him.

MR JANSEN: Yes. Now, did you know Mr Matsidisa?

MR MUSI: No.

MR JANSEN: Never knew of a school teacher or a councillor by that name?

MR MUSI: No.

MR JANSEN: Which primary school did you say did you go to?

MR MUSI: Thembile Lower Primary School.

MR JANSEN: Now, you heard the evidence of Mr Mfalapitsa. Correct?

MR MUSI: Yes.

MR JANSEN: And I take it your comments on his, his version that you were planning to kill Mr Nkosi is just a lot, is just lies?

MR MUSI: Yes, that is correct. That is not true.

MR JANSEN: Now, will you accept that the evidence of Mr Mfalapitsa, that when he drafted, or when he applied for amnesty, he had no contact with his other colleagues who were also applying for amnesty.

MR MUSI: I don't understand the question.

MR JANSEN: Basically, what I am putting to you is, your evidence also would suggest that where Mr Mfalapitsa alleges that you intended to kill Mr Nkosi, his evidence, or where he says that, he does so in grand collusion, or in a plan that he made together with his other colleagues, which also said that in 1982 that was told to them?

MR MUSI: I heard him when he started testifying. He was asked what he said. He said to us he mentioned that more than once that we told him we wanted to get out of the country and then when he was being pressurised by the questions and then he mentioned that point. But, at first, initially, he told the Committee that we wanted to get out of the country. Then the other point came when he was getting pressure from the questions. When he was getting pressure from the questions that were asked by the gentleman in the blue shirt.

ADV DE JAGER: Well, for the sake of the record, that would be Mr Visser now.

MR JANSEN: Now, why do you say would Mr Mfalapitsa be lying about this?

MR MUSI: I don't know what is in his mind. He knows why.

MR JANSEN: And you would agree that if your evidence was correct then Mr Mfalapitsa became involved in this attempt to kill you and in the actual killing of your friends, simply because he knew you and had the opportunity to do so and for no other reason.

MR MUSI: The only reason that I can think about as I was listening to his evidence, when he says that when he, when he came, and then he said when he came as an askari, the police couldn't trust him. Therefore, I think that he was trying to gain their trust, he wanted to show them that he was really working for them.

MR JANSEN: Yes. And, I put it to you that that is an improbable, or it's unlikely to be the truth. Do you have any comment on that?

MR MUSI: That is what he says that when he went there, they could not trust him as an askari. Perhaps for them to trust him he had to do this, and he did this to a family that he knew very well and he said that that family was sympathising with the ANC. That action, that act in itself was going to make the police trust him.

MR JANSEN: Now, what were you intending, when you were going to receive this training with handgrenades and pistols? What, in your mind, was going on? What were you using it for?

MR MUSI: You mean after I getting training from him, from, what training, inside or outside? At first, we told him to help us get out of the country.

MR JANSEN: And when that, when it appeared that would not happen, then you said you were happy, you and your friends, you were happy to receive the training inside the country.

MR MUSI: We were going to fight the apartheid regime.

MR JANSEN: Did you have anything specific in mind? How were you going to fight the apartheid regime?

MR MUSI: That wouldn't be a problem. We did not have a specific place we were going to get training. He is the one who was going to tell us as to where to go, but we were expecting him to give directions thereafter.

MR JANSEN: But, surely you were a young man with a lot of imagination and a lot of enthusiasm? What did you think, what did you think might it entail?

MR MUSI: We were going to get that from him because we had trusted him as a person who had experience who was from the exile. He was going to show us the way. We were trusting him in everything. Because he is the one who told us that ANC had structures within the country and even when it comes to political education, we were relying on him.

MR JANSEN: And you obviously realised that training with grenades and training with pistols would in all probabilities involve giving, or would involve the eventual killing of people.

MR MUSI: We only knew that he was going to point out places to us, he was going to deploy us. We were not thinking specifically of the people who would be killed. We were just thinking that we wanted to be developed politically. We had agreed that we were going to acquire our training within the country.

MR JANSEN: Well, let's put it this way. You were prepared to be involved in activities that would mean, or that would entail, people being killed. Am I correct in saying so?

MR MUSI: I do not understand your question. Will you please put it in a simple phrase?

ADV DE JAGER: You asked for training in order to fight the apartheid regime. Is that correct?

MR MUSI: Yes, that is correct.

ADV DE JAGER: Now, if you've received training, wouldn't you kill people supporting the apartheid regime?

MR MUSI: That was not our main aim. The people were not our main focus.

ADV DE JAGER: What was your main focus then?

MR MUSI: We wanted to join the army of the people and do things that would be in line with the people's organisations. The death or killing of people would happen, but that wasn't our main focus. But if the police, the policy of the organisation specified that that was going to happen.

ADV DE JAGER: Did you think it was necessary to fight a military battle, struggle, in order to liberate the country?

MR MUSI: Yes, we saw that as a necessary measure.

ADV DE JAGER: And you were prepared to join the military force in order to liberate the country?

MR MUSI: Yes, that is correct.

ADV DE JAGER: And if that necessitated killing people, would you have killed people?

MR MUSI: Yes. If that was line with the policy of the organisation of the people or the soldiers, that would happen.

MR JANSEN: I want to get to the sequence of events in your testimony. You said that Mr Mfalapitsa came to you one night round about six or seven o'clock. To your family's home. Is that correct?

MR MUSI: That is correct.

MR JANSEN: Is that the first time that you saw him for, since he had left?

MR MUSI: That was the first time, yes.

MR JANSEN: Was it at that occasion that you had this discussion with him, about you and your comrades, or your friends, that wanted to leave the country?

MR MUSI: That is correct, sir.

MR JANSEN: And, the meeting that was then arranged, was it that, that very Saturday after this meeting?

MR MUSI: That is correct.

MR JANSEN: And the incident happened on that Monday?

MR MUSI: That is correct.

MR JANSEN: So, the very first meeting then, if the incident was on the 15th February, should have been round about the 9th or the 10th of February. Correct?

MR MUSI: I cannot clearly recall, but our first meeting would have been somewhere among those dates mentioned.

MR JANSEN: Well, it was in that preceding week, in other words, in the preceding seven days.

MR MUSI: That is correct.

MR JANSEN: Okay, now in your statement, Exhibit, that was handed in as Exhibit I, there you said that you had messed, met, where you were approached by Mr Mfalapitsa in January 1982. Would you care to explain the discrepancy?

MR MUSI: This might have been a written mistake, but the actual month is February. I am definitely sure about February, that is when we met for the first time. I cannot recall exactly the date but it was during the week in February.

MR JANSEN: Mr Chairman, just bear with me a moment. Okay, I also want to place to you, just for purposes of being complete, the other differences between your evidence and that of Mr Mfalapitsa. Namely, the, the manner in which you came to meet in that period, is the one difference. The other difference is whether you were alone at the meeting on the station or whether you were with this Bimbo person. Do you have any comment on any of these issues? You know what Mr Mfalapitsa's evidence was.

MR MUSI: He is not stating the truth and it's not the first time that he does that. The fact that he says that he met me alone is untrue. I was with Bimbo and it truly shows that he, Mfalapitsa, is stating a lot of untruths in his statement. He's not even mentioning the truth about he was being approached, because I'm the one who told Reggie Morobi where to find him. It truly reflects the untruths in his statement.

MR JANSEN: Thank you, Mr Chairman, I have no further questions.

NO FURTHER QUESTIONS BY MR JANSEN

CHAIRPERSON: Yes, thank you, Mr Jansen. Mr Visser?

CROSS-EXAMINATION BY MR VISSER: Thank you, Mr Chairman. I will be brief. As I understand it, you wanted to receive military training in order to fight the apartheid regime. Is that correct?

MR MUSI: That is correct, sir.

MR VISSER: And those people who represented the apartheid regime would have been your targets. Isn't that so?

MR MUSI: That is not so.

MR VISSER: Well, who, how would you fight the apartheid regime then? With handgrenades and pistols. Shall I repeat the question for you?

MR MUSI: He'll have some water, thank you. Please repeat the question.

MR VISSER: How were you going to fight the apartheid regime with handgrenades and pistols if you were not going to attack people who represented that regime?

MR MUSI: As I have already mentioned that, we are forecasting on the Committee problems that existed, and building up COSAS, we wanted to form defence structures in the community so that they should have the arms to fight all these elements of apartheid regimes, because they were attacks and therefore we knew it would help them to encounter attacks.

MR VISSER: Who were the elements of the apartheid regime that you were going to fight with the pistols and the handgrenades?

MR MUSI: The people who would normally come and kill people. They were organisations called like Mpokhoto, they would come to the townships and attack people. Therefore, we had to form structures that are going to protect the community. That is how we are going to use this training.

MR VISSER: Mr Musi, were Mpokhoto a part of the apartheid regime?

MR MUSI: Yes, they used to cause trouble in the township. They were against the community structures that were existing then, this Mpokhoto group.

MR VISSER: You know, and everybody in this room knows, that you're not telling the truth. Mpokhoto had nothing to do with the apartheid regime. Isn't that true?

MR MUSI: They were people who were canvassed to attack people at night and they called themselves Mpokhoto.

MR VISSER: Did the police attack people at night?

MR MUSI: Are you referring to the police? Were they attacking people? No, they were not attacking people at night.

MR VISSER: Are you saying that the police were never a legitimate target of the ANC? Is that what you are saying? As far as you knew in 1982?

MR MUSI: That is correct.

MR VISSER: Have you ever heard of a person by the name of O R Tambo?

MR MUSI: Yes, I've heard about him.

MR VISSER: Well, that's something you know then. He called up in 1981, called up the youth to take up arms to fight the struggle, the military struggle. Do you know about that?

MR MUSI: I'm not aware of that.

MR VISSER: Not aware of that. Chairperson, let me just look at my notes. I believe I'm through thank you. Just one interesting thing, you said that all you wanted to do with COSAS was to form SRCs, Student Representative Council structures. Is that correct?

MR MUSI: That is correct.

MR VISSER: Did you hold any protests or have any class boycotts in order to establish these SRCs?

MR MUSI: Please repeat your question.

MR VISSER: Did you have any boycotts or any marches and protests in order to establish these SRCs, structures?

MR MUSI: Yes, it was still an initial stage. We were still trying to establish them. We were still trying to strengthen COSAS but without marches.

MR VISSER: Without marches. I see. And who stopped you from forming the SRC structures?

MR MUSI: Please repeat, rephrase your question?

MR VISSER: Did anybody stop, did the apartheid regime stop you from forming the SRCs?

MR MUSI: Yes, it was a destabilising factor in their formation, the apartheid.

MR VISSER: Is it correct that in 1986, you served a term of imprisonment for illegal possession of explosives?

MR MUSI: That is correct.

MR VISSER: When were you arrested, when were you in possession of those explosives, in 1986?

CHAIRPERSON: Mr Visser, how does it help us?

MR VISSER: I'm, I'm just trying to show this witness knows a whole lot more than he's prepared to tell this Committee. It reflects on his credibility, Chairperson, which in turn reflects on whether my applicants could be believed when they told you that they could reasonably have believed what these people were up to, being members of COSAS.

CHAIRPERSON: Yes, but '86, how does that help us with an incident that was apparently happened in 1982?

MR VISSER: Well, so much the more. Because even in 1986, I'm going to argue, he was still fiddling around with explosives. And obviously it was born in the cradle of 1982 when all of this started happening.

CHAIRPERSON: Yes. There doesn't seem to be any disagreement on that and they did intend to receive training in handling handgrenades and things like that.

MR VISSER: Yes. To kill people.

CHAIRPERSON: Ja.

MR VISSER: Well, once you tell me that I can step off my cross-examination, Chairperson.

CHAIRPERSON: Yes, I mean, I don't see how something that happened in 1986 impacts on this at all.

MR VISSER: Well, it supports, corroborates what the position was, what we thought it was, about these four people. That they were in fact going to kill Nkosi and/or black councillors.

CHAIRPERSON: Yes. Well, that won't be a matter of argument, but what I am telling you and the difficulty I have is that it is hard to see how something that happened in 1986, when he was arrested for being in possession of explosives could impact on what happened in 1982? ... (intervention)

MR VISSER: I hear you.

CHAIRPERSON: Who knows what happened between '86, '82 and '86?

MR VISSER: I hear what you say, Mr Chairman. May I just ask my attorney? Chairperson, I just then want to put to the witness. I put it to you that you asked, not only for weapons training, but also suggested that you wanted weapons to be provided to you by Mr Mfalapitsa. Is that correct?

MR MUSI: I have a problem here, but if the Committee can allow me to refrain from answering some questions, because he is asking me about things that I cannot follow, because I had mentioned already what we talked about, me and Mfalapitsa. We wanted to skip the country but he offered to give us military training, but he dissuaded us. But if the Committee, were I'm here to say is the absolute truth in the interest of the amnesty application, but other things they are beyond me.

CHAIRPERSON: Mr Musi, it's a simple question that the Counsel is asking you. I'll repeat it, and I'm going to ask you just to respond. Did you ask Mr Mfalapitsa to give you X?

MR MUSI: We requested military training and to skip the country, but he told us that there was no need. We will be trained for the formation of ANC structures inside the country. We had explained to him that we wanted to go and undergo military training outside the borders.

CHAIRPERSON: So, so, is your answer that you didn't ask Mfalapitsa for weapons?

MR MUSI: That is correct, all we wanted was training.

CHAIRPERSON: Right. Mr Visser.

MR VISSER: Thank you, Chairperson. And how would he train you without weapons, Mr Musi? Did you have weapons of your own?

MR MUSI: He was going to supply the equipment in order to train us because we did not have the equipment.

MR VISSER: Thank you, Chairperson, that's all.

NO FURTHER QUESTIONS BY MR VISSER

CHAIRPERSON: Yes, thank you, Mr Visser. Oh, yes, Ms van der Walt.

CROSS-EXAMINATION BY MS VAN DER WALT: Thank you, I won't be long, Chairperson. Mr Musi, you have said that Mr Nkosi visited you at your home and you said that he wanted information from you. Is that correct?

MR MUSI: Yes, he would come and ask about my brothers.

MS VAN DER WALT: So your brothers were persons who had left the country in 1976. Is that correct?

MR MUSI: That is correct.

MS VAN DER WALT: And your brothers received military training? They even had MK names.

MR MUSI: That is correct.

MS VAN DER WALT: So did you provide him with any information about your brothers?

MR MUSI: No, I never said anything about my brothers.

MS VAN DER WALT: Therefore, he never, you cannot say that he was a friend or a person who caused problems, because he came to your house to cause problems. He wanted information.

MR MUSI: Are you referring to Mr Nkosi?

MS VAN DER WALT: Yes.

MR MUSI: Please repeat your question.

MS VAN DER WALT: Sir, you have just said that Mr Nkosi came to your house to gain information about your two brothers, who were MK members, who had left the country. Is that correct?

MR MUSI: That is correct.

MS VAN DER WALT: And you had said that you did not give him the information that he wanted. Is that correct?

MR MUSI: That is correct.

MS VAN DER WALT: Then he could have never been a good friend or an acquaintance of yours or a person who never gave you any problems, because he did cause problems at your home.

MR MUSI: I didn't have a problem with him coming to, to my house. He was only doing his job. It was not a problem.

MS VAN DER WALT: No further questions.

NO FURTHER QUESTIONS BY MS VAN DER WALT

CHAIRPERSON: Yes, thank you, Ms van der Walt. Ms Thabethe?

CROSS-EXAMINATION BY MS THABETHE: Thank you, Mr Chairperson, I won't be long. I just want to make a follow-up on the last question that was asked. You say Mr Nkosi was doing his job. What was his job?

MR MUSI: He was not interfering with me, he just come for information.

MS THABETHE: No, what I am asking is, what was his job? You said he was doing his job. What was his job?

MR MUSI: He was a Security Branch officer and he had come to enquire about my brothers who were in exile.

MS THABETHE: Okay. Thank you. I just want clarification as well about who approached who in as far as training is concerned. Did Mr Mfalapitsa approach you, or you approached him?

MR MUSI: He came to my house.

MS THABETHE: And what did he say?

MR MUSI: When my grandmother was still around, and we were at my house when he arrived, and my grandmother enquired about my brothers' whereabouts ... (intervention)

MS THABETHE: I am not asking about that, I am just asking about, about how did it happen that someone requested someone else for training. Just that issue.

MR MUSI: I'm the one who approached him about going on exile so as to undergo the military training so as to - at my home. After my mother had left the house I saw him out then I told him that there is something that I wanted to talk to him about.

MS THABETHE: Why did you approach him?

MR MUSI: It was our wish to go to exile, but because I knew that he had come from exile, he left with my brothers, and I trusted him to approach him.

MS THABETHE: Now, you have given evidence that you did not say anything about Mr Nkosi to him, nor the fact that you had targeted people to kill. Then why do you think you were targeted on the specific day when the bomb blast happened?

MR MUSI: (Not interpreted)

MS THABETHE: Why do you think you were targeted, because you hadn't done anything, you just wanted military training.

MR MUSI: As I have already mentioned, the fact that he wanted to entrust by using us.

MS THABETHE: No further questions, Mr Chair. Thank you.

NO FURTHER QUESTIONS BY MS THABETHE

ADV DE JAGER: Could I just clear this up, coming from - when did you, the first time realise, that he was involved in the attempt to kill you?

MR MUSI: When I was released from hospital, I think in 1983, if I can clearly recall, a lady called Nomvula, she heard in Zambia. I cannot recall clearly. They went to Swaziland in 1982 to see my brother and they heard that Weston is no longer working for the ANC but with the police.

CHAIRPERSON: Mr Musi, was there a COSAS branch that was launched in Kagiso in 1982?

MR MUSI: Yes, there was.

CHAIRPERSON: Did you translate that?

INTERPRETER: He said, yes, there was.

CHAIRPERSON: Yes. Just, just repeat the answer.

MR MUSI: Yes, there was a branch in 1982, COSAS branch.

CHAIRPERSON: Were you a member?

MR MUSI: Yes, I was.

CHAIRPERSON: Did you hold any position in the branch?

MR MUSI: I was just an ordinary member.

CHAIRPERSON: And the Residents' Association, what position did you hold there? Were you just a member or what were you?

MR MUSI: I was just an ordinary member.

CHAIRPERSON: Yes.

ADV GCABASHE: Thank you, Chair. Mr Nkosi, no, no, no. The question is, I know it's Mr Musi. Mr Nkosi, was he the only Security Branch officer who visited your home to ask about your brothers?

MR MUSI: They came in a group, most of the time there will be three of them. Three of them frequented our house. It was him, Mr Nkosi, and I cannot recall the other two. But the three frequented our house.

ADV GCABASHE: Were the other two black Security Police officers as well?

MR MUSI: Yes, they were also residing in Kagiso.

ADV GCABASHE: And did you have a similar relationship with the other two black police officers who would come to your house and ask about your brothers? That is, a relatively cordial one.

MR MUSI: They would come and enquire about Mbolelo whenever they came to our house.

ADV GCABASHE: Did they ever come and harass you or assault you or anybody in the family in your presence when they came to your home?

MR MUSI: They would just search but they did not assault us. But at some instances, they would harass my grandmother. But those were the white policemen who did that.

ADV GCABASHE: You, you talk of having a relatively cordial relationship with Mr Nkosi. How much older than you was Mr Nkosi? I hear you refer to him as Utata Nkosi. Just explain this?

MR MUSI: There was a friend of mine who was a churchgoer at the Seventh Day Adventist Mission and Mr Nkosi was an active member in that congregation as well. That's how I knew him.

ADV GCABASHE: And then, and then age-wise? Was he somebody who was relatively young, much older than you are?

MR MUSI: He might have been in his forties, mid-forties.

ADV GCABASHE: Have you ever discussed this particular incident with Mr Nkosi subsequent to your recovery?

MR MUSI: No, I never did.

ADV GCABASHE: Is he still alive? Mr Nkosi?

MR MUSI: Yes, he is still alive.

ADV GCABASHE: He still works in Kagiso? In Krugersdorp?

MR MUSI: I do not know his whereabouts now.

ADV GCABASHE: He no longer visits your home.

MR MUSI: No, he is no longer visiting.

ADV GCABASHE: Coming to the discussions you had with Mr Mfalapitsa, when you agreed to be trained in the country, what exactly was it that you were agreeing to? Do you remember the detail of that discussion?

MR MUSI: (answer not interpreted)

ADV GCABASHE: Okay, I'll shorten the question. You agreed eventually to be trained in the country by Mr Mfalapitsa?

MR MUSI: Yes, we agreed on that.

ADV GCABASHE: And am I right in assuming that this would have been at the Saturday meeting at the station?

MR MUSI: That is correct.

ADV GCABASHE: Do you remember the content of that discussion?

MR MUSI: He said I must first go and consult with my friends Ntshingo about the military training that was going to happen within the boundaries, so when I met him on Saturday I told that we have consensus on this training and he said we will start on Monday and that is when we parted ways.

ADV GCABASHE: Now, you've, you've lost me again. You see you are saying when you discussed this matter with him on Saturday you had already consulted your three comrades. Am I right or wrong?

MR MUSI: That is correct. ... (intervention)

ADV GCABASHE: Oh, let's go to the ... I'm sorry.

MR MUSI: I was with Bimbo.

ADV GCABASHE: Yes, now you had had one other meeting with Mfalapitsa. Am I right?

MR MUSI: I met him for the second time at the station, me and Bimbo. I told him that we have agreed on the training that's going to happen within the boundaries. We are no longer leaving. So we are meeting on Saturday for the second time.

ADV GCABASHE: That's correct. Now, can I take you back to the first meeting. Now at that first meeting, did you discuss training inside the country at that first meeting?

MR MUSI: When he said to me, when I said to him that we wanted to undergo training in exile, he said there was no need as the ANC's intending to form structures within. And therefore I went to my comrades and explained to them what he said. And he said to me that having met with your comrades we will meet again on Saturday and when I met with him on Saturday I had already told him. But the first thing that I mentioned to him on the very first day was leaving for military training, but that is when he dissuaded us. And that's when we met him on Saturday in the company of Bimbo and we expressed the fact that we do not have a problem with him training us within and thus we set up the appointment for Monday.

ADV GCABASHE: Now again, I hear you but I just want absolute clarity. I don't, don't want to be confused. So at that first meeting, one, you said to him we want training outside the country. Yes?

MR MUSI: Yes, we wanted to go to exile, that's what I said to him.

ADV GCABASHE: At that same time, he dissuaded you and said he can do it inside the country. Is this what you are saying?

MR MUSI: Yes, that's what he said. There is no need going to exile because the ANC is setting up structures within and he will just simply train us with him and there won't be a need for us to leave the country.

ADV GCABASHE: Now, a related aspect. Who talked about handgrenades and pistols? Did you talk about training in handgrenades and pistols, or did he first raise the idea of handgrenade and pistol training? I'm not clear about that point.



MR MUSI: He is the one who came with the idea.

ADV GCABASHE: And was this at ... (intervention)

MR MUSI: He said he was going to train us with him with handgrenades and the rest.

ADV GCABASHE: And was this at the Monday meeting or the Saturday meeting?

MR MUSI: It, we met during the week ... (intervention)

ADV GCABASHE: I'm sorry, can I just clarify my question. I see where the confusion might arise. Let me call it the first, second and third meeting, because the third was on a Monday as well. My apologies, I don't want to confuse you at all. I'm talking about the first meeting. I'll stop using the weekday names. Was it at the first meeting that he discussed handgrenades and pistols, or was it at the third, at the second meeting or when was it?

MR MUSI: He, I cannot recall clearly, but we agreed, this emanated on Saturday.

ADV GCABASHE: Did he discuss any other aspects of the training with you on that Saturday, at that second meeting? So he talked about handgrenades and pistols, did he talk about any other form? You know, the form the training would take?

MR MUSI: We also mentioned reading material or study material, so that we should be able to understand the politics of the ANC and the Freedom Charter. And he said that Monday everything will be in order, he'll bring all that.

ADV GCABASHE: Right. When you left with him on Monday, the third meeting, the day of the incident, what were you expecting to do, during training?

MR MUSI: We expected him to hand us the study material, and perhaps the grenade training and the rest.

ADV GCABASHE: Did he clarify any of this to you or was this just something you thought would happen? Can you just explain that? What you were going to do on Monday. When you left Leratong Hospital in the Kombi, you had the idea that you would do a bit of political education when you got to the venue. You would do some handgrenade training, possibly. Is that correct? That's what you thought in your mind.

MR MUSI: Yes, that was what I thought.

ADV GCABASHE: Right. What I am asking is, had he specifically said this to you, or was it just something you thought would be happening?

MR MUSI: That is what we were thinking, because we had already told him about the study material, and therefore were expecting him to bring them as we requested.

ADV GCABASHE: Now in the Kombi, travelling from Leratong to the mine dump, how did that trip take, just roughly?

MR MUSI: It might have been 20 minutes.

ADV GCABASHE: In that 20 minutes, did you have any discussions in the Kombi about where you were going to, what you were going to do when you got to the venue?

MR MUSI: No, there were no discussions in the Kombi.

ADV GCABASHE: And then as you got off the Kombi and walked towards the house, again were there any discussions about the general programme or anything at all? Were you just quiet?

MR MUSI: We were chatting amongst ourselves and he was chatting with the driver. So we were just chatting casually amongst ourselves.

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ADV GCABASHE: And had he indicated at what time you would finish with the training and go back home? Had he said anything at all?

MR MUSI: No, he never gave any time indication.

ADV GCABASHE: And you hadn't asked either?

MR MUSI: No, we never asked.

ADV GCABASHE: Thank you, Mr Musi. Thank you, Chair.

CHAIRPERSON: Thank you very much. Mr Tshabalala, re-examination?

RE-EXAMINATION BY MR TSHABALALA: Thank you, Chair. Were you an experienced politician at the time?

MR MUSI: No.

MR TSHABALALA: That is why you wanted to go outside and get training to develop your political experience?

MR MUSI: Yes, that is correct.

MR TSHABALALA: So, I gather that if you got trained, you will adhere to the policies of the organisation you joined.

MR MUSI: Yes, that is correct.

MR TSHABALALA: So even if it meant that if the organisation had sent you on a mission to attack an installation or whatever, you will adhere to those policies?

MR MUSI: Yes, that is correct.

MR TSHABALALA: Coming back to Mr Nkosi. Mr Nkosi was not your friend?

MR MUSI: Will the speaker please repeat the question?

MR TSHABALALA: Was Mr Nkosi your friend?

MR MUSI: No.

MR TSHABALALA: I gather that from what you said, that the relationship you had with Mr Nkosi was cordial and it was like you respected him as your friend.

MR MUSI: Yes, that is correct.

MR TSHABALALA: Even if he was a police person?

MR MUSI: Yes, that is correct.

MR TSHABALALA: I have no further questions, Chair. Thank you.

WITNESS EXCUSED

NO FURTHER QUESTIONS BY MR TSHABALALA

CHAIRPERSON: Yes, thank you, Mr Tshabalala. Yes, I assume that you don't have any other witnesses that you intend calling.

MR TSHABALALA: I don't have any other witnesses. The families of the deceased, they agreed that we will have only Zandisile Musi to give, as a person who was around at the time. Thank you, Chair.

CHAIRPERSON: Yes, thank you. Ms Thabethe, have you got any witnesses that you intend calling?

MS THABETHE: No, Mr Chair, but I was just clarifying something with Mr Tshabalala, because I was approached by the brother to Mr Musi, and he indicated to me that he want to say something to the Committee members. So I was asking him whether he wasn't going to call him, but I don't know. I don't know how to approach that one.

CHAIRPERSON: Yes, well, if you need to clarify that, perhaps we should do it overnight. We are going to adjourn at this stage, but the reason why I have asked was to get an idea as to how far we are with this particular incident. For the reason that we should be considering whether we ought to finalise each incident as we take it, in the sense of hearing you on the merits at the end of concluding the evidence on each

one of these things or not. So that is something we haven't really taken a final decision on and that is why I would just like to get an idea as to how many witnesses there still are and what the possibilities are of that sort of course of action.

MR VISSER: Do you want to hear me, Chairperson. My views are the following. I was ready to, I rather expected that we would get to the point where this question would be raised today and I was ready to argue. There are two issues. One is of course whether one should leave it to the end and then argue about everything, which may, in a sense, be more convenient. But on the other hand, if the worst comes to the worst, and the unexpected occurs, and one does not finish, well then there's a problem. I can't see that problem ever arising in the present hearing session. But, frankly, I am happy one way or the other. I can argue at the end of each of the applicants, but it may waste a little time.

ADV DE JAGER: But wouldn't it involve keeping people here who are not involved in other cases until we hear argument?

MR VISSER: That hasn't occurred to me and clearly, Commissioner de Jager is correct. Perhaps one should just argue at the end of each case. Perhaps argue tomorrow on this one and go on and argue as we go along.

CHAIRPERSON: Alternatively, we can argue on those matter where there are people that could possibly be released and you can keep the rest and just do it all at the end.

MR VISSER: That might be an alternative. Chairperson, I must say I will only in one, when I argue for the first time, I will cover the field, but thereafter, obviously, I'm not going to do it every time. I'm just then going to deal with whatever issues arose from the facts. So, the first time will be the longest time that I'll be arguing. And thereafter it will be very brief.

CHAIRPERSON: So we won't necessarily save time by following the staggered, sort of ... (intervention)

MR VISSER: I'm not sure that we will. It's much of a muchness.

CHAIRPERSON: I don't have any strong views.

MS VAN DER WALT: The problem will be, as it is now, with the various clusters which are clashing, where I will be able to leave after the heads of argument and attend other matters. That is the biggest problem. If Mr Visser, who is going to argue thoroughly about it, is going to argue then my argument and the argument of the others should be shorter.

CHAIRPERSON: I think that is perhaps a consideration that will sway me to call upon you to agree to argue in cases where you can release some of your colleagues from hanging around. Apart from that, I don't have any strong views, you can do it all at the end. So, can you perhaps just identify amongst yourselves those matters where you can actually help some of your colleagues away. And we will take those addresses and then we can ... (intervention)

MR VISSER: Chairperson, there are already five matters. It's the Pillay matter, the Mxenge matter, Herbert Mbali, Lemmie Booy and, I think, two other matters where other people will not be affected,

other than our clients. But for the rest, we will obviously bear this in mind. The only thing that just occurred to me, is that if somebody else comes in next week and I argue fully tomorrow, that might present another problem. I don't know how one's going to solve that because I may say well, I've argued last week and I refer to that argument. And they'll say, with justifiably they'll say well we don't know what that was. Tell us about it.

CHAIRPERSON: But from the looks of things now, is that likely to arise? Are there people who are not on record yet who might come in to some of the other incidents?

MR VISSER: There is the very likelihood in the case of - which is the matter, Jan? Is it Simelane? Simelane is being opposed by Attorneys Bell, Dewar and Hall.

CHAIRPERSON: Now, now. Yes, I know, I appreciate that. But can't we, I mean, you know, it appeals to me to be able to, where we can release some of the legal representatives and perhaps if, you know, there is a need for you to repeat perhaps something, perhaps it's a small price to pay.

MR VISSER: Just, just the other way around. It just occurred to me that my learned friend, Mr Jansen and his attorney, and Ms van der Walt have heard my arguments so often, I'm sure that they know them by heart by this time, so really I don't think they will be prejudiced if they didn't hear the long argument and I kept that for later. That's just a possibility as well.

CHAIRPERSON: Yes. Can I, can I again then just ask you. It looks like this is one of those cases where we can release some of the legal representatives tomorrow. So if we could then arrange for you to be able to address us on this one tomorrow, once we have concluded the evidence. Would that be possible? Mr Visser has indicated he could accommodate that argument and the rest of you, can I get an indication? Would you be able to address us tomorrow on the merits of this matter, the COSAS Four incident?

MR JANSEN: Yes, Mr Chairman, I am ready to argue. So I would be able to.

MR TSHABALALA: Yes, I would prefer to do the argument and be excused.

MS THABETHE: Sorry, Mr Chair, can I barge in here? I've heard Mr, Adv Visser's concern about repeating himself. When I checked my list I think the person who is not here, it's Eric van der Berg, who's representing the Simelane family and the Mnisi family. Maybe what I can try to do is to call him tonight and find out if he can't avail himself tomorrow morning just for argument so as to avoid the repetition. Yes.

CHAIRPERSON: Yes.

ADV DE JAGER: Mr Visser, your argument as far as the wide argument goes, would be the background. The legal argument and the facts, the legal argument it remains, well the legal argument can't be long. Legally speaking, it's the facts of the case and and's applied to the subsection.

MR VISSER: Well, it's a relative term, long. If you want to, 297D you want me to tell you how long I think I'll be, I'll probably be about an hour and a half to two hours. But Counsel are notorious, as Commissioner de Jager will know, for misjudging times that they will take. It depends on a lot of things. I might finish in an, I might finish in an hour.

CHAIRPERSON: I think, I think I want to call upon you to be able to argue tomorrow. You'll deal with it as you feel comfortable, whether you deal with a long argument or a short argument or whatever it is, you go for it. And the rest of your colleagues are ready to argue and we will conclude this, the COSAS matter tomorrow and we will excuse those D who can be released. And then we will carry on.

MS THABETHE: Sorry, Mr Chair. Can I barge in again. Thanks. I was wondering. I heard Adv Visser saying that the long part of the argument is background which is what he has argued about before. I don't know whether I heard you correctly. Is it not possible for us to get a transcript of that argument and then we just refer to it or you rather to repeat it again and again?

CHAIRPERSON: Yes, no, I would like to hear full argument at some stage of these proceedings, live argument.

MR VISSER: The answer to the question is a very simple one. Yes. In the last, in the Linden Bomb amnesty applications, the full argument was taken down on record. But referring you just to the record is going to be of argument little assistance to you.

CHAIRPERSON: Yes, no. Some of us have not been treated to that, so we would prefer to experience that. Then we will adjourn the proceedings until tomorrow morning. You will sort out whether there are any other witnesses. It might be that if there is one, it would be, sort of a, very, it can't be a very material witness, certainly not somebody who can reflect on the merits of the matter. Mr Musi seems to have been the only one. So, by the looks of things, we should be able to get into the argument sometime in the morning. I then need to be led by you. Shall we start the proceedings at 9.30 tomorrow morning. Will that assist you a little bit, or would that be enough, or would you need a little bit more time than that?

MR VISSER: Nine thirty will suit us, thank you, Chairperson.

CHAIRPERSON: We will then adjourn the proceedings and we will reconvene at 9.30 tomorrow morning. We're adjourned.

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TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

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

JAN CAREL COETZEE 1ST APPLICANT

(AM 4120/96)

WILLEM FREDERICK SCHOON 2ND APPLICANT

(AM 4396/96)

ABRAHAM GROBBELAAR 3RD APPLICANT

(AM 4143/96)

CHRISTIAAN SIEBERT RORICH 4TH APPLICANT

(AM 5011/97)

TLHOMEDI EPHRAIM MFALAPITSA 5TH APPLICANT

(AM 3592/96)

DECISION

These are applications for amnesty in terms of the provisions of Section 18 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 ("the Act") by former members of the South African Police ("SAP") who are herein referred to by their surnames. The matter relates to the killing of Eustice "Bimbo" Madikela, Ntshingo Mataboge (referred to as "Matubane" in the application forms) and Fanyana Nhlapo (collectively referred to as "the deceased") and the attempted killing of Zandisile Musi ("Musi") in an explosion at Krugersdorp on or about 15 February 1982 ("the incident"). The applications were opposed.

The circumstances relating to the incident are largely common cause and can be set out briefly. Mfalapitsa was an askari, which is the term used to describe erstwhile members of the liberation movements, particularly the African National Congress ("ANC"), who had joined the SAP and were working against their former comrades. Before his defection, he had a close relationship with the two elder brothers of Musi who served with him in Umkhonto we Sizwe ("MK"), the military wing of the ANC, in exile. After Mfalapitsa joined the SAP, he and Musi established contact. Musi was a member of the Congress of South African Students ("Cosas"), a popular national student movement active at secondary schools and associated with the ANC at the time. He was desirous of leaving the country to join the ANC in exile with a group of his comrades. His Cosas membership was unknown to Mfalapitsa. He explored the possibilities of leaving the country with Mfalapitsa whom he erroneously still regarded as a member of MK. Mfalapitsa's defection was a closely guarded secret. He was in fact stationed at Vlakplaas, a secret security police base, at the time. Mfalapitsa reported his discussion with Musi to Coetzee, his superior at Vlakplaas. Mfalapitsa was in due course ordered to lure Musi and the deceased to a pumphouse at a mine near Krugersdorp, under the pretence of wanting to give them military training. Here they would be killed in an explosion under circumstances which would create the false impression that they blew themselves up while undergoing military training. The order emanated from senior officers within the SAP and was conveyed to Coetzee by his superior, Schoon. Coetzee arranged with Rorich, who was a SAP explosives expert, to place the explosives inside the pumphouse and to detonate them on the signal of Coetzee. Grobbelaar had to accompany Coetzee on the mission and act as a look-out. These were in fact eventually the respective roles played by each one of the Applicants in the incident.

There were material disputes of fact between the versions of Coetzee and Mfalapitsa which need to be dealt with. According to Coetzee's written statement, which was confirmed in his evidence, Mfalapitsa reported to Coetzee that he had met Musi. According to this report, Musi had indicated to Mfalapitsa that he and three other Cosas members intended to kill a member of the security police, one Nkosi, and that Mfalapitsa should train them in the use of armaments ("wapentuig") and supply them with arms ("wapens"). On the instructions of Schoon he advised Mfalapitsa to attempt to persuade the group to abandon their plan. Some

time prior to the incident the group produced a sketch plan relating to the planned attacks. This version was contradicted in the evidence of Mfalapitsa. According to Mfalapitsa's testimony, Musi indicated to him at their first meeting that Musi and his friends intended to leave the country and that Mfalapitsa should assist them to do so. The group wanted to leave the country in order to receive military training. There was never any question of attacking anyone at that stage. Mfalapitsa reported this to Coetzee who indicated that Mfalapitsa should dissuade the group from leaving the country. Mfalapitsa should also attempt to ascertain whether the group had any specific reason for wanting to receive military training and whether they had already identified any targets. In the latter event Mfalapitsa should offer to give the group military training. Mfalapitsa then had further meetings with Musi and managed to persuade him not to leave the country but settle for local training which would be given by Mfalapitsa. When asked whether they had any specific targets, Musi indicated that they wanted to attack Nkosi and a community councillor, one Matsidisa who was one of the teachers at a primary school which Mfalapitsa attended. Mfalapitsa reported back to Coetzee on this discussion. Coetzee instructed Mfalapitsa to arrange a specific date for the military training when the group would in fact be trapped. Mfalapitsa made the necessary arrangements. On the appointed day he collected the group during the evening in a vehicle driven by a fellow askari, Joe Mamasela, and conveyed them to the mine in the vicinity of Krugersdorp. They showed a sketch of the houses to be attacked to Mfalapitsa. The group was lured into the pumphouse on the mine where Mfalapitsa pretended to be giving them military training. As arranged with his handlers, Mfalapitsa left the pumphouse at one stage under the pretext of wanting to fetch more arms from the vehicle. Once he was clear of the pumphouse the explosives inside were detonated.

In evaluating the respective versions of Coetzee and Mfalapitsa in regard to the issues in dispute between them, we bear in mind that Mfalapitsa is the only Applicant who had direct contact with Musi. We find nothing in his testimony or demeanour which would justify his evidence being rejected on these issues. His version that he would have raised suspicions is he had attempted to dissuade Musi from attacking Nkosi as alleged by Coetzee, is highly probable. He in fact succeeded in persuading Musi not to leave the country, which was the only issue raised by Musi in their discussions. Coetzee on the other hand was testifying in this regard on what Mfalapitsa allegedly conveyed to him in regard to the discussions with Musi. The latter corroborates Mfalapitsa in regard to the fact that he only informed Mfalapitsa that he and his comrades had "intentions of crossing the border and joining the liberation movement and later become members of ANC". He indicated that part of their intention "of going outside the borders of the country [was] to receive military training". Mfalapitsa's evidence was not seriously attacked on behalf of Coetzee. Attempts were rather made to argue that the versions could somehow be reconciled. We accordingly accept the version of Mfalapitsa as truthful insofar as it concerns the issues in dispute between himself and Coetzee.

There were also some disputes between the versions of Mfalapitsa and Musi, particularly insofar as the latter's intentions to attack Nkosi and Matsidisa and the existence of a sketch plan concerning these targets, are concerned. We are prepared to accept, without deciding, for purposes of this decision that Musi indicated to Mfalapitsa that Nkosi and Matsidisa are targets for attack and that Musi's group produced a sketch plan concerning the intended attacks on the day of the incident as testified by Mfalapitsa. We accordingly proceed to deal with the matter on that basis.

One of the crucial requirements of the Act which must be considered in deciding the applications is whether the offence in question constitutes an act associated with a political objective. In our view this issue is determinative of the matter and it obviates the need to deal with the other requirements of the Act. The applications shall accordingly be evaluated against the provisions of section 20(2) and (3) which are relevant in this regard. In view of the decision which we have reached on the matter we will assume, without deciding, that the applications comply with the locus standi requirements set out in section 20(2), although the case, particularly of Mfalapitsa, is dubious on this aspect.

Insofar as the provisions of section 20(3) are concerned, it should be pointed out that we are required to consider the relevant facts of the matter in order to be able to apply the relevant criteria to the applications. On the basis set out above, the relevant facts for the purposes of section 20(3) could be summarised as follows. The victims in the matter are four youths who were ordinary members of Cosas when they met Mfalapitsa who was at all material times unaware of such membership. They believed that he was still a member of MK who had earlier left the country together with two of the elder brothers of one of the victims, Musi. Musi indicated to Mfalapitsa that the group intended also to leave the country to join the liberation movement and undergo military training. He enlisted Mfalapitsa's assistance in regard to the group's intention to leave the country. After having reported the matter to his superior and on the latter's instructions, Mfalapitsa persuaded the group not to leave the country and instead offered to give them military training. This offer was unsolicited and was a ruse intended to lure the group to a secluded spot where they would be killed with explosives. Within a few days after Mfalapitsa's first discussion with Musi, three of the youths were killed and Musi very seriously injured in a planned explosion caused by some of the Applicants under the guise

that the victims were being given military training. The three deceased were unknown to Mfalapitsa and the other Applicants before the day of the incident. No formal investigation was launched into the matter or the backgrounds of the intended victims prior to the incident. On the instructions of Coetzee, Mfalapitsa elicited information from Musi concerning targets which the group intended attacking. In the process he obtained the names of Nkosi and Matsidisa and was shown a sketch plan relating to the intended attacks, on the day of the incident.

We are enjoined by section 20(3) to consider a range of criteria in determining whether the incident in question constitutes an act associated with a political objective. In this process we also have to take into account the criteria which were applied in the repealed indemnity legislation in accordance with the provisions of section 20(4). In our view this does not require a piecemeal analysis but rather a holistic approach in terms whereof we should consider the relevant facts in the light of the applicable criteria in order to determine whether the applications comply with the requirements of the Act. We intend to now embark upon that course.

The stated motive for the murders and attempted murder was basically to protect the lives of Nkosi and Matsidisa and other possible targets of an attack by the victims of the incident. This was in turn linked to the broader objective of maintaining the previous regime which is dealt with more fully below. It is relevant in this regard to point out that there was scant evidence concerning these planned attacks. Mfalapitsa testified that he elicited this information from Musi who in turn denied this. As pointed out above, we accept for present purposes that these victims were referred to by Musi. On the accepted version there was no reference to any planned attacks until Mfalapitsa elicited the information concerning Nkosi and Matsidisa. It has not been established that these attacks were imminent. On Mfalapitsa's version these were possible victims identified for attack after Musi's group had received military training. The evidence concerning the existence of a sketch plan is equally inconclusive. As pointed out above we accept, without deciding, that the sketch plan was only shown to Mfalapitsa on the day of the incident. Such a plan would have served little purpose to Musi and his group who were familiar with the particular surroundings. They would certainly not have needed a sketch plan in order to be able to attack Nkosi and Matsidisa whose identities and whereabouts would have been known to them. On the probabilities, the group would only have produced a plan of this nature at the request and upon the advice of Mfalapitsa. Accordingly in our view, there is no merit in Applicants' suggestion that the existence of the sketch plan was indicative of the advanced nature of the group's planning and the seriousness of their intent. It is more probable that the inexperienced group of youths identified Nkosi and Matsidisa as possible targets and produced a sketch plan after they were prompted by their discussions with Mfalapitsa. There is no credible indication that they volunteered any of this information. The group clearly only had vague notions of going into exile to support the liberation struggle without any wherewithal to realise this objective at the stage of the first contact with Mfalapitsa. This was in fact the only issue mentioned to Mfalapitsa in the initial discussions. The question whether the attacks were imminent is dealt with further in the context of the issue of proportionality.

We take into account that the incident occurred in the context of the political conflict between the government and liberation movements when perceived supporters of the apartheid regime such as the police and community councillors, were targets of attack by liberation movements. We also have regard to the fact that the offences in question are very serious, namely the murder of three youths who were unknown to the perpetrators and the attempted murder of Musi. In the latter case, the only relevant knowledge at the disposal of the police at the time was that the Musi family had links to the ANC as a result of Musi's elder brothers having joined the ANC in exile. There was no suggestion that the police had any specific interest in Musi prior to this incident. The gravity of the offence is exemplified by the fact that three youths lost their lives and Musi was very seriously injured in a pre-meditated and well-planned explosion under circumstances which would have supported a false suggestion that the victims inflicted the injuries upon themselves while engaged in covert military training. We accept that the offences were committed on orders from superiors within the SAP.

According to the Applicants, their political objective in committing the offences was, broadly speaking, to protect and maintain the previous regime ("beskerming en instandhouding van die vorige regeringsbestel"). Although Mfalapitsa's position as an askari was much more tenuous in this regard, we would accept for present purposes that this consideration also applied to him. We are required by section 20(3)(f) to consider the proximity and directness of the relationship between the offences and this objective as well as the proportionality of the offences to this objective. We take into account in this regard that the victims were youths whose political profiles or roles were completely unknown to the Applicants, save for Musi's family's links with the ANC as referred to above. The fact that the victims were ordinary members of Cosas, was not even known to Mfalapitsa who was the only Applicant who had direct contact with the victims. There was, moreover, no persuasive evidence that the victims were involved in an imminent attack upon Nkosi or Matsidisa or any other person. At best for Applicants, the evidence of Mfalapitsa indicated that the victims would have attacked these targets once they had received military training in exile and were

possibly later deployed in the area where they hailed from. The group had no access to arms or to military training hence the initial approach to Mfalapitsa. We also take into account that Applicants neglected to do any investigations into the matter before summarily eliminating the victims. No steps were considered to persuade the group to abandon their plans to obtain military training, especially in view of the success of dissuading them from leaving the country. The idea to give the group military training internally in fact emanated from the police. Mfalapitsa was in a position to exercise considerable influence upon the decisions and actions of the group. His contact with the group would have enabled the police to keep abreast of their intentions and plans. There was no reason why the group could not have been monitored until a full and more reliable assessment could be made of the actual threat posed by the group, before precipitately deciding upon such radical action as summarily killing them.

We have considered the arguments raised by Applicants which apparently militated against opting for arresting and arraigning the group. We find Applicants' version in this regard wholly unpersuasive, that this option would necessarily have led to Mfalapitsa being exposed as an askari. In fact, Applicants do concede that the group could have been charged and convicted of the unlawful possession of arms, ammunition and explosives without the need for Mfalapitsa to testify against them. Applicants' objection to this course of action was that they were not assured that the group would receive long prison sentences. They also argued that there was a danger that the group could possibly have disclosed that Mfalapitsa supplied the armaments, which would necessarily have led to his being unmasked as an askari. There is no merit in the latter suggestion. The prospects of the group implicating Mfalapitsa would have been relatively slim and even if they were to do so they would have referred to him as MK member. They were unaware of the fact that Mfalapitsa was an askari and the police themselves would obviously not have unmasked him. There was accordingly no real prospect of this happening on the remote possibility that the group might have implicated him. Insofar as the former consideration concerning a possible inadequate prison sentence is concerned, it needs to be pointed out that the offences in question were serious ones and would have been so regarded by the courts at the time. The real likelihood of heavy sentences being imposed upon conviction, was therefore not excluded. There was accordingly no reasonable basis for discounting this fact out of hand in the circumstances of the case and to opt for illegal activity with such drastic consequences. The option of arrest and arraignment was thus in our view available to Applicants as an effective, legal and far less drastic option than settling for murder. There was also the further available avenue of acting against the group in terms of the security legislation which allowed, amongst other things, for preventative detention. This option was not explicitly excluded in the applications. Applicants' stated aversion to arresting the group similarly does not effectively exclude the latter option which was also open to the Applicants in the circumstances. In our view the option to eliminate the group could never justifiably have been adopted in the circumstances of this case, until the effect of these less drastic measures was tested and fully and properly assessed. None of the victims were seasoned activists or hardened revolutionaries. The probability that these alternative options would have had the desired effect can therefore not be excluded out of hand or be considered so remote that the only realistic option that remained was to murder the members of the group. It needs to be pointed out that we are mindful of the fact that we have to adopt a realistic approach in assessing the options available to the Applicants and should not allow ourselves to be unduly influenced by the wisdom of hindsight. We bear all of these considerations in mind.

Having carefully considered the matter, we are not satisfied that there was any direct or proximate relationship or nexus between the offences and the political objective which the Applicants allegedly pursued. The alleged relationship was speculative and fanciful in our view. The offences were, moreover, wholly disproportionate in the circumstances. Applicants failed in particular to lay any convincing basis for excluding the adoption of the less drastic measures which were at their disposal and which are referred to above. To summarily murder three members of the group and very seriously injure Musi within a few days of the first discussion with Mfalapitsa, fall way short of the actions which could be justified in the instant case in terms of the criteria set out in section 20(3)(f).

In the circumstances the applications are REFUSED.

DATED AT CAPE TOWN THIS DAY OF 2001.

D POTGIETER, A J

ADV L GCABASHE

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4 September 2019

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**INVESTIGATION INTO THE MURDER OF THE CSOS 4: BOMBING AT DISUSED MINE DUMP:
KUGERSDORP: TRC NUMBER AC/2001/198**

1. The above matter refers.
2. We have conducted a preliminary survey of all material at our disposal including the TRC Amnesty applications. In our view the undermentioned steps ought to have been investigated by now. If not investigated such steps ought to be expedited as soon as possible.
3. Since we do not wish to spend unnecessary resources investigating matters already addressed, we accordingly request you to indicate which steps in the attached activity list have been investigated and resolved.
4. It will be appreciated if we could have your response by Monday, 16 September 2019 so that we can submit a progress report to our clients.
5. We also request to meet with you and the investigating officer as soon as your diary allows. Kindly indicate when we may meet.

Your assistance and cooperation are appreciated.

Yours Faithfully

Y Sooka

Activity Sheet.

<u>Activity</u>	<u>Names of Witnesses</u>	<u>Investigated</u>	<u>Not Investigated</u>	<u>Result</u>
1. The Original Police Docket must be traced – The CR number is not known	SAPS			
2. All the original documents in the original docket must be traced They are: <ol style="list-style-type: none"> Crime Scene photographs Original Explosive reports Injury reports It must be established what type of explosives were used. Rorich said at the Amnesty Hearing that he used Military type explosives PE4. 	SAPS			
3. Trace the original Inquest Documents. It is important to get these documents as we need to compare what these individuals said at the inquest.	Magistrates Court Krugersdorp			
4. Apply for the applicant's original	Archives	SAPS DPCI	Date to be determined	

<p>applications to the Amnesty Committee TRC no AC/2001/198 including the undermentioned exhibits entered into the record:</p> <ul style="list-style-type: none"> a. Exhibit A b. Exhibit B c. Exhibit C d. Exhibit C1 e. Exhibit D f. Exhibit H g. Exhibit P45, P46 and P47 h. Exhibit I 				
<p>5. During the Amnesty Hearings a document Exhibit 'A' called 'Algemene Agtergrond tot Amnestie Aansoeke' was entered into record. This must be obtained.</p>	Archives	SAPS /DPCI	Date to be determined	
<p>6. The original Post Mortem to establish to actual cause of death</p>	Mortuary	SAPS /DPCI	Date to be determined	
<p>7. Another exhibit P45, P46 and P47 was appended to the TRC record. The document is called 'Stigting vir Gelykheid voor die Reg'</p>	Archives	SAPS /DPCI	Date to be determined	
<p>8. The undermentioned person's status must be decided by the NPA as to who to</p>	Accomplice witnesses	NPA	Date to be determined	

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utilize as section 204 witnesses and who to charge and maybe prosecute in stages. None were granted amnesty: a. Brigadier Johan Du Preez. – Did not apply for Amnesty b. Brigadier Willem Schoon c. Captain Jan Carel Coetzee d. Abraham Grobbelaar e. Christiaan Siebert Rorich f. Thlamedi Ephraim Mfalapitsa (Weston) g. Van Tonder – believed to be Deceased h. Joe Mamasela	mentioned in paragraph 5			
9. Zandisile Musi must be interviewed in detail. His affidavit must have been taken, but we must consider retaking it as there are issue that has to be canvassed.	Zandisile Musi			
10. Warrant Officer Nkosi must be traced and interviewed and his affidavit recorded. He was also present when Zandisile Musi was interrogated and tortured after explosion. He also	Warrant Officer Nkosi	SAPS/DPCI	Date to be determined	

ND

R/S

attended the scene of the explosion.				
11. Detailed medical reports and J88 injury reports must be obtained from the Leratong Hospital in Krugersdorp in respect of Zandisile Musi.	Leratong Hospital	SAPS/DPCI	Date to be determined	
12. It was alleged in the TRC hearing that the COSAS 4 wanted to murder a teacher Matsidisa. Trace this teacher and interview and obtain his affidavit.	Teacher Matsidisa	SAPS/DPCI	Date to be determined	
13. Coetzee in his testimony mentioned a sketch plan that was drawn by the COSAS 4 as to how they were going to kill Nkosi and the teacher. This sketch plan must be traced.	Coetzee and Mfalapitsa	SAPS/DPCI	Date to be determined	
14. Brigadier MR SCHOON in his evidence alleges that there was a weekly security review or report that was compiled on a weekly basis. Attempt to trace these security minutes. This may suggest that General Coetzee knew of the	SAPS Security Head Office	SAPS/DPCI	Date to be ascertained	

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order to kill the CSOS 4.				
15. A Van Tonder was apparently with the group when the explosion was set off. He is said to be deceased. Obtain Proof of death	Family of Van Tonder	SAPS/DPCIM	Date to be determined	
16. Mfalapitsa's cousin apparently told him that Musi wanted to see him about going abroad to train. Trace her and obtain her affidavit	Mfalapitsa's Cousin	SAPS/DPCI	Date to be determined	
17. Establish what happened to Lumgile the brother of Musi who went into exile for MK training. Trace him and obtain his affidavit.	Lumgile	SAPS/DPCI	Date to be ascertained	
18. From the evidence led at the TRC Amnesty Committee the police were investigating the explosion where Musi was a suspect. He was arrested and detained. Trace this docket and establish who the investigating Officers were. Trace and interview these policemen. This docket must be an	SAPS	SAPS/DPCI	Date to be ascertained	

exhibit in the subsequent Judicial Hearings				
19. Trace and interview Nomvula. She was in exile and established that Mfalapitsa had turned Asakari.	Nomvula	SAPS/DPCI	Date to be ascertained	
20. Two SB policemen visited Musi in hospital with Nkosi after the explosion. Trace and interview them. Nkosi can assist and trace them.	Trace via Nkosi	SAPS/DPCI	Date to be ascertained	
21. Trace the next of kin of the deceased and interview in detail. Affidavits must be recorded	Deceased next of kin	SAPS DPCI	Date to be ascertained	
22. Musi's relatives must be traced and interviewed. They may assist and confirm that Mfalapitsa visited them	Family of Musi.	SAPS/DPCI	Date to be ascertained	

MINUTES OF THE MEETING HELD ON 29 OCTOBER 2019 AT 15H00 AT THE NPA
OFFICE, JOHANNESBURG

ATTENDEES:

WW:

Moray Hathorn

Sam Robb

Caellyn Eedes

Brigadier Clifly Marion

Advocate JJ Mlotshwa

Sergeant J Tjiane

ABSENT: Advocate JJ Du Toit

1. INTRODUCTION AND GENERAL PURPOSE

- 1.1 Brigadier Marion thanked everyone for taking the time to meet with all the present parties.
- 1.2 The purpose of the meeting was to
- 1.2.1 Identify a number of issues to be investigated; and
- 1.2.2 determine the way forward based on an activity sheet previously prepared on the matter
- 1.3 The Foundation for Human Rights ("FHR") requested legal assistance on a number of "cold cases from the past". Webber Wentzel is not on brief for the families as of yet but they have been instructed by the FHR to attend the meeting.



2. BACKGROUND

- 2.1 Brigadier Marion gave a brief background to the event that transpired on 15 February 1982, whereby three young students were killed and one was injured (Zandisile Musi) as a result of a bomb explosion:

Four young students were living in a township in Krugersdorp, called Kagiso Township. At that stage, there was an MK member turned Askari, named Ibram Mfalapitsa. He received military training under exile in various countries and apparently trained with Musi's brothers. Mfalapitsa was not happy in exile and joined the security branch. Before the incident, Mfalapitsa reported to Coetzee - another member of the security branch - that 4 students (COSAS members) had planned to kill a policeman and a council member. Coetzee reported to Brigadier Schoon who then reported to General Du Preez. General Du Preez instructed Mfalapitsa to convince the students otherwise, to which Mfalapitsa failed to do. As a result, Schoon and Du Preez arranged for the murder of the students. The students would be lured to a mine dump by Mfalapitsa under the belief that they would be receiving training on how to use explosives. At the mine dump, explosives would be detonated, killing the students under the guise that they accidentally detonated the explosives themselves. Mfalapitsa put the plan into action by luring the students to the mine dump before running out the building as a signal to detonate the explosives by the students. 3 students died upon impact and one, Musi, survived but was severely injured. Musi is still alive to date. Of the deceased, only Matebane had an ID number.

3. THE TRC AMNESTY HEARING

- 3.1 Brigadier Marion confirmed that despite the testimonial of the suspects involved, amnesty was not granted at the TRC hearing.
- 3.2 Mr Hathorn confirmed that the reason for this was the absence of proportionality between the act of killing the students and the political objective in preventing the murders of the policeman and council member.
- 3.3 Brigadier Marion added that the applicants lied as well.
- 3.4 Brigadier Marion confirmed the list of TRC Amnesty applicants, including:
- 3.4.1 Brigadier Schoon



- 3.4.2 Coetzee
- 3.4.3 Van Tonder (who might be deceased)
- 3.4.4 Adrian Grobbelaar
- 3.4.5 Joe Madosela
- 3.5 General Du Preez did not apply for amnesty.

4. AFTER THE INCIDENT

- 4.1 Sergeant Tjiane confirmed that there was no post mortem report completed as the morning after the explosion, the families of the deceased were instructed to collect the deceased's bodies for burial. This would not allow enough time for the compilation of a post mortem report.
- 4.2 Sergeant Tjiane further confirmed that no inquest was held despite the unnatural deaths of the deceased.
- 4.3 Sergeant Tjiane then informed the attendees that the only case that was opened as a result of the incident against Musi was for possession of illegal explosives but that he could not ascertain the case number as of yet. It seems that Musi was charged and convicted.
- 4.4 Brigadier Marion commented that by failing to hold an inquest into the unnatural deaths, the ends of justice were defeated.

5. THE POTENTIAL CASE

- 5.1 Mr Hathorn queried how the case will be proven.
- 5.2 Brigadier Marion replied by highlighting the reliance on the testimonials of key participants in the incident, being Musi (a victim) and Mfalapitsa (a perpetrator).
- 5.3 Brigadier Marion further confirmed that the following means could be used to obtain evidence:
 - 5.3.1 Section 204 immunity deal; and
 - 5.3.2 The evidence from the TRC Amnesty hearing - this is not automatically excluded from evidence as inadmissible.

6. POTENTIAL CHARGES

6.1 Brigadier Marion listed the potential charges to be laid against the suspects decided on by the NPA:

6.1.1 Conspiracy to commit murder;

6.1.2 Unauthorised use of explosives - contravention of the explosives legislation;

6.1.3 Use of illegal weapons - contravention of weapons legislation;

6.1.4 Attempted murder; and

6.1.5 Murder.

7. TO DO LIST

7.1 Brigadier Marion listed a plan of action going forward throughout the meeting which included the following:

7.1.1 Sergeant Tjiane to trace the original police docket. Alternatively, draft an affidavit, deposed to by Sergeant Tjiane, confirming that:

7.1.1.1 the docket has been thoroughly searched for, to no avail;

7.1.1.2 as such, it is either missing or the incident was covered up;

7.1.1.3 in the circumstances, no post mortem reports were completed.

7.1.2 Exhume the bodies to obtain a correct pathologist report - post mortems (exhumation applications).

7.1.2.1 Advocate Mhlotshwa suggested consulting the families first.

7.1.3 Thorough discussion or consultation with the family members, especially pertaining to the death certificates and the absence of post mortem reports.

7.1.4 Follow up with home affairs regarding the reference numbers on the death certificates.



- 7.1.5 Obtain exhibits from Mrs Louw for TRC AC/2001/198 - through a PAIA application - Brigadier Marion to send the form to Sergeant Tjiane and Advocate Mhlotshwa.
- 7.1.5.1 Exhibit A: during the TRC hearings, the police, the defence force and everyone in government entered into a standard document highlighting that they were acting on instructions of the government of the day. This document was a requirement to apply for amnesty.
- 7.1.5.2 Original post mortem reports - these likely do not exist hence the need for exhumation.
- 7.1.5.3 Exhibit P45, 46 and 47: created a type of foundation to apply for amnesty.
- 7.1.6 NPA must make a decision on who should be arrested in terms of section 204 of the Criminal Procedure Act, including the options of:
- 7.1.6.1 General Du Preez;
- 7.1.6.2 Brigadier Schoon;
- 7.1.6.3 Coetzee;
- 7.1.6.4 Mfalapitsa;
- 7.1.6.5 Madosela;
- 7.1.6.6 Van Tonder - who might be dead.
- 7.1.7 To decide whether we need a formal inquest or whether to pursue a criminal matter immediately on the charges of murder.
- 7.1.8 Brigadier Marion to send an email to advocate Mhlotshwa regarding who of the suspects are still alive.
- 7.1.9 Sergeant Tjiane to obtain the case number for the court case against Musi.
- 7.1.10 Consultation with Musi regarding the circumstances surrounding his arrest as well as recollection of the incident (crucial witness).
- 7.1.11 Find out whether Nkosi is still alive.



- 7.1.12 Trace Matsidisa - council member.
- 7.1.13 Draft next of kin affidavits on what happened after the victims left home up until receiving potential post mortem reports/the bodies of the deceased.

8. NEXT MEETING

- 8.1 All attendees agreed to hold a further meeting for updates on the above. The meeting is to be held on 4 December 2019 at 10h00 until 13h00 at the NPA offices, Johannesburg.

MEETING ADJOURNED

Handwritten signature and initials, possibly 'MS'.

WEBBER WENTZELin alliance with > **Linklaters****Adv Van Deon Wyk**
National Prosecuting Authority

AND TO

Adv Jabulani J Mlotshwa
National Prosecuting AuthorityEmail address: dvanwyk@npa.gov.za;
jjmloshwa@npa.gov.za90 Rivonia Road, Sandton
Johannesburg, 2196PO Box 61771, Marshalltown
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Your reference

Our reference

Date

M Hathorn / S Robb
3036967

23 March 2020

CONFIDENTIALITY NOTE: This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Advocates van Wyk and Mlotshwa

COSAS 4 (Krugersdorp bombing case)

1. I refer to our meeting that took place at the NPA office in Johannesburg on 11 March 2020 and confirm the undermentioned action items were discussed:

- 1.1 The Investigating Officer will obtain all TRC amnesty original applications (affidavits) including the undermentioned exhibits for Advocate Van Wyk.

- a. Exhibit A
- b. Exhibit B
- c. Exhibit C
- d. Exhibit C1
- e. Exhibit D
- f. Exhibit H
- g. Exhibit P45, P46 and P47
- h. Exhibit I

14912397_6

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa M Adderley NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair DHL Booyen AR Bowley MS Burger RI Carrim T Cassim SJ Chong KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman C Gabriel KL Gawth OH Geldenhuys MM Gibson CI Gouws PD Grealis S Haroun JM Harvey MH Hathorn JS Henning KR Hillis S Hockey CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings CM Jonker S Jooste LA Kahn ACR Katze M Kennedy A Keyser MD Kota JC Kraamwinkel M Kyle J Lamb E Louw M Mahlangu L Marais MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu M Moloi LE Mostert VM Movshovich RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane M Philippides BA Phillips MA Phillips D Ramjetan GI Rapson K Rew SA Ritchie NJA Robb G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Noguelra P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor TK Thekiso C Theodosiou R Tihavani PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson M Yudaken Chief Operating Officer: SA Boyd

- 1.2 That a copy of the existing docket will be made available to Adv Van Wyk no later than 13th March 2020 at 11:00;
- 1.3 Once Advocate Van Wyk has gone through the docket, he will instruct the IO on further matters that need to be followed up on;
- 1.4 The IO must arrange with Advocate Van Wyk for the affidavit to be drawn for exhumation. Please see below our concerns in relation to this;
- 1.5 Investigative Activities in the Project Plan produced by Brigadier Marion to be reproduced by Advocate Van Wyk on an official DPP letter head as instructions to Investigating Officer;
- 1.6 Advocate Van Wyk to submit all evidence to a magistrate for a finding in terms of section 16 of the Inquest Act, 1958 by way of an informal inquest. Please see below our concerns in relation to this;
- 1.7 Investigating Officer to interview next of kin of the deceased on 23/24 March 2020 in order to ascertain certain aspects;
- 1.8 Advocate Mlotshwa to discuss with IO Tjiane as to his capacity and if he is unable to begin work on the case immediately then a new IO with capacity needs to be assigned;
- 1.9 Advocate Mlotshwa must talk to Brigadier Xaba about this matter (Advocate Mlotshwa suggested that he would speak to Brigadier Xaba and Advocate Macadam in order to get a dedicated investigative team for the TRC matters);
- 1.10 Next meeting scheduled for 15th April 2020 at 10h00.
2. Pursuant to the meeting we would like to raise the following issues as matters of concern.
3. **Holding of an Inquest**
 - 3.1 This was suggested by Advocate Van Wyk. However, we respectfully request that the NPA proceed directly to a prosecution. We point out that informal inquests (on the papers) are typically only held when little or no information is available in relation to the circumstances of death. In this case there is considerable evidence available,

suggesting that either a prosecution must be instituted, or a formal inquest be held with the leading of oral evidence.

3.2 However, an inquest may only be held when the circumstances of death are unclear and where there is currently no prospect of a prosecution. The holding of an inquest for the sole purpose of gathering further evidence against known suspects may amount to an abuse of process (*In Re Mjoli 1994 (2) SA 815 (T)*).

3.3 We already know from the proceedings before the TRC Amnesty Committee the actual circumstances under which the COSAS 4 died. We also know exactly who the direct suspects are. At least 5 of the suspects were refused amnesty for the murder of the COSAS 4. We note that the proceedings of the TRC Amnesty Committee, in relation to the COSAS 4, are admissible in subsequent criminal proceedings since s 31 (dealing with 'use immunity') of the Promotion of National Unity and Reconciliation Act, 34 of 1995, was not invoked.

3.4 An inquest in these circumstances will unduly prolong already long delayed proceedings. In our respectful view, if the NPA has the evidence to prosecute, it should prosecute.

4. The advanced age of the perpetrators.

4.1 Advocate Van Wyk said that the court may not hear the matter as the perpetrators are old and therefore, it is better to have an inquest.

4.2 The ages of the potential accused, and their state of health have not been disclosed to us. However, even if old and frail, South African case law is clear that age and infirmity are not a bar to the pursuit of justice but are factors to consider at the sentencing stage (*S v Hewitt 2017 (1) SACR 309 (SCA)* and *S v Zinn 1969 (2) SA 537 (A) at 542B-C*). See also paras 83 to 88 of the recent full bench decision in *Rodrigues v National Director of Public Prosecutions of South Africa and Others [2019] 3 All SA 962 (GJ); 2019 (2) SACR 251 (GJ)* which confirmed that old age and infirmity, on their own, do not necessarily prejudice an accused's right to a fair trial, but are factors to be considered at sentencing.

4.3 Indeed, the advanced age of the suspects and the long neglect of this case should spur the NPA and SAPS to pursue justice for the families and South African society with greater urgency.



5. The exhumation of the bodies

- 5.1 Advocate Van Wyk said that the bodies must be exhumed to confirm identities and since the death certificates indicate "multiple injuries" there must be proof that they were indeed blown up. It is unclear to us why an exhumation is necessary to confirm identities by way of DNA testing. There is no dispute as to the locations of the graves and the identities of the bodies held therein. At no time did the bodies go missing. We also note that there is a long delay in DNA testing of more than a year, which will further delay proceedings.
- 5.2 More significantly there does not appear to be a dispute as to cause of death. The suspects have admitted under oath before the TRC's Amnesty Committee that they did blow up the deceased. An extract from decision AC/2001/198 reads *"this offer was unsolicited and was a ruse intended to lure the group to a secluded spot where they would be killed with explosives. Within a few days after Mfalapitsa's first discussion with Musi, three of the youths were killed and Musi very seriously injured in a planned explosion caused by some of the Applicants under the guise that the victims were being given military training."*
- 5.3 The investigating officer advised us that the families were informed, immediately after the deaths, to bury the bodies or they would be given a pauper's burial in unmarked graves. Accordingly, the families were coerced into hastily arranging the burials to avoid the bodies being removed by the police to undisclosed sites.
- 5.4 The evidence under oath of the 5 policemen who applied for amnesty is that they arranged for the COSAS members to be blown up and that the order came from the Security Branch. The evidence of Mfalapitsa, who was an askari at the time (and one of the 5 policemen mentioned above), can also be relied on. Mfalapitsa provided the following evidence before the TRC in case no. AM3592/96¹:
- 5.4.1 He was informed by the four victims that they wanted to leave the country for military training as they thought that he was still ANC. On hearing this Mfalapitsa informed Captain Johan Coetzee who instructed him to dissuade

¹ His evidence can be accessed here:

<file:///C:/Users/SamaR/AppData/Local/Microsoft/Windows/NetCache/Content.Outlook/IYXE90NS/TRC%20Hearings.%20Bimbo%20AC2001.198%20Day%20Two.html>

them from attending military training and find out if they have a specific reason for doing so. If this fails, Mfalapitsa was instructed to offer them military training locally.

- 5.4.2 Mfalapitsa got some information out of the four victims - that they intended to attack warrant officer Nkoise and a man by the name of councillor Matsidisa. Mfalapitsa made the offer to train them locally and the 4 victims accepted.
- 5.4.3 Mfalapitsa reported this back to Captain Coetzee who said he must make arrangements for a date to train them and they will set a trap for them, and this is what subsequently happened.
- 5.4.4 Mfalapitsa and Joe Mamasela collected the four victims at Kalafong at around 8 o'clock on 15 February 1982. Mfalapitsa, Mamasela and the four victims then drove to a mine in the West Rand and Mamasela left Mfalapitsa there with the four victims. Mfalapitsa and the four victims entered the pump house where Mfalapitsa was supposed to give them training, which was rigged with explosives. Mfalapitsa took out hand grenades and showed the four how they work. Mfalapitsa then told them he was going to fetch some other equipment and left the area. Mfalapitsa then locked the door and joined Mr Coetzee and Mr Rorich (who was a Lieutenant) and they detonated the explosives.
- 5.5 Having said the above, we note that there were no post-mortem reports nor an indication that an examination of the bodies was conducted by the District Surgeon. This has been confirmed by the Investigating Officer and Brigadier Marion. The absence of such reports is further indication of a cover-up. There is a mandatory requirement in terms of s 3(2) of the Inquests Act 58 of 1959 that any death other than from natural causes **shall be examined by the district surgeon or other medical practitioner**. Section 3(4) stipulates that where the examination in subsection (2) was not conducted and the body buried it may be disinterred (exhumed) with the written permission of a magistrate or the attorney general (provincial DPP).
- 5.6 We are accordingly of the view that an exhumation should take place without further delay and that the DPP (Gauteng) should provide the necessary written permission in terms of s 3(2) of Act 58 of 1959; and that once done, a prosecution of the known suspects should proceed.



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Page 6

6. May we kindly have your urgent response regarding these concerns.

Yours sincerely

**WEBBER WENTZEL**

Moray Hathorn

Partner

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Advocate Andrew Chauke
Director of Public Prosecutions,
Johannesburg

Email address: ACHauke@npa.gov.za

COPY TO

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National Prosecuting Authority

Investigating Officer Tjiane
South African Police Service

Ahmed Mayet
Foundation for Human Rights

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(Page 1 of 3 including this page)

Your reference

Our reference

Date

M Hathorn / S Robb
3036967

08 April 2020

CONFIDENTIALITY NOTE: This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Advocate Chauke

Our client: Family of the late Eustice Madikela: Matter: TRC Amnesty Application

Number: AC/2001/198

1. We act for the family of the late Eustice Madikela. We are instructed by the families' representative Mrs Maide Selebi. She is the sister of the late Eustice Madikela.

2020 04 08 WW To Adv Chauke

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa M Adderley NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett T Blackbeard AP Blair DHL Booysen AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman C Gabriel KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealay S Haroun JM Harvey MH Hathorn JS Henning KR Hillis Z Hlophe S Hockey CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel M Kyle J Lamb E Louw M Mahlangu V Mannar L Marais MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu M Moloi LE Mostert VM Movshovich RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane M Philippides BA Phillips MA Phillips D Ramjettan GI Rapson K Rew SA Ritchie NJA Robb G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

2. Eustice Madikela was one of the Cosas 4. The other 3 were Zondisile Musi, Fanyana Nhlapo and Itumeleng Matabane. All but Zondisile Musi were killed in a bomb explosion at a mine dump in Krugersdorp on 15 February 1982.
3. The conspiracy to murder them and the actual killing appears from the following documents, which are attached:
 - 3.1 Evidence of former SAP Security Branch member Ephraim Mfalapitse in the amnesty hearing of W F Schoon and others (Case Number AM3592/96) held in Johannesburg on 4 May 1999. See in particular pages 8 and 9 of the transcript where the killing is described.
 - 3.2 Amnesty decision (AC/2001/198) relating to Willem Schoon, Abraham Grobbelaar, Christiaan Rorich and Mfalapitse in respect of the killing of the 3 and the injury to Musi in terms of section 18 of The Promotion of National Reconciliation and Unity Act.
4. As appears from the attached decision of the Amnesty Committee (AC/2001/198) amnesty was refused to all applicants. The case was referred by the Truth and Reconciliation Commission (TRC) to the National Prosecuting Authority (NPA) for further investigation and prosecution shortly thereafter, but was neglected for more than 18 years. We assume that this neglect was attributable to the political interference which saw the suppression of virtually all cases referred by the TRC to the NPA.
5. A fresh investigation was revived in 2020 at the request of the Foundation for Human Rights (FHR) and is being led by Advocate Deon van Wyk of the NPA assisted by Advocate Jabulani Mlotshwa. In light of the available evidence we have requested Advocates Van Wyk and Mlotshwa to proceed with a murder prosecution against the known suspects.
6. The prosecution team is consulting with our office in this regard. It has emerged that following the murders, and contrary to the provisions of section 3(2) of the Inquests Act, a post-mortem examination was not held in the case of 3 deceased members of the Cosas 4. Their bodies were hurriedly released to the families for burial with the instruction to bury quickly. The families buried them in known marked graves.

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Page 3

7. In the premises the law requires that a post- mortem examination be held by the District Surgeon in the case of each of the deceased. Although there is no dispute that the deceased were killed by the aforesaid explosion, such post mortem reports will be useful to subsequent prosecution in confirming the nature of the murders.
8. Accordingly we request on behalf of the family of the late Eustice Madikela that you act in terms of section 3(4) of the Inquests Act and arrange for the speedy disinterring of his body for purposes of a post mortem. The family would wish to appoint their own forensic pathologist to attend the disinterring and the post- mortem.
9. As the requested prosecution also includes the cases of Nhlapo and Matabane we request you to exercise your *mero motu* powers under section 3(4) to authorise the disinterring of their bodies for the same purpose.
10. We request your urgent response. Having regard to the delay of some 18 years since the TRC handed the cases over to the NPA, further delay must be avoided. We would be grateful to receive your response to this letter by 15 April 2020.

Yours faithfully

WEBBER WENTZEL

Moray Hathorn

Partner

Direct tel: +27 11 530 5539

Direct fax: +27115306539

Email: moray.hathorn@webberwentzel.com

Letter sent electronically. A signed copy will be provided on request.

**IN THE MAGISTRATE COURT OF SOUTH AFRICA
(KRUGERSDORP)**

CASE NO

In the application between:

MAIDE CHRISTINA SELEBI

First Applicant

PATIENCE NHLAPO

Second Applicant

AND

**DIRECTOR OF PUBLIC PROSECUTION, SOUTH
GAUTENG: ANDREW CHAUKE**

First Respondent

**NATIONAL DIRECTORATE HEAD OF THE
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION: SESWANTSHO GODFREY
LEBEYA**

Second Respondent

**HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM:
MADELEINE FULLARD**

Third Respondent

MOGALE CITY LOCAL MUNICIPALITY

Fourth Respondent

**FORENSIC PATHOLOGY SERVICES,
ROODEPOORT**

Fifth Respondent

**GAUTENG PROVINCIAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE:
LIEUTENANT GENERAL E MAWELA.**

Sixth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

PATIENCE NHLAPO

do hereby make oath and state:

M.V.

P Nhlapo

1. I am an an adult female with ID number 49042202380802, residing at 6549 Sebenzisa Drive, Kagiso 2, Gauteng. I am a pensioner. I am the second applicant in the above application and I am the cousin through marriage of Fanyana Nhlapo.
2. The facts herein contained are, save where the contrary appears, within my personal knowledge and are, to the best of my belief, both true and correct.
3. I have read the founding affidavit of **Maide Christina Selebi**, dated 25 August 2020, together with the annexures attached thereto and confirm the contents therein insofar as they relate to the death of my cousin through marriage, Fanyana Nhlapo, who was murdered on 15 February 1982.
4. At the time of Fanyana's death, in 1982, I was living in a house with my in-laws (my husband's parents). Fanyana, who was my husband's cousin, lived with us as my mother-in-law took care of him (as his mother, who was my mother-in-law's sister, was not around). Sometime during the week, in the morning, some policeman came to the house and told us that Fanyana, Eustice Madikela and Ntshingo Mataboge had blown themselves up and were dead. They did not tell us where to find their bodies so my mother-in-law, my sister-in law and my husband went to Leratong Hospital to try and find them. They were unable to find them there so they decided to go to the mortuary in Roodepoort and there they found Fanyana and identified his body.
5. The funeral for Fanyana, Eustice Madikela and Ntshingo Matabogewas took place at the same time, the next weekend, and they were all buried next to eachother in Kagiso Cemetery.

P Nhlapo
M.V

6. My husband, mother-in-law and sister-in-law are no longer alive - my husband died in 2018, my mother-in law died in 1983, and my sister-in-law died in 2008.

P. Nhlapo
PATIENCE NHLAPO

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at Krugersdorp on 2020-08-25 2020, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1046 of 19 August 1977, as amended, having been complied with.



71761334
M
COMMISSIONER OF OATHS

Full names: Mashigo Vink
Business address: 118 Commissioner Street
Designation: Constable
Capacity:

**IN THE MAGISTRATE COURT OF SOUTH AFRICA
(KRUGERSDORP)**

CASE NO

In the application between:

MAIDE CHRISTINA SELEBI

First Applicant

PATIENCE NHLAPO

Second Applicant

AND

**DIRECTOR OF PUBLIC PROSECUTION, SOUTH
GAUTENG: ANDREW CHAUKE**

First Respondent

**NATIONAL DIRECTORATE HEAD OF THE
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION: SESWANTSHO GODFREY
LEBEYA**

Second Respondent

**HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM:
MADELEINE FULLARD**

Third Respondent

MOGALE CITY LOCAL MUNICIPALITY

Fourth Respondent

**FORENSIC PATHOLOGY SERVICES,
ROODEPOORT**

Fifth Respondent

**GAUTENG PROVINCIAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE:
LIEUTENANT GENERAL E MAWELA.**

Sixth Respondent

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Dated at JOHANNESBURG on 27 AUGUST 2020.

**WEBBER WENTZEL**

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Email: info@fickattorneys.co.za
Ref: E Bosman / WW

To:
THE REGISTRAR
Magistrate's Court
Krugersdorp

BY HAND

And to:
**MR ANDREW CHAUKE: DIRECTOR OF PUBLIC PROSECUTIONS,
GAUTENG**
Fist Respondent
6th Floor
C/o Pritchard & Von Brandis Streets,
Johannesburg, Gauteng

BY SHERIFF

And to:
**LIEUTENANT-GENERAL DR SESWANTSHO GODFREY LEBEYA: HEAD OF
THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATIONS**
Second Respondent
A5 Promat Building,
1 Cresswell Road, Silverton,
Pretoria, Gauteng

BY SHERIFF

And to:

**MADELEINE FULLARD: HEAD OF THENATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM**

Third Respondent

VGM Building (Corner Westlake & Hartley) 123 Westlake Avenue,
Weavind Park,
Silverton,
Pretoria, Gauteng

BY SHERIFF

And to:

**PRINGLE RAEDANI: MUNICIPAL MANAGER OF THE MOGALE CITY
LOCAL MUNICIPALITY**

Fourth Respondent

corner of Commissioner and Market Street,
Krugersdorp, Gauteng

BY SHERIFF

And to:

**ANDRE STANDER: MANAGER OF FORENSICS OF FORENSIC
PATHOLOGY SERVICES, ROODEPOORT**

Fifth Respondent

4 Raath Street,
Horizon,
Roodepoort, Gauteng

BY SHERIFF

And to:

**LIEUTENANT GENERAL E MAWELA: GAUTENG PROVINCIAL
COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Sixth Respondent

6 Empire Road
Parktown,
Johannesburg, Gauteng

BY SHERIFF

**IN THE MAGISTRATE COURT OF SOUTH AFRICA
(KRUGERSDORP)**

CASE NO

In the application between:

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Second Applicant

AND

**DIRECTOR OF PUBLIC PROSECUTION, SOUTH
GAUTENG: ANDREW CHAUKE**

First Respondent

**NATIONAL DIRECTORATE HEAD OF THE
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION: SESWANTSHO GODFREY
LEBEYA**

Second Respondent

**HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM:
MADELEINE FULLARD**

Third Respondent

MOGALE CITY LOCAL MUNICIPALITY

Fourth Respondent

**FORENSIC PATHOLOGY SERVICES,
ROODEPOORT**

Fifth Respondent

**GAUTENG PROVINCIAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE:
LIEUTENANT GENERAL E MAWELA.**

Sixth Respondent

DRAFT ORDER

IT IS ORDERED THAT:

1. an examination of the remains of Eustice Madikela, Ntshingo Mataboge and Fanyana Nhlapo must be conducted in terms of section 3(2) of the Inquest Act, 58 of 1959;
2. the fourth respondent is ordered to grant a permit for the disinterment of the remains of Eustice Madikela, Ntshingo Mataboge and Fanyana Nhlapo which are buried at Kagiso Cemetery in graves V8881 V8882 and V8883 for the purpose of removal for a forensic examination of the deceased and to conduct a criminal investigation in terms of section 3(4) of the Inquest Act, 58 of 1959, read with regulations 26(3)(d) and (f) of the Regulations relating to the Management of Human Remains published in Government Notice R363 in Government Gazette 36473 of 22 May 2013;
3. the fourth respondent is ordered to issue a reburial permit so that the disinterment can take place, in accordance with regulations 26 and 27 of the Regulations relating to the Management of Human Remains published in Government Notice R363 in Government Gazette 36473 of 22 May 2013;
4. the fourth respondent, with the support of third and sixth respondents, is ordered to arrange the disinterment of the remains of the deceased described in prayer 1 from the grave sites described in prayer 2, within 30 days of the date of this order;
5. fifth respondent is ordered to carry out a postmortem examination of the said disinterred remains, together with any other necessary medical examination, and to compile a postmortem report and provide same to the

applicants and first and second respondents within 14 days of the date of the disinterment;

6. a medical practitioner and/ or a forensic pathologist nominated by the applicants shall be permitted to be present for the disinterment and medical examination of the remains of Eustice Madikela, Ntshingo Mataboge and Fanyana Nhlapo, in terms of section 3(5) of the Inquest Act, 58 of 1959 and to carry out his or her own examination for purposes of compiling an independent report; and
7. if there is opposition to this application, the costs of the application be awarded to the applicant and be payable by the respondents opposing this application, the one paying the other to be absolved;

Registrar

**IN THE MAGISTRATE COURT OF SOUTH AFRICA
(KRUGERSDORP)**

CASE NO

In the application between:

MAIDE CHRISTINA SELEBI

First Applicant

PATIENCE NHLAPO

Second Applicant

AND

**DIRECTOR OF PUBLIC PROSECUTION, SOUTH
GAUTENG: ANDREW CHAUKE**

First Respondent

**NATIONAL DIRECTORATE HEAD OF THE
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION: SESWANTSHO GODFREY
LEBEYA**

Second Respondent

**HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM:
MADELEINE FULLARD**

Third Respondent

MOGALE CITY LOCAL MUNICIPALITY

Fourth Respondent

**FORENSIC PATHOLOGY SERVICES,
ROODEPOORT**

Fifth Respondent

**GAUTENG PROVINCIAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE:
LIEUTENANT GENERAL E MAWELA.**

Sixth Respondent

FILING NOTICE

TAKE NOTICE THAT the Applicants' file herewith:

1. Confirmatory affidavit of Patience Nhlapo, dated 25 August 2020.

Dated at JOHANNESBURG on 27 August 2020

**WEBBER WENTZEL**

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C/O**Fick Attorneys**

Heritage Office Park, Unit C,
corner of Trezona & Ontdekkers Road,
Mindalore North,
Krugersdorp, Gauteng
Tel: 011 412 7121
Email: info@fickattorneys.co.za
Ref: E Bosman / WW

To:
THE REGISTRAR
Magistrate's Court
Krugersdorp

BY HAND

And to:
MR ANDREW CHAUKE: DIRECTOR OF PUBLIC PROSECUTIONS,
GAUTEN
Fist Respondent
6th Floor
C/o Pritchard & Von Brandis Streets,
Johannesburg, Gauteng

BY SHERIFF

And to:
LIEUTENANT-GENERAL DR SESWANTSHO GODFREY LEBEYA: HEAD OF
THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATIONS
Second Respondent
A5 Promat Building,
1 Cresswell Road,
Silverton,

Pretoria, Gauteng

BY SHERIFF

And to:

**MADELEINE FULLARD: HEAD OF THE NATIONAL PROSECUTING
AUTHORITY MISSING PERSONS TASK TEAM**

Third Respondent

VGM Building (Corner Westlake & Hartley) 123 Westlake Avenue,
Weavind Park,
Silverton,
Pretoria, Gauteng

BY SHERIFF

And to:

**PRINGLE RAEDANI: MUNICIPAL MANAGER OF THE MOGALE CITY
LOCAL MUNICIPALITY**

Fourth Respondent

corner of Commissioner and Market Street,
Krugersdorp, Gauteng

BY SHERIFF

And to:

**ANDRE STANDER: MANAGER OF FORENSICS OF FORENSIC
PATHOLOGY SERVICES, ROODEPOORT**

Fifth Respondent

4 Raath Street,
Horizon,
Roodepoort, Gauteng

BY SHERIFF

And to:

**LIEUTENANT GENERAL E MAWELA: GAUTENG PROVINCIAL
COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Sixth Respondent

6 Empire Road
Parktown,
Johannesburg, Gauteng

BY SHERIFF