

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

**Case No: INQ 01/2021
Original Inquest No: 951/77**

In the matter of:

**THE REOPENED INQUEST INTO THE
DEATH OF DR HOOSEN HAFJEJEE**

OPENING ADDRESS: HAFJEJEE FAMILY

INTRODUCTION

1. I appear on behalf of the Haffejee family with my learned junior, Muhammad Zakaria Suleman. We are instructed by Anwar Suleman Jessop of Anwar Jessop attorneys.
2. We are here today to do justice to the life and death of Dr Hoosen Mia Haffejee ("Haffejee"). In this very month, 44 years ago, Dr Hoosen Mia Haffejee was found hanging in his cell at Brighton Beach Police Station.
3. We are also here today to do justice to the struggle for truth and closure by the Haffejee family, his mother, Fathima Bibi Haffejee, his father, Mohammed Essack Haffejee and sister, Sarah Bibi Lall and brother, Yusuf and Ismail Haffejee. We will hear from Sarah and Ismail. We will not hear from Mohammed who died on 8 May 1986, Yusuf who died on 16 September 2009 and Fathima, who died on 19 April 2011. They went to their graves without the

dignity and closure they so deserved. South Africa has failed the Haffejee family and so many other families waiting for truth and justice from the apartheid era.

4. Fathima Haffejee, like any mother would, fought for justice for her son until the day she died. She never gave up. She wrote several letters to the newspaper pleading for something to be done. On 11 July 1978 she wrote the following letter to the Natal Witness, which was published on 17 July 1978 titled "My son's death in police detention":¹

My son's death in police detention

2638

TODAY is (July 11), and I read about another detainee's death, so it reminds me of my son Dr Hoosen Haffejee who also died while in police detention.

On Monday morning, August 1, 1977, my son wished me goodbye, saying that he would see me on Friday, as he usually came home every Friday since his return from India 22 months ago. My son was a very home-loving person, so he spent three days a week at home and would leave early on a Monday morning for work in Durban. So as usual he left home on Monday, August 1. God knows what happened to him.

On August 3, 1977, we heard that shocking news — he had died in police detention. I could not believe that as my child was no criminal or terrorist. He was a noble young man and a dedicated doctor, but the police found him a dangerous terrorist. What damage had he done or whom had he killed in order to warrant such suspicion? As a sensitive mother she shared a close relationship with her son, I knew that my son was not involved in any political activity, but rather was a carefree person.

The police say that he was a brave man, yes he was brave because he was honest—they also said that

he was desperate, yes because he was in the lions den with no way of escape and no chance of informing his family of his detention.

After his "death", they said they found him hanging in his cell, but I will never, never believe that my son took his own life.

The security police then went to search his flat for about two hours and what did they find? Just two ordinary letters from his friends in India: These were obviously a poor attempt to gather tatty bits of evidence as a means to disguise the main issue, i.e. how and who inflicted these injuries on my son's body?

Although a magistrate's findings are based on the evidence put before him, isn't it strange to find a recurring similarity in the

injuries and bruises found on the bodies of dead detainees and no evidence led about the obvious injuries?

Are we doing enough to see justice being done?

The Prime Minister was quoted in the Natal Mercury, May 25, 1978, confidently stating that "God will open doors to us so that we can fulfil our destiny." I think the time has arrived for us, the Blacks, to pray that God will open a door to protect our destiny from the cruel injustice of the South Africa Security Police. I hope our prayers are answered before it is too late for us all.

As a grieving mother I cannot forget this terrible ordeal; my heart will always cry for my son.

Mrs FATHIMA HAFEEJEE
Church Street
Pietermaritzburg

**THE BIGGEST
MOTORING
IN 30 YEARS**

¹ Volume K, item 1 at page 2637-8 (2677 of PDF).

5. Another letter from Fathima was published in the Rand Daily Mail of 8 November 1978 titled "A mother wakes up":²

8 NOV 1978 RDM

A mother wakes up

I RECENTLY read a letter in the Rand Daily Mail by Mr Promise Mhloko, whose innocent parents had been shot while trying to run away from police missiles. Mr Mhloko, I send you my full-hearted sympathy. I understand your suffering perfectly. I lost my son, Dr Hoosen Haffejee, on August 3, 1977. He died within 28 hours of Security Police detention — apparently he committed suicide by hanging. He had some 50 to 60 bruises.

I have the agonising pictures of his injured body with me — and they make it clear that these bruises could not have been sustained while he was being

arrested or by a most desperate attempt at suicide. My son was home-loving and had no political interests. But somehow the police found him to be a dangerous terrorist! I suspect he was framed.

As with the death of Mr Mhloko's parents, no-one was to blame for my son's death. I don't think I can ever get over the pain and the loss I have suffered.

But the ordeal has not destroyed my fighting spir-

it. Before my son's death I was an ordinary uninformed housewife and mother. But since then I have begun to read. I am now aware of and very much interested in what is happening around me.

The cruel and oppressing law of South Africa has not crushed the people of South Africa — it is in fact rearing a strong, determined and united black group. — MRS FATIMA HAFJEJEE, Maritzburg.

6. Fathima was quoted in a piece published in the Post of May 7 – 10, 1997, in an article titled "Mother's plea as security policeman gives evidence: Who were my son's killers?"³ in which she appealed to the Truth and Reconciliation Commission ("TRC") to put an end to her two decades of pain and suffering:

"I know the truth about how my son died is going to come out one day.....

I want to know the truth about how my boy died. I am very heartsore, and I will not rest until I find out who the killers are.

² Volume K, item 3 at page 2639 (2679 of PDF).

³ Volume K, item 4 at page 2641 (2681 of PDF).

I will never never believe my honest, home-loving and caring son took his own life. He looked forward to coming home very weekend from Durban.”

7. Fathima was correct in saying back in 1997 that she knows that the truth about how her son died will come out one day. That day has eventually arrived. We are confident that this reopened inquest will finally unearth the truth about what happened to Hoosen Haffejee. The question is why the family had to wait for some 44 years for this day, some ten years after Fathima passed away.

THE FIRST INQUEST FINDING

8. The first inquest finding of Magistrate Trevor Blunden (“Blunden” or “the Magistrate”) makes for pitiful reading. He accepted the police version without question, or even raising the slightest concern or apprehension about its improbabilities.
9. Examples of Blunden’s disinterest in the truth was his acceptance of the claims by Lt James Brough Taylor (“Taylor”) and Captain Petrus Lodewikus du Toit (“Du Toit) that Haffejee was violent in nature in that he strenuously resisted arrest and had to be forced into the vehicle on the morning of 2 August 1977; and that he again resisted being placed back into the vehicle following the so-called pointing out at North Pier on the beach at 8 pm.⁴
10. The evidence of Taylor and Du Toit is patent transparent drivel. Haffejee had an unusually small physique for a 26-year-old, weighing only 49 kg (with a

⁴ Pages 3 – 5, Magistrate Blunden Finding. See also Vol A, item 3, p 45 (66 of PDF), lines 10 – 12.

height of 1.75m).⁵ Evidence will be led to show that his weight and frame was comparable to that of an average 14-year-old boy. He had a body mass index (BMI) of only 16, when it should have been between 18.5 and 24.9.⁶

11. In contrast Du Toit and Taylor would not have been out of place in the front or second row of a rugby scrum.⁷ Du Toit weighed 109 kg⁸ and his height was 1.98m⁹, giving him a BMI of approximately 27.8. Taylor weighed in at 82 kg¹⁰ with a height of over 1.75m¹¹ giving him a BMI of 26.8.¹² Indeed, Du Toit admitted he had been a rugby player¹³ and Taylor conceded he “played rugby at the time”.¹⁴
12. There were at least 6 police officers present at the arrest¹⁵ and at least 4 were supposedly present at the alleged pointing out at North Pier.¹⁶ The claim that Haffejee, a tiny person, would have taken on multiple police officers, especially those the size of Du Toit and Taylor on two occasions stretches belief to

⁵ Vol B, p 754, Post-mortem Report, p 2.

⁶ Para 29, Medico-legal Report of Dr S Naidoo, exhibit G24.

⁷ Newspaper photos of Du Toit and Taylor can be viewed at Vol H1, page 1828.

⁸ Volume A, item 3 page 186 (PDF page 207), line 1. The evidence states “240 ponds” being 109kgs.

⁹ Volume A, item 3 page 186 (PDF page 207), line 4-5. The evidence in “ses voet ses” being 6’5” – which was then converted to centimetres.

¹⁰ Volume A, item 3, page 40 (PDF page 61), line 27.

¹¹ We assume that Taylor was the same height as Haffejee. Taylor, in cross-examination stated that he was “perhaps a bit taller than what [Haffejee] would be”. Vol A, item 3, page 41 (PDF page 62), line 17.

¹² The following BMI calculator was used:

https://www.nhlbi.nih.gov/health/educational/lose_wt/BMI/bmi-m.htm

¹³ Line 20, page 594, Vol A

¹⁴ Taylor at TRC Section 29 Hearing, Vol E, paginated page 1054 (p 47).

¹⁵ Gopal affidavit, Vol G, item 26, p1745 (PDF page 1780). These were Du Toit, Taylor, Govender, VR Naidoo and McPherson.

¹⁶ Testimony of Taylor, Vol A, item 3, p 106 – 107, lines 30 – 32. These were Du Toit, Taylor, McPherson and Moonsamy.

breaking point. Indeed, it will be the evidence of former Warrant Officer Mohun Deva Gopal that the so-called pointing out at North Pier in the harbour never took place.¹⁷ It was a story invented to try and explain away the injuries all over Haffejee's body.

13. The fabrication however is easily understood. The Security Branch had to come up with an explanation for the nearly 50 injuries discovered on Haffejee and so they concocted these stories. In so doing they were accommodated by a pliant magistrate who was willing to avert his gaze from logic and the facts.

14. Blunden accepted the SB version while at the same time accepting the claims of:

14.1. Taylor and Du Toit, that at the times of the incidents, when Haffejee apparently had to forcibly subdue he showed no signs of injury and made no complaint to them or the charge office staff,¹⁸ when in fact if he had endured the injuries discovered in the post-mortem in those incidents, his injuries, incapacity and discomfort would have been blindingly obvious to all.

14.2. Constables D Naude and Shadrack Madlala that Haffejee at 3 am in the morning of 3 August was injury free and had no complaints,¹⁹ when if he

¹⁷ Vol G, item 26, p 1771 (PDF p 1806) para 18; see also Vol G, item 26, p 1751 (PDF p 1786) para 65 and p 1752 (PDF p 1787) para 67.

¹⁸ Magistrate Blunden Finding, p 11, lines 6 to 15.

¹⁹ Magistrate Blunden Finding, p 6, line 28.

had the injuries from the claimed encounters with the 2 vehicles earlier in the day, he would have been seriously incapacitated and in much pain.

15. Blunden, in his rush to exonerate the police saw no contradiction in accepting these mutually destructive versions. If Blunden had been engaged in a serious search for the truth, he would have found the evidence of Du Toit, Taylor, Naude and Madlala to be highly improbable, raising serious questions as to what they were hiding.
16. Magistrate Blunden casually finds that nobody had a motive to kill Haffejee,²⁰ completely ignoring the impact of the 50 odd injuries on him, and the serious implications for the police in trying to explain how these occurred, particularly since it is likely that by the end of Haffejee's ordeal, he was most likely incapacitated and quite possibly unconscious.
17. Given the medical evidence Blunden was forced to accept that there "*seems little doubt that at least some of the injuries found on the body ...were in all probability sustained by him whilst he was in the custody of the Security Police concerned, that is Captain du Toit and Lieutenant Taylor...*".²¹ However, notwithstanding this concession, Blunden concludes that any suggestion that Du Toit and Taylor were responsible for such injuries "*is completely unsupported by any evidence and is in fact mere speculation*".²² This jaw dropping conclusion was reached on the basis of their denials "*under oath*", that

²⁰ Magistrate Blunden Finding, p 12, line 5.

²¹ Magistrate Blunden Finding, p 16, line 5.

²² Magistrate Blunden Finding, p 16, line 30.

they corroborated each other, that any such injuries occurred in the two subduing incidents; and that the two were “*unshaken by long and searching cross-examination.*”²³

18. Denials by Security Branch officers under oath were good enough for Blunden. It is quite apparent that Taylor and Du Toit were unshaken in cross-examination because they always knew they had nothing to fear from the inquest proceedings. We will lead evidence to demonstrate that apartheid-era inquests involving the Security Branch were charades designed for the purpose of covering up the truth.
19. Blunden went so far as to claim that even if there was “*direct eye-witness evidence of a deliberate infliction of injuries*” by the police this would be “*entirely irrelevant to this inquest*” since these acts are “*collateral or completely unconnected with the main issue*”, namely the death.²⁴ Needless to say, Blunden offered no explanation for this crass conclusion. He suggests that the very context in which the death occurred is irrelevant to an investigation into how the death occurred.
20. There was not the slightest attempt to explore the impact of the injuries on the physical and mental wellbeing of the deceased and if it was a suicide, whether it was an induced suicide -- given the unrelenting abuse and torture meted out to Haffejee. Not a single question was raised about what the police were willing

²³ Magistrate Blunden Finding, p 17, lines 1 – 10.

²⁴ Magistrate Blunden Finding, p 17, lines 10 – 20.

to do to protect themselves from the inevitable scrutiny that would follow, given the obvious evidence of brutality visited upon Haffejee.

21. Blunden concludes his woeful finding by claiming that after “*careful consideration*” the Inquest Act does not require him to make a finding of suicide, even if the death was a suicide. In his final cop-out, he finds that the Haffejee “*died by hanging*” which “*was not brought about by any act or omission amounting to an offence on the part of any person.*” Aside from the obvious misreading of the Inquest Act, the mind boggles as to why Blunden could not bring himself to put up a reason behind the hanging. While it’s obvious he is suggesting that the hanging was self-inflicted, even if he could not call it suicide, the finding is devoid of any suggestion or motive explaining why Haffejee would take his own life.

22. We will be submitting that Magistrate Blunden conducted himself in manner that was predisposed to a particular result, namely the exoneration of the police from all wrongdoing. He went out of his way to give the police version a veneer of respectability. It was manifest to any casual observer of the first inquest that the magistrate paid little or no regard to the standard of even-handed justice. His manifest bias was plain to see. We will submit that on this ground alone the finding of the first inquest warrants overturning.

APARTHEID-ERA INQUESTS

23. Sadly, the bias of Blunden was no exception in apartheid-era inquests. George Bizos SC, in an affidavit supplied in the Reopened Inquest into the death Dr

Neil Aggett pointed out that most apartheid-era magistrates had no real desire to reach the truth.²⁵ It appeared that some of these magistrates saw it as their duty to protect organs of the state, such as the police. Magistrates tended not to interrogate police versions that vigorously. By way of example, magistrates invariably never asked police the most obvious question: why should a detainee commit suicide when he had the option of remaining silent under interrogation?

24. Bizo SC also points out that apartheid-era inquest courts tended to minimize evidence of the ill-treatment of detainees.²⁶ Official police versions were often contradicted by forensic pathologists who examined the bodies of detainees. Magistrates typically ignored such expert evidence and uncritically accepted the versions of police witnesses.
25. Improbable testimony of police witnesses was invariably rubber-stamped by inquest magistrates.²⁷ Police versions that deceased detainees were treated with care and consideration were readily accepted by the courts notwithstanding evidence of pre-death injuries.

THE HAFJEJEE FAMILY CASE

26. In short, the family will seek to demonstrate that the Security Branch sought to bludgeon Haffejee into submission as quickly as possible to extract information on others, with the aim of apprehending them before they could escape.

²⁵ Neil Aggett Reopened Inquest exhibit G1 p 4 para 15

²⁶ Neil Aggett Reopened Inquest G1 p 5 para 18

²⁷ Neil Aggett Reopened Inquest G1 p 5 para 19.

27. In order to keep his arrest under wraps they did not take him to the SB Headquarters in Fisher Street. They took him rather to a police station off the beaten track, Brighton Beach Police Station on the Bluff in Durban. They did not book him in. They did not take him to an office or interrogation room. They had other plans for him. They needed a place with total privacy where things could get messy. This is why they took him to the station basement storeroom.
28. As soon as they placed Haffejee into the basement storeroom they unleashed a barrage of unrelenting brutality against him. Like many other underground activists linked to the ANC and SACP who had received training on how to handle detentions, Haffejee was expected to hold out for at least 24 hours.²⁸ By all accounts he did not break. He endured his final journey to save his comrades, not himself. This would have enraged his interrogators who would have visited even more barbarity on him.
29. Medical evidence will be led to demonstrate that by the end of his interrogation he had been so battered he was already concussed or in a state of unconsciousness induced by head trauma from blunt force impact, and probably not responding to attempts to revive him or bring him back to consciousness.
30. Given his chest and abdominal trauma he would have been doubled up in pain and breathing with great difficulty. He was probably close to death at that point and may have already died from cardiac concussion. The medical evidence will

²⁸ Affidavit of Mohamed Bhamjee, Vol A, p 1422, para 30.

further demonstrate that he did not die from hanging but more likely from neck constriction, which was a common form of police torture.²⁹ Significantly the medical evidence will show that he did not die between 3 and 4 am on the morning of 3 August 1977 but more likely around midnight, suggesting he may very well have succumbed under torture.

31. It is likely that Security Branch members then used the time between midnight and 4 am to manufacture their cover story. This would have involved slinging up Haffejee on the grille to give the impression that he had committed suicide. It would have included concocting the tall tales of the scuffles at the time of arrest and the fabricated North Pier excursion to explain the multiple injuries visible on Haffejee.
32. Since the Security Branch were the feared elites of the police, they would have encountered no resistance from the uniform branch members who would have done what they were told to do. In this regard, we have searched high and low in the record and come across no exhibit containing Occurrence Book entries booking in Haffejee at midnight as alleged by the SB. This speaks volumes. Such entries may have been withheld knowing that they were fraudulent and may expose those involved to serious criminal consequences.
33. It will be shown that Professor Isidore Gordon made fundamental errors in his post-mortem report, most notably in relation to cause and time of death. It must

²⁹ Vol G, item 24, p 1575 (p 1610 of PDF).

be asked whether Professor Gordon was simply incompetent, or whether he too, like Magistrate Blunden, was politely averting his gaze.

34. It will be demonstrated through medical and trajectory evidence, that even if Haffejee had been alive in his cell in the early hours of 3 August 1977, he would have been in no position to execute the strenuous movements required to hang himself as alleged by the police.
35. Evidence will be led from family members explaining why it would have been totally uncharacteristic for Dr Haffejee to have taken his own life. We will then lead the evidence of eyewitnesses who will testify to his state of being, and physical and mental health prior to his detention, as well their observations of his body at the mortuary and at the funeral.
36. We will lead similar fact evidence from detainees who endured interrogation and torture at the hands of the Security Branch while being detained and interrogated in various Durban areas. Finally, we will set out the *modus operandi* of the Security Branch in carrying out torture to extract information followed by cover-ups of their actions, particularly when deaths occurred in detention.

EFFORTS TO SECURE JUSTICE

Amnesty International

37. Yusuf Haffejee, Hoosen's elder brother, worked with Amnesty International ("AI") to establish the truth around the death. AI appointed a team of high profile Danish forensic specialists to consider the medical evidence.³⁰ After evaluating 18 colour photos of the body, they concluded that he had sustained, inter alia, blows and blunt force injuries.³¹ In particular they concluded that:

37.1. bleeding in the scalp and the lesions on the body and the extremities were caused by heavy blunt violence while the deceased was alive"³².

37.2. bleeding in the connective tissues of both eyes reinforced the view that the cause of death was constriction of the neck.³³

Truth and Reconciliation Commission

38. Yusuf Haffejee appeared on 9 May 1996 before the Human Rights Violations Committee of the Truth and Reconciliation Commission ("TRC") to read a

³⁰ News release, 16 March 1978, Amnesty International, Exhibit C5. The experts were Sigurd Riber Albrectsen (Medical Health Officer), Inge Kemp Genefke (Psychochemical Department, University Hospital, Copenhagen) and Jorgen Voigt (Head of Department of Forensic Pathology, University Institute of Forensic Medicine, Copenhagen, Denmark)

³¹ Correspondence from Amnesty International Investigation, 19 October 1977, p2 Exhibit C2

³² Correspondence from Amnesty International Investigation, 24 February 1978, p2 Exhibit C4

³³ Correspondence from Amnesty International Investigation, 24 February 1978, p2 Exhibit C4

statement prepared by the family.³⁴ His statement details his experiences with the Security Branch following his brother's death and outlines the police cover-up of how Dr Haffejee really died. He strenuously opposed amnesty for the perpetrators.³⁵ Yusuf devoted all his remaining years to fighting for justice for his brother.

39. On 10 May 1997 former Security Branch member, Mohun Deva Gopal, applied for amnesty for his involvement in the assaults perpetrated on Haffejee and Joseph Mdluli.³⁶ In his application³⁷ Gopal asserted that:

39.1. Du Toit, Taylor, McPherson Govender, Benjamin and himself, effectively kidnapped Haffejee and drove him to Brighton Beach Police station;³⁸

39.2. He was present while Dr Haffejee was interrogated and tortured, which took place from morning to midnight, and which were carried out by Lt Taylor and Captain du Toit;³⁹

39.3. Du Toit instructed Gopal and others to prepare their stories for the inquest and told them to say that Haffejee had tried to escape and in so doing, had hit his body on the car.⁴⁰

³⁴ Vol E, item 5, page 967 (PDF page 998).

³⁵ Transcript of testimony of Yusuf Haffejee. Proceedings held at Durban on 8 May 1996 before the Human Rights Violation Committee. Page 50. Available at <https://www.justice.gov.za/trc/hrvtrans/hrvdurb1/durban2.htm>

³⁶ Vol G, item 26, page 1775 (1810 of PDF).

³⁷ Vol G, item 26, page 1766 (1801 of PDF).

³⁸ Para 10.

³⁹ Para 10.

- 39.4. That he did not believe that Haffejee could have committed suicide.⁴¹
40. On 16 July 1997 the TRC's Amnesty Committee refused to grant Gopal amnesty on the grounds that his offence did not relate to an act associated with a political objective.⁴²
41. At a Section 29 hearing before the TRC held on 23 April 1997,⁴³ Captain Taylor was subpoenaed to answer questions about the deaths of numerous anti-apartheid activists including Griffiths Mxenge, Rick Turner, Goodwill Sikhakane and Hoosen Haffejee.
42. Taylor denied assaulting and torturing Haffejee⁴⁴ and maintained the same concocted story he provided at the first inquest.⁴⁵ He did not apply for amnesty.
43. The TRC final report stated that the investigation into the deaths in detention of Dr Haffejee, Bayempini Mzizi, Aaron Khoza and Joseph Mdluli were hampered by the destruction of records but found that there was a *“marked disparity between the official police version and other evidence of the events leading to these victims’ deaths”*.⁴⁶

⁴⁰ Para 18.

⁴¹ Para 19.

⁴² Vol G, item 26, page 1774 (Page 1809 of PDF).

⁴³ Vol E, item 10, page 1007 (1038 of PDF).

⁴⁴ Vol E, item 10, page 1059 (1090 of PDF) para 4.

⁴⁵ Vol E, item 10, page 1092 (1123 of PDF) para 4.

⁴⁶ TRC Final Report. Volume 3, Chapter 3, page 180.

44. In relation to Haffejee, the concluded that the evidence before the commission suggested that he may have died while under torture.⁴⁷
45. Notwithstanding the finding of the TRC, and the fact that Gopal was denied amnesty, and Taylor and Du Toit spurned the process and did not apply for amnesty, the post-apartheid authorities were not moved to take the case forward. Had they done so the perpetrators could have been held to account before they died.

JUSTICE DELAYED IS JUSTICE DENIED

46. At least since the time of the TRC proceedings the roles of the key perpetrators have been known. If the SAPS and NPA had complied with their duties under law and the Constitution the main perpetrators could have faced justice in the years following the winding up of the TRC.
47. They failed to act, and these perpetrators have died in the ensuing years, thereby escaping justice and denying closure to the family. The table below sets out the perpetrators, the roles they played and their dates of death.

SB Member	Evidence against individual
Lt Moonsamy (changed his name to Joseph Benjamin) Deceased: 2010-12-16	<ul style="list-style-type: none"> • Was involved in the arrest of Haffejee • Was present during the brutal assault on Haffejee. • Was present when Haffejee was placed in the cell.
Captain Petrus Lodewikus du Toit	<ul style="list-style-type: none"> • Instructed the arrest of Dr Haffejee • Was involved in the arrest of Haffejee

⁴⁷ TRC Final Report. Volume 3, Chapter 3, page 179.

Deceased: 2008-04-15	<ul style="list-style-type: none"> • Striped Haffejee of his clothing. • Brutally assaulted Haffejee • Detained Haffejee in the cell. • Instructed Gopal to lie.
W/O Shunmugam Govender Not traced Status unknown	<ul style="list-style-type: none"> • Conducted surveillance on Haffejee • Was involved in the arrest of Haffejee • Assaulted Haffejee in the kidney area by punching him • Was present when Haffejee was placed in the cell.
Lt James Brough Taylor Deceased: 2019/08/19	<ul style="list-style-type: none"> • Was involved in the arrest of Haffejee • Striped Haffejee of his clothing • Brutally assaulted Haffejee • Shoved Haffejee into a toilet pan and forced him to drink water from the toilet pan. • Was present when Haffejee was placed in the cell.
Lt Vic Macpherson Deceased 20 / 4 / 2017	<ul style="list-style-type: none"> • Was involved in the arrest of Haffejee

48. The TRC referred hundreds of cases to the National Prosecuting Authority (NPA) in which amnesty was not applied for or denied, including the Haffejee case (the TRC cases). Until the last few years these cases were not pursued. The responsible institutions essentially sat on their hands, and pretended that investigations were proceeding, when they were not. We now know why the cases from our past have not seen the light of day in courts of law. It has emerged in recent court proceedings⁴⁸ that powerful elements in society have shamefully colluded to ensure the suppression of all cases referred by the TRC to the NPA.

49. The Supreme Court of Appeal, which recently dismissed former apartheid policeman Joao Rodrigues's bid for a permanent stay of his prosecution for the

⁴⁸ *Thembi Nkadimeng v National Director of Public Prosecutions and Others* Case No. 3554/2015, Gauteng Division. Court papers available at: <https://www.ahmedtimol.co.za/wp-content/uploads/2020/03/6.-Notice-of-motion-and-founding-affidavit-and-annexures.pdf>: *Rodrigues v The National Director of Public Prosecutions* [2019] 3 All SA 962 (GJ) at paras 21 – 23.

1971 murder Ahmed Timol, said it was “perplexing and inexplicable” why these cases were suppressed:

“... the Executive adopted a policy position conceded by the State parties that TRC cases would not be prosecuted. It is perplexing and inexplicable why such a stance was taken both in the light of the work and report of the TRC advocating a bold prosecutions policy, the guarantee of the prosecutorial independence of the NPA, its constitutional obligation to prosecute crimes and the interests of the victims and survivors of those crimes.”⁴⁹

50. Most of these cases cannot be revived. Suspects, witnesses, and family members have died.⁵⁰ The harm visited upon these families and their communities is incalculable. They deserve nothing less than a full, open and public commission of inquiry as to how and why justice was denied to them.
51. While the NPA and SAPS have appeared to turn over a new leaf on these cases with the welcome announcement of the creation of a special unit, we must regrettably advise that they had to be forced to take action in this case.
52. On 29 July and 15 August 2019 lawyers acting on behalf of the families of the late Neil Aggett and Hoosen Haffejee threatened the Minister of Justice with an

⁴⁹ *Rodrigues v The National Director of Public Prosecutions and Others* (1186/2019) [2021] ZASCA 87 (21 June 2021) at para 26; see also the 2019 representations of Lukhanyo Calata and other families to the Judicial Commission of Inquiry into Allegations of State Capture, available at: https://www.ahmedtimol.co.za/wp-content/uploads/2019/08/2019-04-17-Representations-to-the-Commission_paginated-bundle.pdf

⁵⁰ Just in 4 months, between April and August 2019, four former suspects and witnesses in apartheid-era cases died before the trials or inquests commence, including accused former Sergeant Msebenzi ‘Vastrap’ Radebe in the Nokuthula Simelane murder case; former Lieutenant Stephen Whitehead, lead interrogator of Neil Aggett; witness Ernest Matthis who saw Timol fall and was expected to testify in the murder trial of Jao Rodrigues; and former Security Branch Colonel James Taylor, who was involved in the arrest and brutal interrogation of Dr Hoosen Haffejee. Recently another accused in the murder of Nokuthula Simelane died.

urgent High Court application if he did not instruct the judge presidents of the Gauteng and KwaZulu Natal Divisions to reopen the inquests.

53. On 16 August 2019 the Minister of Justice released a press statement announcing that the inquests into the deaths of Aggett and Haffejee would be reopened. James Taylor, the last surviving interrogator and torturer of Haffejee died 3 days later on 19 August 2019.

TRIBUTE

54. We pause to pay tribute to other activists who died in Security Branch detention in KZN in the 1970s and 80s and who also deserve to have their inquests to be reopened to get to the truth of their deaths.

Names of Deceased	Police Station detained	Place of Death	Date of Death	Cause of Death	Reference
Joseph Masobila Mdluli	Durban C R Swarts Square	Durban Security Branch – Fisher Street Offices	19 ^t March 1976	Claimed scuffle with SB and “fell” against a chair hitting his head and chest on a door.	Joseph Masobila Mdluli South African History Online (sahistory.org.za)
Samuel Malinga	PMB Prison	PMB Prison	22 Feb 1977	“Natural causes”	https://sabctrc.saha.org.za/reportpage.php?id=12733&t=Hooosen+Haffejee&tab=report
Aaron Khoza	PM Burg Prison	PMB Prison	26 th March 1977	Alleged suicide by hanging	https://sahistory.org.za/people/aaron-khoza
Bayempini Mzizi	Brighton Beach SAPS	Brighton Beach Cells	10^t August 1977	Alleged suicide by hanging	Durban Inquest 1001/77
Ephraim Mthethwa	Durban Central Prison	Durban Central Prison	25 August 1985	Alleged suicide by hanging	https://sabctrc.saha.org.za/reportpage.php?id=12733&t=Hooosen+Haffejee&tab=report

55. We draw your attention to the death in detention of Bayempini Mziizi who died in very similar circumstances to Haffejee only 7 days later in a cell at Brighton Beach Police Station. On behalf of the Mzizi family we had sought to reopen that inquest and consolidate it with this inquest. Sadly, that has not happened, and we are still waiting for a decision from the NPA in this regard.
56. The investigating officer refers to another detainee by the name of Billy Dorasamy who also died a few days after Haffejee in similar circumstances, but no further details were provided.⁵¹
57. The surviving members of the Haffejee family, his brother and sister, Ismail Haffejee and Sarah Bibi Lall, have asked me to recognise the role of Adv Shubnum Singh of the NPA in putting this case together. Between 2017 and 2019 she spent hundreds of hours reconstructing the record, interviewing witnesses, taking statements, consulting with experts and liaising with the family. This case would not be happening today without her efforts. She established a special relationship with the family and gained their trust and respect. Adv Singh was removed from the case in 2019 as part of a decentralisation program. The family made numerous approaches to the NPA to have her reinstated in the case, to no avail. They had hoped to see her today assisting Adv Macdonald as his junior. They are perplexed and deeply disappointed that she is not present.

⁵¹ Vol A page 1365 para 2

COUNSEL FOR THE HAFJEJEE FAMILY

H VARNEY

MZF SULEMAN

17 August 2021