



OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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MINISTRY FOR JUSTICE AND CORRECTIONAL SERVICES
PRETORIA
2019-04-15
PRETORIA
MINISTÈRE VIR JUSTISIE EN KORREKTIEWE DIENSTE

**TO: T.M. MASUTHA, MP (ADV.)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

OFFICE OF THE DEPUTY MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT
PRETORIA
2019-04-12
PRETORIA
OFFICE OF THE DEPUTY MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

OFFICE OF THE DIRECTOR-GENERAL OF THE ADMINISTRATION
PRETORIA
2019-04-10
PRETORIA
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

**SUBJECT: RE-OPENING OF INQUEST – DECEASED: DR NEIL AGGETT. DEATH IN DETENTION: JOHN VERSTER
POLICE CELLS: JOHANNESBURG – DATE 5 FEBRUARY 1982**

**FROM:
ADV. S. BATOHI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Route Form

COMPONENT: OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: RE-OPENING OF INQUEST - DECEASED: DR NEIL AGGETT. DEATH IN DETENTION: JOHN VERSTER
POLICE CELLS: JOHANNESBURG - DATE 5 FEBRUARY 1982

DRAFTING OFFICER	CHECKED BY
ADV. SUSAN BUKAU	

Post Design	Title, Name & Surname	Signature	Date
NDPP	Adv. S. Batohi		
DG: DoJ&CD	V. Madonsela, Esq	<i>[Signature]</i>	10/6/19
Deputy Minister: DoJ&CD	Mr. J. Jeffery, MP	<i>[Signature]</i>	12/6/19
Minister: DoJ&CS	T.M. Masutha, MP (Adv.)		

INSTRUCTIONS / COMMENTS

MINISTRY FOR JUSTICE AND CORRECTIONAL SERVICES
PRETORIA
2019-04-15
PRETORIA
MINISTERIE VIR JUSTISIE EN KORREKTIEWE DIENSTE

OFFICE OF THE DIRECTOR-GENERAL
DIRECTORATE: ADMINISTRATION
PRETORIA
2019-04-10
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
PRETORIA



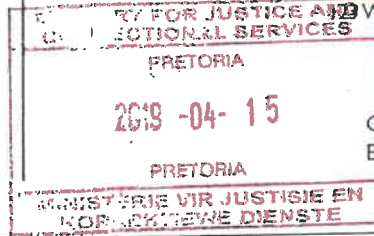
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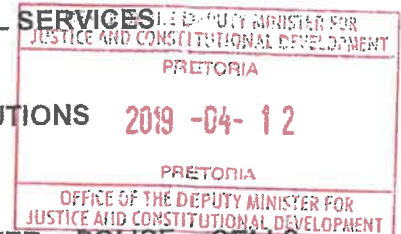


TO: T. M. MASUTHA, MP (ADV.)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

FROM: ADV. S. BATOHI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: RE-OPENING OF INQUEST
DECEASED: DR NEIL AGGETT
DEATH IN DETENTION: JOHN VORSTER POLICE CELLS
JOHANNESBURG
DATE OF DEATH: 5 FEBRUARY 1982

DATE: 1 APRIL 2019



PURPOSE:

1. The purpose of this memorandum is to request the Minister in terms of section 17A(1) of the **Inquests Act 58 of 1959** to approach the Judge President Gauteng Division to appoint a Judge so that the inquest in respect of the above matter can be reopened.

BACKGROUND:

2. Dr Neil Aggett was a medical doctor and trade unionist. He was detained by the Security Branch in 1981 at the John Vorster police cells, Johannesburg, and found dead in his cell on 5 February 1982.
3. An inquest held at that time found that he had committed suicide and that the police were not responsible for this state of affairs. The inquest finding received considerable public criticism both nationally and internationally due to the narrow approach adopted by the magistrate which excluded critical evidence depicting a pattern of sensory deprivation and torture.

4. Advocate Bizos SC represented the family at the inquest. Although he accepted that the deceased had committed suicide he argued that the head of the component of the Security Branch as well as the officer in charge of Aggett's interrogation were guilty of culpable homicide due to the circumstances under which he was detained and treated.
5. My Office requested the police to initiate an investigation into the matter when representations were received from former colleagues of Dr Aggett.
6. This investigation has revealed several new facts which place the finding of the magistrate into dispute. These include *inter alia*:
 - An attempt to obtain evidence to justify a finding of suicide by breaking into the home of Dr Aggett's parents. This incident was denied at the inquest.
 - A charge of assault which was laid by Dr Aggett shortly before his death. The magistrate refused to attach any weight to this complaint.
 - The unlawful monitoring of the consultations of Adv Bizos by the police.
 - The rehearsing of versions by the police who testified at the inquest.
 - Evidence of Dr Aggett's co-detainees also having been tortured.
 - The granting of amnesty to a former Security Branch member who was involved in the torture of the co-detainees.
 - The granting of amnesty to another Security Branch member involved in the interrogations for the particularly brutal murder of a member of the Liberation Movement.
7. The family of Dr Aggett have engaged a firm of attorneys who have also made a request that the inquest be reopened.
8. The request for the reopening of this inquest is consistent with the reopening of the **Timol** and **Haffejee** matters which also relate to deaths in detention.
9. Due to the fact that Dr Aggett died in police custody in Johannesburg the reopened inquest would have to be before a Judge of the Gauteng Division of the High Court sitting in Johannesburg.

RECOMMENDATION:

10. I therefore request you to in terms of section 17A(1) of the **Inquests Act 58 of 1959** to approach the Judge President to designate a Judge to reopen the inquest. I attach herewith as **Annexure A** a draft letter to the Judge President for your approval. Kindly provide me with a copy of your letter to the Judge President.



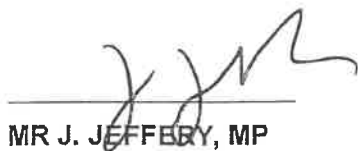
ADV. S. BATOHI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE: 9/4/2019



VUSI MADONSELA, Esq.
DIRECTOR-GENERAL
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 14/04/2019



MR J. JEFFERY, MP
DEPUTY MINISTER
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 14/04/2019



T.M. MASUTHA, MP (ADV.)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

DATE: 23/04/2019

LETTER ON .
SEND PROPER MINISTERIAL
LETTERHEADS .

MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

The Honourable Judge President
Gauteng Division of the High Court
Judges Chambers
Private Bag X67
Pretoria
0001

Dear Judge Mlambo

**RE-OPENING OF INQUEST IN TERMS OF SECTION 17A(1) OF THE INQUESTS ACT 58
OF 1959**
DECEASED: DR NEIL AGGETT
PLACE OF DEATH: JOHANNESBURG
DATE OF DEATH: 5 FEBRUARY 1982

The deceased in the above matter died in detention after he had been detained by the then Security Branch of the South African Police. An inquest held at the time returned a verdict of suicide.

The National Director of Public Prosecutions has requested me to approach you in terms of section 17A(1) of the **Inquests Act 58 of 1959** to designate a Judge of your Division to reopen the inquest. This was after the matter had been reinvestigated and new evidence obtained indicating that a verdict of at least culpable homicide if not murder may now be justified.

On the facts presented to me I have acceded to the request and do in fact request you to designate a Judge of your Division to reopen the inquest. Due to the fact that the deceased died in Johannesburg it is recommended that you designate a Judge who presides in the Johannesburg High Court.

The NPA will be responsible for liaising with your Office regarding all further steps which must follow should you accede to my request.

Yours sincerely



T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
DATE: 23/04/2019

SEND DRAFT LETTER
TO C MONAGHAN
VICES JUSTICE 5011 29

PLEASE SEND DRAFT LETTER FOR AMENDMENT



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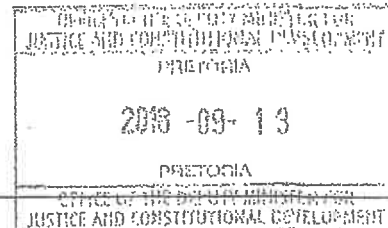
MINISTRY FOR JUSTICE AND CORRECTIONAL SERVICES
PRETORIA
2018-09-14
PRETORIA
MINISTERIE VIR JUSTISIE EN KORREKTIEWE DIENSTE

**TO: T. M. MASUTHA, MP (ADV.)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

**FROM: DR SILAS RAMAITE, SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**SUBJECT: REQUEST FOR THE REOPENING OF THE INQUEST OF DOCTOR
HOUSEN MIA HAFJEJEE**

DATE: 3 SEPTEMBER 2018



- This memorandum is prepared pursuant to the first request for re-opening into the death of Dr Haffejee. A copy of the first memorandum dated 15 January 2018 is attached marked Annexure A.
- Significant developments have since transpired. Two damning expert reports namely that of the independent pathologist, Professor SR Naidoo and the trajectory expert Mr T Moodley have been obtained. The finding of the 1978 Inquest court, based on the reports of both the experts and independent witnesses, is open to challenge. However a golden opportunity to ensure that justice would have been done after 41 years was lost when we failed to secure the evidence of a vital witness from France because of a frustrating and embarrassing administrative bungle.

1. INTRODUCTION

*An inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into the circumstances of the death.*¹

¹ *Timol v the Magistrate of Johannesburg* 1972(2) SA 281(T): "Nevertheless, the inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into the circumstances of the death."

Justice in our society so that people can live in freedom and security.

Given the great difficulty in proving torture, because of the closed and secretive nature of the practice and the habitual denials on the part of torturers such cases require careful consideration. It is a tragic fact that torture seems to have been part of South African history since the earliest times. The practice of torture has waxed and waned changed form, purpose and legality. So too, have the miserable victims of it persecutions been differently categorised over time.²

The question is was there really full and fair investigation into the circumstances of death of Dr Haffeejee. Taking into account the following, the response thereto can only be an emphatic "No!"

- Doctor Housen Mia Haffeejee, a 26 year old dentist, died on 3 August 1977 whilst in detention at Brighton Beach Police Station. He had been under interrogation by the Security Branch after having been "arrested" on 2 August 1977, under the Terrorism Act on suspicion of being a trained saboteur and of plotting to overthrow the State. Within 20 hours of his arrest, the SACP/ANC member was dead after allegedly hanging himself with his trousers from a grille door at Durban's Brighton Beach police station.
- The then Attorney General declined to prosecute and a formal inquest was held in the Durban Magistrate Court, which returned a finding that Dr Haffeejee had committed suicide and that the police were not responsible for his death.
- Dr Haffeejee was under surveillance by members of the security branch for approximately four months after been informed upon by a spurned fiancé for allegedly manufacturing explosives and bombs. After bugging his flat, tapping his office telephone landline at King George V Hospital, Overport, Asherville and having him under surveillance for months, on the morning of 2 August 1977, a team of security branch members lay in wait as Dr Haffeejee departed from his flat.
- Security Branch police officers including but not limited to, Captain PL du Toit (du Toit), Lieutenant Jimmy B Taylor (Taylor), Sergeant Shunmugan Govender (Govender), Warrant officer Benjamin Moonsammy (Moonsammy) (as he then was) and Sergeant Mohun Deva Gopal (Gopal) had met early that morning (2

² Don Foster Detention and Torture in South Africa p 172.

August 1977) at approximately 06:00. A decision to "bring him in" was made. They formulated a plan as to how Dr Hafejee would be approached. They were aware that Dr Hafejee's shift at the hospital would have commenced at 8am. His routine pattern of travelling was that he would leave his flat between 07h20 and 07h30 every morning. He would work from Monday to Fridays only.

- As Dr Hafejee drove his vehicle on Crescent Street, du Toit drove in front of him in his vehicle. Gopal was seated in a vehicle following the vehicle of Dr Hafejee. As they approached a traffic circle, du Toit deliberately decreased the speed of his vehicle forcing Dr Hafejee to slow down. As he did so, Taylor overtook the vehicle in which Gopal was and literally pushed Dr Hafejee's vehicle off the road, onto a patch of grass, near the Asherville Swimming Pool forcing Dr Hafejee to stop. Dr Hafejee was "boxed" in. Dr Hafejee was searched and taken into police custody. Prior to his arrest, he had no injuries.
- Within 20 hours of being taken into police custody, Dr Hafejee was dead.
- A medico –legal post mortem examination conducted by the Chief Pathologist Professor I Gordon determined that Dr Hafejee's death was consistent with hanging. There were countervailing opinions by the independent experts. For instance an independent report by Amnesty International found that there were no convincing rope marks seen around the neck of Dr Hafejee.
- In line with the recent landmark ruling of the re-opened inquest into the death of Ahmed Essop Timol (IQ01/2017) the suspicious circumstances surrounding the death of Dr Hafejee need to be re looked at. As in the Timol matter, the question that has to be answered is whether Dr Hafejee did indeed take his own life or was he murdered and who, how and when were between 40 and 50 injuries inflicted on his body.
- The irresistible conclusion that Dr Hafejee was severely assaulted and met with foul play is to be drawn from the versions of du Toit, Taylor, Naude and Madlala, which are in direct contradiction with the medical evidence that was led at the inquest itself. Furthermore new evidence, in the form of witnesses including damning expert evidence, have come to light which warrant closer inspection. Further only evidence favourable to the police was led. He was also not the only

person arrested or detained. No other evidence from any other detainees was heard and neither were they given the opportunity to be heard.

- Two pertinent issues must be addressed viz (a) the **injuries sustained** by Dr Hafejee in relation to the time of his detention, the critical analysis of the **duration of his detention** and the **contradictory medical evidence** and (b) and **witness evidence**. However before the issues are addressed, the judgment of the learned magistrate, is regrettably, all that presently remains of the inquest,³ (Durban Inquest 951/77). It is important to set out the findings of the inquest court of 1978.
- The 16 page judgment of the learned magistrate Mr T L Blunden records:
 - that only two police officials directly involved in the arrest of Dr Hafejee, viz du Toit and Taylor were called to testify. The remaining security branch police officials including Gopal, although present, were never called to testify.
 - That according to the evidence of Taylor and du Toit, Dr Hafejee failed to stop his motor vehicle when Taylor signalled to him to stop.
 - That Dr Hafejee resisted attempts by Taylor to search him.
 - That du Toit came to Taylor's assistance and together they forcefully placed him into their vehicle. Dr Hafejee had allegedly put up a "spirited resistance."
 - Further that from the time of his "arrest" up until 20h00 Dr Hafejee was interrogated by Taylor, Du Toit and others.
 - At approximately 20h00 he was taken to the North Pier to allegedly point out literature that he had disposed of in the sea.
 - Again, according to the evidence of Taylor and du Toit, Dr Hafejee allegedly resisted getting back into the police vehicle and had to be forced back into the vehicle.
 - According to Taylor and du Toit's evidence, both the struggles, on arrest (at 08h00) and at the alleged pointing out (20h00), 12 hours apart were similar in terms of use of force in the sense that only minimum force was used to subdue Dr Hafejee on both occasions.
 - Interrogation continued until 23h00.
 - Thereafter, according to the evidence of Taylor and du Toit, Dr Hafejee was shown photocopies of documents that had been stolen after they broke into his flat.

³ There is a possibility that an important witness might still have a transcript of the inquest.

- These documents, both in typed and long hand version were shown to Dr Haffeejee and were allegedly proven to be written by Dr Haffeejee, who on noting this, became un co-operative and from then on was either evasive or refused to answer any questions.
- According to the evidence of Taylor and Du Toit, when it became apparent that no progress was made, Dr Haffeejee was then handed over to the charge office shortly after midnight.
- Constable D Naude was the sole recipient of the key to cell no 2 where Dr Haffeejee was locked up for the night. (3 August 1977) after all "normal charge office duties had been complied with."
- Constable Shadrack Madlala accompanied Constable Naude every hour on the hour until 3 am for a cell visit and noted that Dr Haffeejee did not exhibit any signs of injury and had made no complaints whilst lying on his cell mat. He was clearly awake and did not speak.
- At 4am he was again visited by Constable Naude and Shadrack Madlala. This time Dr Haffeejee was found suspended by his trousers from the bars of his cell doors. He was deceased.
- Senior police officers including du Toit, were immediately summonsed.
- The chief government pathologist Professor Gordon arrived at the police station at 7am to examine the deceased and the cells.

(A) THE INJURIES SUSTAINED BY DR HAFEEJEE IN RELATION TO THE TIME OF HIS DETENTION, THE CRITICAL ANALYSIS OF THE DURATION OF THE DETENTION AND THE CONTRADICTORY MEDICAL EVIDENCE.

- It was never disputed that Dr Haffeejee was arrested by 8am on 2 August 1977.
- It was not disputed that by 4am on 3 August 1977, he was dead.
- Dr Haffeejee sustained between 40 to 50 injuries which were never successfully explained. He died within 20 hours of his alleged arrest, in an unnatural position which is not consistent with a "normal" hanging.
- Taylor and du Toit's account of how Dr Haffeejee "may" have been injured is also not in line with the **actual injuries** sustained by Dr Haffeejee. By their own account, there were just two quick scuffles when Dr Haffeejee allegedly refused to enter into the vehicle at 8am and 20H00 respectfully. Neither Taylor nor du Toit were able to associate **any particular** incident in either of the two struggles with a particular injury sustained by the deceased.

- It is with respect highly unlikely that with the **nature and extent** of these injuries that if they were sustained BEFORE his arrest, Taylor, du Toit and others would not have noted them. The interrogation could hardly have continued from 8am until midnight if Dr Haffejee was injured.
- Professor Gordon, the chief Government Pathologist observed no fracture of the skull, nor did he observe any external injuries to the skull. **But** Dr D H Biggs, who conducted a private post mortem on the body of Dr Haffejee noted amongst others the following:
 - o "the face and neck were noted to be of a darker colour than the rest of the body.
 - o There were subconjunctival haemorrhages in both eyes.
 - o There was a sutured incision extending across the occiput from the region of the ears.
 - o The vault of the skull moved on the lower section whilst the scalp was palpated."
- The presiding magistrate attempted to assist this "oversight" on behalf of Professor Gordon by finding that "the deceased had a thick mop of hair which could have had a cushioning effect on any blow which might have been directed to the skull and which would also have made the finding of external injuries more difficult."
- According to Taylor and du Toit, Dr Haffejee **showed no signs** of having being injured and made **no complaints** about having being injured to them or the charge office staff. It can safely be assumed again, then that since his morning arrest until he was lodged into the cell, Dr Haffejee was in good health.
- **Three particular injuries**, which Professor Gordon described as **significant**, viz extravasation of blood into the subcutaneous tissues of the scalp, injury to the mesentry and the bruises to the sternum, ribs and loins were highlighted and raise suspicion.
- According to Dr Lorentz, a surgeon in private practise testified that the extravasation of the blood into the subcutaneous tissue required a **direct blow**

- of some significance. Such a blow, according to him, could hardly have gone unnoticed. Further that Dr Hafejee would have been dazed or confused. He was adamant that this would have been caused by a blow to the head.
- He argued that the same applied to the injury to the mesentery. According to Dr Lorentz, this injury would have caused Dr Hafejee to be winded and this would have been **distinctly noticeable**.
 - He could **not reconcile the version of the police with the injuries** of Dr Hafejee.
 - He also testified that the abraided bruises to Dr Hafejee's body were not in themselves serious, there was a significantly large number of them and their distribution was striking.
 - Professor Gordon, who was present when Taylor and du Toit testified, **refused to comment** on the probability of Dr Hafejee's injuries having been sustained in the manner postulated by Taylor and du Toit. His view was simply that the injuries could have been caused either by **application of blunt force to the body into contact with a blunt object**. He was prepared to concede that blunt force could not take the form of a blow with the fist or kick.
 - Dr Lorentz was less reticent and accepted that even though he could not "adduce any incontrovertible medical evidence to refute those statements (of the police), in his opinion it was **unlikely that they should have been sustained in their multiplicity during the two scuffles that were described by Taylor and du Toit**.
 - Professor Gordon specifically **ruled out** the possibility that the injuries could have been self-inflicted DURING the process of hanging.
 - The presiding officer himself acknowledged that from the available evidence there was little doubt that at least some of the injuries found on the body of Dr Hafejee were in all **probability sustained by the deceased whilst he was in custody of the security police in particular Taylor and du Toit**.
 - It is strange that the presiding officer found the evidence of Taylor and du Toit's account of how Dr Hafejee MAY have been injured and met his untimely demise as credible. By their own account, there were just two quick scuffles when Dr Hafejee allegedly refused to enter into the vehicle at 8am and 20H00 respectfully. Neither could explain how he would have hurt himself.

- It is imperative that a **time frame** from the time of Dr Haffeejee's arrest, and subsequent death be scrutinised.
- In it is exposed the improbabilities and serious contradictions with the versions of Taylor, Du Toit, Naude and Madlala.
- Dr Haffeejee was arrested at 8am. After the first scuffle when he allegedly resisted arrest, no injuries were sustained or visible. This is according to Taylor and du Toit. By their own account, on both occasions when Dr Haffeejee allegedly resisted arrest, very little force was applied notwithstanding the fact that Dr Haffeejee weighed a mere 49kg and Taylor 82 kg and du Toit 100 kg.
- Both Taylor and du Toit claimed that Dr Haffeejee could only have been injured during these two scuffles, one at 8am and the other at 20h00. Both claimed to be **unaware** of the fact that he had at any stage sustained any injury. According to them, he showed **no signs** of having been injured either to them, or to the charge office staff.
- If Dr Haffeejee was well until 20H00 and was well enough to point out where he allegedly threw pamphlets into the sea, then clearly he was in good health until then.
- He must certainly have been in good health then at 23H00 when he was shown notes in his own handwriting as alleged by Taylor and du Toit because after that Dr Haffeejee became completely unco-operative and refused to answer any further questions.
- According to Taylor and du Toit, Dr Haffeejee was taken by du Toit and Taylor to the charge office shortly after midnight and "after normal charge office formalities had been complied with" Dr Haffeejee was taken to cell number 2 and locked up. It can safely be assumed that if Dr Haffeejee was not well, or injured or complained, this would have been exposed during the "normal charge office formalities being complied with."
- According to Naude and Madlala's evidence, no one else had access to Dr Haffeejee.
- The cell keys were in the sole custody of Naude.
- Both Madlala and Naude carried out a cell inspection every hour on the hour.
- At 3am Dr Haffeejee had not exhibited any signs of injury and had made no complaints. Naude and Madlala saw him lying on his mattress. They saw that he was awake even though he did not speak.
- At 4am he was discovered, deceased.

- According to Professor Gordon, who examined Dr Haffeejee's body at 7am, he estimated the time of death of Dr Haffeejee to be between 3am and 4am.
- If this is indeed to be believed, then the evidence of the police officials is in direct contradiction with the evidence of Professor Gordon, whose object of an examination on representative sections taken from the body of Dr Haffeejee to be subjected to microscopic examination was to establish the age of the injuries with a view to determining the time at which they would have been sustained.
- He established that all the lesions were sustained within a period of 4 to 12 hours before death. In the case of other bruises other than the abraded bruises, the interval of 4 to 12 hours may have been exceeded by several hours.
- Given this evidence, if Taylor and du Toit by their own versions saw no injury on Dr Haffeejee on arrest, it can safely be concluded that all injuries were sustained **during Dr Haffeejee's arrest and detention.**
- There was a consensus of all the medical opinions that the injuries were sustained **BEFORE** the deceased was handed over to the charge office staff. Confirmation of this is to be found in the judgment itself when the magistrate remarked that "all charge office formalities were complied with" before Dr Haffeejee was placed in the cell.
- Furthermore, that it is highly suspicious, that if there were three seriously significant injuries that would have **incapacitated** Dr Haffeejee to some extent, then the versions of du Toit, Taylor, Naude and Madlala cannot be true.
- If Professor Gordon is to be believed then du Toit, Taylor, Naude and Madlala cannot be believed.
- The question then would be why did they lie?
- The role of presiding officers, doctors, prosecutors, pathologists etc was laid bare in the re-opened inquest of Mr Ahmed Timol. Like in the Timol matter, for the sake of loyalty and allegiance to the special branch, the relevant role players did not fail to disappoint and looked for every excuse to apportion blame to everyone else except the special branch and their political masters.

2. THE EXPERT FINDING OF PROFESSOR NAIDOO

- There is an uncanny resemblance of the injuries sustained by Dr Haffeejee to that of Mr Timol. Dr Haffeejee also had scalp bruising "all over the top and sides

of the calvarium (skull cap) in addition to the multiple bruises around his body. Those were found to be inflicted, like the scalp bruising, whilst Dr Haffeejee was still alive. This the Professor concludes was sustained as a result of significant, multiple impacts of blunt force injury to the whole of the scalp. Furthermore Dr Haffeejee sustained an "extravasation of blood in the substance of the mesentery" from a "significantly heavy blunt blow to the abdomen."

- Professor Naidoo also concludes that there is a strong possibility that death occurred just before or just after midnight as opposed to the finding of the chief pathologist who concluded that Dr Haffeejee died at 3am or 4am.
- He also concluded that to refer to the cause of death as "hanging" is strictly incorrect and a misnomer as it is misleading and creates the impression that death was caused by body weight suspension, irrespective whether self – inflicted or homicidal. Whilst the professor sets out scenarios and concludes that amongst other injuries, the scalp (head) chest and mesentery injuries would have been particularly physically incapacitating and the deceased would have been in noticeable pain.
- The professor concludes that "in my (his) opinion, and based upon the injuries and their effects, the deceased was to a great possibility either unconscious or actually dead at the time of the ligature constriction and serious consideration must be given to the possibility of a homicidal slinging of the body in the position he was found". There is compelling new evidence relating to the torture which could result in a different finding.

(B) EVIDENCE OF WITNESSES

- It has since emerged that a member of the security branch that was present when Dr Haffeejee was abducted and assaulted testified as a witness at the TRC. New, graphic evidence has emerged.
- He was the only person who applied for amnesty.
- From vital investigations conducted, it is clear that he will be utilised as a witness as contemplated in terms of s204 of the Criminal Procedure Act 51 of 1977. It must be noted that he was extremely concerned that he would be committing an offence if he testified iro any information pertaining to the

security branch. As such he insisted on and was granted indemnity against prosecution on 7 February 2018 in terms of the Official Secrets Act.

- The versions of both Taylor and du Toit are disputed by him. He disputes that Dr Hafejee resisted arrest. He confirms that Dr Hafejee was always compliant. That he was severely assaulted by Du Toit, Govender, Taylor, and Moonsammy. Dr Hafejee was stripped to his underpants, punched, kicked, thrown against the wall, slapped repeatedly, had his head shoved into a toilet pan and forced to drink the water from the toilet pan.
- He also states that the day following the discovery of Dr Hafejee's body, all security branch members were called in to "get their stories right".
- He was told to say that Dr Hafejee was taken to the North Pier to do a pointing out and that when he refused to get back into the vehicle, that is how he may have been injured. The witness however disputes that they ever left Brighton Beach after arresting Dr Hafejee.
- A further witness was detained at the same time with Dr Hafejee. The witness, Mr Ken Soni, was severely beaten by members of the security branch and questioned about his relationship with Dr Hafejee. On his release, he made enquiries as to the whereabouts of Dr Hafejee. The response thereto was chilling. He was told that "you would read about it in the newspaper". He confirms that he was arrested before the death of Dr Hafejee was confirmed. Taylor assaulted him. This clearly is contradictory because according to the evidence of Taylor, he left the charge office at midnight and never came back. The witness is based in France and was detained in the early hours of Wednesday 3 August 1977. Right from the outset the importance of this witness was stressed. The prosecutor involved traced and located the witness through simple investigative techniques which if employed twenty/fifty years earlier would have ensured that the witness testified before the TRC/inquest court. In fact, much like Dr Essop in the Timol matter, simple investigation in 1977 would have shown that he too, was beaten severely and tortured. And like in the Timol matter, this evidence was overlooked.
- Shortly after the death of Dr Hafejee, the witness left the country fearing for his life. He eventually took up residence in France and lived a fairly reclusive life after been diagnosed as suffering from Post Traumatic Stress Disorder, which emanated directly from the horrendous assault by the security branch and the death of his friend, Dr Hafejee. After tracing him, concerted effort had to be put into establishing a relationship of trust with him. He had been back in

South Africa just once after his arrest and detention, and was extremely afraid of security branch police officers that still existed in South Africa. He had three attempts made on his life. There was no doubt that he had vital information that would have shed light on the death of Dr Hafejee. He was a special witness and in the interests of justice, should have been treated as such. After building a relationship of trust, he agreed to consult with the prosecutor. Sadly, the NPA did not have funds to accommodate such an important request. Efforts were then made to arrange for the investigating officer and his colleague to travel to France on the budget of DPCI to secure the affidavit of the witness. Considering the importance of this witness, administrative bungling led to an embarrassing situation which cost us dearly. Despite dates for the visit being arranged for a timeous visit, DPCI failed to ensure that both the officers concerned met with the already highly suspicious and perturbed witness timeously. They arrived two weeks later and were treated with disdain and suspicion by the witness. The fact that the image of the NPA and the HAWKS have been severely damaged did not help the situation either. As a result, the officers returned empty handed. See annexure B. This witness would have shed light on the versions of Taylor and du Toit. It would also appear that the version of Taylor and du Toit that they no longer were with Dr Hafejee after the 3rd of August 1977 might have being **directly contradictory** to the evidence of the witness in so far as his detention and interrogation was concerned.

- Other witnesses have also come forward and will testify in respect of whether **suicide** was an option by members of the SACP/ANC, the circumstances and resolutions taken by them in respect of detention and imprisonment. The last two witnesses to see Dr Hafejee were also traced and their statements obtained. The persons who recruited Dr Hafejee were also traced and their affidavits obtained. Important affidavits of family members regarding the injuries of Dr Hafejee and the subsequent harassment by police were also filed. None were afforded the opportunity to testify at the initial inquest.
- The scorned ex fiancé of Dr Hafejee has also been traced. Her affidavit **confirms** that her husband, a member of the security branch, Moonsammy aka Benjamin told her that he was present when Dr Hafejee was abducted and assaulted. He took part in this assault. He had told her that Dr Hafejee was tortured with a shifting spanner or a "pinchies". (riveter) This is consistent with the injuries which were noted in pairs.

- This was also confirmed by Dr Biggs in his report when he noted that "these lesions were notable in the fact that they were similar in size and appeared to occur in pairs."
- She confirms that her husband who took part in the assault on Dr Haffejee had told her that Dr Haffejee had been murdered.
- Another crucial point to be considered is the **almost identical alleged suicide** of one Bayempini Mzizi, a gentleman detained at Brighton Beach SAPS, and held under Section 6 of the Terrorism Act, and who died eleven days after Dr Haffejee. Whilst Dr Haffejee allegedly hung himself with his pants, Mr Baymepin allegedly hung himself with the strip of his jacket. Despite extensive investigation to trace him, we were unsuccessful.
- The reports of both the experts on whom we intend to rely on to show that Dr Haffejee was murdered have now been obtained and filed. Both agree that Dr Haffejee could not have hung himself.
- Repeated efforts to trace police officials Naude and Madlala have yielded negative results.
- The quest for justice of Dr Haffejee was indeed so sincere that the dentures which were worn by Dr Haffejee at the time of his death were in fact traced. Sadly again, due to lack of funds, this vital piece of evidence is inaccessible. This would have proven that the force used to inflict the injury to his mouth were so severe that they cause his dentures, fitted with cement to be separated from his fixed set of teeth.
- Like in the Timol matter where justice prolonged, was justice denied in the sense that most police officers involved in the assault and torture of Timol were deceased, only one police officer namely Taylor is alive.

3. THE RELEVANT LEGISLATION

- There is more than one section that can be used to reopen an inquest. However the most applicable section is Section 17A of the Inquests Act, Act no 58 of 1959 which stipulates as follows:

17A Re-opening of inquest

(1) *The Minister may, on the recommendation of the attorney-general concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a provincial division of the Supreme Court to designate any judge of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designated shall re-open such inquest.*

4. RECOMMENDATION

- It is the respectful submission that it is necessary and in the interest of justice that the Minister of Justice and Constitutional Development request the Judge President of the Kwa Zulu Natal High Court to *designate any judge of the Supreme Court of South Africa to re-open the inquest of DR HOUSEN MIA HAFEEJEE and it is so recommended.*
- In light of the landmark ruling of re-opened inquest of Ahmed Timol, and the subsequent reversal of the findings of the 1972 inquest, it is recommended that the investigation and presentation of evidence be undertaken in the interest of justice.
- In his scathing ruling, Judge Mothle commented at paragraph 341 – 343:

“341 It will be remiss of this court not to address an issue on which Bizos’ evidence put a spotlight. This is the impropriety role played by some in the magistracy, prosecuting authorities and medical experts in the past inquest proceedings. Bizos’ evidence reveals the role of some of these public officials in being complicit in exonerating members of the Security Branch from the crimes that they committed. The 1972 inquest into the death of Timol is one such example. From the outset, it had to take a court order to allow Timol’s family and their lawyers to have access to the documents, before the inquest commenced. The evidence of the 1972 inquest further demonstrate how the prosecution made no effort to obtain further evidence other than that of the police and the magistrate attempting to explain away the ante mortem injuries, without any shred of evidence supporting this statement about a brawl.

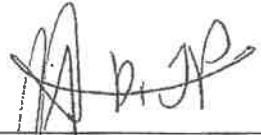
342 Bizos also makes reference in his publication to the inquest into the death of Steven Bantu Biko. The much publicised and documented unprofessional conduct

of the doctors who testified in that inquest, illustrates the point. Doctors, like lawyers, take an oath, in their profession it is a Hippocratic Oath.

343 Every professional lawyer and public official survives on integrity. Magistrates and prosecutors are lawyers participating in the administration of justice and are expected to discharge their functions in terms of the oath they were sworn to uphold. For all public office bearers of the State, an oath is sacrosanct. Apart from their knowledge of and experience in the practise of law, lawyers, in particular judicial officers, are expected to bring to bear their honesty, independence, personal and professional integrity and ability to act without fear or favour in the administration of justice. It is not ethical and proper on the part of a judicial officer to preside over or decide cases out of fear, or in favour of a person, entity or institution, or in expectation of promotion or reward; or in advancement of some real or perceived interest. Judicial officers have to be loyal only to the Constitution and the cause of justice. Public officials in the administration of justice are enjoined by law to jealously guard against casting aspersions on the integrity of the judicial system, by conducting themselves in a manner contrary to their oath of office. Such conduct has no place in a Constitutional Democracy.”

- This matter is unlike the Timol matter where the nephew of Mr Timol pursued justice for his beloved uncle. There were no specific legal representatives for the family seeking justice for this family at the stage that the initial memorandum was furnished. It was purely by the investigation undertaken by and the reference by Mr Imtiaz Cajee, the nephew of Mr Timol, during his evidence at the re-opened inquest that peaked the interest of the Hafejee family. In this instance we have a family that has been looking for justice for so long with no recourse to state resources. After the Ahmed Timol inquest, they contacted the NPA, requested assistance and the NPA obliged. (Legal Resource Centre are now attorneys of record in this matter.)
- A further delay of any kind will result in a travesty of justice. Families are waiting for decades for simple investigation to be undertaken to expose murderous activities of our tragic and shameful past.
- On the request of the family this is an initiative of the National Prosecuting Authority to endeavour to bring justice to the Hafejee family. It is said that Justice prolonged

is justice denied. It took 48 years for simple investigation to literally expose the cover up in the Timol inquest. It is submitted that there is only one person of interest left in this matter. We should not lose the opportunity to expose the truth by delaying our decision to re-open the inquest into the death of Dr Haffejee. Affidavits of both the surviving Haffejee siblings are attached marked Annexures C and D respectively.



DR TORIE PRETORIUS, SC
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
PRIORITY CRIMES LITIGATION UNIT
DATE: 3/09/2018



DR SILAS RAMAITE, SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 03/09/2018

 Supported.

VUSI MADONSELA, Esq.
DIRECTOR-GENERAL
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 12/09/2018



MR J. JEFFERY, MP
DEPUTY MINISTER
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 12/09/2018

W.K.

RECOMMENDATION

It is the respectful submission that it is necessary and in the interest of justice that the Minister of Justice and Constitutional Development request the Judge President of the Kwa Zulu Natal High Court to *designate any judge of the Supreme Court of South Africa to re-open the inquest of DR HOUSEN MIA HAFJEJEE and it is so recommended.*



T.M. MASUTHA, MP (ADV.)

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

DATE: 18/09/2018