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Report of the Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse Against ANC Prisoners and Detainees by ANC Members

Motsuenyane Commission of Inquiry

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Motsuenyane Commission of Inquiry, Margaret A. Burnham, Bernard E. Harcourt, David E. Loftis, Samuel M. Motsuenyane, and David M. Zamchiya

**REPORT OF THE COMMISSION OF ENQUIRY INTO CERTAIN
ALLEGATIONS OF CRUELTY AND HUMAN RIGHTS ABUSE AGAINST
ANC PRISONERS AND DETAINEES BY
ANC MEMBERS**

20 August 1993

ACKNOWLEDGEMENTS

The Commission wishes to record its sincere gratitude and appreciation to the various organisations and individuals who contributed towards ensuring the smooth running of its work.

Among these, special mention needs to be made of the following :

The National Soccer League - for the use of their premises at F.N.B. Stadium; The South African Council of Churches - for providing the Commission with offices at Khotso House; The Standard Bank - for the use of their Management College; The Counsel and Attorneys who assisted the Commission; Attorneys David E. Loftis and Bernard E. Harcourt, both of the United States, who served as clerks to the Commission; Linda Dawson - for her resilience in helping to produce and put together this report; and other staff members for their invaluable input.

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EXECUTIVE SUMMARY

1. INTRODUCTION

- 1.1 The Motsuenyane Commission of Inquiry was appointed by the President of the African National Congress of South Africa (ANC), Dr. Nelson Mandela, to investigate allegations of human rights abuses and alleged disappearances among its members. Its terms of reference were dated the 12th January, 1993. This is a historic event insofar as it is the first time that a liberation movement has engaged an independent commission to review allegations that its members violated human rights guarantees within its ranks.
- 1.2 The Commission met on 7th February, 1993 to consider its terms of reference, prepare a general plan for how it would work and arrange for the appointment of Counsel and support staff.
- 1.3 The hearings were held in public at the FNB Soccer Stadium in Johannesburg from May 13th to June 18th, 1993, during which time the evidence of fifty (50) witnesses was received. Eleven alleged perpetrators of human rights abuses gave oral testimony, cross-examined Commission witnesses, called several members of the ANC leadership, and an expert on human rights and introduced some evidence by affidavit. The alleged perpetrators travelled to the hearings, some from great distances, the United Kingdom and Zambia. The hearings were open to the public and were well attended by members of the public and media. Altogether, the Commission received over 2,500 pages of testimony.
- 1.4 The Commission made an *in loco* inspection of two former ANC settlements (Mazimbu and Dakawa) and an UNHCR refugee camp (Kigwa) in Tanzania to determine whether any persons were still being detained by the ANC in Tanzania. During this trip, the Commission made contact with officials of the Tanzanian government, the UNHCR and the ANC.

2. FINDINGS

- 2.1 In the aftermath of the Soweto student uprisings in 1976, a torrent of young men and women joined the ANC in exile and placed heavy demands on the Organisation for military, educational and welfare needs.
- 2.2 The resulting expansion of the ANC army, Umkhonto We Sizwe (MK), could not be accompanied by a proportional increase in the number of persons infiltrated into South Africa, and this disparity resulted in wide-scale frustration among MK cadre in Angola. Many cadre felt that they were engaged against the wrong enemy (UNITA) or forgotten in remote and difficult areas of northern Angola. These concerns were voiced but not properly addressed by the leadership, which resulted in mutinies. In turn, the mutinies appear to have been dealt with in a repressive, rather than an understanding, way.
- 2.3 The tidal wave of newcomers also created a serious risk of infiltration by agents of the South African regime. This risk, which materialized with the poisoning of inmates and the subsequent bombing of Nova Catengue Camp in Angola in the late 1970s, produced the first official ANC detention Camp, Quadro in 1979. Quadro was intended to be a rehabilitation centre. Instead, it became a dumping-ground for all who fell foul of the Security Department, whether they were loyal supporters accused of being enemy agents, suspected spies or convicts. All were subjected to torture, ill-treatment and humiliation far too frequently to achieve its purpose as a rehabilitation centre.
- 2.4 In retrospect, Quadro was conceived without proper deliberation. It was located in Angola, a country at war, and was staffed by inadequately trained youths of insufficient experience. The first camp commander was only nineteen years old. The failure to train adequately and supervise the staff, the lack of clear authority between Mbokodo and MK, and the breakdown in communications between the prison and the Officer of Justice, resulted in many abuses of human rights.
- 2.5 Quadro contained a counter-productive mix of common criminals, persons who were most likely spies and deserters, and loyal ANC members under investigation. All were deemed enemy agents, even if it had not yet been established that they were, and accorded the

harshest treatment. Quadro developed a widespread reputation as a hell-hole where persons were sent to rot. About two dozen of those incarcerated at Quadro were men arrested in early 1984 in the wake of the Viana and Pango mutinies. These uprisings were investigated by the leadership, but action to release the inmates was slow and, for some, was not taken until 1988, four years after their initial detention.

2.6 Aware of the cases of the mutineers and other detainees, the leadership did implement mechanisms, mainly the Code of Conduct and the Office of Justice, both of 1985, in an effort to respond to these problems. However, the leadership did not follow these measures through adequately. The Officer of Justice was not allocated sufficient resources or the authority to implement his mandate effectively, and was too easily discouraged. In addition, the Security and Intelligence Department of the ANC took a defensive attitude toward the Officer, instead of working together for the common goal of humane treatment and respect of detainees. Mbokodo's initial reaction was to regard the Code of Conduct as a criticism of its operations, which it was, and would not do too much to promote the Code.

2.7 Ultimately, the systems put in place under the Code of Conduct failed. Persons were detained, some of them for up to six years, without trial. Persons were subjected to beatings and torture. Persons were called humiliating and derogatory names, placed in isolation for lengthy periods of time, denied medical care, and subjected to cruel and inhuman conditions of confinement. The goal of rehabilitation was entirely lost in the shuffle.

2.8 A number of persons have been reported missing. The witnesses at the hearings mentioned 29 persons who died or disappeared. Many more have been reported missing by other sources, although the Commission has determined that some of these persons have in fact been repatriated to South Africa by the UNHCR. However, others have died in exile, as a result of suicide, ambush, malaria, inadequate medical treatment, execution, or natural causes. The Commission has accounted for all in respect of whom information was made available. The ANC needs to continue the search for the remainder and for any others the Commission may not have been told about.

3. CONCLUSIONS

- 3.1 The absence of clear lines of demarcation between the powers and responsibilities of Umkhonto We Sizwe and Mbokodo resulted in a lack of accountability for excesses that occurred at Quadro and during the investigation of alleged enemy agents. The failure to incorporate Mbokodo properly into the structures of the ANC created a degree of independence and unaccountability for the Security apparatus which was detrimental to the overall interests of the Organisation.
- 3.2 The leadership did not adequately deal with the concerns and complaints of the mutineers in a way that could possibly have avoided the mutiny. The problems were further exacerbated by the breakdown in the legal processing of the mutineers. This all resulted in the arbitrary detention of persons without trial becoming routine.
- 3.3 The personnel at Quadro was not adequately trained and supervised and did not have the maturity or experience to deal with persons accused of being enemy agents. There was a breakdown in communication between Mbokodo and the Officer of Justice which resulted in the continued improper detention of persons without trial.
- 3.4 As a result of insufficient resources, unclear authority, and faltering resilience, the Officer of Justice was not effective in administering the Code of Conduct in such a way as to protect the human rights of the persons detained.

4. RECOMMENDATIONS

It is recommended that :

- 4.1 The ANC apologises publicly to all persons whose rights have been violated by it at any stage.
- 4.2 All persons who lost personal property as a direct result of their detention by the ANC be compensated for the loss.
- 4.3 The ANC establish a Claims Settlement Agency to award compensation for human rights violations which occurred while persons were detained by the ANC. Among these violations were

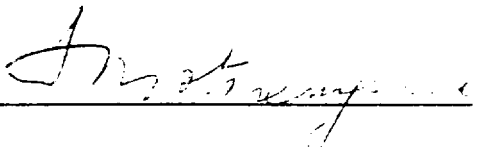
(a) detention without trial; (b) beatings; (c) solitary confinement; (d) humiliation; (e) cruel and inhuman treatment; and (f) death.

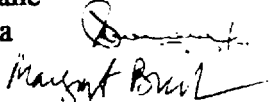
The Claims Settlement Agency should articulate a schedule of compensation which can be uniformly applied once the Agency has made findings on a case-by-case basis on allegations of human right abuses. With regard to the complainants who testified before this Commission, we recommend that the Claims Settlement Agency be bound by the detailed findings of the Commission as articulated in this Report.

- 4.4 The ANC publish periodically a bulletin informing the public of all cases of missing persons whose investigations have been completed and all cases where an investigation is ongoing.
- 4.5 The persons responsible for the human rights abuses -- who have been identified in this Report -- be subject to disciplinary action and/or penalties in accordance with the Code of Conduct of the ANC.
- 4.6 Consideration be given to assisting by payment of medical bills, those persons whose health has been seriously affected by their detention or ill-treatment in ANC hands.
- 4.7 The ANC reconciles with, and reintegrates into its ranks, all victims of human rights abuses who are willing to continue working with the Organisation towards creating a better South Africa.
- 4.8 The supervision of all organs of the ANC by the NEC be improved in order to increase greater accountability and avoid future incidents of serious violations of human rights on the part of any person who deals with the ANC, whether as friend or foe.

Johannesburg

20 August 1993



Dr. S. M. Motsuenyane
Adv. D.M. Zamchiya
Hon. M. Burnham 

INTRODUCTION

1. ESTABLISHMENT OF THE COMMISSION:

By mandate of Dr. Nelson R. Mandela, the President of the African National Congress, dated 11 January 1993, this Commission of Enquiry was established and charged with the responsibility of determining the validity of allegations of human rights violations committed against detainees in ANC prisons or places of detention at camps from where the organisation operated. Specifically, the Commission was appointed to establish findings relative to :

- (a) Whether specific and named persons belonging to the ANC have committed acts of cruelty towards former detainees and prisoners;
- (b) Whether specific members of the ANC in positions of authority failed to curb the commission of these atrocities when they were in a position to do so;
- (c) Whether specific members of the ANC have breached its Code of Conduct and, if so, in what respect the Code has been breached;
- (d) Whether specific named members of the ANC have acted in any manner which brings the ANC into disrepute or in any manner which justifies disciplinary action;
- (e) Whether there is any truth in the allegations that there are people who are unaccounted for, and, if so, the circumstances under which they are alleged to have disappeared.

2. MEMBERS:

To undertake the work of the Commission, the following Commissioners were appointed :

- (i) Dr Samuel M. Motsuenyane is a retired business leader who for 24 years held the position of President of The National African Federated Chambers of Commerce (NAFCOC), and pioneered the establishment of various Black companies, including the African Bank where he serves as Chairman. Dr Motsuenyane is professionally trained as a Social Worker and an Agronomist. He holds the position of Director in many large and small companies.

Dr Motsuenyane was appointed Chairman of the Commission.

- (ii) Adv. David M. Zamchiya is a Barrister at Law and a member of the Grays Inn Society. He has been admitted to practice both in Zambia

and in his home country, Zimbabwe. He serves as a partner in a law firm in Harare; and for eight years was Permanent Secretary for Justice, Legal and Parliamentary Affairs in Zimbabwe; and is also a former Senator.

Advocate Zamchiya has been for many years Constitutional Advisor in his own country and in other countries in Southern Africa. He has been a member of the Bar for 27 years.

- (iii) **Hon. Margaret Burnham** is from Boston, Massachusetts in the United States of America. She has served as a trial judge in the Commonwealth of Massachusetts. Judge Burnham presently teaches Political Science at the Massachusetts Institute of Technology, and is a partner in the law firm of Burnham, Hines and Dilday. The Judge has been a member of the Bar for 24 years.

3. **PROCEDURE FOLLOWED:**

(i) **Appointment of Counsel**

For the purposes of preparing Affidavits and presenting evidence, the Commission appointed two Advocates, namely **Advocate Vincent Maleka** and **Advocate Richard Moloko**. Both are members of the Johannesburg Bar. They were assisted by the instructing attorney, **Steven R Mathopo**. In accordance with its Terms of Reference, the Commission also allowed those against whom allegations of human rights violations were made, to appoint a defence team to represent them. The defence team was led by **Advocates Abdullah Omar** and **Siraj Desai**, both of them being members of the Cape Bar. Other members of the defence team were Attorneys **Tiego Moseneke** and **Brian Kopedi**.

(ii) **Presentation of Evidence (Affidavits)**

The Counsel to the Commission gathered evidence from witnesses primarily in the form of written sworn affidavits. Altogether 27 affidavits were presented to the Commission and these formed a major part of the submissions made at the public hearings held at the First National Bank Stadium from 13 May to 18 June 1993. The Commission finally heard evidence from 48 witnesses. Of these 20 submitted sworn Affidavits, while 28 made oral submissions.

Whereas initially the Commission was, in accordance with its terms of reference, resolved to conduct the hearings *in camera*, the ANC however, later decided that the hearings be made open to the public.

(iii) **Visit to Tanzania : (12 - 16 June 1993)**

To ascertain whether the ANC still held some members in detention camps in Tanzania; and also to obtain further information on specific individuals who allegedly had gone missing in that country, the Commission undertook a four-day visit to Tanzania. The visit entailed :

- a) a tour of Mazimbu and Dakawa, both former ANC settlements at Morogoro;
- b) a journey by air to Tabora, and from there by road to Kigwa;
- c) meetings with the representatives of the Tanzanian Prime Minister's office; the Security Department; and the UNHCR.

4. **Method of Operation:**

a) **Public Hearings**

From 13 May to 18 June, 1993 the Commission held public hearings at the F.N.B. Soccer Stadium near Soweto. These were attended by representatives of the media, international human rights organisations as well as the general public.

Notice of the hearings was widely publicised and those having information concerning any human rights abuses at ANC camps, were invited to give testimony.

Attendance of the public hearings, which enjoyed considerable media coverage, included, inter alia, the following local and international human rights organisations :

Amnesty International
Lawyers Committee for Human Rights
Lawyers for Human Rights
International Freedom Foundation
International Society for Human Rights

Other international organisations such as The International Committee of the Red Cross and The International Committee of Jurists, although invited, did not send representatives.

b) Witnesses:

The witnesses who testified before the Commission were given a full opportunity to put forth their evidence. The accused had the right to confront and question the witnesses who testified against them. In advancing their defence the accused were represented by Counsel and attorneys of their choice.

Some of the witnesses appearing before this Commission had appeared before a previous ANC-appointed Commission of Enquiry, namely the "*Skweyiya Commission*". The witnesses who testified before that Commission made allegations of torture and assaults to which they said they had been regularly subjected and of unsanitary conditions and inadequate medical care. Moreover, many of these persons also complained of being detained purely on the basis of mere suspicion; and that they had not been afforded the opportunity to present their cases before a tribunal. Based on the testimony it heard, the Skweyiya Commission found that there had been widespread human rights violations against detainees in ANC detention camps or prisons.

The *Skweyiya Commission* recommended that "*consideration be further given (by the ANC) to the creation of an independent structure which is perceived to be impartial, and which is capable of documenting cases of abuse and giving effect to the type of recommendations made in this report*".¹

c) Scope Covered by present Commission:

The present Commission interpreted its terms of reference as empowering it not only to conduct hearings regarding allegations of human rights abuses, but also to investigate the circumstances of the deaths or disappearances of detainees wherever this was feasible.

For the purpose of enabling it to arrive at a balanced and impartial assessment of the situation and conditions which prevailed in the ANC detention camps, the Commission made extensive reference to a large number of documents and publications as shown in the list of references. Notwithstanding its access to a wide range of documentation, the Commission conducted a *de novo* review of the issues before it. The evidence presented to the Commission at the hearings, was recorded verbatim, and is contained in 32 Volumes covering 2499 pages.

¹ Skweyiya Report, p.24, Art. (vi)

d) Standard of Review of this Commission

The applicable standard of proof that the Commission applied in reviewing the evidence presented to it is "the balance of probabilities". In other words, the Commission has found facts where the evidence in support of the facts is more likely to be true than false. The burden of proof has been on the complainants throughout; the alleged perpetrators did not bear any burden to persuade the Commission. Where the balance of probabilities lies in any one case is a matter for the judgment of the Commission.

e) Affidavits

Affidavits received by the Commission were considered by it, but not given the same evidentiary weight as oral testimony.

f) Time Frame

Initially the Commission had scheduled the hearings to run from 13 May to 4 June 1993, or at the latest up to 11 June 1993; but owing to the unexpectedly large number of witnesses who came forward to testify before it, the Commission was compelled to extend the period of the hearings to 18 June 1993. So popular did these hearings become that, in one instance, a witness made two appearances at his own request.

The Commission met from 4 to 20 August to prepare and present its Report.

OBLIGATIONS OF THE ANC UNDER HUMANITARIAN AND HUMAN RIGHTS LAW AND THE ANC CODE OF CONDUCT

1. THE APPLICABLE LEGAL STANDARDS

The conduct of the ANC and, particularly, of its Security Department, toward the complainants must be measured against humanitarian law (the Geneva Conventions, their Protocols, and customary international law), the human rights documents of the ANC (the Freedom Charter and the ANC Code of Conduct), and the international law of human rights. The analysis is guided and informed by the ANC's historic commitment to humanitarianism and human rights. In undertaking to accede to Protocol I Additional to the Geneva Conventions of 1949, former President O.R. Tambo stated:

"We in the African National Congress . . . have for nearly 70 years respected humanitarian principles in our struggle. We have always defined the enemy in terms of a system of domination and not of a people or a race. In contrast, the South Africa regime has displayed a shameless and ruthless disregard for all the norms of humanity ... As we have done in the past, so shall we continue, consistently and unreservedly, to support, fight for, and abide by the principles of international law. We shall do so in the consciousness that our struggle for liberation is imbued with the morality of democracy and justice, of progress and peace."^{1/}

The legal standards applicable depend on the status of the complainants. For purposes of this analysis, the complainants who testified before the Commission may be divided into five groups:

- (1) persons loyal to the Umkhonto We Sizwe who allegedly participated in the mutiny in Angola in 1984-85;
- (2) persons loyal to Umkhonto We Sizwe who allegedly engaged in infractions of military discipline;
- (3) persons loyal to the ANC and/or Umkhonto We Sizwe who allegedly engaged in espionage and/or war treason;
- (4) persons loyal to Umkhonto We Sizwe who allegedly deserted the army; and

^{1/} Statement by Mr. O. R. Tambo, President of the African National Congress of South Africa, on the occasion of the making of a Declaration of adherence to the Geneva Conventions, page 3 (Nov. 28, 1980).

- (5) persons suspected of loyalty to the South African regime who allegedly infiltrated Umkhonto We Sizwe for purposes of espionage.

The protections afforded by humanitarian law apply to the last category of complainants -- persons who were allegedly loyal to and dependent on the South African regime who fell into the power of the adverse party, Umkhonto We Sizwe. Protocol I Additional to the Geneva Conventions -- as well as Common Article 3 of the Geneva Conventions and customary international law -- guarantee such persons humane treatment in all circumstances and the right to be free from torture, outrages upon personal dignity, humiliation and degradation. In addition, these treaties and humanitarian law guarantee that no punishment is imposed except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure.

The four other groups of complainants -- persons who were loyal to the ANC and/or Umkhonto We Sizwe but violated military laws or discipline -- do not benefit from the protections of the international treaties and customary law, but instead are entitled to fundamental human rights protections. The Freedom Charter and ANC Code of Conduct, as well as the international law of human rights, guarantee such persons the right to be free from torture, from cruel, inhuman or degrading treatment, and from detention and punishment without fair trial. Under the ANC codes, the goal of punishment is rehabilitation and the guiding principle is humane treatment; similarly, international human rights guarantee conditions of existence that favour the harmonious development of the individual.

2. INTERNATIONAL TREATIES AND CUSTOMARY INTERNATIONAL LAW

A. The Applicability of Protocol I Additional to the Geneva Conventions of 1949

The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts ("Protocol I"), is directly addressed to the armed conflict between the ANC and the South African regime. Article 1, paragraph 4 states that the Protocol shall apply in the situation of "armed conflicts in which peoples are fighting . . . against racist regimes in the exercise of their right of self-determination. . ."

There is no question that the struggle against apartheid waged by the ANC and Umkhonto We Sizwe was both an armed conflict and a struggle against a racist regime. In attempting to accede to the Protocol on 28 November 1980, Mr. O. R. Tambo, former President of the ANC, recognized this and declared that:

"Apartheid, the policy of official discrimination enshrined in the law and constitution of South Africa, has now been legally denounced as a crime against humanity and has led to an international convention for the suppression of the crime of apartheid. Protocol 1 of 1977 itself recognises that 'practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination'

constitute grave breaches of the Conventions and must therefore join the list of crimes identified at the Nuremberg War Crimes Tribunal.

. . . The state of war which exists in South Africa is a war of national liberation, for self-determination on the basis of the Freedom Charter, of whose adoption we are celebrating the 25th anniversary this year. It is, as Article I of Protocol I of 1977 recognizes, an armed conflict in which peoples are fighting against 'colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.'^{1/}

Although Protocol I may not bind the ANC as a formal legal matter^{2/}, there is no question that the ANC endeavoured to respect the Protocol, attempted to enforce the Protocol and has voluntarily bound itself to apply the Protocol. The ANC undertook to apply the Geneva Conventions and Protocol I in relation to its armed conflict against the South African regime "by means of a unilateral declaration addressed to the depositary."^{3/} On November 28, 1980, former President O. R. Tambo signed a declaration addressed to the International Committee of the Red Cross purporting to accede to the Protocol. The declaration states:

It is the conviction of the African National Congress of South Africa that international rules protecting the dignity of human beings must be upheld at all times. Therefore, and for humanitarian reasons, the African National Congress of South Africa hereby declares that, in the conduct of the struggle against apartheid and racism and for self-determination in South Africa, it intends to respect and be guided by the general principles of international humanitarian law applicable in armed conflicts.

Wherever practically possible, the African National Congress of South Africa will endeavour to respect the rules of the four Geneva Conventions of 12 August 1949 for the victims of armed conflicts and the 1977 Additional Protocol I relating to the protection of victims of international armed conflicts.^{4/}

^{1/} Statement by Mr. O. R. Tambo, pages 1-2 (Nov. 28, 1980).

^{2/} See S v Petane 1988 (3) SA 51 (C), at p. 56; Protocol I, Article 96, paragraphs 2 and 3.

^{3/} Protocol I, Article 96, paragraph 3.

^{4/} Declaration from the African National Congress of South Africa addressed to the International Committee of the Red Cross, delivered in Geneva, Switzerland, on 28 November 1980. This declaration, including the language "wherever practically possible," was written by the International Committee of the Red Cross to account for the different status of a liberation movement, and was delivered to the Red Cross because, for technical reasons, it could not be sent to the Swiss Federal Council. Tr.

When the ANC acceded to Protocol, Mr. Tambo stated:

"We in the African National Congress of South Africa solemnly undertake to respect the Geneva Conventions and the additional Protocol I in so far as they are applicable to the struggle waged on behalf of the African National Congress by its combatants, Umkhonto We Sizwe. In particular we undertake to apply the provisions of the Third Convention of 1949, namely the Geneva Convention relative to the Treatment of Prisoners of War, to the regular armed forces of the South African regime captured by the cadres of Umkhonto We Sizwe. This Convention is one of the cornerstones of humanitarian international law."^{1/}

Subsequent to these declarations, members of the ANC attempted to enforce the provisions of Protocol I.^{2/} For these reasons, it is plain that the ANC intended to respect the provisions of Protocol I and would want to be bound by the principles and spirit of the Protocol. This is consistent with the "growing conviction that under contemporary international law members of . . . the ANC are members of liberation movements entitled to prisoner-of-war status, in terms of a new customary rule spawned by the 1977 Protocols."^{3/}

The applicability of Protocol I to the particular cases of the complainants who have put their cases before this Commission also depends on the status of the complainants. The evidence presented to the Commission establishes that none of the complainants were combatants of the South African regime who fell into the power of Umkhonto We Sizwe while they were engaged in hostilities against the movement.^{4/}

However, several of the complainants fell into the category of spies, who were entitled to fundamental guarantees under Article 75 of the Protocol once they had

2,345-46 and 2,338 (Asmal).

^{1/} Statement of Mr. Tambo, supra, page 2 (Nov. 28, 1980).

^{2/} See, e.g., S v Petane 1988 (3) SA 51 (C) at p. 62.

^{3/} J. Dugard, Annual Survey of South African Law, at p. 66 (1983).

^{4/} Such persons would have been entitled to prisoner-of-war status. Article 43 of Protocol I defines "combatant" as a member of the armed forces of a party to the conflict, and, under Article 44, he is entitled to prisoner of war status when he falls into the power of the adverse party.

been determined to be spies and thereby stripped of their prisoner-of-war status^{1/}.

The Security Department was -- and remains today -- convinced that certain of the complainants were active members of the South African Police, were recruited to infiltrate Umkhonto We Sizwe and did so under orders of the SAP. The Security Department contended at the hearings that these individuals confessed immediately upon arrest and there was testimony that one of them, Patrick Hlongwane, even asked the Security Department to be swapped for ANC prisoners held by the South African regime. The Commission concludes on this evidence that these complainants were "members of the armed forces" for purposes of Article 46 and, thus, were entitled to be treated as spies under Protocol I.^{2/}

It is difficult to apply the formal structures of documents such as international treaties to the complex situation of a national liberation movement in exile struggling against a racist regime that imposes its power by all possible means, including its police force. One may presume that the South African regime -- which in any event was not a party to Protocol I -- would not have notified anyone, pursuant to Article 43, paragraph 3, that it had incorporated the South African Police into its armed forces for purposes of its armed conflict against the ANC. Nevertheless, that does not mean that the SAP was not functioning in concert with the armed forces. This Commission is of the view that if a member of the South African Police were recruited to conduct foreign espionage by infiltrating with false pretence the structures of Umkhonto We Sizwe, such an individual could properly be deemed a

^{1/} Article 46 of the Protocol defines "spy" as "any member of the armed forces of a Party to the conflict [who is not in the uniform of his armed forces] and falls into the power of an adverse Party while engaging in espionage." The official commentary to Article 46 suggests the following more precise definitions of a "spy": "a person who secretly, in disguise or under false pretence, seeks information with the intention of communicating it to the enemy," or "someone who gathers or attempts to gather information through an act of false pretences or deliberately in a clandestine manner, with the intention of transmitting it to the enemy." (IRCR Commentary, p.570, para. 1784)

^{2/} To be sure, neither the Protocol itself, nor the official commentary to the Protocol, address this precise question. The Protocol does, however, envisage the possibility that an armed law enforcement agency may be incorporated by a party into its armed forces. (See Art. 43, para. 3 ("[w]hen a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict"). Moreover, the "[f]ailure to notify the other parties to the armed conflict of the incorporation of 'paramilitary or armed law enforcement agenc[ies]' will not affect their basic characteristics." (L.R. Penna, Customary International Law and Protocol I: An Analysis of Some Provisions, at p.215 (reproduced in Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet (C. Swinarski e. 1984)).

spy under Article 46 of Protocol I and would be entitled to the fundamental guarantees protected by the Protocol.

B. Applicability of Common Article 3 of the Geneva Conventions of 12 August 1949

Even if the ANC legally is not bound by Protocol I, the analysis would not differ in great measure because the ANC is bound by the provisions of Common Article 3 to the four Geneva Conventions of August 12, 1949. Common Article 3 codifies customary international law. Thus, although the Geneva Conventions are only open for accession by sovereign states, Common Article 3 establishes normative humanitarian rules applicable to non-international armed conflict and represents the minimum floor of humanitarian guarantees under customary international law.^{1/} Common Article 3 automatically applies in the situation of internal armed conflict^{2/} and the obligation of the ANC to apply Common Article 3 would be absolute.^{3/}

C. The Fundamental Guarantees Protected by Article 75 of Protocol I and Common Article 3 of the Geneva Conventions

(i) Protocol I

Under Protocol I, a spy is entitled to the "fundamental guarantees" articulated in Article 75. "The spy who is denied the status of prisoner of war is a civilian protected by . . . Article 75 (Fundamental guarantees) of the

^{1/} See Military and Paramilitary Activities in and against Nicaragua, (Nicaragua v. United States of America), Merits, 1986 I.C.J. Reports 14 (Judgment of June 27, 1986); T. Meron, Human Rights and Humanitarian Norms As Customary International Law.

^{2/} See Commentary on the Geneva Conventions of 12 August 1949: Volume I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, p. 48-52 (J. Pictet ed. 1952) (hereinafter "Geneva Commentary") ("We think. . . that the Article should be applied as widely as possible, *id.* at 50).

^{3/} The reciprocity clause was intentionally eliminated in Common Article 3. See Geneva Commentary, at p. 51.

Protocol."^{1/} However, before a spy can be deprived of his prisoner-of-war status and treated as a spy, he must be afforded a trial.^{2/}

Article 75 sets forth specific judicial guarantees after prohibiting summary conviction without fair trial. Protected rights include the right to notice of charges, presumption of innocence; individual responsibility, speedy and public trial, confrontation of witnesses, and the right against self incrimination.^{3/}

Article 75 also requires that all persons captured as spies "shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon . . . belief, political or other opinion. . . Each Party shall respect the person, honour, convictions and religious practices of all such persons." Article 75, paragraph 2, specifically prohibits (a) violence to the life, health or physical or mental well-being of persons, including murder, torture of all kinds (whether physical or mental), corporal punishment and mutilation; (b) "outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;" . . . (d)

^{1/} ICRC Commentary, p. 570, para. 1787; see also *id.* at 563, para. 1768 ("a spy who has been deprived of his prisoner-of-war status . . . is a civilian protected by the . . . provisions of the Protocol [that] contain substantial guarantees, particularly in Article 75 (Fundamental guarantees)."

^{2/}The ICRC Commentary states that:

if a person suspected of espionage appears to be a member of the armed forces, he should have the benefit of prisoner-of-war status as long as there is any doubt regarding the matter of his right to such status, and until a competent tribunal has decided on this matter (Article 45 -- Protections of persons who have taken part in hostilities, paragraph 1). In short, there may exist two conflicting presumptions simultaneously: prisoner of war or spy. The presumption of prisoner-of-war status should prevail, at any rate whenever the person concerned has not been charged on the basis of prima facie evidence.

The deprivation of prisoner-of-war status already constitutes a punishment in itself and can therefore only take place following the tribunal's decision. This applies a fortiori to the deprivation of prisoner-of-war treatment. ICRC Commentary, p.564, para. 1769-70; See also *id.* at 570, para. 1788 ("[i]n cases of doubt, the person concerned is treated as a prisoner of war pending a decision regarding his status by a competent tribunal. Penal sanctions can only be imposed by a judicial tribunal"). Under international law, penal sanctions may include the death penalty. See *id.* at 563 n.4.

^{3/} Protocol I, Article 75, paragraph 4.

collective punishments; and (e) threats to commit any of the foregoing acts. These are the fundamental guarantees afforded a person suspected of being a spy under the provisions of Protocol I.

(ii) Common Article 3 of the Geneva Conventions

Common Article 3 provides, "as a minimum," the following:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely. . .

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; . . .
- (b) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (c) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

In interpreting what constitutes "the judicial guarantees which are recognized as indispensable by civilized people" in the context of Common Article 3, this Commission will look to Article 6 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts ("Protocol II").^{1/} "[M]ost of Article 6 [of Protocol II's] fundamental guarantees are patterned on or near verbatim transcriptions of provisions in Articles 14 and 15 of the International Covenant on Civil and Political Rights. . ."^{2/}

Article 6 of Protocol II secures, *inter alia*, the right to notice, individual responsibility, presumption of innocence, and the right to protection against

^{1/} Cf. Goldman, Americas Watch, Violation of Fair Trial Guarantees by the FMLN's Ad Hoc Courts, p. 6-8 and n.11 (May 1990).

^{2/} *Id.* at 8.

self-incrimination.^{1/} The basic guarantees required by Common Article 3 do not differ greatly from the fundamental guarantees codified in Article 75 of Protocol I.

D. Customary International Law

Finally, humanitarian principles also apply with regard to the complainants that were allegedly loyal to and dependent on the South African regime. Fundamental humanitarian laws have been distilled from the principle of humanitarian law "that respect for the individual and his well-being shall be ensured as far as this is compatible with public order, and, in time of war, the military requirements."^{2/} The fundamental principles include:

the principle of inviolability: the individual is entitled to respect of his life, of his physical and spiritual well-being, and of his personal attributes.

Torture and degrading or inhuman treatment are forbidden.

Everyone is entitled to respect of his honour, family rights, convictions and habits.

Anyone who is suffering shall be sheltered and shall receive the care which his condition requires.

the principle of non-discrimination: individuals shall be treated without any distinction based on . . . political, philosophical or religious opinions.

the principle of security: every individual has a right to personal safety.

No one may be held responsible for an act which he has not committed.

Reprisals [and] collective punishment are prohibited.

Everyone is entitled to the usual legal safeguards.^{3/}

E. Internment Under the Geneva Conventions and Protocols

Several complainants to whom the guarantees afforded by international law may be said to apply -- those deemed spies under Protocol I -- were detained for several years without trial. Some commentators have suggested that non-punitive internment of persons suspected of being loyal to the adverse party during time of war is a more favourable alternative to trial with inadequate due process, particularly where the

^{1/} Protocol II, Article 6

^{2/} J. Pictet, Humanitarian Law and the Protection of War Victims, p.29 (9175).

^{3/} Adapted from Humanitarian Law, *supra*, p. 34-43.

liberation movement is not capable of extending the individual rights required by Article 75 or Common Article 3.^y

The question is whether a liberation movement such as the ANC, that may not have had the capability to establish regularly constituted courts while in exile, could intern persons who were suspected of being a risk to its security for a long period of time - instead of granting them a speedy trial in compliance with Article 75 of Protocol 1 or Common Article 3. Whether or not an international court of law would ascribe to this position, this Commission is of the view that internment was a more favourable alternative to trial by inadequately constituted courts without the fundamental guarantees of due process. But, in these circumstances, such internment would have had to have been non-punitive - a variant of house arrest. But that was not the case here. Here the Commission finds that the protections concerning humane treatment and the prohibitions against torture and outrages upon personal dignity were violated during the detention of the alleged spies.

The argument that non-punitive internment would have been the better course where trials comporting with due process could not be afforded, and the detainee could not be unconditionally released, applies with equal force to deserters.^z

3. THE ANC HUMAN RIGHTS DOCUMENTS

The ANC has a long tradition of humanitarianism and human rights. Several important human rights texts -- including the Freedom Charter and the ANC Code of Conduct -- have emerged from this tradition. These texts set forth guarantees and protections for members of the ANC and Umkhonto We Sizwe; require notice of criminal or disciplinary infractions; and articulate rules of procedure for the conduct of trials and judicial review.

(i) The Freedom Charter

The Freedom Charter, adopted at Kliptown on June 26th, 1955, contains several provisions that are relevant to the situation at hand. The Charter states, in pertinent part, that:

ALL SHALL BE EQUAL BEFORE THE LAW!

No one shall be imprisoned, deported or restricted without a fair trial;

No one shall be condemned by the order of any government official;. . .

Imprisonment shall be only for serious crimes against the people, and shall aim at re-education, not vengeance;

^y See Goldman, Americas Watch, Violation of Fair Trial Guarantees by the FMLN's Ad Hoc Courts, p. 37-38 (May 1990).

^z See p. 77. below

The police force and army shall be open to all on an equal basis and shall be the helpers and protectors of the people;

All laws which discriminate on grounds of race, colour or belief shall be repealed.

While it can be argued that these noble declarations are meant to apply to the conduct of the future government of South Africa^{1/}, the principles and aspirations set forth in the Freedom Charter are relevant to the circumstance of persons detained by the ANC because these principles are so basic and fundamental to ordered society.

(ii) **The Code of Conduct**

The Code of Conduct, adopted at the initiative of former President O. R. Tambo at the Kabwe conference in 1985, consists of the African National Congress Code of Discipline and the Umkhonto We Sizwe Military Code. The African National Congress Code of Discipline opens as follows:

"All shall be Equal before the Law, No-one shall be imprisoned, deported or restricted without a fair trial;

No-one shall be condemned by the order of any government official;

The courts shall be representative of all the people;

Imprisonment shall be only for serious crimes against the people, and shall aim at re-education, not vengeance;

The police force and army shall be open to all on an equal basis and shall be the helpers and protectors of the people;

All laws which discriminate on grounds of race, colour or belief shall be repealed."

It goes on to declare that :

The ANC is the instrument created by the people of South Africa to achieve their goal of a just and democratic society, to build a world in which all our people live together as equals, countrymen and brothers.

In fighting for justice in our land, we must ensure at all times that justice exists inside our own organisation -- our members, the people of South Africa, and the people of the world must know and feel that for us justice is not merely an ideal but the fundamental principle that governs all our actions. Accordingly, we must at all times act justly in our own ranks, train our people in the procedure of justice and

^{1/} See Tr. 2,386 (Asmal).

establish the embryo of the new justice system we envisage for a liberated South Africa.¹

(a) **Fundamental Guarantees**

The Code of Conduct articulates some basic guarantees afforded to members of the ANC and Umkhonto We Sizwe. These guarantees include, first, the right to be free from torture. The Code strictly forbids "[t]orture or any form of cruel, inhuman or degrading treatment of a detainee or a person on trial." Code of Conduct at page 11. The Code only permits "intensive methods of interrogation . . . in extraordinary circumstances and under proper authorisation and strict supervision by the highest political authority in the area."

Second, the Code guarantees the right to be free from cruelty, intimidation, bullying, insults and ill-treatment. The Code declares that the following conduct by a member of the organisation shall be an offense: "cruelty inflicted on a member of the army or public; . . . the use of insulting and/or obscene language, bullying and intimidation, whether against a comrade or member of the public; . . . ill-treatment of prisoners of war or persons in custody." Id. at 24. The Code requires that "[a]ll members of the ANC and combatants . . . respect the terms of the Geneva Convention on the Treatment of Prisoners of War in line with the formal acceptance by the ANC of these terms." Id. at 25.

Third, the Code emphasizes that the goal of punishment is rehabilitation and that the guiding principle should be humane treatment. The Military Code states:

The purpose of punishment is to deter members from committing an offence, assist offenders to rehabilitate and protect the ANC, Umkhonto, liberation and the revolution. In imposing punishment, the competent authorities shall be guided by high political principles to the exclusion of personal animosity or any trace of vendetta. Punishment shall be administered humanely and without undue harshness or cruelty.

Id. at 25. Elsewhere the Code states that "[e]very attempt is made to correct bad behaviour and rehabilitate members who violate the army's code." Id. at 22.

Fourth, the Code requires prompt handling of prosecutions, with "no undue delay . . . between completion of investigations and the date of the trial." Id. at 10-11. Under the Code, the criminal justice system is overseen by an Officer of Justice appointed by the NEC, whose responsibility it is to ensure the speedy and just administration of the Code and the fair and humane treatment of prisoners.² In general, the "Officer of Justice shall pay special attention to ensuring the prompt handling of matters, and

¹ Code of Conduct, at p. 1.

² The duties and responsibilities of the Officer of Justice under the Code of Conduct are set out at p. below

shall recommend rules to the NEC covering the maximum periods which should normally be permitted for investigation, preparing the matter for hearing, and for the hearing itself." Id. at 17.

Moreover, the Military Code recommends that "among [the] first tasks [of the Justice Officer] be an investigation, in the light of the principles of the codes, of all cases of persons still serving sentences in terms of earlier proceedings, and of all cases awaiting trial." Id. at 25.

Fifth, the Code establishes certain guarantees of fair trial rights. The Code envisages the establishment of a disciplinary organ to be known as "The National People's Tribunal" consisting of five members appointed by the National Executive Committee (NEC). Id. at 9. The guarantees include:

- (a) The Accused shall have the right to put questions to witnesses on the evidence given against him/her;
- (b) After the Presenter's evidence has been led, the Accused shall have the right to give evidence and present or call for the production of witnesses or documents;
- (c) The Accused shall not be obliged to testify, but failure to do so will normally be considered as admitting the allegations not directly rebutted by him/her;
- (d) The Tribunal may at any stage question the Accused as to whether he/she admits or denies, in whole or in part, evidence which has been led by the Presenter...^y

These are the major guarantees articulated in the Code.

(iii) The Penal Code

The Code of Conduct also sets forth what amounts to a penal code and rules of criminal procedure. The following substantive crimes pertinent to this Commission's review, and their corresponding range of punishments, are set forth in the Code of Discipline and/or the Military Code as follows:

(a) treason:

"A grave crime shall be committed by any person who. . . with intent to destroy the integrity of the organisation, its personnel, its material or its fighting capacity . . . sabotages the activities of the organisation. . . or does any other act calculated to undermine its effectiveness as a liberation organisation." Code of Discipline, at p. 3. The penalties for this offence range from capital punishment to incarceration for a period of fifteen years all

^y Code of Conduct, at p. 12.

the way down to suspension, public reprimand, and forfeiture of privileges. *Id.* at 7-9.

With regard to the death penalty, the Code states:

In exceptionally serious cases, where no other penalty would be appropriate, maximum punishment may be imposed. In considering whether or not to impose this penalty, tribunal shall recall the traditions of humanity of the ANC and its long-standing opposition to capital punishment.

Id. at 7.

(b) espionage:

"A grave crime shall be committed by any person who. . . infiltrates the organisation, acting on behalf of or in collaboration with . . . the racist regime . . . [or] any person or group who wish to destroy the organisation or prevent it from fulfilling its mission of liberating South Africa." Id. at 3. The range of punishment is the same as for treason.

(c) mutiny:

"All combatants must defend the ANC and be loyal to it, the army and the revolution. The following acts or omissions shall be an offence: . . . rebellion or revolt against the army command or part of it or attempts to commit such an act of rebellion or revolt." Id. at 23. The penalties for mutiny include the death penalty, solitary confinement for a period determined by a tribunal, and dishonourable discharge. *Id.* at 26.

(d) desertion:

"The following. . . shall be an offence: . . . desertion from the army." Id. at 23. The penalties for desertion include the death penalty, solitary confinement for a period determined by the tribunal, and dishonourable discharge. *Id.* at 26.

(e) misbehaviour that seriously threatens the safety of the Organisation

"Serious offenses . . . shall include . . . behaving dishonestly in relation to the property of the organisation; . . . [or] racketeering in cars, drugs, food, clothes or other items. . ." *Code of Conduct, p.4.* The penalties for this offense range from incarceration for five years, to suspension, public reprimand or forfeiture of privileges. *Id.* at 7-9.

(f) violations of discipline:

"Violation of discipline shall include. . . drug taking; excessive drinking; carelessly talking about the organisation in any way that could be useful to the enemy; . . . negligent driving or careless use of organisational transport; . . . [or] behaving in a manner calculated to bring the organisation into disrepute." *Id.* at 5. The penalties for disciplinary infractions include demotion and redeployment. *Id.* at 9.^{1/}

(iv) **Rules of Criminal Procedure and Appellate Review:**

The rules of procedure require the Tribunal to record the essential findings of facts on which it bases its decision, and, wherever possible, to appoint a reporter to keep a verbatim record of the proceedings. *Id.* at 13. In addition, all findings and penalties imposed by the Tribunal are to be reviewed by a National Review Committee (NRC) established by the NEC. *Id.* at 16. Moreover, the NEC *"in its capacity as the highest organ of the ANC in the period between Conference, and as the guardian of the interests of the membership as a whole, will be responsible for the overall supervision and control of the functioning of th[e] Code."* *Id.* at 17.

D. **International Law of Human Rights**

In addition to the Freedom Charter, the Code of Discipline and the Military Code, the conduct of the alleged perpetrators must also be measured against accepted international norms of human rights. The basic human rights pertinent to the inquiry of this Commission are the following:

- (1) **the right to life:** "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."^{2/}

^{1/} The Code of Conduct is similar in many ways to the Uniform Code of Military Justice in place in the United States. For example, treason, or "aiding the enemy," is similarly defined: "[a]ny person who (1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or (2) without proper authority, knowingly harbors or protects or gives intelligence to or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct." Uniform Code of Military Justice, Article 104, 10 U.S.C. Sec. 904. Desertion is defined under the Uniform Code of Military Justice as follows: "[a]ny member of the armed forces who . . . without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently . . . is guilty of desertion . . . [and] shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct." Uniform Code of Military Justice, Article 85, 10 U.S.C. Sec. 885. Both the substantive offenses and the range of punishments are very similar.

^{2/} The African Charter on Human and Peoples' Rights, art. 4 (hereinafter "ACHPR"); *see also* International Covenant on Civil and Political Rights, art. 6

- (2) the right to be free from torture, ill-treatment and degradation: "All forms of exploitation and degradation of man, particularly . . . torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."^{1/}
- (3) the right to be free from arbitrary arrest and arbitrary detention: "No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."^{2/}
- (4) the right to be informed of the charges and to a fair trial within a reasonable time by an impartial tribunal: "Every individual shall have the right to have his cause heard, [including] . . . the right to be presumed innocent until proved guilty by a competent court or tribunal; the right to defence, including the right to be defended by counsel of his choice; the right to be tried within a reasonable time by an impartial [and independent] court or tribunal. . . "^{3/}

These fundamental human right guarantees parallel the protections of the Code of Conduct and ensure all members of the ANC, whether detained or not, fair and humane treatment and due process.

(hereinafter "ICCPR"). This right may not be derogated even in time of declared public emergency. See ICCPR, art. 4(1).

^{1/} ACHPR, art. 5; see also ICCPR art. 7 and 10(1) ("All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"); Universal Declaration of Human Rights, art. 5 (hereafter "UDHR"). This right may not be derogated even in time of declared public emergency. See ICCPR, art. 4(1).

^{2/} ACHPR, art. 6; see also ICCPR, art. 9; UDHR, art. 9. While it may be argued that these rights may be derogated in times of war or declared emergencies under international law, the ANC made clear that derogation was not "strictly required by the exigency of the situation," ICCPR art. 4(1), when it adopted the Code of Conduct in 1985.

^{3/} ACHPR, art. 7 and 26; see also ICCPR, art. 9 and 14; UDHR, art. 10. Again, while it may be argued that these rights may be derogated in times of war, the ANC made clear that derogation was not required by adopting the Code of Conduct.

ORGANISATIONAL STRUCTURE OF THE ANC IN EXILE

Information supplied to the Commission by Mr Alfred Nzo who, for many years until June 1991, was Secretary General of the ANC and from Mr Liso Njenje (Gibson Makhanda) who was a security and intelligence operative, and from other witnesses, suggests that the ANC in exile evolved its structure over several years. As the Organisation grew, so its structures also changed. Other changes were the results of improvements which were dictated by the Organisation's desire to correct unacceptable internal developments.

Important examples of structural changes which were brought in to deal with changed circumstances are the creation of the Revolutionary Council (RC) at the Morogoro Conference in Tanzania in 1969, and the establishment of the Office of Justice in 1985 following the Kabwe Consultative Conference, Zambia in 1985.

By 1990 the Organisational structure of the ANC was as represented on the organogram on page 244 and had the following main features :

1. NATIONAL CONSULTATIVE CONFERENCE (NCC)

This body took the place of the National Congress (possible only inside South Africa) as the most representative organ of the ANC. It elected the National Executive Committee.

2. NATIONAL EXECUTIVE COMMITTEE (NEC)

Composed of senior ANC members and responsible for the overall policy of the Organisation, the NEC was the highest executive organ of the ANC. The NEC had two main committees :

- (a) National Working Committee - made up of those NEC members who happened to be at the Organisation's headquarters in Lusaka, this committee conducted the day-to-day running of the ANC at NEC level.
- (b) Secretariat - made up of the Secretary General and representatives of the President's Office and the Treasurer General's Office, this organ provided secretariat services to the ANC.

3. PRESIDENT'S OFFICE

Headed by the President of the ANC, this office had the responsibility of -

- (a) overall charge, direction and co-ordination of the other major organs of the ANC; and
- (b) ensuring that the ANC survived and continued to operate both outside and inside South Africa.

In time the President's Office became the sole instrumentality through which the struggle to democratise South Africa was waged. The President's Office was a member of the NEC.

4. **SECRETARY GENERAL'S OFFICE (SGO)**

The SGO was headed by the Secretary General of the ANC and, apart from providing general secretariat services at the National level, was charged with putting in place, running and developing the external (outside S.A.) wing of the ANC. All international affairs work, including diplomatic and representational, was conducted through the SGO. Its main departments included international affairs, manpower development, culture, women and youth. It had regional political committees, one in each region (country) where the ANC was represented.

The SGO was parallel with the President's Office and was a member of the NEC.

5. **TREASURER GENERAL'S OFFICE (TGO)**

Headed by the Treasurer-General of the ANC the TGO was charged with general mobilization, husbandry and disbursement of resources for and of the Organisation. The TGO would raise funds, invest, look after and disburse them and impose accounting and other financial disciplines as necessary.

Its work in the regions would normally be done through the Chief Representative.

The TGO was parallel to the President's Office and the SGO and was also a member of the NEC.

6. **NATIONAL SECURITY COUNCIL**

Below the President's Office is the National Security Council (NSC) whose members were the President, the Secretary General, the Treasurer General and the head of the Security and Intelligence department. NSC provided the national leadership with security and intelligence information.

7. **REVIEW BOARD**

The Review Board was set up to review cases of detainees and make recommendations on whether or not a detainee should be released. It also reviewed cases of capital punishment and made recommendations to the NSC. The Board would visit detained persons, review their welfare and review all appeals against sentences by tribunals.

8. **OFFICE OF JUSTICE**

Created in 1985, the Office of Justice looked into all legal matters but in particular the matters affecting detainees. It would therefore visit detention centres, receive dockets of persons under arrest and organize tribunals to try cases. Like the Review Board, the Office of Justice reported to the NSC.

9. **REVOLUTIONARY COUNCIL (RC) (PMC)**

Below the NSC was the Revolutionary Council, set up at the 1969 Morogoro Conference in Tanzania and charged with building up the internal (inside South Africa) structures of the ANC. The RC was subsequently replaced by the Politico-Military Council (PMC) which continued the work of the RC but through its three component departments, namely, the Military Headquarters (MHQ), the Political Headquarters (PHQ) and the National Security (NAT).

10. **REGIONAL POLITICO-MILITARY COUNCILS (RPMC)**

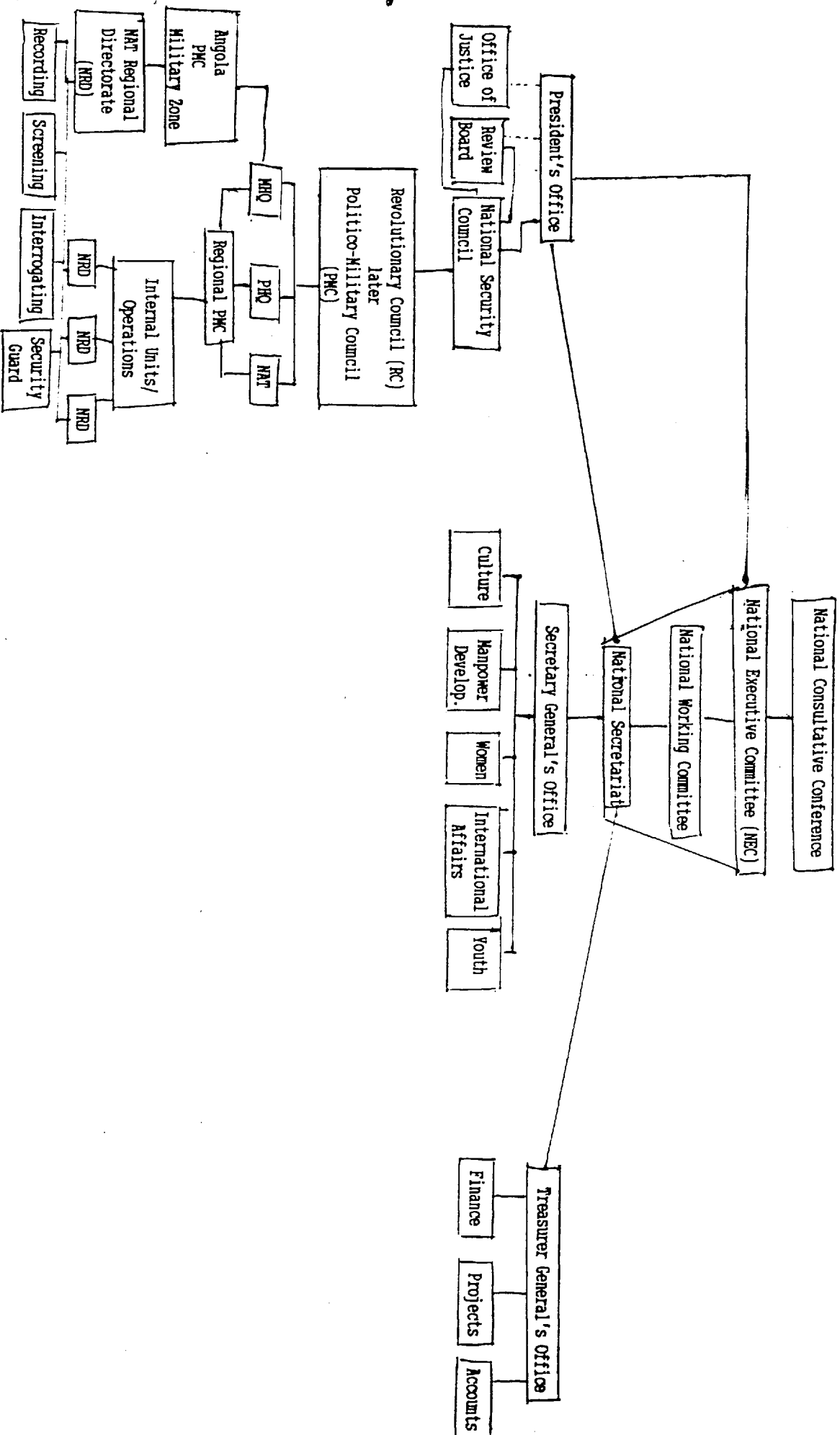
Below the national PMC were regional or country PMCs. Specifically, these were in Angola, Botswana, Lesotho, Mozambique, Swaziland, Tanzania, United Kingdom, Zambia and Zimbabwe.

Angola was treated in a separate way because the war in the country demanded that the ANC regard it as a military zone under a regional command.

Each RPMC had a number of Internal Units and Operatives composed of political, military and security representatives. In these units, the security operations were, because of their sensitive nature, conducted under a NAT Regional Directorate. The work emphasis in each case depended on the peculiar circumstances of that region. For example, while in Botswana, the regional security work was mainly intelligence, counter-intelligence and administration work, in Angola additional responsibilities involved screening for infiltrators, disciplinary and security guard duties.

The structure was not cast in stone and there appears to have been some flexibility in the manner in which it was interpreted and implemented.

AFRICAN NATIONAL CONGRESS OF SOUTH AFRICA
STRUCTURE IN EXILE



THE ANC SECURITY APPARATUS

1. ESTABLISHMENT OF THE DEPARTMENT OF SECURITY AND INTELLIGENCE

The Commission did not receive any information on the existence of a distinct and separate security apparatus of the Organisation for the period up to 1976 and between 1976 and 1981. It is clear, however, that security and intelligence duties were carried out as part of the operations of the MK. Indeed, Mr Piliso informed the Commission that while in Angola, he was the most senior recruiting and training officer of MK and was responsible for the establishment there of all the training camps. These responsibilities would, undoubtedly, have involved intelligence collection and the screening and allocation of recruits to their different departments.

It also appears that the Head of this Department was appointed by the President but that once he was in place, it was his prerogative to appoint the other members. The leadership of the MK would be involved in selecting people for the Security apparatus because all Intelligence and Security personnel were recruited from MK.

In 1981, Mr Mzwandile Piliso, then of the National Executive Committee (NEC), was appointed Head of the Intelligence and Security Department of the ANC.

Mr Peter Boroko was Deputy Head and together with the heads of the three sub-departments constituted the Executive Committee of the Department. The sub-departments are :

- a) external intelligence;
- b) internal intelligence (security);
- d) administration.

The Intelligence and Security Department was based in Lusaka, the Headquarters of the ANC and on his appointment, Mr Piliso had to transfer to Lusaka from Angola, where he had been based as one of the leaders of MK.

The Department's main responsibility was to defend the ANC and protect its activities from external and internal enemies. Ultimately, the operation of the movement's places of detention came within the purview of the Security Department.^{1/}

^{1/} Persons could be required to be held in detention either by military or security authorities. There were a number of places where such persons were detained: some of the military camps held detained individuals; some were held in some of the private houses operated by the ANC at its Lusaka headquarters; in the latter years of the 1980s some were held at Sun City, a detention centre in Tanzania; some were held at Dakawa and Mazimbu in Tanzania; some were incarcerated in the jails and prisons of the host state; and still others - apparently the majority - were held at Quadro.

In the earlier stages, (the early 1980s) the Department reported directly to the ANC President.

In time, the Department came to be popularly known as Mbokodo, a Xhosa word which means a stone used for grinding maize or other cereals and, in some people's minds, a euphemism for the harshness with which the Department treated its victims.

It was the responsibility of this Department to interview recruits into the ANC, screening them for the authenticity of their declared intentions, recommending on who should join MK, or attend academic training or undertake other functions. Beyond this, the Department would collect intelligence information both inside and outside South Africa relevant to the survival of the Organisation and the prosecution of its struggle inside the country.

Following the 1976 disturbances in South Africa, there was such an enormous influx of recruits into the ANC that the Department was stretched for human and material resources to handle the volume of work adequately.

2. WEAKNESSES IN THE SECURITY STRUCTURES

By the time of the Kabwe Conference, 1985, some of the inadequacies within the Department had become serious and the Conference decided to confine the activities of the Department to screening and investigating (in addition to intelligence collection). The Department was required to prepare reports and submit cases of persons suspected of unlawful activity or of being enemy agents to the new office created by decisions of the Kabwe Conference, the Office of Justice. In other words, although investigative functions were to remain with the Security Department, it was for the Office of Justice to carry through - with, for example, trials - once the investigation had been completed.

Obviously unhappy with how the Security Department was run, the NEC created a Provisional Directorate of Intelligence and Security to run the Department between 1986 and 1987. The then Secretary General of the ANC, Mr Alfred Nzo headed the Directorate, whose other members included Mr Piliso, Mr Joseph Mbuku Nhlanhla and Mr Jacob Zuma. In 1987, Mr Piliso was transferred from the Department and Mr Joe Nhlanhla appointed its Head.

Mr Nhlanhla told the Commission that, as a condition of his accepting appointment as the new Head of Intelligence and Security, he asked that conditions at the ANC camp in Angola called Camp 32 (Quadro) be improved. The conditions at Camp 32 are dealt with elsewhere in this Report. It suffices here to record that these conditions had brought the Department and the whole Organisation into disrepute. Hence, the need to change the leadership and some of the responsibilities of the Security Department which ran that Camp.

Mr Nhlanhla identified three major and interrelated weaknesses in the security Apparatus at that time. These were -

1. The mystery which surrounded its operations and its image. People were taken away from their work stations into the hands of the Department of Intelligence and Security and no information was given to them or those remaining behind regarding what was happening.

ANC cadres taken by the Department, or recruits who were being processed, would be moved from one place to another - even from one country to another, with no explanation given to them or their associates/ workmates, friends or relatives.

Upon their release from the Department, freed prisoners would not be returned to where they had come from - nor were the releases relayed to anybody where the people came from. The result was that nobody knew what happened to people picked up by the Department.

2. There were no distinct and adequate internal structures of the Department and its powers were apparently pervasive. This reflected itself mainly in the attitudes of the camp guards and administrators (particularly at Camp 32) to the inmates of these camps or prisons.
3. Accountability was seriously lacking. Members of the Department did not consider themselves accountable to the ANC generally or answerable to anybody specifically other than its head. This caused considerable friction with other organs of the ANC, particularly the army, MK. Other examples of this confusing situation were -

(a) Thami Zulu

A Commission of Inquiry was set up by the ANC in November 1989 to investigate the circumstances leading to the death of Mzwake Ngwenya (popularly known as Thami Zulu or TZ). That commission was chaired by Mr Z.N. Jobodwana and its report is dated 16 March 1990.

TZ had held various positions of authority in the ANC including being a commander of MK. He was later appointed head of the "Natal Machinery" of Mbokodo. Problems within that machinery led to his arrest by Mbokodo, and detention in Lusaka. He died at the University Teaching Hospital, Lusaka, in November 1989. Did he die from torture or starvation by the ANC Security, was he poisoned by the enemy to keep him quiet or did he die from AIDS? The commission found that TZ had TB and AIDS and had been poisoned prior to his death.

What interests this Commission is that TZ was arrested and confined by the ANC Security, his own Department, for 14 months under suspicion and that, even though his illness was evident from the condition of his body, he was not released in time for him to be given better medical attention. MK wanted him back but Mbokodo held him - without proper trial. Eight weeks were spent in solitary confinement. No progress was made in the investigations into whether he was a spy, yet Security continued to detain him.

The commission suggested that "the time taken was too long and that the length of the detention was influenced by a certain unwillingness to let go and a determination to prove that Security was right". It also was of the view "... that one of the causes for the delay both in investigation and in resolution of the case was the lack of cooperation between Military Headquarters and Security."¹

We have no information that this matter was brought to the NEC by either Security or MK before TZ died.

(b) Jordan's Arrest

Dr. Pallo Jordan - at present the head of the ANC's Department of Information - was arrested by junior Security officers, led by Ulysses Modise, was detained for 6 (six) weeks without any reason being given and subsequently released without any senior person informing him about what was happening and why. To this day, Dr Jordan can only guess that he was detained because he criticised the Security Department. Security decided to act and, until it was through, nobody could interfere. The Commission did not receive any information of the NEC discussing Jordan's detention.

(c) Quadro problems

Just who was responsible for Camp 32? Chris Hanani told the Skweyiya Commission that Quadro was under the control, not of the army, but of Security.

"This camp was in the hands - entirely in the hands of the security department. Although it was supposed to be a camp it was not in the - under the control of Umkhonto We Sizwe. It was handled by the security officials of the African National Congress ... Except that, ... supplies ... logistical supplies, they would get their food and everything but the operation in Quadro is a security operation. It is not a military operation. And we would visit Quadro in our capacity as officers to say how are you, how are the conditions because the people in charge of Quadro were themselves soldiers. They are selected by the security but not by ourselves."²

Finally, there were many other problems at Quadro. Yet, despite reports from MK, from the Committee of Three, and from individual NEC members who visited the Camp, the Commission is not aware of any meetings of the NEC to discuss these problems between 1979 and 1985 when the Kabwe Conference was held.

¹ Thami Zulu Commission Report page 19

² Skweyiya Report, pp. 429-430 (Hani)

Other witnesses identified two further weaknesses of the Security apparatus and the testimony of Pallo Jordan was very comprehensive and poignant in this regard¹. He confirmed before this Commission his evidence before the Skweyiya Commission concerning the problems which led to the appointment of a provisional directorate of the Security Department in 1986 followed by a change of leadership of the Department in 1987.

These weaknesses were -

First, the perceived corruption of the leaders of the Department all the way to the third layer. There were rumours of rampant embezzlement of funds, illicit dealings in precious minerals and theft of motor vehicles.

Second, the Department had acquired the reputation of being extremely repressive (hence Mbokodo) and brutal. The brutality manifested itself in the manner in which suspects were dealt with. People were required to write biographies of themselves over and over again until the Security people were satisfied. Suspects were beaten up very seriously and torture, both physical and psychological, was used too commonly as a means of investigation.

Third, the Department was intolerant of criticism. People were ill treated because they criticised the Security Department and Jordan's own detention was a case in point.²

These abuses needed to be uprooted from the Security apparatus and from the ANC as a whole.

The improvements which Mr Nhlanhla put in place included introducing greater transparency in the Department through general meetings at the regional level so that ANC members generally, and members of the Department particularly, could debate issues and inform people and each other about the liberation of South Africa. This had the effect of removing the secrecy with which the department was shrouded - thereby improving the image and increasing the effectiveness of the Department through greater popular involvement, participation and co-operation.

An interventionist style of leadership by Mr Nhlanhla also injected greater acceptance by his team that other organs like the MK and the Office of Justice were partners with whom the Intelligence and Security Department had to work and co-operate.

The Commission was also told that the problems explained by some of the witnesses were not to be regarded as the full story since there was another side to the Security apparatus. This was the fact that, but for the work of this Department - very successful work now viewed in retrospect - the whole Organisation would have been greatly at risk.

¹ TR 468-470 (Jordan)

² TR 451 (Jordan)

As Dr Jordan put it

"... in the period 1980, 1981, 1982, if it had not been for the successes that the Department had scored, it is very likely that the ANC would have been destroyed by the efforts of the South African regime. There were times ... especially 1981-1983, immediately after the Reagan administration ... in the United States, that ... I am sure the enemy would have succeeded in destroying the ANC, or at least inflicting very terrible damage on it".¹

3. COMMENTS

Without the co-operation of this Department, the work of the tribunals would never have been possible.

- ▶ Cases needed to be prepared for or under the supervision of the Office of Justice, but the Security Department did most of the work; information, witnesses, transport and other facilities were provided by Security;
- ▶ Security also escorted the tribunal members to the various places and protected them while they were at work - this was particularly necessary and appreciated in Angola;
- ▶ Mr Stuart says he experienced no problems with the Security Department either before or after 1986/87 - and uses one trip to Angola with Dr Skweyiya to illustrate that Security did not prevent Dr Skweyiya or anyone from performing their function.¹
- ▶ The Security apparatus was at the forefront of the struggle, confronting the enormously powerful enemy equipped with state of the art weaponry and other equipment. Mbokodo dared and succeeded in infiltrating the South African security apparatus, protecting its own underground machinery and safeguarding MK and the ANC as a whole;
- ▶ However, too much power was concentrated in an organ which was neither transparent nor accountable. Mbokodo investigated and arrested; it tried and convicted; it imprisoned and guarded its victims and decided whose cases to review, when and where and whether to release anyone. There can be no justice where one and the same organ is policeman, prosecutor, trial judge, prison officer and appeal court.
- ▶ Even under the new regime of the Office of Justice, Tribunal, Review Board and the Code of Conduct, the machinery of justice depended on the Security Department for most of its preparations, witnesses and protection. Mbokodo

¹ TR 466-467 (Jordan)

¹ Tr. 185 (Stuart)

decided which cases to prepare for trial and when - and no other organ could order Mbokodo.

- ▶ There were no properly defined structures within Mbokodo and all members tended to owe their allegiance to the Commander - fertile ground for corrupt practices.
- ▶ Checks and balances on the power of Mbokodo were noticeably absent and some of its officers, particularly security guards, were allowed to beat up, torture and abuse other people to a point where they were themselves dehumanised by the unchecked power in their hands.
- ▶ The Security Department did not maintain a proper balance between being vigilant in protecting the ANC from the South African regime and being vigilant against corruption and oppression - the rot which necessarily attends people who get used to power.
- ▶ Inspectorate responsibilities of such bodies as Mrs Shope's Committee of Three or the Officer of Justice were not backed by real authority. If any such inspector pitched up at a camp, all that a security guard needed to say (and did say) was "show me a letter from my commanding officer" and the inspector would not proceed with his/her work.¹
- ▶ The NEC itself lacked monitoring power over the Security apparatus and may have felt too indebted to it to want to interfere.

Dr Jordan suggested two lessons which he isolated from the experience of his detention, namely,

- (a) that respect for human rights cannot and should not be taken for granted - enough mechanisms and procedures must be created to protect these rights; and
- (b) that respect for human rights is not a luxury to be enjoyed when it suits the ANC - it is the essence of the democratic values for which the Organisation stands - and must fight for in good times and bad times.²

In the fight against apartheid and minority rule, the most lethal weapon and one which gave the ANC its moral superiority over the South African regime was the extent to which it lived up to the values contained in its documents such as the Freedom Charter, draft Bill of Rights and Code of Conduct. Any diversion, however temporary, would and did cause lingering internal haemorrhage.

¹ TR 503 (Jordan)

² TR 476 (Jordan)

HEIGHTENED SECURITY CONCERNS - 1976 TO 1990

1. THE INFLUX OF NEW CADRES INTO THE ANC

June of 1976 marked a momentous new phase in the struggle against apartheid within South Africa. Across the country, thousands of young people participated in political demonstrations, expressing a revitalized commitment to the struggle. The majority of these youths had not been actively involved in opposing the regime prior to the Soweto massacre of 16 June, which resulted in the killing of hundreds of school children by South African police forces. In the wake of the massacre, the youth were rapidly drawn into the political maelstrom and were anxious to realize their goals as soon as possible. Many of them perceived that the ANC, and particularly MK, offered the best opportunity for them to pursue their developing political consciousness and commitment.

Accordingly, hundreds of young people, men and women, found their way to the ANC. Sometimes they would make contact with underground ANC operatives within the country. Many others eventually made their way out of the country with the intention of linking up with MK. From 1976 until about 1980, the Soweto generation constituted the principal source of the ANC's new membership. Prior to 1976, typically new members came into the ANC through a recruitment process. That is to say, generally the existing membership would encourage the participation of certain individuals who were seen as suited to join the organization. Others were recommended to MK by their ANC branches in South Africa. However, after 1976, the ANC found it necessary to respond to the hundreds of unsolicited membership applications of the Soweto generation.

It appears that the ANC was not fully prepared to absorb these young people who were applying for membership. It lacked the apparatus properly to investigate the background of the applicants. Facilities for housing and otherwise providing for the welfare of new members were not in place. Perhaps, too, the creation of a significant ground force was not fully consistent with the ANC overall political and military strategy at that time.

Importantly, there existed something of a gap between the political expectations and experience of the new and the old membership. The Organisation into which the Soweto generation would be absorbed was primarily made up of seasoned veterans of the struggles of the 1950s and 1960s as well as some whose connections with the movement dated from the early 1970s. These were, for the most part, mature individuals who had incorporated the lessons of political patience and who had acquired a deep understanding of the history and mission of the ANC. A number of them had travelled widely in support of the organization, and, because of their own experiences or those of their colleagues, virtually all of the members had a keen sense of the security risks to which the ANC was exposed.

By contrast, the Soweto generation members, whilst most of them harboured a deeply felt desire to contribute to the struggle, had not been schooled in the

traditions of the ANC. They knew little of world politics or of the place of the ANC on the contemporary South African political scene. Their educational backgrounds revealed the flaws of Bantu education. In the view of ANC Security, many of the young people did not possess the personal discipline required in the circumstances, and some exhibited the life-style problems of their generation - petty thievery, smoking dagga and the like. Moreover, most of them were not disposed to patiently wait until the conditions were ripe to engage the enemy. They wanted to fight, and to fight now. Zola Skweyiya put it this way :

*"There was (a) general lack of discipline in the new crop ... (They) had no politics whatsoever ... the only thing they wanted was a gun, and as far as the ANC (was concerned), the act of carrying a gun was political, and as such, they had to be politicised first."*¹

The difficulty of absorbing the new members was further complicated by the fact that large numbers of them were sent to the ANC across the South African borders by the South African police, who took advantage of the influx to step up its campaign of infiltration. Mzwai Piliso remarked that James Kruger, then Minister of Police, had bragged that "of every ten who cross the border to find the ANC, five are mine". What is of significance here is that the ANC security personnel genuinely believed that the new members were as likely to be agents as not, even if the actual number of spies was not as high as Kruger boasted.

(a) The Membership Application Process

The Security Department was responsible for processing applicants for membership in the ANC. Typically, the applicant would be asked to write a biography detailing his personal background. The individual was required to include specific information as well as general background. If, after reviewing the biography, the individual was accepted by Security for membership, he would be asked whether he wished to join the military or to enrol at an educational institution. If his choice was the military, he would then be sent on to a military camp in Angola for training.

It appears that if the biography caused Security to question whether the individual presented a security risk, the applicant would be referred to the Investigation Department. He might be asked to rewrite the biography, sometimes many times. The applicant could be held until the questions the Investigation Department had about him were resolved to its satisfaction.

2. THE EFFECT OF INFILTRATION AND AGENTS PROVOCATEURS

As has been discussed, the ANC was a heavily infiltrated organisation during the 1970s and 1980s. The campaign of infiltration waged by the regime was designed to eliminate membership, sow distrust among the cadres, and disrupt political and military operations.

¹ TR 78 (Skweyiya)

Although all of its organs were at risk, MK and Mbokodo were particularly targeted for infiltration. Infiltrators exacted heavy costs upon the Organisation and caused its members to become highly suspicious of each other, particularly those whose histories with the ANC were not well established. Such suspicions increased dramatically in the late 1970s in the wake of assaults upon ANC camps, offices and the homes of its members and supporters.

- ▶ On 20 September 1977 Nova Catengue, was targeted. On that occasion, the entire camp population of some 500 cadres experienced an epidemic of diarrhoea and dysentery, the cause of which was ultimately determined to be the poisoning of the camp's food. Disaster in those circumstances was narrowly avoided when Mzwai Piliso, a former pharmacist, together with the camp doctor, Peter Mfelang, was able to administer anti-diarrhoeal medication.
- ▶ In April 1979, South African army planes executed a bombing raid on the same Camp. The bombs were targeted with such a degree of precision that it was apparent that an agent had supplied the enemy with intelligence information. Among the first targets was the site where anti-aircraft missiles had, two weeks before the raid, been located. Fortuitously, Mr Piliso had earlier ordered the weapons removed from that location. The second target was the Camp's communications room. The raid took place at a time when it would have caused the greatest number of casualties, except that the cadres were on roll call at the moment of the raid. Three cadres lost their lives during the attack. Although the cost in loss of life was minimal, the raid reduced the Camp to a heap of rubble.
- ▶ In 1982, in Maputo, Mozambique, a letter bomb was included in the mail received by ANC member Ruth First, who, as a result of the assault, was killed. Pallo Jordan, as well as other members, were present in the room and badly injured in this bombing.
- ▶ At some point it was discovered that two persons assumed to be loyal ANC members operating out of Lusaka were in fact enemy agents.
- ▶ In 1985, 1986 and 1987 ANC facilities in Botswana, Swaziland and Zambia were the sites of police attack, and cadres, including their children, were killed or wounded.

Other circumstances fuelled the security concerns resulting from these direct attacks on ANC members and facilities. A number of witnesses, including Mrs Gertrude Shope, Mr Joe Nhlanhla and Dr Pallo Jordan testified that several would-be ANC members, upon crossing the border to join MK, freely admitted that they had been sent as infiltrators and *agent provocateurs* by the South African police or army. Frequently, these persons were not the well-trained, highly disciplined agents of spy fiction, but rather they came from among the under-employed, under-educated youth of the ghetto. Generally, they had no strong moral commitment to either one side or the other of the conflict, but were motivated by the promise of pecuniary reward or, sometimes, assistance with a pending court case. Moreover, they were often poorly

paid for their services - some said they were given as little as R20 - and quickly abandoned by their sponsors in South Africa if their missions went awry. It is not difficult to understand why persons in these circumstances would readily admit to the ANC that they were sent to spy on it.

Notwithstanding their inexperience, the operations of these agents were often extremely effective. Some of these agents told members of the Security Department that, in addition to gathering information, they were instructed to booby trap the material of MK, including tampering with bullets, inserting high level explosives in certain weapons so that they would backfire on the shooter, and the like. Some ANC cadres were seriously injured as a consequence of such activity.

Others were assigned to infiltrate MK units returning to South Africa to carry out military missions. On one occasion, MK cadre Victor Mahlo, while passing through Lesotho, was detained and tortured because, apparently, his mission had been uncovered.¹ On another occasion, four MK members on a re-infiltration mission were abandoned by one of their number, who claimed he had to use the toilet in a nearby farmhouse. He never returned, but shortly thereafter two South African helicopters landed on either side of the remaining three.

The developments in the Angolan civil war also presented hazards with which the ANC security was concerned. Many of the camps were located very close to contested territory. Land mines laid by UNITA were a constant threat, and claimed the lives of many ANC cadres. Thus, Security was concerned about intelligence leaks to both UNITA as well as its South African enemy forces within the country.

The Security Department was also aware that the camps of other national liberation forces in the frontline states had been targeted by enemy forces. One of the SWAPO camps was bombed, resulting in the loss of several hundred SWAPO cadres, as were the camps of the Zimbabwean liberation movement.

In this environment, in which one's bunkmate could be a plant, it was felt that it would be foolhardy not to take the most extensive steps possible to protect the movement against infiltration. The Security Department was therefore given a broad mandate to identify and contain informants and *agent provocateurs*.

Many considered that the price of reduced civil rights was not too high to pay for the security the Organisation required. For example, in his testimony before the Commission, Pallo Jordan expressed the view that, although he considered his own detention to be unjustified, he was not troubled by the failure of the Organisation to sanction those responsible for it, because, he said :

¹ Tr 461 (Jordan)

*"No, I am not bitter about it, because I contextualise it and I contextualise the action of the people who had acted in that fashion. The task of someone whose job it is to defend the movement against assaults and attacks by the enemy is not an easy one ... if your responsibility is that, you are in a sense in a no win situation ..."*¹

¹ Tr 458 (Jordan)

DISTURBANCES IN THE ANGOLAN CAMPS 1983 - 1984

1. ESTABLISHMENT OF THE ANC CAMPS

From the mid-1970s to 1990, the ANC operated camps in various of the states which were neighbours to South Africa. These countries included Angola, Botswana, Tanzania, Zambia and, after its independence in 1980, Zimbabwe. It appears that there may have been a camp in Uganda after 1990 as well. Some of the camps, particularly those in Angola, were military in nature. Others facilities, specifically Dakawa and Mazimbu, housed non-military training and educational facilities. Quadro Camp was utilised exclusively as a detention/rehabilitation facility.

In Angola, Mzwai Piliso was, in about 1976, placed in charge of establishing the military training camps, of which there were ultimately eight - Cama Lundi, Viana, Malange, Pango, Quibaxe, Nova Catengue, Fazenda and Caxito. Viana served as a transit site from which cadres were moved to other camps. The ninth camp in Angola was Quadro, and it was constructed, under Piliso's direction, in the latter part of 1979. Although the exact number is uncertain, thousands of men and women were stationed at these various Angolan camps.

Apparently, the camps in Angola fell within the jurisdiction of both the military and the Security Department. When the training camps were first established around 1976, Mr Piliso had some supervisory responsibility for the camps. It also appears that from 1976 to 1983 the camps were under the supervision of the Regional Military Commissar, and above him, the Military Commissar of Umkhonto We Sizwe. In about 1983, the ANC established its Military Headquarters under an organ known as the Political Military Command. Angola was designated a war zone and access to it was restricted to persons authorised by Military Headquarters and the Regional Political Military Command.

2. THE MUTINIES

By 1983, several thousand cadres were deployed at various camps in Angola. Many of the soldiers had been in MK for over five years, and had been stationed in Angola since the late 1970s. Beginning in 1982 and carrying over into 1983, a number of factors combined to generate an infectious state of unrest within the camps. The principal grievance was that the soldiers felt they were wasting their time in the camps and wished to be placed in action inside the country. In accordance with MK strategy, only a few select cadres would be sent on missions inside at any given period in time. The large majority of the troops were engaged in training in the camps; many were fighting alongside Angolan forces (FAPLA) against UNITA.

The engagement in the Angolan civil war had become increasingly unpopular among MK ranks because many of them felt their presence was resented by the Angolan peasants among whom they were living and FAPLA forces alike. Moreover, the

war was taking its toll and MK suffered significant casualties as a result of UNITA ambushes.

Moreover, the campaign against dagga smoking that had been launched in the late 1970s had created bitterness among cadres who considered the treatment of the alleged dagga users to be overly harsh. It was felt that the anti-dagga campaign had taken on a witch-hunt quality, and that the security officers who had initiated the campaign were too autocratic and insensitive to the rights of the rank and file.

A further and related complaint was that with the increasing authority of the security department in the camps, it became a dangerous thing to voice criticism, and this, in turn, stifled the political expression of the cadres. In the late 70s, it had been the practice for cadres to meet as ANC members once a month to discuss political issues, including the direction of the movement. This provided an opportunity for the airing of grievances. However, after about 1981, it seems the meetings ceased, and criticism of the Organisation or its leadership was thereafter discouraged.

These issues led to dissension which came to a boil in late 1983. MK cadres at Caxito and Pango demanded to be taken to Luanda so they could be deployed at the Front. From late December 1983 to the end of January 1984, some of the 50-odd cadres deployed in the town of Cangandala expressed their discontent by shooting their weapons into the air. The shooting continued intermittently in the day and at night. No one was injured by this protest; however the MK command was alarmed, as were the Angolans. At one point Mr Timothy Mokoena, who at that time was Regional Commander, visited Cangandala to give audience to the grievances. He asked that all those cadres who wished to leave Angola should step to one side, and virtually the entire unit indicated that they wanted to leave. In January, Chris Hani, accompanied by Joe Nhlanhla and Lehlohonolo Moloï also visited Cangandala. Mr Hani, too, listened to the grievances of the men and sought to respond. He appeared to sympathise with the concerns that were being expressed and urged the men to desist from shooting in the sky.

A short while later in January, MK forces were evacuated from Cangandala and taken to the town of Cacuso. Here, in addition to the men already stationed at Cacuso, the Cangandala units were joined by units from Musafa. The protest did not cease, but rather continued to fester. By now, the men numbered more than 100.

At the beginning of February, the men were once again moved, this time from Cacuso to Viana transit camp. Upon their arrival at Viana, a volley was fired into the air one final time. At Viana, which is close to Luanda, the men were asked to disarm by the Viana camp commander. The reason given was that the Angolans did not wish to deal with an MK revolt on the doorstep of Luanda. Some men disarmed, but many refused to do so. They state that they refused to give up their arms because they felt they would be beaten by the security officers.

At Viana there was an incident that added to the resentment of the security forces. Solly Sibeko, a soldier who was apparently not physically well and who had complained against the leadership in an annoying and vociferous manner, was locked up by security officers in a container and there he apparently died.

At some point during the second week of February, the cadres were requested by Vuki, Chief of Personnel in Angola, to select some of their number as representatives who could meet with the leadership to discuss their grievances. On February 15, which was a few days later, an open meeting was held at the camp and a Committee of Ten was selected for this purpose. The concerns of the cadres were recorded by a secretary. They sought the following:

1. A national consultative conference be convened to discuss the direction of the movement;
2. The leadership reconsider whether their deployment in Angola was in the best interests of the movement; and
3. The security department to be disbanded and its alleged abuses be investigated.

The Committee of Ten never had an opportunity to place these issues before the leadership. In the early morning hours of February 16, Angolan government forces, outfitted with a few armed personnel carriers (APCs) came into the camp. As the Angolans were entering, one David Makhubedu, who was working in the camp kitchen, spied them and sounded the camp alarm. Thus alerted, many of the MK soldiers ran away from the camp and into the bush. Others took cover in trenches around the perimeter of the camp. Thus, when the Angolans took their positions, they found themselves encircled by armed MK soldiers. It appears that many of the MK cadres did not know that the Angolan forces were from FAPLA, but thought they might be UNITA. Their confusion was, in part, attributable to the fact that one of their number, a soldier known as "Babsy", was shot and killed when the Angolans made their entry into the camp.

The Angolans remained in their positions, as did the MK soldiers until early dawn. When it began to get light, the Angolans observed that the MK men, armed, were in the trenches surrounding them. One of the FAPLA soldiers began to throw a grenade into one of the trenches, but before he could do so, Dysasop, an MK soldier, distracted him by shooting a bazooka at an APC. An Angolan soldier manning the APC, it appears, was killed. After a brief exchange of fire, the MK soldiers came out of the trenches. Babsy and the Angolan manning the APC were the only two casualties.

After some discussion, the MK cadres surrendered their arms to the Angolans. Later in the morning, Chris Hani arrived at the camp, in the company of officials from the OAU and the Angolan Government. Hani met with his men, listened to their complaints, and stated that anyone who wished to leave the ANC was free to go with the OAU officials. None of the men took Hani up on the offer, and Hani then told his soldiers that, as you have affirmed that you are loyal members of the ANC, you must now obey orders.

Later on that same day, 16 February, Chris Hani returned to Viana Camp with Joe Modise. The cadres were gathered in the camp hall once again and were addressed by Modise, whose speech on that occasion angered many of the Comrades. Modise

told the soldiers that their actions were counter-revolutionary, and that they were being manipulated by enemy agents in their midst. He pointed out two cadres as working for the enemy, Zaba Malidza and Adelaide Mofokeng. These two soldiers worked with Radio Freedom and were known and admired by many of the cadres, who were embittered by Modise's remarks. Modise also announced the formation of the Stuart Commission. He also advised the men that they would be evacuated from Viana and sent to Quibaxe and Pango, in the north. Sometime after Modise's departure, a list was posted setting forth the names and destinations of the soldiers. Certain persons did not find their names listed, and it appeared that those individuals were the ones who had played a leadership role in the Viana events.

The next morning, 17 February 1984, Modise returned to the camp along with Chris Hani and Andrew Masondo. The units were ordered to line up in formation and, when they had done so, the names of certain individuals were called out and they were ordered to board a truck that was nearby. These individuals were arrested. There were about 32 names called out, including the Committee of Ten. All of the persons whose names were called got on the truck except David Makhubedu, who was then forced onto the truck. The Viana mutineers were accused of being enemy agents and they ultimately landed up in Quadro, where they remained for more than four years.

Some months after the Viana events, there was another revolt at Pango. This time, the protesters added to their list of demands a call for the release of the Viana mutineers. The Pango uprising was, in some ways, more alarming than Viana, for the mutineers apparently hunted down Security officers and MK commanders and killed some of them. Once again, the leadership travelled to Angola to quell the mutiny, but the violence had so heightened tensions that there was little room for reconciliation. The MK leadership hurriedly convened a tribunal and placed some of the mutineers on trial. The death penalty was imposed and carried out in some cases. Other offenders were locked up in Quadro.

The Viana and Pango mutinies led to the appointment of a commission headed by Mr James Stuart to consider the problems facing the movement.

QUADRO

4. THE NEED FOR A DETENTION CENTRE

Late in 1979, a camp was established in Angola near Camp 13 (which was Quibaxe). The new camp was code-named Camp 32 for security reasons and was subsequently given the official name of the Morris Seabelo Rehabilitation Centre - in memory of its first deputy Camp Commander, Morris Seabelo, who was assassinated by the South African regime agents in Lesotho in 1985.

Soon after it was established, Camp 32 was nicknamed Quadro (Portuguese for "Four") after the notorious high security prison No. 4 in Johannesburg which has since been closed.

The decision to establish Camp 32 was taken by the Security and Intelligence Department, then under the leadership of Mr Piliso. The intention was to create for the Organisation a lock-up facility at which people who were regarded as in need of rehabilitation could be rehabilitated.

Prior to 1979 the ANC did not have a rehabilitation centre. People were locked up for short periods of time at places like a basement room at Quibaxe, a back room at the RC complex in Lusaka, and even in a metal container in Viana, Angola.

The reasons for creating this camp can all be traced back to the flight out of South Africa by young men and women after the 1976 Soweto uprisings. This torrent provided a very welcome injection of much needed manpower for the MK machinery. The other side of the coin, however, was that the sudden demands for military, educational and welfare resources were simply too great to be met by the Organisation.

Indiscipline, particularly amongst those who were taken into the MK and kept in training camps, manifested itself in various forms. Of the greatest concern to the leadership, however, was drug abuse (dagga smoking) which had reached alarming proportions and, induced or voluntary, had the effect of making the cadres ungovernable, antagonistic to leadership and even mutinous.

The South African regime saw an opportunity and took it. It infiltrated the ANC through these recruits and made known that it had sent its spies into the Organisation.

The last straw was the mysterious poisoning and, shortly thereafter, the bombing of the Nova Catengue camp by the SADF with such precision as to suggest that they had information from the ANC ranks.

It was time to act decisively, tighten the security and lock up any suspects and convicted collaborators with the enemy.

5. WHY IN ANGOLA?

Given that the aim of the organisation in creating Camp 32 was to place a base where rehabilitation could be provided, and that the driving motivation was to show the wrongdoers what the ANC stood for and why they should turn from the errors of their ways, it was not clear why this camp was sited in Angola. Mr Piliso informed the Commission that he personally chose the site and, as overall commander of the Security Department, oversaw the conversion of the old dilapidated buildings there into an ANC camp. It appears from him and the other witnesses that Angola was chosen as the best country for such a camp because -

- ▶ there were already many other camps (7 or 8) where hundreds of cadres were under training or waiting for missions;
- ▶ the department was already very active in the region and inmates at such a camp would be more secluded and secure in Angola.

6. PROBLEMS

- ▶ Because Camp 32 was a sudden, almost knee-jerk, reaction to the enemy onslaught which threatened the very existence of the Organisation, it was not properly planned and became a makeshift camp.
- ▶ The banana-ripening centre, which the site had originally been, with old and abandoned buildings, was filled up along the spaces and cracks to house people in a hurry. About five isolation cells were created and about seven communal ones with a carrying capacity of up to eight people for the smaller cells and up to 14 people for the largest. The ventilation was extremely poor as the old windows were blocked altogether or reduced to the size of air vents. No beds were provided, inmates having to make do with floor mattresses.
- ▶ Starting with four inmates in 1979, the camp soon carried 70 to 80 people and overcrowding became a serious problem. Mr Nhlanhla said he found between 111 - 115 inmates and set about reducing the numbers by releasing 25 to 30 of them;
- ▶ Angola was in the grips of a raging civil war and ANC camps were subject to the same difficulties and shortages as the rest of the country :
 - irregular food supplies
 - inadequate medical facilities
 - malaria
 - the UNITA menace which killed many ANC cadres
- ▶ The greatest problem, though, was the medical one. Camp 32 was far from Luanda Hospital and the ANC had only 2 or 3 doctors to cover all the camps in Angola. The barefoot doctors trained by the Organisation had an almost

impossible task fighting endemic malaria and heat without adequate medicines and supervision. Many people died.

- ▶ Camp 32 had no running water. Water for all purposes had to be fetched from Camp 13 when there was transport or by a 1000 litre tank pulled by hand from a river nearby - this was such a difficult exercise in view of the extremely steep and rough terrain that many complainants regarded it as a form of punishment.¹
- ▶ There was no electricity.
- ▶ Leadership of Camp 32 was entrusted to very young people, the first Commander was only 19 years old, backed up by a team whose ages ranged between 16 and 30. These cadres did not have the training and experience necessary to run such a difficult camp under such demanding circumstances.
- ▶ All inmates were treated the same way, whether they were loyal ANC cadre under suspicion, or suspects awaiting trial, or convicted enemy agents serving their sentences. All were regarded and treated as enemy agents, given derogatory nicknames which ridiculed and dehumanised them and altogether made to feel that they were prisoners.
- ▶ The net result was that Camp 32 became Quadro, rehabilitation was replaced by repression - there were no sporting facilities, no reading materials and no lectures. Inmates were kept indoors for most of the time. The spirit behind Camp 32 became stillborn.

7. THE SPIRIT

The Commission was informed by many witnesses including Mr Piliso and Mr Mthembu (Head of Security and first Commander of the Camp, respectively) that the spirit behind this Rehabilitation Centre was that inmates should be handled with care and consideration because the ANC believed that most of the enemy agents were not people who had volunteered to work against the ANC and their own people. Rather,

¹ While virtually every witness who had anything to do with Quadro - guards and inmates alike - related that the necessity to pull the water tank up to the camp was a major irritant, the Commission heard divergent opinions about the approach of the Quadro management to this intractable problem. One inmate, Obbey June Mabena, testified that the inmates were beaten while pulling the tank uphill, but that *"without the amount of beatings that were taking place there, there was no way that tank would have reached the camp ... without the coercion, it was not possible for anybody ... to push the tank because ... it was just too heavy for any number of people"*. (Tr. 1293, 1303 (Mabena)). But another inmate, Robert Vusumuzi Shange, considered that the inmates were forced to pull the tank to the Camp purely for punishment's sake. *"Even when the truck [that was sometimes available to tow the tank] is there ... they will not use it. Slaves are there to pull that tank"*. (Tr. 1349 (Shange))

it was thought that they were largely forced into infiltrating the ANC as a trade off for long terms of imprisonment in South Africa or some other serious threat. Many who felt safe confessed this to the ANC.

Accordingly camp regulations issued by the Regional Command stressed that inmates were to be handled humanely. Interviews and interrogations were based on the necessity to show inmates what the ANC values were and how they should turn a new leaf. The use of third degree methods of extracting information was therefore prohibited except in extreme circumstances. Camp officers who contravened these regulations would be punished. For example -

- (i) a medical officer called Spider Hluluntu was demoted because of having a relationship with a female inmate; and
- (ii) Sizwe Gani who was seen beating up an inmate was demoted.¹

8. STRUCTURE

Witnesses told the Commission that Camp 32 had the following usual camp structure -

- Camp Commander
- Camp Commissar (Second in Command)
- Chief of Staff
- Chief of Ordinance
- Chief of Logistics
- Recording Officer
- Guards

However, it was evident that there was no clear cut line of authority in the Camp as all of the staff were ex-MK who now served Mbokodo. One former camp commander of Camp 32 informed the Commission that his appointment was a joint decision of, and he was reporting to, both the Security Department and MK. This would affect who he felt should supervise his work. Close monitoring of this camp was not evident in the testimony.

9. ABUSES

Inmates were not only abused by the general conditions in which they were kept, but also by actual acts of ill treatment meted out against them. Forms of ill-treatment reported to the Commission by complainants were these -

- ▶ lengthy isolation in solitary confinement;
- ▶ regular beatings under the feet or elsewhere with guava tree sticks (guava juice treatment) or with coffee tree sticks (coffee treatment);

¹ TR 1840 (Mthembu)

- ▶ napalm - being rubbed with (or rolling naked on) hairy beans or leaves of a plant which caused itching;
- ▶ pompa - blowing ones cheeks or pumping them up so that a guard would slap the cheeks causing excruciating pain to the ears;
- ▶ pawpaw - being covered on the face with the skin of a scooped out pawpaw fruit and beaten;
- ▶ Beirut - flogging while naked and lying in a face-down position;
- ▶ helicopter - being tied hand and foot and suspended on a pole or log like a pig on a spit;
- ▶ being tied to a tree and remaining there in public view for a long time;
- ▶ red ants introduced into clothes one was wearing and being bitten by these ants;
- ▶ Slaughter - digging a hole shoulder deep and being beaten on the head and hands as you obey the instruction to come out of the hole;
- ▶ Starvation - being denied food as a form of punishment;
- ▶ chopping wood for hours on end;
- ▶ 1000 litre tank - drawing water and pulling a 1000 litre tank uphill with others and being beaten in the process;
- ▶ Third degree interrogation - non-stop interrogation for two days or more.

The defendants who testified before the Commission denied that they administered any of these forms of human abuse, and denied that most of them were used at all. However, beatings, strenuous interrogation and tying to a tree were admitted specifically by some of the witnesses like Mr Piliso¹ and Mr Mthembu². Other evidence also supported that some excesses were recorded as seen in Dr Jordan's testimony and in the references to Mr Hani having promised to look into the situation. The late President, OR Tambo, is also reported to have said that Camp 32 was one camp the ANC could do without.

¹ TR 345-346 (Piliso)

² TR 1840 (Mthembu, G)

Mr Stuart told the Commission that there were cases of assault in the camps¹ and use of force to extract confessions from the accused.²

10. COMMENT

The leadership of the Organisation in exile knew about the situation at Quadro from the reports made to the NEC by Mrs Shope's Committee of Three, visits by Mr Modise, Mr Piliso and Mr Stuart, among others.

The first major attempt to improve the lot of the inmates of Quadro and those of other camps was the Code of Conduct in 1985 which set up the Justice department.

Without enforcement, monitoring and supervisory powers, however, the machinery of justice was unable to stop abuses of human rights which continued.

When OR Tambo visited Quadro in 1987 and there was a change in leadership of the Security Department in the same year, ANC leadership addressed Quadro more squarely, resulting in some improvement in the conditions there and a decision to build a new camp.

Plans of a proposed new rehabilitation centre were shown to the Commission. The layout shows an administration block and general storage buildings in the middle and adjacent to them and to the South, a football field and a volleyball field.

These facilities separate the staff quarters to the east and the prisoners' accommodation to the west. Prison cells are shown as blocks 1-5 containing 62 single cells and blocks 6-9 of shared accommodation to house 144 inmates. The single cells are marked as "debriefing" and the shared cells as "rehabilitation" and have appropriate toilets and washing rooms.

From the date of the plans, June 1989, it is clear that construction of a new rehabilitation centre could not have commenced until the latter half of 1989 at the earliest. As it turned out, they were overtaken by events and were never used.

- ▶ In 1988, as a result of the New York Accord regarding Angola, which included the requirement that the ANC close down its camps, the Morris Seabelo Rehabilitation Centre was closed down and inmates transferred to Uganda. There was no time between arrival in Uganda and the release of ANC leaders from prisons in South Africa to allow for a new Camp 32. It was not needed.

Most of the problems of Quadro would have been resolved earlier if -

¹ TR 183 (Stuart)

² TR 192 (Stuart)

- (a) a country in which rehabilitation facilities were or could have been available were chosen to site the camp;
- (b) there was clearer division of responsibility, authority and accountability between MK and Mbokodo;
- (c) there was separation between :
 - (i) the arrestors and investigators;
 - (ii) judges;
 - (iii) prison guards;
 - (iv) categories of inmates;
- (d) closer supervision of Mbokodo by NEC.

There is no reason given to the Commission which satisfactorily explains why Camp 32, the rehabilitation centre, turned into Quadro, the dumping pit. The NEC should have stepped in sooner, but did not; and the good work which MK and the Security Department were doing was allowed to blind the leadership from the manifest abuses of human rights at Camp 32.

LEGAL MACHINERY

1. THE STUART COMMISSION

Mr James Stuart (real name Hermanus Gabriel Loots) was appointed in 1984 by the NEC to chair the Commission which enquired into the Pango Mutiny in Angola by ANC combatants - the Stuart Commission.

He appeared before this Commission and provided a summary of the proceedings and recommendations of his Commission.¹

In brief, he chaired a commission of five persons, two of whom were lawyers, to make recommendations to the NEC on the causes of the mutiny and how to address the issues behind those causes. His commission talked to all detainees involved in the mutiny, visited Pango itself and the maximum security prison in Angola, but did not visit Camp 32 (Quadro).

The main reasons identified for the mutiny at Pango were that the MK cadres there -

- (a) were frustrated by the length of time they were kept in camps without going to fight in South Africa - some had been in camps for ten years;
- (b) wanted a national conference to be held so that the ANC could debate many issues of its policy and administration;
- (c) felt that some of the older leaders should be reinforced by young blood; and
- (d) wanted a review of the structures of the Organisation, especially the Security Department.

After considering all the evidence placed before it, the Stuart Commission made its recommendations, including that :

- (i) the NEC should immediately appoint a Committee to prepare for a national conference of the ANC;
- (ii) the military structures should be changed so that, in particular, the command structure includes two senior offices, one for the military operations inside South Africa and the other for military organisation outside South Africa;
- (iii) matters relating to the welfare, supplies, transport and logistics of all ANC personnel should be looked into; and
- (iv) a committee should be set up to handle without delay, the cases of all persons suspected as enemy agents.

¹ TR 168-173 180-182 (Stuart)

Mr Stuart told this Commission that his commission made other recommendations which he could not remember without his Report, but that he was pleased that there was a very quick and positive reaction to his Report. The main results were -

- (a) The holding of a national conference at Kabwe, Zambia in 1985;
- (b) The adoption by Kabwe Conference of the ANC Code of Conduct, 1985;
- (c) The creation, as part of the Code of Conduct, of three new offices as additions to the ANC structure - namely :
 - (i) the Officer of Justice;
 - (ii) the Tribunal;
 - (iii) the Review Board.

These new offices became the new legal machinery through which the ANC has, since 1985, waged its campaign against the violation of human rights amongst its membership.

2. THE CODE OF CONDUCT

Prior to Kabwe, the ANC had a department responsible for legal and constitutional affairs on an ongoing basis. It was this department that would supply all the general legal advice required by the Organisation - to the extent that the department was equipped to do so. More especially, of course, the department monitored the development of the Constitution in South Africa and the ANC's responses to these developments from time to time.

Leading up to the disturbances in ANC camps in Angola and especially after the revolt at Pango, it became clear that extra legal capacity was required by the Organisation to address internal problems and strengthen mechanisms for the protection and advancement of human rights. Complaints about the manner in which the ANC cadres were treated in some camps and detainees ill-treated at the Camp 32 Rehabilitation Centre (Quadro) all added up pressure on the leadership of the Organisation. In the end, a decision was taken during the Kabwe Conference in 1985 to regulate human behaviour within the ANC through a Code of Conduct.

One part of the Code of Conduct was the Umkhonto We Sizwe Military Code.

The other part was the general (civilian) Code of Discipline. It provides, among other things, for principles of discipline, offences and penalties for contravention of the Code, and disciplinary committees and procedures.

Three offices are established by the Code, namely,

- (1) The Officer of Justice;
- (2) The National People's Tribunal (The Tribunal); and
- (3) The National Review Committee.

(a) **Officer of Justice**

The Officer of Justice is appointed by the NEC and has the responsibility, in collaboration with the President's Office, of ensuring that the principles of natural justice are followed within the ANC. Some of the specific areas of responsibility are :

- ▶ Supervising investigations when charges against members are contemplated;
- ▶ preparing documents (dockets) for trial proceedings;
- ▶ appointing legal representatives for the prosecution and/or the defence in trials;
- ▶ ensuring that no person in custody or under investigation by the ANC is treated in a cruel, inhumane or degrading way;
- ▶ making regular inspection tours of persons in custody;
- ▶ ensuring that no undue delay takes places between completion of investigations and trial; etc.

The first Officer of Justice was Dr Zola Skweyiya who was appointed in 1985. He came to Lusaka from Addis Ababa, Ethiopia, where he was the ANC Chief Representative. He was not a military person and was not a member of the NEC.

Dr Skweyiya informed the Commission that in 1985 and 1986 he had no staff and no resources, although he was able to use some of the resources of the Legal and Constitutional department, namely, two secretaries and two other lawyers.

He was expected to travel to all places where the ANC operated outside South Africa but, in fact, could not do much visiting because he had no resources. He could not travel to Angola until 1987 because the Intelligence and Security Department did not give him the assistance which he required in order to enter the war zone of Angola. Indeed, until there was a change of leadership in that Department, Dr Skweyiya says he experienced hostility between that Department (Security) and his office - to the point that he was regarded as an interference in its affairs, "poking our noses in matters that did not concern us"¹ and was threatened with being locked up. This lack of co-operation with Security rendered him ineffective as Justice Officer since

¹ TR 84 (Skweyiya)

information regarding prisoners, detention camps, etc. could, according to him, only come from Security.

When there was a change of the leadership of the Security Department, the Officer of Justice was able (in 1987) to visit Angola, the main region of alleged human rights violations. He made one visit to Viana, outside Luanda, and spoke to ANC people there. He was unable to visit other camps, especially Quadro, until his return to South Africa. "We were never allowed to get into Quadro" he says.¹ During that same year, 1987, the first session of the Tribunal sat in Luanda, under the Chairmanship of Mr James Stuart.

Dr Skweyiya painted a very sad picture of non co-operation with three important organs of the ANC - all of which impacted adversely on his effectiveness.

- i) The Security Department did not co-operate and Dr Skweyiya told the Commission that it took persistent pressure on his part, assisted by Presidential intervention and Mr Nhlanhla's arrival as head of Security, for him to become aware that "there was also a detention camp in Lusaka."²
- ii) Contact with the Review Board was minimal.³
- iii) The Chairman of the Tribunal had little interaction with the Officer of Justice.⁴

The fact that this was a new office created against the background of major disquiet and resource limitations within the Organisation, was an obvious constraint.

(b) **The National People's Tribunal**

Generally known simply as "The Tribunal", this organ was intended to be a permanent part of the structure of the ANC so that regular disciplinary complaints could be dealt with speedily, fairly and at reduced costs to the Organisation. With it in place, Commissions of Inquiry should become necessary as an exception and to be resorted to in matters of major complexity and gravely serious import.

The Tribunal is appointed by the NEC for a period of three years and its chairman is appointed by the President of the ANC from among its members.

The first Tribunal, the Commission was informed, was appointed soon after Kabwe in November/December 1985 with Mr James Stuart as Chairman and the following

¹ TR 98 (Skweyiya)

² TR 99 (Skweyiya)

³ TR 97 & 98 (Skweyiya)

⁴ TR 97 & 98 (Skweyiya)

as members: Dr Pekani and Mr Joe Badwana, both lawyers; Mrs Gertrude Shope, head of the ANC Women's League and one other who failed to attend.

The Tribunal first sat in a courtroom in Luanda, Angola, observing the proper rules of court and with both sides being represented by lawyers. There were some acquittals and some convictions as well.

It had other sessions such as at Quadro in 1987 when between 32 - 35 cases were heard; and in 1988 when on trial was a camp security guard who was charged with rape but was convicted of indecent assault and sentenced to five years' imprisonment.

Hearings in Zambia were held in public because the cases were not security-related.

Another Tribunal was appointed and operated in Uganda in 1990 under the Chairmanship of Tony Mongalo. The Mongalo Tribunal also sat in Tanzania in 1991 to deal with the case of Bonginkosi Sibisi, who, at the time, was being held at the Maweni maximum security prison at Tanga, Tanzania.

Mr Stuart informed the Commission that his Tribunal followed the regular court of law practices and procedures including the rules of natural justice. If a confession formed part of the evidence against the accused, the commission would automatically disregard it, because Mr Stuart said it was aware that the confessions were not always obtained voluntarily. People found not guilty would be advised there and then and would be discharged and released. Most of such people would be transported to Tanzania where they would be reintegrated with others. Where the Tribunal convicted a person, however, Mr Stuart's practice was to inform the accused merely that he had been convicted without the sentence of the Tribunal being pronounced in open court. The procedure was to recommend a sentence to the ANC President who, normally, would refer the case to the Review Board. Only after the Review Board had dealt with the case, would a sentence be confirmed by the President - and carried out.

From affidavits presented to the Commission by the ANC on the missing people, it would appear as if other tribunals of a military nature existed, which imposed sentences on various alleged serious offenders at different camps.

No information was obtained by the Commission on the nature, powers and composition of these tribunals, although some information relating to the disposition of the cases handled by these tribunals was made available to the Commission by affidavit after the hearings concluded.

(c) The National Review Committee

Ordinarily called the Review Board, this organ was established by the NEC and made up of five people. Its members were prohibited from also being members of the Tribunal. It was the function of the Review Board to consider cases referred to it by the Tribunal, with the full case record, in order to determine an appropriate result to the case. In effect, this organ was a court of appeal with full jurisdiction to

confirm the decision of the Tribunal or to alter it as the Review Board felt just. An interesting feature of its powers was that it was to function with due regard to legal rules but also to be guided by political and humanitarian considerations.¹

The Commission was told that whatever sentence the Review Board determined would be referred to the NEC for authority to implement through the President. In the case of the death penalty, there was never an execution endorsed by the NEC as this penalty was unpopular. Mr Dan Tloome chaired the first Review Board.

3. COMMENTS:

- (a) That the Code of Conduct was agreed upon at Kabwe Conference, within a year after the Stuart Commission's recommendations, showed that the leadership of the ANC was gravely concerned with the need to correct the identified wrongs once these had been properly investigated and thrown up.
- (b) The system of justice represented by the structures in the Code of Conduct was unique among liberation movements in Southern Africa - and both Dr Skweyiya and Mr Stuart were pleased with the system.
- (c) Some aspects of the system took long to produce benefits because of the war context and the limited human and material resources available. This was particularly so with the Office of Justice.
- (d) The system represented a large step forward in respect of human rights protection within the ANC because the insistence on proper legal procedures including the appropriate burden of proof meant that arbitrary arrests should have been reduced in the knowledge that improperly prepared cases would be thrown out at the trial. Further, many people were actually acquitted and released. The Vosloorus Six case, 1987, in connection with which seven detainees were released by the Tribunal at Quadro in 1988, is an example. All this had the effect of increasing the credibility of the system.
- (e) The Commission was told of only one case in which the Tribunal recommended capital punishment. The Tribunal, in principle, did not favour the death penalty which it did not consider effective as a deterrent; and even in this case, the penalty was not confirmed because the NEC, and OR Tambo himself, were against this form of punishment.
- (f) The explanations given to the Commission by the Officer of Justice were not supported by such witnesses as Mr Piliso, Mr Stuart and some of the younger members of the Security Department. All felt that he could have travelled to Angola like other ANC leaders and that the Security Department did not stop the Officer of Justice. It is probable that Dr Skweyiya, not being an MK person at the time, having just come to Lusaka from Ethiopia and against the background of a raging civil war in Angola, felt limited if not crippled by the

¹ Code of Conduct, p.16 Section B.4(d)

lack of resources and became more cautious than necessary about taking the Security Department head on and travelling into Angola.

Perhaps some personality friction between Dr Skweyiya and some leaders of the Security apparatus, notably Mr Piliso, contributed to the problems Dr Skweyiya faced. He may also have been too easily discouraged.

COMPLAINANTS

Each of the complainants listed below gave the Commission a detailed account of his experiences under detention by the Security Department of the ANC -

1. Abrahams, Henry Joseph
2. Dysasop, Luthando Nicholas
3. Hlongwane, Mncedisi Patrick
4. Khosa, Dumisani
5. Laka, Abeod
6. Mabena, Obbey June
7. Makhubedu, David
8. Mbatha, David
9. Mngqibisa, Olefile Samuel
10. Mpungose, Goodluck
11. Mthembu, Diliza
12. Nkosi, Felix
13. Peterson, Percy
14. Phiri, Norman
15. Setlhoke, Gabriel
16. Shange, Robert Busi
17. Sibisi, John
18. Thombisa, Jamiel Jacques
19. Twala, Mwezi

HENRY ABRAHAMS

INTRODUCTION

Henry Abrahams (Peter Leromo) was born on September 16, 1948. Abrahams lives in Cape town and is presently studying at the faculty of the arts at the University of the Western Cape. He was detained on several occasions during his MK service from 1977 to 1990. His major complaint to this Commission is that he was not properly compensated for his personal vehicle that he claims was expropriated by the Organisation. In addition to the complainant's testimony the Commission heard evidence from Jacob Sithole, Floyd Huna and Gabriel Mthembu bearing on this case.

FACTUAL BACKGROUND

Abrahams became politically involved after the June 16th uprisings. Abrahams was a resident of Johannesburg and owned a car, a 1975 model Fiat 125 Sedan, which he bought for R9 000. After the 1976 events, he began ferrying people out of South Africa and into Botswana. At a certain point in 1977, Abrahams' cover was blown and he was forced to remain in Botswana. There he joined the ANC in 1977.

Abrahams was unable to sell his car before being transported to Angola, where he received his military training. At his departure, Abrahams left his car in the hands of one Keith, an ANC member, who told him that he would sell the car and send the money to Abrahams' father in Cape Town. Abrahams had a child in Cape Town and many debts which he hoped would be paid off by the sale of the car. Abrahams stated that in 1978 he met Joe Modise at the Quibaxe camp, and Modise told him that the car had been sold and the proceeds were sent to his father. Modise denies the conversation.

Abrahams trained in Angola and was deployed at Quibaxe camp. He was given the MK name "Peter Lerumo". During his deployment at Quibaxe, Abrahams was disciplined on several occasions. Abrahams candidly admitted to the Commission that he was, in his youth, "naughty". He enjoyed drinking, smoking and eating to his heart's content, and got along very well with the women in the camps and in town. Abrahams explained that he did not "become an angel" when he completed his military training.

On one occasion in 1978, Abrahams was caught stockpiling bananas for his own consumption. Abrahams was disciplined by being locked in detention for three days. During the days, he was placed in the basement, in a locked room. During the night, he would be attached to a pole in a remote area of the camp. The discipline was meted out by the camp commander, Kenneth Mahamba, who, Abrahams testified, was later arrested as an "enemy agent" in 1981. There was no tribunal or review process established to evaluate the discipline meted out.

On another occasion, Abrahams was caught with a bundle of clothes which he was going to use as barter for beer and cigarettes. Abrahams was locked down in the

basement again for a period of 3 to 4 months. During the days, he was ordered to dig a dug-out. At night he was confined to the basement cell.

On another occasion in Pango camp, Abrahams was arrested for brewing his own liquor. Abrahams was given work to do in the camp and was detained in isolation in a room in the camp.

Abrahams was deployed in Angola until 1986, when he was sent to Lusaka to undergo an operation to remove a growth on his vocal chords. When he reached Lusaka, Abrahams heard that his car had been used as personal property in Lusaka, that it had ultimately been sold, but that the proceeds had not been sent to his father. Abrahams became vocal about the situation and wrote to the leaders of the ANC to expose what he viewed as corruption in the organization as evidenced by his personal experience with his car. In his letter, Abrahams asked that he be allowed to pursue his own trade, which is carpentry, in Lusaka, rather than continue with his military exercises.¹

Abrahams' allegation of corruption was not well received by the ANC Security Department. Instead of receiving a written response, Abrahams was arrested and detained in 1988 by Goodman Soweto and Majozi, two members of the Security Department. Abrahams was first detained at the Chilenje Police Station by Zambian officers for a few hours, and then taken to the Green House. Thereafter, Abrahams was taken to the ANC prison known as Sun City, where he was detained for 4 to 5 months.

Abrahams was not interrogated at Sun City until about two or three months after his arrival, and then only about an incident the night before when an inmate named Thabo seized the keys to the prison cells and unlocked everyone from their cells.

Abrahams was beaten on that occasion by two young warders named Gift and Willie.

Abrahams was released from Sun City in 1990 after a visit by Zola Skweyiya. Abrahams proceeded to Malawi, then returned to Zambia, before being repatriated to South Africa.

Personal Injury and Lost Property

Abrahams brought his complaint regarding the loss of his car to the attention of the ANC in Cape Town and was given R7 000 by the ANC. However, Abrahams contends that he is still owed R15 000, because the present value of a similar two year-old car is R22 000.

Sithole testified that, far from being the victim of the ANC, Abrahams had himself stolen money from the Organisation. He allegedly sold an ANC house that had been

¹ At about the same time, in 1986, Mr Abrahams was also detained for allegedly running a shebeen, known as "Peter's Shebeen". However, he escaped from that detention, was recaptured and later released on the orders of Joe Modise.

furnished to him in Zambia and ran off to Malawi with the proceeds. These allegations were not put to Abrahams by the defendant and so their truth remains untested.

COMMENT AND RECOMMENDATION

Abrahams readily admitted that the periods of detention he was made to serve while he was in the Angolan camps were sanctions imposed for violations of camp rules. As to these detentions, the Commission observes that, although it seems there was adequate reason to sanction Abrahams, one particular aspect of his punishment appears to have been unduly harsh. When, in 1978, Abrahams was punished for hording bananas in Quibaxe Camp, he was tied outside to a steel pole at night, where he was to remain until the morning. Abrahams' testimony in this regard is consistent with other reports that miscreants were punished during this period by tying them to trees and poles.

Abrahams related two occasions on which he was arrested and detained in Lusaka. As to the first, which occurred in 1986 and concerned the allegation that he was connected with the operation of a shebeen, the evidence does not clearly establish that there were no proper grounds for the arrest itself even though later investigation showed there was no basis for the charge. However, the manner in which the arrest of Abrahams was effected showed a lack of judgment and restraint on the part of the security officers involved. Abrahams related that in the course of detaining him after he had escaped their custody, he was shot at by security officers in a reckless manner, and subsequently beaten in the street with a gun.¹

Abrahams was again arrested in 1988 and detained for three to four months at the Sun City Prison in Lusaka. There was no apparent reason for this detention, nor was Abrahams ever charged with any specific violation or given an opportunity to present a defence. Moreover, although he had nothing to do with the escape attempt by Thabo, Abrahams was nevertheless beaten by warders Gift and Willie.

The Commission finds that Abrahams' detention and the beating he sustained at the Sun City Prison constituted a violation of ANC policy. The Commission recommends that the ANC issue a letter of formal apology to Abrahams. The Commission makes no recommendation as to the disposition of the dispute between the ANC and Abrahams regarding his car and the alleged theft of the proceeds of the ANC house Abrahams is said to have sold, but suggests that further inquiry be undertaken by the proper authorities within the organization and a final decision be rendered thereon.

¹ Abrahams named one Steve as the security officer who shot at him, but there was no further identification of this man. Huna testified he was present at Abrahams' arrest, and it was one Mzwandile who fired the shot, see p. below.

THE INDIVIDUALS WHOM THE COMMISSION FINDS VIOLATED THE RIGHTS OF HENRY ABRAHAMS ARE AS FOLLOWS :

1. Kenneth Mahamba : unduly harsh punishment, (Quibaxe Camp, Angola)
2. Goodman Soweto : excessively long detention without charge or hearing (Sun City, Lusaka)
3. Majozi : excessively long detention without charge or hearing (Sun City, Lusaka)
4. Steve : excessive force (Lusaka)
5. Gift : excessive force (Sun City, Lusaka)
6. Willie : excessive force (Sun City, Lusaka)

LUTHANDO NICHOLAS DYASOP

INTRODUCTION

Luthando Nicholas Dyasop was born on 21 September 1958. He is from the Cape. In 1980 he left South Africa to join the ANC military wing in Lesotho. After his training, Dyasop was deployed in several Angolan camps. He was arrested as a Viana mutineer in 1984 and detained at Quadro until November 1988.

FACTUAL BACKGROUND

Luthando Dyasop completed his basic military training in Angola in 1982 and was further trained in anti-missile weaponry. Dyasop's code name within the MK was Chauke Mange. He was assigned to the Eastern Front in Angola where he served as a medico.

After a number of years in the Eastern Front camps, Dyasop became dissatisfied with the direction that the ANC was taking in Angola. He questioned the commitment of MK forces to the war in Angola, particularly because some Angolans themselves had expressed their resentment at what they saw as the unjustified involvement of the ANC in their internal conflict. Too, Dyasop complained that democratic practice was in jeopardy within the MK, and that the rank and file could not freely state their views about the leadership without risking sanction.

When the Eastern Front soldiers rebelled in early 1984, Dyasop participated. On 14 February, 1984, the Angolan FAPLA forces were dispatched to Viana camp to subdue the mutiny. When, in the early morning hours, the Angolans arrived, one of the MK soldiers alerted the others by sounding the camp alarm, and many of the men, including Dyasop, headed for the trenches that formed a semicircle at the perimeter of the camp. The FAPLA forces positioned themselves in the centre of the camp, not realizing that the mutineering MK soldiers were surrounding them in the trenches. When, at daybreak, the FAPLA soldiers realized that they were surrounded, a commander ordered the MK soldiers to leave the trenches with their hands up. The commander was armed with a grenade and appeared to be preparing to toss it into the trench. Upon observing the commander pull the pin on the grenade, Dyasop, who was armed with a bazooka, fired a round in the direction of an armoured personnel carrier (APC) that was situated a short distance away from the Angolan commander. Dyasop says that his intention was to distract the commander so that he could not aim the grenade in the direction of the trench. This tactic was successful, for the grenade exploded short of the trench and many ANC lives were saved.

It is unclear what became of the Angolan driver of the APC. Dyasop heard that he died; others have testified he did not.

Two days after the Angolan attempt to control the mutiny, the MK leadership, including Joe Modise and Chris Hani, arrived at Viana Camp for the purpose of

arresting certain individuals who had played an active role in the uprising. Although he had fired his bazooka at the APC and had perhaps killed an allied soldier, Dyasop was not among the group of about 26 which was arrested. Instead, in an apparent case of mistaken identity, Mbeko Kokie, who, along with three other soldiers, was in the trench with Dyasop, was arrested for the bazooka incident.¹ As for Dyasop, he was taken to Pango Camp when Viana was evacuated after the mutiny.

Fate eventually caught up with Dyasop, however, and, in March 1984, he was arrested and ultimately detained at Quadro. Dyasop complains of the manner in which his arrest was effected. At Pango, a security officer told him to prepare himself for an infiltration mission inside South Africa. Being chosen for an infiltration mission, known within MK as "Umchayina," was regarded by the soldier as the highest honour, the "jackpot" as Dyasop explained, "something to write home about". Only the chosen few were asked to return on an MK mission to South Africa. In Dyasop's words, they were the "few chosen people who were supposed to fight the Boers for the rest of us". Dyasop was suspicious about the assignment because he felt that the truth of the part he played in the mutiny would ultimately emerge. His suspicions about the assignment were further aroused because he was told he would have to transit without a weapon. He concluded that he would not be sent on any infiltration mission, but rather that he was being tricked into leaving Pango, and he feared he would be killed in the bush. He therefore twice defied the order to depart on the assignment. In so doing, he sought to alert his comrades so that he would not disappear without notice.

When he was for a third time ordered to prepare for an infiltration mission, Dyasop went along with the security officers. He was thereafter held in a security house in Luanda for a few weeks and, on April 26, he was incarcerated at Quadro. Upon his arrival at Quadro, Dyasop, who was given the code name "APC," was badly beaten up by the warders. Dan Mashigo punched him in the mouth and knocked out one of his front teeth. Kingsley assaulted him on the bottom of his feet, telling him his purpose was to make sure Dyasop could not run away again. In the reception area, he was beaten by Dexter while Johnson, the camp commander, and Peter, Mountain, Stanley, and Mashego looked on. The day after he arrived, Dyasop told the security officers that he wished to be formally charged and tried; he was not charged, but instead was beaten by another guard named Jabu. He was then locked in isolation for two months.

Dyasop was subjected to miserable treatment during his imprisonment at Quadro, and particularly during his first year there. He was beaten daily for the better part of the year. Most of these assaults were inflicted by a guard named Fortunate, who would beat him with coffee sticks on his buttocks until he tired of hitting Dyasop. These beatings lasted from six to eight minutes at a time. Occasionally, Fortunate used a small stick as a weapon, and while hitting Dyasop on his back with the stick, he would taunt him, telling him he he was "writing the day I will be released from Quadro." On other occasions, Fortunate would use a larger stick to beat Dyasop

¹ Mbeko Kokie was held in Nova Stella Cao until his release in March 1985, which was almost a year after Dyasop was identified and arrested.

around the lower spine. These assaults eventually caused Dyasop to have problems with walking and balance.

Other forms of abuse to which Dyasop was subjected included being ordered to knock his head against a guava tree and to crawl and sit on a plant that caused the skin to itch. In addition to Fortunate, Dyasop was flogged by Kingsley and Donald during his incarceration at Quadro. On one particularly memorable occasion, the prisoner was badly beaten by the medico, Stalin, who caused him to fall down into a pile of bricks. This injury left scars on Dyasop's torso which remain to the present day.

Dyasop developed severe health problems due to the beatings and the conditions at Quadro. Because he was made to work even while he was suffering from malaria, his health deteriorated and he became prone to epileptic seizures. On or about January 7, 1985, Dyasop, weak from malaria, found he could not keep up with the pace of the work crew. Because he fell behind, he was hit by Donald, and he collapsed. From that time on, he would collapse whenever he had to work hard. In 1986 he suffered a particularly harsh beating at the hands of Mayibuye, causing him to collapse and lose consciousness for several hours. Dyasop has not suffered any epileptic seizures since 1988.

Dyasop was never provided an opportunity for a hearing, or told what he was charged with, or when he would be eligible for release.

On November 16, 1988, Dyasop, along with several other Viana mutineers, was released from Quadro. He and the others were resettled at Dakawa in Tanzania, where at first they were fully integrated into the community. Dyasop was appointed to head up the settlement's Art Department. However, about a year after they had been at Dakawa, the former Quadro prisoners were denied full participation in the Dakawa community. On Christmas eve of 1989, Chris Hani visited Dakawa and caused all the former Quadro inmates to be removed from the elected and appointed leadership positions that they had attained.

Dyasop concluded that Hani's edict was tantamount to his expulsion from the ANC, and that he was still being punished for his participation in the 1984 mutiny. Along with Mwezi Twala, Norman Phiri, David Mthembu, Siphon Phungulwa and a few others, Dyasop left Dakawa and sought refuge at the offices of the UN High Commissioner of Refugees in Dar es Salaam.

Ultimately, the group made its way to Malawi, from where, on 24 April 1990, they were repatriated to South Africa.

Upon his return to South Africa, Dyasop, along with a fellow exile and prisoner, Siphon Phungulwa, approached various organizations, including the ANC, SACP, and COSATU requesting assistance in exposing the hardships they had endured in Angola. During a visit for this purpose to the ANC offices in Umtata, Transkei, on 13 June 1990, Siphon Phungulwa was assassinated. Dyasop witnessed the crime and he himself narrowly escaped. Dyasop claims that the men who murdered Siphon were affiliated with the ANC office. Two persons, who, according to Dyasop are

members of the ANC, were arrested and released on bail for this offense, but they have yet to be tried.

The Commission inquired whether Dyasop suffered any losses during his confinement from March 1984 to November 1988. Dyasop told the Commission that he seeks no compensation for material losses, as he possessed little of value during his time in MK. However, he does wish consideration to be given to the pain and suffering he endured as a result of his incarceration.

COMMENT AND RECOMMENDATION

Luthando Dyasop complains that his arrest in March 1984 was unlawful; that he was unlawfully detained, first in Luanda for a week or so, and then in Quadro from March 1984 to November 1988; and that the order of Chris Hani barring him from participation in the structures of the Dakawa settlement was improper. He further complains that June 1990 the killing of Siphon Phungulwa has not been investigated or prosecuted by the Transkei authorities in an aggressive and impartial manner.

The Commission finds that there was ample reason to arrest Dyasop in March 1984. By his own admission, he had fired a missile at an allied soldier on February 1984 in the Viana uprising, thereby endangering the Angolan soldier's life and perhaps killing him. But Dyasop was never specifically told what the charges were or on the basis of what evidence he was being detained.

It was highly improper for the Security Department to deprive Dyasop of an opportunity to be heard in his own defense. It appears that although Dyasop may have been involved in a death, there were mitigating factors which, if believed by a factfinder, might have led either to his unconditional release or a reduction of his sentence.

The Commission is not able to draw a conclusion about Chris Hani's role in barring Dyasop from ANC structures after his release from Quadro, because the Commission did not have the benefit of Hani's testimony on this matter.

Finally, the Commission recommends that

- (1) the ANC apologize to Dyasop and compensate him for his unlawful incarceration and the ill-treatment he endured;
- (2) the ANC reinstate Dyasop as a member in good standing entitled to all the rights and privileges thereof, if Dyasop so desires; and
- (3) the ANC determine how it might facilitate the expeditious resolution of the charges pending against the men accused of the death of Siphon Phungulwa.

THE INDIVIDUALS WHOM THE COMMISSION FINDS VIOLATED THE RIGHTS OF LUTHANDO DYASOP ARE AS FOLLOWS :

1. Dan Mashigo : excessive force (Quadro)
2. Kingsley : excessive force (Quadro)
3. Dexter Mbona : excessive force (Quadro)
4. Fortunate : excessive force (Quadro)
5. Donald : excessive force (Quadro)
6. Stalin : excessive force (Quadro)
7. Mayibuye : excessive force (Quadro)
8. Johnson : as Camp Commander failed to stop use of excessive force by his subordinates (Quadro)

PATRICK MNCEDISI HLONGWANE

INTRODUCTION

Patrick Hlongwane left the country for Lusaka in 1986. There he met with ANC security officers, who, suspecting that he was an enemy agent, caused him to be arrested. He was detained first in Lusaka and then, in May 1987, he was transferred to Quadro in Angola where he was held until December 1988, when he was transferred once again to Bokoloto Prison in Uganda. Hlongwane appeared before an ANC tribunal in February 1991 in Uganda, and was convicted of various offenses and sentenced to 15 years' hard labour. On 17 August 1991, Hlongwane was released from detention. He returned to South Africa with the assistance of the South African Police. Since his return, Hlongwane has been employed full-time as the chairman of the Returned Exiles Committee.

In addition to his testimony, the Commission considered a videotape of a statement made by Hlongwane in 1986 in Lusaka. The video records Hlongwane's confession that he was employed by the South African Police to spy on the ANC and disrupt its activities. In addition to the videotape, Hlongwane wrote several other statements of confession during his period of detention.

The Security Department claims that Hlongwane was indeed an enemy agent who was sent to Lusaka on a spy mission. Hlongwane denies any connection to the South African Police, and alleges he was wrongly accused, tortured, and imprisoned. He disavows his videotaped and written confessions, which he claims were obtained as a result of extreme torture.

FACTUAL BACKGROUND

Patrick Mncedisi Hlongwane was born on September 21, 1958 in Port Elizabeth, where he grew up. In the late 70s he had some connections with the Port Elizabeth Black Civic Organization (PEBCO) and other local liberation movement groups.

1. Background to Hlongwane's arrest as an enemy agent

Hlongwane testified that in 1983 he travelled to Lesotho to pursue academic interests. He returned to South Africa shortly thereafter and, in 1986, he left the country again and went to Lusaka, in order, he claimed, to meet ANC and PAC representatives. It was at that time that he was arrested by the Security Department as a spy and subsequently incarcerated. He was not released until 17 August 1991.

Hlongwane was held in Lusaka for three months at the RC building. He did not immediately admit his police connection when he was arrested in Lusaka. Rather, he provided a confession only after he was severely beaten by members of the Security Department. In the course of his interrogation, Hlongwane was subjected to the "helicopter," whereby he was stripped

naked, his hands and legs cuffed to a pole and made to swing. He was beaten with the butt of an AK 47 and struck repeatedly on the soles of his feet. At one point he was made to dig what he was told would be his own grave. At gunpoint, he dug a deep hole and stood in it. As he stood in the hole, an armed security officer told him he would be shot there and buried. At that point, Hlongwane agreed to confess.

Although the torture which was imposed upon him casts a long pall over his alleged confession, there is ample evidence to suggest that the Security Department did indeed have good reason to arrest Hlongwane as an enemy agent. Hlongwane was involved in serious crimes in the Port Elizabeth area. His criminal involvement, coupled with the fact that he was never committed to prison for his acts, and that he served as a state witness in cases against movement activists, suggests he benefited from favourable treatment by the police.

Hlongwane admitted to the Commission that, in 1984, he stabbed the student leader, Gxuma Mzolisi to death. He did so, he said, because Mzolisi accused Hlongwane of being a police spy. Hlongwane was convicted of Mzolisi's murder, but he refused to tell the Commission what sentence he received. Notwithstanding this conviction for a 1984 homicide, Hlongwane was a free man in 1985 and thereafter until his detention by the ANC Security Department in 1986.

Hlongwane further told the Commission that in February 1980, he appeared as a state witness at the trial of two Port Elizabeth activists, and that, on the basis of his testimony, these individuals were found guilty of possessing explosives which, it was alleged, they had used to petrol bomb the houses of police officers. These two persons received sentences of 11 and 15 years, respectively.

Hlongwane also testified before the Commission that he appeared again as a state witness in the 1983 trial of Zola Matadzi, accused of public violence. On the basis, in part, of Hlongwane's testimony, Matadzi was convicted and sentenced.

As to his testimony before South African courts as a state witness, and his own criminal homicide conviction, Hlongwane admitted to the Commission that his videotaped statements describing these events were true. However, he denied all other aspects of the confession. It appears he chose only to acknowledge his participation in activities that could be documented through court records.

There was considerable other reliable evidence that Hlongwane was a spy. In 1985, Hlongwane's mother was tragically killed in Port Elizabeth, allegedly because of her son's activities. She was the victim of a "necklacing" and her house was petrol bombed.

In his videotaped confession, Hlongwane stated he was in the employ of the South African Police from 1980 to 1987. He stated he had provided the SAP

with the names and telephone numbers of members of the Port Elizabeth movement, persons whom he had encountered at PEBCO meetings, in exchange for 100 Rand. He reported that he had been trained in firearms and the use of a night camera by the police and that, along with SAP officials, he had participated in a search of the Port Elizabeth home of an individual who was politically active. In the course of this search, Hlongwane - acting, he claimed, on the orders of the police - shot the girlfriend of the targeted man. In his oral testimony, Hlongwane admitted to the shooting, but claimed it was an accident.

The videotape also records Hlongwane's admission that, along with SAP officials, he participated in a destabilization campaign in the Port Elizabeth area. He formed an organization known as Roots, whose activities included beating up students and disseminating false information. An example Hlongwane provided was that if a group called for a mass meeting to take place on a certain day, Roots would thereafter spread word that the scheduled meeting had been cancelled.

According to his videotaped statement, the SAP, in September 1982, sent Hlongwane to Lesotho on a reconnoitring expedition. His instructions were to photograph all the homes of ANC members. He remained in Lesotho until November, whereupon he returned to South Africa. Shortly thereafter, in December, Hlongwane accompanied the SAP on a search and destroy mission in Lesotho. Based on information he had provided, several ANC houses were attacked and ANC personnel were killed. Hlongwane confessed that he himself shot an ANC cadre to death in the 1982 Lesotho raid, and that he grenaded the home of Chris Hani. Hlongwane admitted that he returned to Lesotho in 1983, again for the purpose of infiltrating the ANC, and that he provided names, addresses, car tags and descriptions of ANC members to the police.

2. Hlongwane's Detention in Quadro

After about three months in Lusaka, Hlongwane was taken to Luanda, Angola. He was first detained at a security house and then at Nova Stella Sao. After about three weeks there, in May 1987 he was transferred to Quadro. At Quadro, he was given the name "Nduku," which means a stick. Hlongwane was given this name to signify that he beat up his own people. As were other Quadro inmates, he was required to wear a lice-infected uniform, beaten regularly, subjected to "pompa" and forced to perform hard labour.

In March 1988, less than a year after his detention at Quadro, Hlongwane was invited to appear before a tribunal to test the legality of his detention. He refused to do so.

On December 24, 1988 Quadro, Angola was evacuated and Hlongwane was ultimately transferred to Bokoloto Prison in Uganda. There he engaged in a

hunger strike for 29 days. For this protest action he was beaten and taken to an ANC security house for five days, and ultimately returned to prison.

On February 19, 1991, Hlongwane, represented by an attorney provided for him by the ANC, appeared before a tribunal in Uganda. He was convicted of 42 offenses relating to his spy activities and sentenced to 15 years of hard labour.

On August 17, 1991, Hlongwane was released from detention and returned to South Africa with a group of 31 other former Quadro detainees. Since his return, Hlongwane has served as chairman of the Returned Exiles Committee.

COMMENT AND RECOMMENDATIONS

Based on the evidence before it, the Commission concludes that the Security Department had ample grounds to arrest Hlongwane in 1986. The Commission further concludes that the preponderance of evidence supports the finding reached by the tribunal in February 1991 that Hlongwane was for more than five years a police agent actively engaged in numerous acts of sabotage against the ANC. Although, in his testimony before this Commission, he disavowed it, the videotaped statements he made about his life as a police agent are more likely than not to be true. In the first place, Hlongwane, when asked why he had made the statements, stated he did so because he had been told the ANC would seek to use the videotape to effect a prisoner exchange with the SAP. If, as he testified, Hlongwane expected the SAP to view the videotape, it is reasonable to infer that he would not lie, for there was nothing to be gained from lying about his involvement with the SAP. Moreover, Hlongwane stated he thought the prisoner exchange would result in his return to South Africa. He would not have wanted to be handed over to the SAP in such an exchange unless he was certain he would be favourably treated by the police. In any event, why would the SAP want him as part of an exchange?

Secondly, notwithstanding that he was severely tortured prior to making his confession, Hlongwane's demeanour on the videotape is not consistent with his subsequent disavowal of the story he told to the interviewer. He appeared to be actively engaged with the interviewer, genuinely interested in the question and answer session, and alternatively pensive and sincere in his manner.

Finally, Hlongwane provided tremendous detail about his activities in his various confessions, including the telephone numbers of the different divisions of the SAP at various police precincts, the layout of SAP stations, and the details of the Roots organizational activities.

Accordingly, the Commission concludes there is no basis for Hlongwane's claim that his initial arrest and subsequent detention were unjustified. As to his detention in Angola, Hlongwane chose to decline the offer to appear before a tribunal in March 1988.

However, there was no justification whatever for the torture of Hlongwane in Lusaka or for the harsh conditions of his detention in Quadro. This conduct constituted a violation of Hlongwane's rights.

Hlongwane has named several persons whom he states were responsible for his torture and for the beatings he sustained in Quadro. While, based on the totality of the evidence before it from numerous other witnesses, the Commission is prepared to accept that Hlongwane was beaten, because his evidence is otherwise very unreliable, the Commission is not satisfied that those named by Hlongwane were the actual perpetrators.

The Commission recommends that the ANC issue a general apology to Hlongwane for the torture to which he was subjected and the humiliating treatment he endured while incarcerated in Angola.

DUMISANI CHARLTON OUPA KHOSA

INTRODUCTION

Dumisani Khosa comes from Alexandra Township. He left the country in 1976 to work with the ANC. As a member of MK, he was posted in Lusaka in 1977, where he was a producer of programmes for Radio Freedom and a speech writer for O.R. Tambo. He was also sent to Angola, where he trained at Catengue Camp. Khosa appeared before the Commission to seek attention to the case of his friend, Philip Tsakane (also known as Makerere), who is missing, but he also detailed the circumstances of his own detention in Quadro from 1981 - 1984.

FACTUAL BACKGROUND

In late February or early March of 1981, Khosa was present at an ANC meeting in Lusaka. The discussion turned to problems within the organization and Khosa candidly expressed his views on three issues. First, he said that there was a need for better training programmes for the young people who were coming into the ANC, and with whom he had occasion to work at Radio Freedom. Second, he said that it appeared that nepotism was becoming a demoralizing factor within the organization, and third, he discussed the need for greater leadership morality, in connection with which he noted that some persons were involved in the sexual harassment of young women.

After the meeting, a security department member, Keith Makwate (Mokoape?), told Khosa that he was looking for evidence on which to arrest him. Two or three weeks after the meeting, Khosa was scheduled to interview Moses Mabhida, then general secretary of the Communist Party. He was told to go to RC for the meeting, but when he arrived, tape recorder in hand, Mabhida was not there. It became clear that the scheduling of the appointment was merely a ruse to effectuate his arrest. Joe Modise was present at the time of his arrest. Khosa was then transported to Makeni, a settlement south of Lusaka. He was taken to an ANC house there by four men, including Keith Makwate. He was told "you are no longer a comrade", and then he was beaten with wire, a plank and a stick. He was beaten on the bottom of his feet. The beating lasted from about 10.00 a.m. to about 3.00 p.m. When it was over, he found he could not walk and that he was urinating blood. At 3.00 p.m. Joe Modise arrived at the ANC house at Makeni and, shortly thereafter, Khosa, along with about 14 others, was taken to the Lusaka airport. There he boarded a plane for Luanda, ultimately ending up in Quadro.

At Quadro, Khosa was given the name Senghor. He was required to write his biography almost every week. At some point in 1981 he appeared before a five person tribunal of which Joe Modise was a member. Two witnesses alleged that he had been involved with enemy agents when, in early 1977, he was a commander at Catengue Camp. Khosa denied the allegations; he had never previously encountered the two witnesses. Khosa was never advised of the results of the tribunal.

In July 1984, Khosa was released. He continues to be an active supporter of the ANC.

COMMENTS AND RECOMMENDATIONS

The Commission recommends that the ANC issue an apology to Khosa and consider compensating him for the time he spent in detention.

THE INDIVIDUALS WHOM THE COMMISSION FINDS VIOLATED THE RIGHTS OF DUMISANI KHOSA ARE AS FOLLOWS :

1. Keith Makwate (Mokoape?) : arrest without cause (Lusaka), excessive force (Lusaka). (Khosa was not sure of his identification of this man, and his identity is therefore unknown. The Commission questions whether the Keith involved was Keith Mokoape).
2. Joe Modise : arrest without cause (Lusaka); failure to give notice of tribunal findings (Quadro).

ABEOD LAKA

INTRODUCTION

Abeod Manare Laka left South Africa for Botswana in 1986, purportedly to continue his studies. There he came into contact with members of the ANC, and at their urging he joined the Organisation. He was transported to Lusaka, where he was detained on suspicion of being an enemy agent. In Lusaka he was subjected to torture. He ultimately confessed to working for the South African Police, and in June 1987 he was taken to Angola, where he was held, first in Nova Stella Sao and then, from July 1987 to December 1988, in Quadro. In December 1988, when Quadro was evacuated, he was transferred to Bokoloto Prison in Uganda, where he was held until his repatriation in April 1991.

In appearing before the Commission, Laka sought to clear his name. He claims he was not an enemy agent, but was forced by torture to give a false confession. He asked the Commission to "go and investigate about myself so that they can clear my name, whether I am an enemy agent or not."¹

FACTUAL BACKGROUND

Abeod Laka was born on 22 July 1956. He grew up in the Pietersburg area. He left school in 1971, but resumed his education in 1982, attending Marobathota High School until, in 1986, he was expelled for having participated in an assault on a security guard during a school boycott.

In October 1986 Laka left South Africa for Botswana. He claims to have left the country in search of an opportunity to further his studies. He reported to the UNHCR in Botswana and was sent to Dukwe, a refugee camp, where he met up with members of the ANC. They told him that if he joined the ANC he could receive a scholarship and continue his education. He accepted the offer and, in November 1986 he joined the ANC. He was taken to Lusaka. Once there, he was instructed to write his biography. Apparently, the biography raised suspicions that Laka might be an agent of the South African police.

Laka was detained from January 1987 at the Revolutionary Council Building (RC) for about 4 months. There he was interrogated by Gibson, Zakithi Dlamini, and a third member of the Security Department whose name he could not remember. In the course of this interrogation, Laka was severely tortured. He was beaten with sticks and electric cables. On one occasion he was tortured by Jackie Mabuza, who caused him to be suspended from an iron pole by his handcuffed hands and feet. While so positioned, Laka was made to swing back and forth as he was beaten about the body with sticks and electric cables - he was given what complainant refers to as the "helicopter" treatment.

¹Tr. 1,057 (Laka)

At one point during his detention at RC, Laka was confronted with an accusation made against him by a man who was brought before him and identified him as someone he had seen in De Aar in the Cape Province in a police uniform and claimed, further, that while in the employ of the police Laka had killed two people, one by shooting him and the other by beating him to death. Laka was also told that Patrick Hlongwane had identified him as working for the SAP. However, Laka testified that when they were later both incarcerated in Uganda, Hlongwane told him he had falsely named Laka after he had been forced by torture to do so.

Eventually, in May 1987, Laka rewrote his biography, confessing that he was in fact a police agent. He claims this statement was false and that he only "confessed" because he could no longer take the beatings.

On 14 June 1987 Laka was taken to Angola where he was first incarcerated at Nova Stella Sao. In July or early August he was transferred to Quadro. He wrote another biography there in December 1987. He claims he tried to make that biography consistent with the Lusaka version, which was part of his personal files available to the administration at Quadro. He was beaten because the Quadro guards were not satisfied with what he wrote, and he was made to rewrite the confession.

Laka was called "Sphukuphuku," or "fool," by the guards at Quadro. He was often beaten and subjected to the humiliating treatment and forced labour that is described elsewhere in this report.¹ He was a special target for Stanley Brown, who Laka says, beat him often and indiscriminately during his first year at Quadro.

In December 1988, Quadro was evacuated and Laka was among those taken to Uganda, where he was imprisoned at Quadro, Uganda. On January 17, 1990, in response to a request from his warders, Laka wrote his biography once again. He stated that he had been recruited by the South African Police in May 1986 and was at first paid R400 a month for his services. He was taught how to obtain information and to use firearms, among other skills. He admitted to being on patrol in De Aar. He stated that at one point, in October 1986 he was provided with R1,000 and a passport and sent to Gaborone, Botswana where he was to infiltrate the ANC organs there.

In early 1991, while incarcerated in Uganda, Laka was offered the opportunity to appear before a tribunal. He declined because he feared he would not receive a fair trial.

Laka returned to South Africa in April 1991. He testified that as a consequence of his detention he lost about R100 and a Citizen watch of the approximate value of R150.

¹See p 41.

COMMENT AND RECOMMENDATIONS

The Commission concludes that the evidence available to the Security Department was sufficient to warrant the initial detention of Abeod Laka. However, Laka should have been provided an opportunity to have the evidence against him tested before an impartial tribunal prior to early 1991, when he was offered a trial in Uganda.

Laka seeks a finding by this Commission that he was not an agent of the South African Police, and wishes his name to be cleared by the ANC. The Commission cannot draw any such conclusion based on the evidence presented.

Laka's testimony as to how he came to travel to Botswana in 1986 is not wholly persuasive. Although he states he went to Gabarone to further his studies, he was at that time 30 years old, poorly educated, and without apparent resources. If Laka was not in Botswana for educational purposes, it is not improbable that his purpose was to infiltrate the ANC.

Moreover, there is reason to doubt Laka's claim that his confessions were false. Laka's first written confession was in April 1987. He wrote another confession in December 1987, and a third - a copy of which was provided to the Commission - in January 1990. The 17 January 1990 statement contained tremendous detail, including the names and numbers of police contacts in Botswana and South Africa. These same details had been provided in earlier Laka confessions. Although Laka states that he had committed his first confession to memory, one might question whether he could have produced a virtually identical account of his activities and contacts fully two years after his last biography if his story was purely fictional.

For these reasons, the Commission could not resolve the question whether or not Laka was a police agent.

The Commission recommends that the ANC apologise to Laka for detaining him without trial under cruel and abusive conditions and torturing him.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF ABEOD LAKA :

1. **Gibson : excessive force (Lusaka)**
2. **Stanley Brown : excessive force (Quadro)**

Laka also gave evidence against the following individuals, but the Commission could make no findings as to them because they are deceased:

1. **Zakithi Dlamini : excessive force (Lusaka)**
2. **Jackie Mabuza : excessive force (Lusaka)**

OBBEY JUNE MABENA

INTRODUCTION

Obbey June Mabena left South Africa in 1976 to join the liberation movement in exile. He became a member of Umkhonto We Sizwe and was deployed in the Angolan camps. In 1979, at Fazenda Camp, Mabena, dissatisfied with life in the camps, and decided to leave Umkhonto. He left the camp for Luanda, where he ultimately presented himself to the United Nations High Commissioner for Refugees. His efforts to leave Angola were intercepted by ANC leaders who caused him to be arrested. In October 1979, Mabena was incarcerated at Quadro, where he was one of the very first prisoners. He remained a prisoner there until his release in January 1987. Mabena was never told what if any charge had been lodged against him, nor was he provided a hearing of any sort.

Upon his release, Mabena was re-integrated into the structures of the ANC. He remains, today, an active member of the organization.

FACTUAL BACKGROUND

Obbey June Mabena lives in the Johannesburg area with his wife and children. He is presently employed as a manager in a private firm.

In March 1976 Mabena joined the ANC and in June he left the country for Swaziland. He then undertook military training in Angola as a member of Umkhonto We Sizwe. He was deployed for some time at Quibaxe and then, sometime in 1978, he was sent to Fazenda. Mabena is of the belief that he was sent to Fazenda as punishment for expressing his impatience with camp life at Quibaxe. Mabena had complained that he wanted to be deployed on a military mission, but instead he was wasting time in the camps. He encountered a number of others in Fazenda who felt as he did. He stated that "all of us had one thing in common, and that was our yearning to come back and fight, as was the agreement between us and the movement, when we opted for training."¹

Frustrated by the situation that confronted him at Fazenda, Mabena, in 1979, left for Luanda with the intention of making a complaint to the ANC authorities. In Luanda he met with Andrew Masondo, national commissar, and Mike Sandlana, Regional Commissar. Telling them he wished to leave the Angolan camps, he said "*I am not going back to . . . Fazenda or any camp. . . I have had enough of camp life.*"² The commissars responded by reminding Mabena that as a soldier, he was required to remain at the camps. Thereafter, for a short time, Mabena remained in Luanda, but ultimately he was ordered to return to the camps. Rather than submit to that directive, Mabena reported to the United Nations High Commission on Refugees in

¹Tr. 1302 (Mabena)

²Tr. 1281 (Mabena)

Luanda. However, before he could obtain refugee status he was arrested by Andrew Masondo. He was taken first to Quibaxe and then, on 12 October 1979, he, along with three other persons, was incarcerated at Quadro.

At Quadro, Mabena was first held in a solitary cell. He was among the first prisoners, and was required to assist in the construction of the prison camp. In 1981 Mabena was given the prison name "Andrew." He was beaten virtually every day, required to submit to hard labour, accused of being an "enemy agent" and otherwise subjected to the punitive and humiliating conditions prevailing at Quadro.

Sometime in late 1986, Chris Hani spoke with Mabena at Quadro and told him he was looking into the question of his release. Hani returned some months later in January 1987 and directed him to be released. During the course of his seven year imprisonment, Mabena was never charged nor tried. Upon his release Mabena was re-integrated into the ANC structures. He resided first in Luanda, then in Lusaka, and then in Tanzania. From late 1988 to May 1991, he was deployed in Britain with the ANC Department of Information and Publicity. In May 1991 Mabena returned to South Africa and from then until January 1993, he was employed as a computer technician with the ANC Information Systems Department at Shell House in Johannesburg. In January 1993, Mabena took up employment with a private firm, but he fears he may not be able to hold on to his job because of his poor health.

Mabena described to the Commission the suffering he has endured as a consequence of his seven years of incarceration at Quadro. He stated that his family life was devastated. When he left South Africa in 1976, he was married, but he did not see his wife again until his release from prison in 1987. At some point during the couple's separation Mrs. Mabena was made to believe her husband had died, and, according to Mabena, she started "behaving as a person who no longer had a husband."¹

Mabena suffered a marked deterioration of his health in confinement. His eyesight, once near perfect, is now extremely poor, and he attributes this to the poor lighting conditions in the cells. He presently suffers from poly-arthritis and repeated bouts of flu. He described himself as "living on painkillers" and complained that "my body no longer feels like my body."²

COMMENT AND RECOMMENDATIONS

As a soldier, Obbey Mabena had an obligation to serve Umkhonto We Sizwe. As is provided in the preamble to the Unkhonto We Sizwe Military Code :

"Umkhonto is an army of volunteers. It consists of volunteers drawn from the revolutionary sections of our people. By joining Umkhonto, combatants commit themselves to the solemn and noble duty of serving our suffering and

¹Tr. 1315 (Mabena)

²Tr. 1314 (Mabena)

dispossessed people in the struggle that will continue for each and all of us until victory or death."¹

When, in 1979, Mabena refused to return to the camps, he became, in effect, a deserter. The difficult question in these circumstances is how a cadre who deserts a volunteer military formation should be treated. As a volunteer, the length of Mabena's term of service was not prescribed. It is clear, however, that although the Umkhonto Code cannot be read literally to have required the volunteer to serve until death or victory - both rather indefinite,² if certain, eventualities - neither could the army function without sanctioning desertion. The middle road between these two extremes is hard to fix. Professor Kader Asmal advised the Commission that there are no international standards pertaining to such a situation. He argued that a volunteer soldier who wished to be relieved of his commitment should, in the best of circumstances, be permitted to leave. *"My personal view ... is that you cannot even have around you someone who is hostile to you in a movement that depends on ideas and a concept of freedom."*³

But Professor Asmal went on to note that, where the soldier was in possession of sensitive information, he could not be permitted to leave of his own choice:

*"Under the exigencies of that situation [where the volunteer who is privy to classified information wishes to leave the army] ... the person could [not] be allowed to give the information to the enemy, because it becomes a matter of life and death of the collective over the interests of the individual. But ... this is the exigency of ... war time."*⁴ :⁵

¹ Preamble to Umkhonto We Sizwe Military Code, See Appendices p. below.

² The MK ^(Code) makes desertion punishable by, among other penalties, death, MK Code 25-26

³ Tr 2379 (Asmal)

⁴ Tr 2380 (Asmal)

⁵ The Commission enquired of Professor Asmal as to whether the exigencies of such a situation could not be met by a form of detention that was less than punitive, as for example, internment :

"Mr Zamchiya : Do you make any distinction, Professor, in your term 'detention' between ensuring that the person does not leave, and on the other hand, making sure that they lose privileges and undergo punishment?"

Prof. Asmal : ... I think all detention, whatever the occasion, must be under humane conditions." (Tr 2380 Asmaal)

(The concept of non-punitive internment as a means of meeting the exigent security needs of the Organisation without unduly compromising individual human rights is discussed at p. 14 above).

In any event, whatever the obligation of Mabena was to Umkhonto We Sizwe, it cannot be gainsaid that he was entitled to a prompt and fair hearing.

The punishment to which he was subjected was not commensurate with his offence. As an alleged deserter, he should have been afforded a hearing and, if a penalty resulted therefrom, it should have been determinative.

The Commission considered that Mabena demonstrated strength of character in his continuing loyalty to the ANC. It recommends that the Organisation issue an apology to Mabena for failing to afford him notice of the charges resulting in his imprisonment, a hearing, and for the excessively harsh and unduly long incarceration he endured. Consideration should be given to compensating Mabena for his losses. Factors to be considered include his :

detention without trial;
8 years' loss of liberty;
beatings and humiliation; and
impairment of his health.

DAVID MAKHUBEDU

INTRODUCTION

David Makhubedu left South Africa in 1975 to join the liberation movement in exile. He joined the ANC in April 1977 in Dar es Salaam and subsequently became a member of Umkhonto We Sizwe. He was trained in Angola, where he was deployed in the camps until February 1984, when he was arrested for his participation in the Viana mutiny. He was first incarcerated at Nova Stella Sao, and then at Quadro until his release in November 1988. From Quadro, he was sent to Dakawa Settlement in Tanzania, where he remained until, in December 1989, he left the Settlement and the ANC along with several others. The group first went to Malawi, where they were detained for two months, and ultimately, in April 1990, Makhubedu returned to South Africa.

FACTUAL BACKGROUND

David Makhubedu was born on 5 February 1951. He lives in Duduza and is self-employed as a marketing manager for a firm that makes bricks.

Makhubedu came into the liberation movement in the wake of the uprisings of the mid-1970s. He left the country in 1975 for Botswana, where he joined the PAC. In April 1977, because he was disenchanted with its political thrust, Makhubedu left the PAC. He joined the ANC in Dar es Salaam and became an MK soldier. He was trained in Angola and spent several years in the camps in that country. He was deployed at Nova Catengue when, in April 1979, it was bombed by the South African Defense Force. He was later deployed at Pango and Fazenda, and, in 1982, he served as a political commissar in Viana.

Makhubedu became increasingly dissatisfied with the nature of MK life in the Angolan camps and with the conduct of the war against UNITA, in which MK was a participating force. When, in early 1984, the discontent in the Angolan camps began to crescendo, Makhubedu was among those who sought a meeting with the leadership to discuss the direction of the struggle in which the MK soldiers were involved. He testified that, as conditions worsened in Angola, and as the soldiers' tours of duty there became longer and longer, the culture of open political discussion and dissent within the ANC began to suffer.

On 15 February 1984, when, in the early morning hours the Angolan forces arrived to restore order in Viana, Makhubedu was preparing fat cakes for breakfast in the camp kitchen and was therefore one of the first to take note of the Angolans' arrival. He, with two or three others, promptly alerted the others in the camp by sounding an alarm. Because of Makhubedu's swift response, large numbers of the rebelling MK men were able to take cover either in the surrounding trenches or the nearby bush and they thereby gained a strategic advantage over the Angolans.

Makhubedu readily admitted that he supported the mutiny and that, when at Viana he was ordered to surrender his weapon to his commanding officers, he refused to do so.

On 16 February when Hani, Masondo and Modise came to the camp for the purpose of arresting those deemed responsible for the Viana uprising, Makhubedu was among those arrested. He was taken to Nova Stella Sao, where he was incarcerated until 23 March, when he was transferred to Quadro.

At Nova Stella Sao, Makhubedu participated in a hunger strike in protest of the harsh conditions, and in particular, the serious inadequacy of the food, which was in short supply and barely edible. Makhubedu provided a written statement to the Stuart Commission at its request while he was detained at Nova Stella Sao, wherein he described the conditions leading up to the insurrection at Viana and the difficulties the MK men were experiencing in the Angolan prison. Makhubedu testified that he believes he suffered reprisals for having given his evidence to the Stuart Commission, specifically, he was moved from a communal cell to solitary confinement.

Makhubedu arrived at Quadro on 23 March 1984 with three other Viana mutineers. He was subjected to a vicious beating upon his arrival. Kingsley punched him in the mouth, causing him to bleed profusely. As the blood ran from his mouth, he testified that other warders taunted him, saying "Hey, who do you think you are, spitting on our floor with blood?"¹

After this assault by Kingsley, Makhubedu was ordered to remove all but his trunks and to lie prostrate on his stomach. Thus positioned, he was beaten for about an hour and a half by many of the guards in the reception hall. He told the Commission that "when we arrived, anyone who felt like beating anybody. . . it was open to everybody to participate, it was not a special. . . everyone who was there participated in beating us."²

Makhubedu, who at Quadro was given the name "Da Costa" after an infamous Mozambican defector, described conditions there as unbearably harsh. He was routinely beaten by guards far younger than himself, and he recalled one particularly brutal assault he suffered at the hands of Fury in April 1984. On that occasion, Fury, whom Makhubedu identified in person during his testimony, beat him with a stick.

Between November 1984 and April 1986, Makhubedu and the other Quadro inmates were only permitted to leave their cells about once a month. After April 1986, conditions improved, and the warders permitted Makhubedu to work outside about every other day. Some of the chores he was required to perform included chopping wood, cleaning up the camp site, and pushing the 1,000 litre tank uphill.

¹Tr. 880 (Makhubedu)

²Tr. 930 (Makhubedu)

Makhubedu related a visit to Quadro by Chris Hani and others in the leadership which, he said, occurred in February 1985. In a meeting with Makhubedu and others of the Viana mutineers, Hani stated, according to Makhubedu, that the leadership of the organization had agreed to seek an early resolution of the questions raised by their detention, which they deemed to be a political, rather than criminal issue. However, stated Makhubedu, there were no further developments for three years thereafter. Then, on 16 November 1988, he, along with others from the 1984 uprisings in Viana and Pango, were released from Quadro and ultimately, in March 1989, relocated at Dakawa Settlement.

At Dakawa, initially the former Quadro inmates were absorbed into the community without incident and were free to exercise all the rights and privileges of other ANC members. In September 1989, several of them were elected and selected to serve in the community structures. However, the following month, to the great distress of Makhubedu and others, Chris Hani ordered the removal of the former MK dissidents from the leadership positions to which they had ascended.

In December 1989, Makhubedu and about 14 others left Dakawa in protest of what they considered their unjustified exclusion from the full life of the community. The group reported to the United Nations High Commission for Refugees in Dar es Salaam. There they were told they had to resign from the ANC in order to be eligible for refugee assistance. Makhubedu resigned and, along with others, after about a month in Dar es Salaam he travelled to Malawi, where he was imprisoned for about 2 months. He was repatriated to South Africa on 24 April 1990.

COMMENT AND RECOMMENDATIONS

The Commission observed David Makhubedu to be a highly intelligent, forthright and principled individual whose political commitment, notwithstanding his experience, remains with the ANC. It is regrettable that means could not be found to accommodate the discussion he endeavoured to initiate within the ranks of the MK from 1983 to 1984. The Commission finds that the MK insurrection which culminated in Viana in February 1984 constituted a mutiny which the MK leadership had the right forcefully to suppress. Makhubedu has admitted his participation in the mutiny in that he refused, when commanded to do so, to surrender his weapon to superior officers, and he alerted others to the presence of the FAPLA forces, providing the mutineers with a strategic advantage.

Accordingly, there was sufficient cause to detain Makhubedu to determine the full nature of his participation in the mutiny and to ascertain any extenuating or mitigating circumstances. However, there was no justification for Makhubedu's detention for over four years in Nova Stella Sao and Quadro without a hearing. Nor does there appear to have been any justification for effectively ousting Makhubedu from the ANC in September 1989 by proscribing his full participation in its structures; however, the Commission could not fully assess the apparent violation of Makhubedu's rights in this regard because the late Chris Hani was not available to testify.

It is the recommendation of the Commission that the organization provide Makhubedu with an apology and that consideration be given to compensating him for his wrongful detention, five years' loss of personal liberty, injuries to the person and humiliation.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF DAVID MAKHUBEDU :

1. Kingsley : excessive force (Quadro)
2. Fury : excessive force (Quadro)

DAVID NDABAKAYISE MBATHA

INTRODUCTION

David Mbatha has been a member of the ANC since 1968. He is from an ANC family in the Durban area. He is the father of nine children and five grandchildren. In 1988, he travelled with his wife outside of the country to visit his children, who were in Lusaka and Tanzania. In Lusaka he was detained by the Security Department and held for about two months under suspicion that he was an enemy agent. He was transferred to Quadro, where he was imprisoned until December 1988, when Quadro was evacuated. After a further short period of detention in Luanda, he was re-integrated into the ANC structures at Mazimbu in Tanzania.

FACTUAL BACKGROUND

David Mbatha is from the Durban area, where he, his wife and other family members have long been active in the ANC. From about 1983, Mbatha was active in the UDF-sponsored "Release Mandela Campaign."

At the invitation of Oliver Tambo, the Mbathas, in the mid 1980s, sent their nine children out of the country to further their studies and to participate in the liberation movement. Seven of their nine children ultimately enrolled in Solomon Mahlangu Freedom College in Tanzania and the other two were deployed with MK units.

In 1988, Mbatha and his wife left the country in order to visit their children. Using their personal vehicle, a Ford Cortina, they travelled to Maputo, where they met with Jacob Zuma, who was at that time Chief of Intelligence operating out of Lusaka. Zuma told the Mbathas that if they could travel to Lusaka, he would facilitate a visit there with their children. Leaving their car in Maputo, they went to Lusaka where they saw two of the children. They then went to Tanzania where they visited the seven who were studying at Dakawa. They returned to Lusaka and sought out Zuma, whose assistance they needed to get back to Maputo, where they had left their car. But Zuma could not be located.

After remaining in a Lusaka hotel for about two months with his wife, Mbatha was, on 8 July 1988, detained by members of the Security Department. Forced to leave his wife behind at the hotel, he was first taken to a house in Lusaka secured by Joe Zungu, and after several weeks, to another house of detention in Lusaka where he was held in a cell. There he was beaten by a young man whom he could only identify as "BM." The assault consisted of being struck repeatedly on the soles of his bare feet as he sat on the floor. During his detention in Lusaka Mbatha states he was from time to time interrogated and accused of being an enemy agent, but he denies he was asked to make any confessions at the time of the beating. This was the only time that, as a prisoner, Mbatha was beaten.

After about a month and a half in Lusaka, Mbatha was told he was to be sent to Angola for "military training." He protested that he was too old for such training,

exclaiming "who said I want to be trained? I do not want to go for training." Notwithstanding, he was flown to Luanda and, after a brief detention at a security house there, where he was required to write his biography by recording officer Griffiths Seboni, he was driven to Quadro. He was imprisoned at Quadro until it was evacuated in December 1988. Mbatha was given the name "Juice" by the Quadro guards. He states he was treated with respect, and that some of the security officers, many of whom were friendly with his children, expressed great surprise that he was a prisoner.

Upon his release on 23 December 1988 Mbatha was taken to a warehouse in Luanda where he was detained until, in May 1989, he was transferred to Tanzania where he was re-integrated into the ANC community at Mazimbu.

As a result of his detention, Mbatha experienced the alienation of his wife's affection, and he complained to the Commission that the consequent rupture in his long-standing marriage consumes him to the present.

Mbatha testified that he was told by the security men who initially detained him in Lusaka that his arrest was pursuant to the instructions of Jacob Zuma. Another witness, Jacob Sithole, who is a member of the Security Department, also testified that he thought Zuma ordered the arrest of Mthaba.

"... I think the authority (to arrest Mbatha) came from Comrade Zuma, if my memory serves me well, it came from Zuma, but exactly who did the actual arrest, I cannot remember."

However, Zuma denied that he had played any role in the detention and imprisonment of Mbatha. Zuma told the Commission that at the time of Mbatha's arrest, he was himself away from Lusaka on business.

It appears that in 1987, there arose a number of problems in the ANC structures in the Natal region, and the Intelligence Department, which Zuma headed, launched an investigation to determine the source of information leaks that were endangering the organization. It seems several activists were interrogated in connection with the investigation, including Mbatha. Mbatha, however, denies he was questioned about the crises facing the Natal organization, and claims he was merely told he was an "enemy agent" without further explanation.

COMMENT AND RECOMMENDATIONS

Mbatha, a loyal and long-time ANC member, has adopted an admirably philosophical attitude about his experience as a detainee. He explained that he was giving evidence not out of anger, but

¹Tr. 1165 (Mbatha)

²TR 2204 (Sithole)

"because I love the ANC, I love my organisation, I love the people of South Africa. I am trying to help our organisation to know about the tactics of the Boers, amongst ourselves. The Boers are using our people to infiltrate, to turn the people of South Africa away from our organisation. So I say, I understand, though I was unlawfully arrested, tortured and so on. But I say that was the work of the enemy."

While there may have been good reason to detain Mbatha to determine if he was party to information that might have advanced the Natal investigation, it was improper to hold him without specifying the charge. It was also improper to subject him to a beating in the course of investigating him. Moreover, the Commission was given no explanation as to why it was necessary to detain Mbatha for 10 months without affording him a hearing, or why Mbatha was transferred from detention in Lusaka to Quadro where the conditions were significantly more harsh. While it is certainly possible that the investigation to which Mbatha was relevant took time, even many months, to develop, there has been no evidence to that effect. Indeed, Jacob Zuma could not enlighten the Commission as to the circumstances under which Mbatha came to be detained and imprisoned.

The Commission recommends that the ANC issue an apology to Mbatha for his detention. The Commission further recommends that the ANC consider compensating Mbatha for

- (1) the cost of the car he and his wife left in Maputo; and
- (2) the time he spent in detention in Angola.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF DAVID MBATHA :

1. Jacob Zuma : failed adequately to supervise the investigation of Mbatha's case and to assure its prompt resolution (Lusaka)
2. BM : excessive force (Lusaka)

OLEFILE SAMUEL MNGQIBISA

INTRODUCTION

Samuel Mngqibisa joined the ANC in the wake of the Soweto uprising in 1976. He was deployed as an MK member first in Angola in 1977 and then, in 1978 in Lusaka. In Zambia Mngqibisa was detained from 1978 to 1979 in various facilities. He states the reason for his detention was his vociferous complaint of corruption within the ANC. After his release in April 1980 Mngqibisa was reintegrated into the MK structures of the ANC. From 1984 until 1991 Mngqibisa was a resident at Dakawa Settlement in Tanzania, where he an apprentice plumber. In 1991, Mngqibisa was detained once again at the Ruth First Centre at Dakawa for 15 days.

FACTUAL BACKGROUND

After joining the ANC in late 1976 in Botswana, Mngqibisa was trained in military operations in Angola in 1977 and then in Zambia in 1978. In Zambia, he underwent a three month survival training course, following which he was transferred to Lusaka at the "Yellow House," where trained cadres would transit before returning to South Africa for underground activities.

In December 1978, while he was staying at the Yellow House, Mngqibisa began having difficulties with his supervising officers. At a meeting attended by Keith Mokoape, a senior security official, and his deputies, Mngqibisa complained bitterly that the food being supplied to himself and other cadre was insufficient. When told the food was the best the ANC could afford, he disputed it and claimed that the organization's resources were absorbed by corruption among the leadership. One of the security officers at the meeting told Mngqibisa that the way he complained was "the way enemy agents are taught to operate within the ANC,"¹ and with that comment, the meeting came to an abrupt conclusion.

The following morning, Mngqibisa was taken into custody at a detention house operated by the Zimbabwe African People's Union (ZAPU) in Lusaka, Zambia. He was held there and at another ZAPU house for about a week. He was then transferred to Nampundwe Prison, a ZAPU prison and military camp located outside of Lusaka. There he remained for about a month. In February 1979 Nampundwe was bombed by Rhodesian forces and Mngqibisa was injured. He was taken to a hospital in Lusaka for treatment of a shrapnel wound to his shoulder. However, he did not receive the necessary treatment because of the other casualties to be attended to at the hospital and the splint of shrapnel was not removed from his shoulder until the end of Mngqibisa's term of confinement in 1980.

The day after the bombing of Nampundwe, Mngqibisa returned to the Yellow House in Lusaka. He was once again arrested by Mokoape, who told him that only Joe Modise had the power to order his release. Mngqibisa was then detained at the J.Z.

¹Tr. 1239 (Mngqibisa)

Moyo Camp, another ZAPU facility, and then transferred to ZAPU's main prison, Mboroma, where he was detained from February 1979 to April 1980.

Mngqibisa was, accordingly, detained from December 1978 through April 1980. At no time was Mngqibisa afforded the opportunity to appear before a tribunal or told the specific charge against him. Upon his release, Mngqibisa was reintegrated into the MK structures.

As a result of his detention in Zambia, Mngqibisa developed rheumatism and suffers from malaria.

From 1980 until 1991, Mngqibisa appears to have had a quarrelsome relationship with many members of the organization. He complained often and bitterly about corruption, favouritism, and other forms of abuse of privilege. In 1984, he was deployed at Dakawa where he was to learn to become a plumber.

In January 1991 Mngqibisa was again detained, this time for about two weeks. At Dakawa, Mngqibisa had appointed himself head of the plumbing department. There was a breakdown and crisis of the water system at Dakawa, and Mngqibisa was requested by Jackie Morake, co-ordinator of administration and a security officer, to repair the pipes. Mngqibisa refused to provide his plumbing services without compensation. He was consequently detained at the Ruth First Centre at Dakawa, from where he ultimately escaped. He then resigned from the ANC and returned to South Africa with the assistance of the United Nations High Commission on Refugees.

Mngqibisa is presently undergoing psychological counselling for problems related to his experiences from 1976 to 1991.

COMMENT AND RECOMMENDATIONS

Mngqibisa's first period of detention in jails in Zambia for 14 months appears to have resulted from his vociferous criticism of ANC's leadership. Neither he nor the Commission have been provided with any other explanation for the detention. The Commission therefore concludes that the detention was without good cause and further, that it was improper to hold Mngqibisa without informing him of the charge.

The Commission recommends that the ANC issue an apology to Mngqibisa for wrongfully detaining him from 1978 to 1980.

The Commission makes no recommendation as to whether Mngqibisa should be compensated for what he claims are the medical problems resulting from his detention. Mngqibisa seeks payment directly to his doctor because he does not wish to have his medical records rendered available to the ANC.

It is not as clear that the 1991 detention was unjustified. The Dakawa leadership must have experienced Mngqibisa as a difficult and contentious man. He himself

admitted that he got into trouble because he "could not tow the line." It appears his request to be compensated for fixing the broken pipes was, in the totality of the circumstances prevailing at Dakawa, an unreasonable one. Notwithstanding, the better course would perhaps have been to impose a determinate period of detention, rather than holding Mngqibisa at Ruth First for an unspecified period.

**THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS
VIOLATED THE RIGHTS OF OLEFILE SAMUEL MNGQIBISA :**

1. Keith Mokoape : caused Mngqibisa to be arrested and detained without good cause (Zambia)

DILIZA MTHEMBU

INTRODUCTION

Diliza Abednego Mthembu was born on 1 January 1955. He now lives in Soweto. He is unemployed. Mthembu left South Africa to join to ANC following the Soweto uprising. He had been encouraged to join the ANC by his father, Patrick Abel Mthembu, who had been the Acting President of the ANC region in the Transvaal in 1958 and had been detained by the regime on numerous occasions.

Mthembu, a member of MK, was deployed in Angola in 1979. He was charged with failing to carry out an order and was detained for a period of time in Viana. He was later arrested in connection with the Viana mutiny in February 1984 and held in Quadro until his release in October 1988. He was then reintegrated into the structures of the ANC in Dakawa until, in 1989, he resigned from the organization, was afforded refugee status, and, in 1990, was repatriated to South Africa.

FACTUAL BACKGROUND

After training in Angola under the supervision of MK and Cuban instructors, Mthembu was appointed chief of staff at the Caxito camp in 1979. Mthembu remained in that position until 1980 when he was appointed chief representative of the ANC to the Benguela Province in Angola. As chief representative of the Benguela Province, Mthembu reported to the overall chief of the ANC in Angola, Orion Mkeba. His duties at that time included heading the logistical department in the Province, which managed the supply of food and civilian equipment to the camps in Southern Angola.

Mthembu encountered a number of problems with his superior. According to Mthembu, Mkebu repeatedly reminded Mthembu that his father had allegedly betrayed the ANC. Mthembu was openly critical of the Organisation's leadership, and their difficulties ultimately culminated in Mthembu refusing to obey instructions from Mkebu about the use of certain Land Cruisers in the Benguela Province.

As a result of Mthembu's refusal to follow orders, he and his assistant, Henry Mane, were arrested by members of the Security Department, Itumeleng and Afrika. Mthembu and Mane were taken to an Angolan prison for approximately one month. Although the grounds for the detention were refusal to obey the lawful command of a superior, Mthembu claims that when they reached prison, he overheard Itumeleng telling Angolan officials that "these are enemy agents".

The conditions at the Angolan prison coincided with the general conditions prevailing throughout the country of Angola at the time - which were extremely difficult. They were given blankets, food and water.

Mthembu and Mane were then taken by Itumeleng and Afrika to Viana, the Transit Camp. They were told that the leadership in Luanda wanted to see them. At Viana, Mthembu and Mane were forthwith confined in a freight container that had been used to transport goods. The container measured approximately four by six metres

and had no heating or cooling systems, nor any electricity. It was always dark inside the container. The metal structure accentuated the sharp differences of temperature between day and night, resulting in excessively hot days and excessively cold evenings. The container had no system of ventilation. The only air that entered the container came through a crack in the opening of the door. Mthembu and Mane had no blankets to sleep on or under, and were therefore forced to sleep directly on the floor of the metal container.

Mthembu and Mane were not served any food, officially. Food was smuggled to them by other MK cadres who knew they were locked in the container. Sometimes they would stay for two to three days without being provided with food. As a result of this and subsequent detentions in ANC camps, Mthembu developed an asthmatic condition in exile and is now asthmatic.

After being locked under such conditions for approximately 28 days, Mthembu and Mane were released from the container. Mthembu stated that when he inquired as to why he had been detained, he was told that he was tried in absentia concerning the matters leading to his confinement.

Mthembu was then named to be a commander of a platoon at Viana. That was at about the time that MK cadres were returning from the Eastern Front disgruntled with their deployment against the UNITA forces. Mthembu refused the appointment because he felt that the taint of being labelled an enemy agent had never been cleared.

Mthembu was involved in the discussions and meeting that culminated in the election of the Committee of Ten and the mutiny at Viana in February 1984. Mthembu was not elected to the Committee. As a result of the mutiny, Mthembu was detained and taken to the Central Prison in Luanda, Nova Stella Sao.

Mthembu stayed at Nova Stella Sau for about one year until March or April 1985. There, Mthembu was subjected to beatings and other forms of abuse. On an early occasion, security officers of the ANC made Mthembu squat on his toes, tied his arms with electrical wire behind his back, beat him, threatened him with pistols and accused him of pursuing the treasonous interests of his father.

After his arrest and transfer to Nova Stella Sau, James Stuart visited Mthembu and asked him to write a statement concerning why the mutiny had occurred, which Mthembu provided.

In 1985, Mthembu was transferred to Quadro. Upon arrival he was given the name "Mgoqozi" and was given a filthy, lice-ridden uniform to wear. He was locked down in a communal cell with six other inmates. Mthembu was allowed 15 minutes per day of light exercise outside, spending the rest of his time in his cell.

As a result of his confinement, Mthembu's health continued to deteriorate. The windows in the cell were very small. Mthembu went to the medical department for help, but was beaten in that department on several occasions. Once he was made to lie on the floor and was kicked by the medical officer, Sonwabo. Mthembu was also

assaulted by the medical officers Stalin and Philip. they used coffee sticks to beat him and made him do "pompa".

As time went on, Mthembu was assigned certain work assignments, including chopping wood and pulling the 1,000 litre tank of water. Mthembu was weakened by the incarceration and his ill-health, and would be beaten with coffee sticks if he hesitated or faltered while pulling the tank of water. He was beaten on these occasions by, among others, Austin and Mawene.

On one occasion, Philip, a very young guard, forced Mthembu to propose marriage to a tree. He was then forced to lie down on the stem of the tree and pretend to have sexual intercourse with the stem of the tree. Mthembu claims this was followed by three continuous hours of beating.

Mthembu was detained at Quadro from 1985 through to 1988 without ever going before a tribunal.

Mthembu was released from Quadro in September 1988 and ultimately taken to Dakawa in Tanzania, where he stayed from 1988 to 1989. There he was reintegrated into the ANC. Mthembu was appointed to be an organizer in the Culture and Sports department in Dakawa and was elected into the regional structure. However, Chris Hani subsequently banned Mthembu from any position of leadership.

Mthembu left Dakawa for Dar es Salaam to seek protection from the United Nations High Commission for Refugees. After he resigned from the ANC, the United Nations afforded Mthembu refugee status. Mthembu returned to South Africa in 1990 via the South African Embassy in Malawi.

Diliza Mthembu was deeply distressed by the death of his father, which occurred while he was in exile. The father died under a shadow, having been accused of betraying the ANC, of which he had long been a stalwart supporter. Diliza states he was taunted because of the circumstances under which his father died, and that the allegations that he was an enemy agent were fuelled because he was his father's son.

Mr Mthembu still considers himself a member of the ANC. He does not hold any grudge against the ANC or against any of the individuals who beat and abused him. He considers them brothers and sisters who were misled into believing that he was an agent provocateur and merely followed orders. Mthembu stated he desired to express his grievances to the ANC only within the structures of the ANC. Mthembu is now engaged to be married to Nontyantyambo Nzimeli who, from August to October 1986 was a warder at Quadro at the time that Mthembu was detained there. Mthembu met his fiance in Dakawa after he was released from Quadro.

Mthembu has gone to the Pomolo Clinic for treatment of his asthma. He goes there on a monthly basis, each trip costing R10-00. Mthembu has a significant past due account at the Clinic. Mthembu has been unemployed since his return to South Africa. Mthembu contends that his unemployment and inability to provide for his two children (five and two years old) and his aging mother, are due to the years he

spent detained in exile and his ill-health. During the course of his arrest and imprisonment at Viana, he lost a suitcase and bag of clothes worth about R600 - R700.

COMMENT AND RECOMMENDATIONS

The first detention of which Mthembu complains occurred in 1980 in the wake of the disagreement he had with his superior, Chief Representative Oriah Mkeba. It is unclear from the evidence whether the command given Mthembu by Mkeba was of a military nature or not. If it was, then Mthembu was manifestly in error in defying it.

What is undisputed is that Mthembu and his associate were arrested by the Security Department, presumably at the direction of Mkeba. The Security Department apparently conducted little or no investigation into the reasons for the detention, nor was it ever determined for how long Mthembu was to be held. Mthembu complained that he was targeted because of his father's alleged misdeeds; in a full, fair and timely investigation of his arrest and detention, this grievance could have been considered.

Furthermore, the conditions of Mthembu's confinement in the metal container were excessively punitive, especially considering that he was held there for almost a month. It is of note that another cadre imprisoned in a container at Viana, Solly, was, in 1984, found dead there.¹

The Commission also considered the propriety of Mthembu's detention in 1984.

When he gave evidence before this Commission, Mthembu was closely questioned by counsel for the defense as to why, in the 1984 Viana mutiny, he and the other mutineers chose to defy the MK command structures. Mthembu explained that he felt the soldiers had run out of ways to make their point:

"MR DESAI: . . . You were in an army, right? Your structures have broken down, and you are helping the structures to break down, wasn't that a serious occurrence in an army?"

*MR MTHEMBU: We were in a life and death struggle, and some of us have spent most 12 years in Angola, and we have experienced a lot of hardships, you see? People have been staying in the camps, in the bushes, for many years, you see? And then there are people who are just living comfortably, moving, telling us when they come from the front line states, telling us stories, of how they are living and so on and so forth, and the struggle does not move. You can feel it in yourself. . . ."*²

¹ See ^{Page} ~~Set~~ 33. above.

² Tr 719 (Mthembu)

The frustration expressed by Mthembu is understandable. It is a view that, in different words, was presented in the evidence of each of the Viana detainees who testified. But the fact remains that the MK leadership had the lawful right to suppress the Viana mutiny by detaining those whom the available evidence pointed to as responsible for it. But it is also this Commission's finding, in this case, as in others like it, that although the Security Department manifestly had the authority to arrest and briefly detain Mthembu in the aftermath of the Viana mutiny, it is equally clear that there was no justification for the more than four years' imprisonment without hearing and under the harsh conditions prevailing at Quadro, that followed the initial arrest.

The Commission recommends that the ANC issue an apology to Mthembu and that it consider compensation for unlawful detention, incarceration in a metal container and loss of personal property.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF DILIZA MTHEMBU

1. Itumeleng : cruel detention (Viana)
2. Afrika : cruel detention (Viana)
3. Sonwabo : excessive force (Quadro)
4. Stalin : excessive force (Quadro)
5. Austin : excessive force (Quadro)

Mthembu also gave credible evidence against the following individual, but the Commission could make no finding because he is deceased :

1. Philip : excessive force (Quadro)

GOODLUCK BHEKINHLANHLA MPUNGOSE

INTRODUCTION

Goodluck Bhekinhlanhla Mpungose was born on 1 July 1946. He is presently unemployed and resides at Ntuzuma Location in Durban. He is married and has fourteen children. Mr Mpungose was detained by the ANC from October 1987 to April 1991 without the benefit of a trial. During his time in detention, Mr Mpungose was subjected to beatings and torture.

In addition to the evidence given by Mpungose, the Commission considered evidence given by Security Officers Tim Williams and Floyd Huna (Spinks) about the circumstances surrounding the initial arrest and detention of Mpungose.

FACTUAL BACKGROUND

Mr Mpungose was employed by the South African Police as a constable in Durban from 1967 to 1978. He retired from the police force in 1978 as a result of health problems. He was only 32 years old at the time. He was suffering from drowsiness at work, as well as diabetes, and was deemed mentally unfit for work. Mr Mpungose received a pension from the SAP, beginning in April 1978.

In 1970, Mpungose had begun studying and practising herbalism. Around the time when he retired from the police force, Mpungose was approached by members of the United Democratic Front (UDF) for herbal medicines. In one instance, in 1984, Mpungose was asked to prepare herbal mixtures that would protect UDF members from the members of the Inkatha Freedom Party. Mpungose provided his clients with potions that he asserted had supernatural powers. Mpungose developed a reputation as a herbalist.

Mpungose's cousin, Bafana Duma, was a member of the ANC in exile in Zimbabwe. In June 1986, Mpungose visited Zimbabwe with friends and sold herbal medicines. Mpungose also travelled to Swaziland where he traded in herbs. Then, in 1987, Mpungose's cousin invited him to come stay in Harare in order to provide him and others with herbal medicines. On 30 July 1987, Mpungose left South Africa for Zimbabwe.

After about one week in Zimbabwe, Bafana Duma told Mpungose to go to Zambia. Duma informed Mpungose that Jacob Zuma, the Chief of Intelligence, wanted to purchase herbal medicines. Mpungose travelled to Lusaka, Zambia. Before meeting with Zuma, Mpungose was asked by two members of the ANC Security Department to write his biography. He was then ordered to be detained.

The evidence provided by Tim Williams, who at the time was a security officer in Lusaka assigned to Mpungose's case, suggests that Mpungose was lured to Lusaka via Zimbabwe by the Security Department. Williams had come into possession of certain files maintained by the Security Branch of the South African Police in Durban, and these files revealed that information was being regularly provided to the

police by Mpungose. Shortly after the ANC Security became aware of the files, Mpungose was encouraged to travel to Lusaka, purportedly for the business transaction with Zuma.

The Security Branch files - authored by Mpungose's handler, one Captain Botha - suggested that several missions were undertaken by Mpungose on behalf of the Durban police. He is alleged to have provided information to the police about a celebration for Winnie Mandela that he attended in Zimbabwe. Another Botha report related Mpungose's activities as a courier for an underground MK unit in Durban. In that connection, Mpungose is alleged to have undertaken several trips to Swaziland, and on one such trip, it is claimed he obtained identity documents for two MK cadres who were illegally in the country and turned copies of the documents over to the police. Other material in the files raised suspicions as to whether Mpungose had been involved in the kidnap-murder of ANC member Mapumulo.

In addition to the Botha files, there were other persuasive reasons to suspect Mpungose of being a police agent.

When he was arrested, he was found in possession of certain suspicious items. Mpungose had on him the registration numbers of two cars belonging to Joe Jebe and Joe Nhlanhla, both members of the National Executive Committee, of the ANC. He also had a bottle of car polish from Joe Nhlanhla's car, as well as directions from the political headquarters house where he was being kept to the clinic used by ANC members. Mpungose was also in possession of a membership card of the Inkatha Freedom Party.

In Lusaka, Mpungose was interrogated and tortured by four members of the Security Department, including Floyd Huna, also known as "Spinks", Tim Williams and a young man named Piliso.¹

Mpungose was beaten on the feet, on his back and all over his body with a hoe handle and with a sjambok, similar to those used by the SAP. He was assaulted for two days. He was also burned with candles on the bottoms of his feet. Mpungose became seriously ill during the course of his beatings, due to his diabetic condition. A doctor was brought to examine him and he had medication prescribed for him. Ultimately, Mpungose confessed to being a spy for the South African Police.

Mpungose was then taken to Chongela farm, outside of Lusaka. He was stripped naked and beaten on the bottom of his feet. His feet were also burned with candles. These beatings were administered by Huna, Williams and two others. He was hung from a tree by his feet and then by his hands and beaten on his back and on the bottoms of his feet with a fan belt by Huna and Williams.

Mpungose was then transported by Huna to Angola, where he was held in various detention centres, including the "Res" in Luanda and the Luanda Military Prison Hospital. At the Luanda Military Prison Hospital, Mpungose was held in isolation

¹ This is not Mzwandile Piliso.

for approximately one month. There was no running water, nor any blankets and he was forced to sleep on a stone slab. He was again beaten by Huna, who pulled on his beard, spat in his face, and burned the bottoms of his feet with candles.

Both Tim Williams and Floyd Huna, who worked with the counter-intelligence section of the Security Department, denied that they assaulted Mpungose in any way. Their evidence was that Mpungose confessed as soon as he was confronted with the items of physical evidence. They admitted that he was taken to Chongela and interrogated there for several hours after midnight until before daybreak, but they explained that it was merely a scare trip designed to impress upon Mpungose the importance of providing full details of his activities. They were particularly concerned to learn from Mpungose how much the Durban police knew about the two underground MK cadres for whom he had secured false documents. As Williams stated : *"we took him one night and drove him to the farm. It was late at night. We thought that that in itself would ... scare him or something ..."*¹

On October 22, 1987, Mpungose was taken to Quadro. The name he was given at Quadro was "Mabele", which means a woman's breasts. At Quadro, he was assaulted by Stanley Brown. He was also assaulted in the clinic by a guard named Sonwabo because he was not taking his medication. On another occasion, Mpungose was assaulted by about 30 members of the Security Department, including Austin and Siphso Masela, because he was accused of breaking the tennis board. He was also assaulted on the head by Siphso Masela when he was running to empty his chamber pot. Mpungose was interrogated by Commander Pro, Bob and the chief medico, Ronnie. He was assaulted by Griffiths Sebone with a rope. He was made to adopt his prior confession.

At Quadro, Mr Mpungose was subjected to "pompa" and beatings that were administered by Brown, Mzwakhe, Sonwabo and Commissar Hammer. He was also forced by Siphso Masela to crawl through "napalm". Mpungose was also beaten with coffee sticks on his buttocks while he was forced to touch his toes; this would at time be administered by fellow detainees under duress. On other occasions, Mpungose would be forced to carry items that had ants crawling all over them, and would not be allowed to shake the ants off his body, clothes or out of his shoes, resulting in severe ant-bites.

In December 1988, Mpungose was taken to Nonkala, in Luanda, Angola, and then to Bokoloto Prison near Kampala, Uganda, where he was detained from March 1989 to April 1991.

In April 1991, Mpungose was taken to Dakawa, Tanzania. Mpungose was then released from custody at Dakawa and appointed the head of the religious department at the camp.

¹ Tr. 2273 (Williams)

On February 13, 1992 Mpungose returned to South Africa from Dakawa, Tanzania, under the auspices of the United Nations.

During his entire period of detention, Mpungose was never afforded the opportunity to appear before a tribunal. Mpungose bears a number of scars on his body which he displayed for the benefit of the Commission and which he contends were caused by beatings at the hands of members of the Security Department.

COMMENT AND RECOMMENDATIONS

Mpungose seeks compensation for physical injuries and material losses he claims to have suffered as a consequence of his incarceration. He provided the Commission with a list of items he claims to have lost, as follows :

- 1) medicine in the amount of R5,200;
- 2) briefcase worth R300;
- 3) shoes, trousers, two shirts and a belt valued at R195;
- 4) watch and wedding ring valued at R600;
- 5) 1,800 Zimbabwe Dollars; and
- 6) a radio/tape player worth R300.

In addition, Mpungose desires to be reimbursed certain monies he borrowed from his brother-in-law to pay arrears on property he owns in Ntuzuma Township, and certain outstanding bills. These loans and arrears amount to R2,046. Mpungose contends that, had he not been detained, he would have been able to earn the money necessary to pay these loans and arrears off.

Finally, Mpungose has asked the Commission to recommend to the ANC that it provide him with an attorney to deal with certain outstanding matters, including a divorce and the loan repayment.

As to the initial detention of Mpungose in Lusaka, the Commission finds that the Security Department had more than ample cause to hold Mpungose for interrogation. The Security Branch files implicated Mpungose in acts of treachery aimed at the ANC. There was reason to suspect that, if he was not involved in it himself, Mpungose might well have known how Mapumulo came to be kidnapped and murdered in Swaziland, for the files indicated that close to the time of Mapumulo's death, Mpungose was in Swaziland.

There was, accordingly, strong reason to suspect that Mpungose was not a harmless herbalist, but a dangerous police agent. These suspicions were likely sharpened by the physical material in Mpungose's possession at the time of his arrest. Mpungose offered plausible explanations for his possession of each of these items. He said he

had copied the car registration numbers of Nhlanhla and Jebe because he did not know the names of the persons who had visited him at the Lusaka location where he was being held and he feared the security officers who were interrogating him would ask for their names. He explained that he intended to store some medicines in the car polish bottle, which he thought had been discarded. As to the map, he could not recall it, but suggested that if he was in possession of such a map it would have been to assist him to escape from custody. Notwithstanding these explanations, Mpungose's possession of the items was equally consistent with his being a police spy.

Albeit the Security Department was justified in its decision to arrest and question Mpungose, the torture imposed upon him in Lusaka to extract a confession was improper. Although Williams and Huna both denied assaulting Mpungose, the Commission finds it more likely than not that he was beaten by them in some manner, even if not exactly as he described it. The trip to Chongela corroborates Mpungose's version of his Lusaka interrogation. If, as Williams and Huna testified, Mpungose had provided a confession immediately upon their confronting him with the physical evidence, there would have been no reason to take him on a "scare trip" to Chongela. It is more likely he was taken there so that the security officers would have a greater opportunity to impose whatever force they felt was required to get the information they sought.

Had Mpungose been tried by the ANC as an enemy agent, he might well have been found guilty. But he was not tried. Williams stated that at the conclusion of his investigation in Lusaka, he sent a report of his findings on to the ANC Legal Department, also headquartered in Lusaka, and that he heard nothing further of the case. At that stage, it appears Mpungose's case was ripe for a tribunal, and one should have been convened by the responsible officials.

Rather than proceeding by tribunal, Mpungose was detained under extremely harsh conditions in Angola and Uganda for 43 months.

The Commission recommends that the ANC issue an apology to Mpungose for detaining him without trial. As to monetary compensation, the Commission questions the accuracy of the high value of the property which Mpungose claims he had. Further, taking the evidence of this witness as a whole, the Commission is left in doubt as to whether or not he had these items. Accordingly, the Commission makes no recommendation as to the monetary compensation.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF GOODLUCK BEHIKINHLANHLA MPONGOSE :

1. Tim Williams: excessive force (Lusaka)
2. Floyd Huna (Spinks) : excessive force (Lusaka, Zambia and Luanda, Angola)
3. Piliso : excessive force (Lusaka)

4. Stanley Brown : excessive force (Quadro)
5. Sonwabo : excessive force (Quadro)
6. Austin : excessive force (Quadro)
7. Sipho Masela : excessive force (Quadro)
8. Griffiths Sibone : excessive force (Quadro)
9. Commissar Hammer : excessive force (Quadro)

FELIX ZANDILE NKOSI

INTRODUCTION

Felix Nkosi left South Africa for Botswana in 1980. He joined the MK and after his military training, was deployed in Angola and Lusaka. In Lusaka in 1983, Nkosi served as a guard at the RC residence. There he was punished for two disciplinary infractions that, apparently, related to some abuse of alcohol on his part. When he got into trouble a third time, Nkosi fled Lusaka and headed for Botswana in order to avoid being punished again. He was sent back to Lusaka, where he was interrogated and then sent on to Angola. There he was detained from 1984 until 1987. Upon his release in 1987 he was reintegrated into the ANC structures in Angola and, in 1990, he was repatriated to South Africa.

He has complained to the Commission about his detentions in Zambia and Angola. In addition to Nkosi, the Commission heard evidence from Basil Mavuso ("Jomo") bearing on Nkosi's arrest and detention in Lusaka.

FACTUAL BACKGROUND

Felix Nkosi was born on 1 February 1958 in the Johannesburg area, where he presently lives. He has not been able to find full-time employment since his return to South Africa.

In 1980 Nkosi left the country seeking educational opportunities in Botswana. Once there, he found his way to the MK and joined. After undergoing military training in Angola and the German Democratic Republic, he assumed the position of platoon commander within the anti-air platoon in Quibaxe.

In Quibaxe camp, Nkosi was detained on one occasion. One evening, the soldiers were gathered in a meeting to report on the day's events. One soldier reported, falsely, that MK Commander Joe Modise had been demoted. Nkosi's superior, Camp Commander Livingstone Gaza, criticized Nkosi for failing to correct the report at the meeting, which Gaza apparently deemed somewhat seditious. For this infraction Nkosi was sentenced to one month's hard labour at Quibaxe.

After he served his sentence, Nkosi was redeployed to Lusaka, where he served as a security guard at RC. There were two further disciplinary infractions while he was so deployed.

On the first occasion Nkosi had gone out drinking with a friend. After he dropped Nkosi off at RC, the friend crashed the car and a passenger was seriously injured. For his role in the incident, security officer Mike Sandlana imposed a punishment whereby Nkosi was assigned to gardening work for one month.

The second incident, which was within a year of the first, also involved a car crash. This time it was Nkosi himself who was the driver. Because Nkosi anticipated he would be punished after the accident, he immediately left Lusaka and crossed the

border to Botswana. Once in Botswana, Nkosi was arrested as an illegal alien and incarcerated for a month. Eventually, the Botswana immigration authorities turned Nkosi over the ANC, and in particular, to the custody of Peter Boroko. Nkosi told Boroko that he had left Lusaka out of fear that he would be punished, and that he did not want to return to the ANC. He said, "*[n]ow I do not want to hear anything about the ANC. I can stay here [in Botswana] or go back to South Africa.*"¹ Boroko caused Nkosi to be sent back to Lusaka, where he was taken to the RC. There he was interrogated by Basil Mavuso ("Jomo"), Bongo, and another man whose name Nkosi could not provide. Jomo and Bongo had both worked with Nkosi when he had been assigned to security at RC. During the course of this interrogation, Nkosi was ordered to strip naked and then he was beaten by the three officers. The beating lasted from 7 p.m. until about 1 a.m. In the course of it, Nkosi lost consciousness. The officers accused Nkosi of working for the police, and wanted to know where he was recruited in South Africa.

Nkosi was kept in the RC building for two months, and then moved to Nova Stella Sao in Angola. There he remained in an isolation cell without any blankets for two to three months. He was then sent to Quadro, where he remained in an isolation cell for another two months. He was given the name "Plogha," which, in Russian means "fool".

At Quadro Nkosi was repeatedly beaten until he admitted he was an enemy agent. His admission was false and was given only to stop the beatings. After he was released from isolation, Nkosi was placed in a communal cell and made to perform hard labour. Weakened from his detention in isolation, Nkosi could not keep up the pace expected of the inmates. On one occasion, when, fatigued, he dropped a heavy bag of potatoes, he was kicked in the face by a guard named Bheki, knocking out his four front teeth.

About a month after the 1987 visit of Oliver Tambo to Quadro, Nkosi was released. He was deployed to an ANC farm in Luanda, where he remained until he returned to South Africa in 1990.

COMMENT AND RECOMMENDATIONS

Nkosi concedes that there was sufficient cause to warrant the penalties imposed upon him in connection with the car crashes in which he was involved in Lusaka. He, moreover, has no substantial complaint about the discipline to which he was subjected in Quibaxe Camp. But he asserts that the torture to which he was subjected at RC, and his ensuing incarceration at Quadro, violated his rights.

When, to avoid confronting his responsibility for the second car crash, Nkosi left Lusaka for Botswana, his conduct, in effect, constituted desertion, for which he could rightfully be punished. Nkosi admitted as much. But he protested that the punishment to which he was subjected - torture and punitive detention for three years - did not fit the crime of which he was accused:

¹ Tr 1404 (Nkosi)

" . . . In a normal army, or normal situation, a person who has committed a crime or anything is supposed to be punished, but the duration, you are supposed to know the duration. "¹

The evidence suggests that the security officials who handled Nkosi when he was brought back to Lusaka from Botswana thought they were dealing not just with a deserter, but with a spy. The fact that Nkosi had no political experience before he left the country in 1980 aroused their suspicions. He had developed a reputation as a person lacking the discipline desired an MK cadre.

Because they likely thought he might be a spy, and in view of the detailed description Nkosi provided of the abusive treatment to which he was subjected, it is more probable than not that Nkosi was beaten in the manner he described at RC and by the persons he named. Basil Mavuso testified that he knew Nkosi from having worked with him, and that he was aware of the circumstances under which he was brought back from Botswana, but that neither he nor any other security official beat him. The Commission cannot accept this testimony.

Nkosi named one Bongo as one of his assailants at RC. The Commission did not hear evidence from Bongo. However, Mountain Kepadise, the security department member who was appointed by the department to trace members against whom allegations were made, averred that Bongo "was not known" and that "nobody [he] interviewed had any knowledge who [he] was or where [he] could be traced."

This evidence is contrary to that given by Mavuso, who testified before the Commission that he knew of Bongo:

"MR MOLOKO: According to [Nkosi's] evidence, it was you [Mavuso] who actually received him at the RC and you were part of the panel, that is yourself, Mr Bongo and a coloured comrade that he could not recall his name.

MR MAVUSO: I heard about this, but I do not think it is true. Bongo was not, he did not participate in whatever interviews, his main role was to guard at the RC and to guard the headquarters of the ANC. He never even participated in interrogation and interviews whatsoever. Both Bongo and April, they never participated in those sessions. "²

It would not be unreasonable to expect that, in his search for Bongo, Kepadise would have inquired of Mavuso, who was implicated in the same case, especially in as much as both men work for the same department at Shell House.

Nkosi's expressed desire to leave MK presented a dilemma for the security department. Here was a man who may have been privy to sensitive information and

¹Tr. 1420 (Nkosi)

²Tr 2314 (Mavuso)

whose conduct raised suspicions as to his trustworthiness. The decision to send him to Quadro appears to have resulted from these circumstances:

"MR MOLOKO: In your own opinion, why did the department . . . send him to Angola [upon his return from Botswana]?"

MR MAVUSO: Well, we deal with delicate issues in the department, you know. And he was exposed to a lot of information. If we are in a situation whereby a member of the department deserts and comes back into the country, he would have exposed a number of things which were quite confidential to the movement. . . [A]nother reason is that . . . in the army, desertion . . . is a serious case. . . hence he was taken to Angola."¹

In light of the dilemma presented by Nkosi's case, the preferred manner of protecting the information of which Nkosi was possessed would have been to either redeploy him or intern him under non-punitive conditions.²

The Commission finds that Nkosi's detention under extremely punitive conditions in Quadro, without trial, was improper and violative of his human rights,

The Commission recommends that the ANC issue an apology to Nkosi and consider compensation for unlawful detention, beatings and deprivation of liberty for three years.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF FELIX ZANDILE NKOSI :

1. Bheki : excessive force (Quadro)
2. Basil Mavuso : excessive force (Lusaka)
3. Bongo : excessive force (Lusaka)

¹ Tr 2315 (Mavuso)

²See discussion at p 14. above

PERCY ENNIS PETERSON

INTRODUCTION

Percy Peterson joined the ANC in 1976 in Botswana. He received his military training in Angola, after which he was deployed in Mozambique. There he was arrested by Frelimo forces on suspicion that he had played a role in a bombing that resulted in injury to two other MK cadre. After a period of incarceration in Mozambiquan detention centres, he was released and reintegrated into MK. He was sent to Tanzania and then on to Zambia. When an infiltration mission of which he was a part went awry, his commander was killed. On suspicion that he had something to do with the death of his commander, he was brought back into Zambia and detained for investigation. Ultimately he was detained in Quadro and in Bokoloto Prison in Uganda until, in April 1990, he was repatriated to South Africa.

FACTUAL BACKGROUND

Percy Peterson was born on 19 July 1954. He now lives in Soweto. He is unemployed.

Peterson left the country for Botswana in October 1976 after the uprisings during that year. He was trained as an MK soldier and served in that capacity for ten years in various camps in Africa.

In 1984, Peterson was stationed in Mozambique when a bomb exploded at the MK residence where he was staying. Peterson was not present at the time of the explosion, in which two persons were injured. He was arrested by the FRELIMO authorities while they conducted an investigation into his role in the bombing. He was held in Mozambiquan jails from October-November of 1984 until May 1985.

After this detention, Peterson was redeployed with the MK in Tanzania. He was assigned to a group undertaking special missions within South Africa. His duty was to train and recruit young people for the ANC.

In the course of his operations within South Africa, two of Peterson's commanders died. One of them died as a result of a lovers' quarrel; the other, Vuyisile, died under suspicious circumstances. Peterson was once again placed under a cloud and he was ordered to return to Lusaka. Upon his return he was placed under arrest by Griffiths Seboni.

From Lusaka Peterson was sent to Angola, ultimately ending up in Nova Stella Sao. At Nova Stella Sao, Peterson was tortured during the course of interrogation. The torture/interrogation sessions were conducted by Griffiths Seboni and other members of the security department. With his hands and feet handcuffed Peterson was made to squat down while Griffiths beat him. Live electric wires were applied to his back. From time to time Griffiths would order Peterson to lean against the live wires and when Peterson refused, Griffiths would assault him.

The conditions at Nova Stella Sao were extremely punitive. Peterson was placed in an isolation cell and for thirty days he slept on the concrete floor with no blankets. He was not permitted to exercise nor was he provided the medical treatment he required.

After about three months in Nova Stella Sao, in July 1988, Peterson was moved to Quadro. He was given the name "Ntshebe," meaning "Beard," and was told it was because he resembled Jonas Savimbi. He remained there until the camp was closed in December 1988. During that six month period, Peterson was kept isolation and subjected to further beatings. On one occasion his body was smeared with pork fat as he lay prostrate, exhausted from a beating. A warder then released a jar of ants near him which, attracted by the fat, would crawl over Peterson's body and bite him.

Peterson was taken to Bokoloto, Uganda after Quadro closed. There Mountain Kepadise offered him an opportunity to appear before a tribunal but Peterson refused.

Peterson returned home in April 1991 with the group of 32 Bokoloto inmates.

As a result of his detention, Peterson lost a wallet, a belt and about R2000. His health was affected by the harsh conditions of the imprisonment, and he suffered from scurvy, rheumatism and acute chest problems. Since his release, Peterson has been diagnosed as having an asthmatic problem.

COMMENT AND RECOMMENDATIONS

Peterson came under suspicion of being an enemy agent when his second commander died under questionable circumstances. Although there was *prima facie* reason to detain Peterson for investigation, the torture to which he was subjected, first in Nova Stella Sao and then in Quadro was manifestly unjustified.

Moreover, he was detained for a period of over three years, far in excess of what should have been required to investigate his culpability in the death of Vusiliye. Indeed, a commission of inquiry investigated the causes of Vuyisile's death in January 1988, but Peterson never learned the results of that investigation.

The Commission recommends that Peterson receives an apology from the ANC for unlawful detention and be compensated for the period he spent in detention from January 1988 to April 1991.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUAL VIOLATED THE RIGHTS OF PERCY PETERSON :

1. **Griffiths Sebani** : excessive force (Nova Stella Sao)

NORMAN PHILLIP PHIRI

INTRODUCTION

Norman Phillip Phiri was born in 1957, and currently lives in Soweto, Johannesburg. In 1976, Phiri attended Standard 10 at Sekanontoana High School in Senaoane, Soweto and belonged to the South African Student Movement. He fully embraced the ANC's policies and strategies and had contacts with the Organisation's underground structures inside of South Africa. In October 1976, he used these structures to leave the country, and he joined the ANC in Swaziland. After undergoing extensive training, Phiri was deployed on the eastern front in Angola and was involved in the 1984 uprising in Viana. He was detained and spent four years and nine months incarcerated. He was tortured while in prison. Phiri is currently unemployed and has been so since his return from exile in December 1992. He remains loyal to the goals of the ANC. He is an active member of the Organisation and of MK.

FACTUAL BACKGROUND

In November 1977, after Phiri had already completed basic military training at a camp in the Catengue Province of Angola, he was sent to the Soviet Union to study military engineering for five months. In May 1978, Phiri returned to Angola and became a political instructor at the Quibaxe camp. Then, In October 1978, he travelled to Fazenda Camp and took a survival course.

1. Fazenda

In 1979 Phiri became camp commissar at Fazenda. In that year problems developed within the ranks. Cadres became disillusioned in the leadership and thought that the war in South Africa should have been escalated. They had heard that targets in South Africa had been hit and were therefore extremely frustrated that they had not seen any actual combat, despite the fact that they had undergone years of military training. The cadres requested that the leadership send them on infiltration missions. When the leadership could not comply, the cadres began to disobey military instructions. In addition to disillusionment, the cadres in Fazenda also had to face adverse living conditions. There was a high incidence of malaria and yellow fever at the camp, which would eventually be closed in 1980 because of these health risks.

A highly trained soldier, Phiri realised that in any army it was vital to follow the command structure and that cadres were bound to follow lawful orders and could be disciplined if they did not do so. Indeed, Phiri also noted that infiltrators and enemy forces placed ANC camps in grave danger; he recalled that cadres had been trapped in ambushes, ANC camps had been bombed, and the food at one of the camps had been poisoned. Due to these dangers, Phiri conceded that it was imperative that the command structure be followed,

so that the army could act in an organised and disciplined fashion in the face of adverse circumstances.

Yet, Phiri too was frustrated that he had not been sent to fight the South African forces. The ANC, at that time, had meetings every Saturday night, and he used that forum to voice his dissatisfaction with the leadership. Although frustrated, Phiri always followed orders. Because it was "wrong" to refuse to follow orders, Phiri tried to use his influence as camp commissar to convince the cadres to obey orders. In an effort to defuse the unrest that was developing, however, the camp leadership had to send some of the cadres to different camps. Additionally, three men were arrested and sent to Quadro in 1980.

2. Pango

Phiri left Fazenda in 1980 to study political science in the Democratic Republic of Germany. He subsequently returned to Fazenda and became a political instructor for five months. Thereafter, he studied military combat in London and undertook another 3 weeks of military training in Caxito. Although the leadership told Phiri that he would likely be deployed in a front line state when he completed his training at Caxito, Phiri was next sent to Pango to assume the position of political commissar.

As in Fazenda, the cadres at Pango were anxious to engage the South African forces and were frustrated because the leadership did not appear to be intensifying the armed struggle. The cadres also feared the Security Department. There had just been a campaign to rid MK of dagga users, and some of the Security Department's tactics were viewed as oppressive. Moreover, it was around this time that the ANC weekly meetings had ceased, in part because they had deteriorated into gripe sessions against the leadership.

In 1981, President Oliver Tambo visited each of the camps in Angola. At Pango, he stated that there were people in the movement who were trying to sabotage it. He suggested that cadres should meet to voice their grievances and to put forth suggestions that would help improve the movement. As a result, a meeting was held. The cadres elected Phiri to be chairman, as he was the staff commissar and the most senior cadre there. At that meeting the cadres formulated a list of demands :

- (a) They wanted an intensification of the armed struggle;
- (b) They requested that a national conference be held so that issues facing the movement could be addressed in a comprehensive manner;
- (c) They asked that the Security Department be temporarily suspended to investigate alleged abuses of power.

In addition to formulating these demands, the cadres levelled very serious accusations against the leadership. They complained that some of the commanders in the front line states had "sold them out" and were working for the "enemy".

When Phiri presented the demands to the leadership, he received a hostile response. Camp Commander Dan Peterson accused him of leading a mutiny and told Phiri that he should have suppressed the attacks on the leadership. Phiri disagreed, reasoning that an open forum to voice disagreement was consistent with the democratic principles of the ANC.

Peterson subsequently reported the details of the meeting to the leadership in Luanda. Two days later, Andrew Masondo met with the cadres and "dressed them down", labelling their accusations as nonsense. Masondo then accused Phiri of instigating the cadres at Pango against the leadership and further accused him of having fuelled the problems at Fazenda in 1979.

3. Viana

Towards the end of 1982, Phiri again went to Caxito. This time he trained in military artillery. He had again been promised that at the end of this training course he would be sent to fight against the South African forces, but, at the course's completion, he was sent to Malange. In November 1983, he was deployed in Cacusa, as the commander of a unit of 10 men. On his arrival he found problems. The soldiers were disillusioned. They did not want to fight against UNITA, but wanted to be deployed against the South African forces - that was the armed enemy they had joined the ANC to fight. According to Phiri, the cadres, at that point, could not be "trusted" to fight the UNITA forces. The cadres in Cacusa presented their grievances to the Commander, who told them that he would convey the grievances to the leadership. The cadres, however, received no reply.

From Cacuso, Phiri, as ordered, took his unit of ten cadres to Kangandala, where they joined about forty cadres. Phiri then became the commander of a platoon of about 20 men. The situation at Kangandala was worse than that in Cacusa. The cadres' frustration was heightened by the fact that some FAPLA soldiers had stated that they considered the members of UNITA to be their brothers and that they wanted to fight their own battles. Thus, the MK soldiers not only refused to engage UNITA, but also began to act out their frustrations by firing their weapons into the air. The soldiers would also, against orders, go into town and drink. When they became drunk, they fired off their weapons. Phiri noted that the situation had become serious and dangerous; Kangandala was a "front" and it was therefore imperative that soldiers act in a disciplined manner.

Although Phiri agreed with the dissident cadres' position that they should not be fighting against UNITA, he thought that they were wrong to disobey orders and to fire off their guns. Phiri kept order amongst the platoon he

commanded; his cadres maintained the stations to which they were assigned and did not fire their weapons into the air.

Chris Hanu came to Kangandala to discuss the situation. The cadres demanded that they be pulled out. They stopped shooting for one day after Hanu left, but, when their demands were not met, they began firing again. Eventually, the fifty-odd soldiers stationed at Kangandala were sent back to Cacuso. There matters worsened. The fifty-odd soldiers already in Cacuso joined those that returned in venting their frustrations by firing guns in the air.

Finally, the cadres in Cacuso were sent to Viana Transit Camp. When they arrived, the Viana camp commander ordered them to disarm - an order which Phiri concedes was lawful. But the cadres, at that point, were suspicious and were concerned that they would be abused if they disarmed. Therefore, many cadres, including Phiri, did not follow this order.

A few days after the cadres' arrival, Hanu visited and said he would hear grievances. The cadres held a meeting which was open to all ANC personnel in Viana. To maintain order and present their grievances to the leaders, the cadres - at the suggestion of Vuki, Chief of Personnel in Angola - elected a group of ten. Although the cadres hammered out a list of demands, they were never able to present them to the leadership. In the early morning hours of the next day, FAPLA troops surrounded the camp.

The following day, Hanu came to the camp and explained that the FAPLA forces had been called in because the leadership could not allow armed forces without proper leadership to remain so close to Luanda. Hanu asked the cadres to surrender arms. The cadres complied. The following morning, 16 February 1984, Hanu, Modise and Masondo came to the camp. After Modise condemned the cadres actions as mutinous, someone called out a list of cadres; each of the members of the Committee of Ten, including Phiri, was named. These cadres were arrested and taken to Nova Stella Sao.

4. Nova Stella Sao

Phiri occupied a cell with four others. For eight days, he and his group remained in the cell without any blankets. The only other people in the cell without any blankets were captured UNITA soldiers. The food rations at the prison were meagre and the cell remained dark throughout the day. Moreover, although the prison authorities allowed the Angolan prisoners to go outside on a daily basis, the ANC cadres were not afforded this privilege.

Phiri and the other ANC detainees complained about the food, the lack of light, and lack of blankets to a captain in the ANC's Security Department. The group, as a result, was eventually provided with blankets. The food, however, remained unchanged. Although Angola was a war-torn country suffering from food shortages, the ANC had not only been able to provide food for the cadres in military camps, but had also been able to provide food

to peasants in Kangandala. Since they were in the ANC's custody, Phiri believed that it was the ANC's responsibility to provide adequate food supplies. Thus, in protest over the meagre food rations, Phiri joined a hunger strike which had been started by the cadres locked in isolation.

The Stuart Commission approached Phiri while he was incarcerated in Nova Stella Sao and asked him to explain the causes of the mutiny, which he did in a written document.

5. Quadro

In mid-March 1984, after having remained in the Angolan prison for one month, Phiri and three others were taken to Quadro. One day earlier four other cadres from the mutiny had been taken there. Upon his arrival, Phiri was given a "hot reception".¹ Lawrence Sekwalo, Kingsley (who was at the time a recording officer at Quadro), Maurice and another warder gave him the "Beirut treatment"; that is, they ordered him to strip and then to lie prostrate on his stomach. The four security officers then beat him with an electrical cord for about twenty minutes. During this assault, the warders questioned Phiri about who ordered the hunger strike at Nova Stella Sao.

After being beaten, Phiri was given the prison name "Papi". Phiri was placed in a cell which he shared with three other people. During his stay at Quadro, Phiri remained in a number of different cells, and, at various points, these cells were overcrowded. The cells had no toilet facilities, as the camp was without running water and one had to use a five litre oil can to relieve oneself.

Because Phiri had been involved in a hunger strike at Nova Stella Sao, he was often overfed as punishment when he arrived at Quadro. A warder named Brian (who subsequently became an Askari) would give Phiri and his three cellmates a twenty litre pail of rice and beans, and would order them to finish it. They would invariably fail to finish the food and were beaten.

Additionally, for the first two months of incarceration, Phiri and his cellmates were not provided with water to bathe. After that period, they were only provided with bath water about once a week. As a result, the cell became lice-infested. This situation did not improve until about 1985 when Hani visited the facility. After that visit the inmates were given bath water every other day.

Further exacerbating the poor living conditions was the fact that the inmates were always locked in their cells and not exposed to sunlight. Not surprisingly, Phiri was often ill. He suffered from malaria, a toothache and piles. When he went to the clinic to treat his ailments or to treat injuries

¹ Tr 560 (Phiri)

from the frequent beatings which he incurred, Stalin, the medic, assaulted him with coffee sticks.

Phiri was also required to perform hard labour, often when he was weakened from illness. Warders Fury, Stalin, Cetshwayo, Fortunate, Valody, and others Phiri could not remember by name, regularly beat him when he was attempting to perform the tasks they had assigned him. The beatings were not limited to having Phiri complete specified tasks, but were part of the daily routine at Quadro. The warders beat Phiri with coffee and guava sticks and made him "pompa". On one occasion Valody struck him with such force while performing "pompa" that Phiri's ear drums were damaged.

6. Release to Dakawa

Phiri was released from Quadro in October 1988. He then went to Dakawa and was at first welcomed into the ANC community there. He was elected representative of the unit from Dakawa to the Zonal Political Committee and also assumed the position of Deputy Principal of Administration at the Vocational Training Centre. Phiri, however, was later required to relinquish his positions.

Phiri ultimately left Dakawa and moved to Dar es Salaam where, for a while, he attended school. Thereafter he stayed in Nairobi, where he was also in school. In December 1992 he finally returned to South Africa.

7. Compensation

While incarcerated Phiri lost two suitcases of clothing and a chess board, for which he would like to be compensated. He would also like to be compensated for the four years and nine months which he spent incarcerated. He cannot place a monetary value on what he believes is owed, but would accept "whatever the movement can to compensate me - [w]hatever is in its power". Additionally, he would like his name to be cleared.

COMMENT AND RECOMMENDATIONS

Norman Phiri presented as highly intelligent and profoundly committed person of great strength of character. He stressed his continued commitment to the ANC and MK, of which he has been a member since 1977. Phiri was repeatedly selected for his leadership ability to express the views of MK rank and file, and as well, he was promoted to ever more important positions of leadership within MK. He fell under suspicion, it appears, precisely because he was an articulate, forceful and effective spokesman.

The conclusions he drew from his experiences, as he expressed them to this Commission, seemed highly reasoned and balanced. He did not support the rash actions of those soldiers at Kangandala and Cacuso who sparked the February 1984 mutiny by firing their weapons in the air and otherwise defying the established command structures. Rather, he attempted to retain control of his own platoon, and

to keep open the lines of communication with higher leadership. He did not volunteer to serve as chairman of the Committee of Ten in order to promote the disorder; rather he was elected to that position because he had won the wide respect of the rank and file soldiers. When he was forced out of the positions of authority to which he had been elected at Dakawa, he did not follow the course of some and desert the ANC; rather, he sought to advance his studies so that he could be of continuing use to the struggle to which he had committed his life.

Phiri was never told why he was arrested and detained in Quadro. He was never provided an opportunity for a trial. Although his evidence regarding the beating he sustained upon his arrival at Quadro was rebutted by Lawrence Sekwalo, the Commission credits Phiri's testimony in this regard¹, as well as other evidence he provided concerning the conditions of his incarceration at Quadro.

The arrest of Phiri in February 1984 and his detention until October 1988 constituted a violation of his rights. It was improper to deprive Phiri of a full opportunity to participate in the life of the ANC at Dakawa, and to oust him from the leadership position to which he had been elected.

The Commission recommends that the ANC issue a letter of apology to Norman Phiri, and that it consider compensation for the violation of his rights, including unlawful detention, loss of personal liberty for 4 years 9 months and injury to the person.

THE COMMISSION FINDS THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF NORMAN PHILLIP PHIRI

1. Lawrence Sekwalo : excessive force (Quadro)
2. Kingsley : excessive force (Quadro)
3. Maurice : excessive force (Quadro)
4. Brian : excessive force (Quadro)
5. Stalin : excessive force (Quadro)
6. Fury : excessive force (Quadro)
7. Cetshwayo : excessive force (Quadro)
8. Fortunate : excessive form (Quadro)
9. Valody : excessive force (Quadro)

¹ Lawrence Sekwalo testified that he transported Phiri and the other mutineers from Viana to Quadro from Nova Stella Sao, but he stated he had nothing further to do with them after delivering them to Quadro. (Tr. 2175 (Sekwalo))

GABRIEL PHEMELO SETLHOKE

INTRODUCTION

Gabriel Phemelo Setlhoke resides in Soweto and is employed at Dorkay House.

Setlhoke was an underground operative for the ANC during the late 1970's, operating within South Africa. In the early 1980s he lived in exile in Botswana, where he served as a member of the Security and Intelligence Department. In 1985 he came under suspicion of being an enemy agent and was required to report to Lusaka for questioning. There he was detained and tortured. He ultimately confessed, falsely, he states, and in January 1986 he was sent to Angola. He was detained in Quadro from February 1986 until December 1988, and from December 1988 until his release in April 1991 he was incarcerated at Bokoloto Prison in Uganda. Setlhoke was never tried as an enemy agent. He is presently an active member of the ANC.

In addition to his own testimony, evidence bearing on Setlhoke's case was provided by Basil Mavuso ("Jomo") and Golden Rahupe ("Pro").

FACTUAL BACKGROUND

In the course of his work as an underground operative for the ANC, Setlhoke was, on 1 June 1980, arrested by the South African Police. He was tortured and beaten by the SAP for a period of two weeks. Finally, Setlhoke broke, and to avoid being tortured further, he agreed to become an informant and provide the SAP with the address, car tag and model, and names of any affiliates of his contact person in Botswana, Jerry Matsila [code name "Victor"], who was the head of security and intelligence in Botswana at the time.

Setlhoke immediately travelled to Botswana and informed Matsila that he had been arrested and agreed to cooperate with the SAP. Upon Matsila's instructions, Setlhoke returned to South Africa and informed the SAP that he had not been able to locate Matsila. Thereafter, Setlhoke made contact with Matsila again and asked that he be permitted to go into exile. Six weeks later, the movement decided to move Setlhoke to Botswana, where Setlhoke received political asylum. Setlhoke moved to Botswana with his wife, Doris, to whom he is still married.

Setlhoke was absorbed in the Botswana structure and worked for Matsila for five years, from 1980 to 1985, as a member of the ANC Security Department in Botswana. It was there that he first came into contact with another security officer, Basil Mavuso ("Jomo").

Setlhoke testified that, when he was stationed in Botswana, he had a personal dispute with Mavuso which he believes led to his subsequent troubles. One day, Mavuso arrived in Botswana unannounced and Setlhoke, because at the time he did not know who Mavuso was and had received no advance notice from Lusaka headquarters about his visit, denied Mavuso's request for lodging.

In July 1985, Setlhoke was transferred to Lusaka headquarters. The circumstances of his transfer are unclear. Setlhoke states he left Botswana because the government of that country directed that all ANC structures leave the country. Mavuso testified, on the other hand, that Setlhoke was deported from Botswana because he was deemed untrustworthy by the Botswana government, and that he did not report directly to Lusaka, but rather went first to South Africa and then, via Zimbabwe to Lusaka.

In Lusaka, Setlhoke continued to work in the Security Department. However, within three months of his arrival in Lusaka, Setlhoke became the target of accusations by Mavuso, Kwesh Mokoena ("Aaron"), and Robert Moima, all members of the Security Department. It was alleged that Setlhoke was an enemy agent, and was responsible for (a) the 1985 Botswana raid¹, (b) the car bomb assassination of Roger Nkadimeng² (c) the arrest of his wife, Doris, who was an ANC courier, in August 1983³, and (d) the arrest of Roland Hunter, an ANC contact in the South African Defence Force.

Setlhoke was detained at the Revolutionary Council residence (RC) in Lusaka from October 1985 to January 1986. During the first three weeks, Setlhoke was interrogated every day and was severely tortured. At one point he was made to sit in a lotus position and was beaten while naked. He was once hand-cuffed and leg-cuffed, hanging from a metal pole and made to swing, while Mavuso beat him on the soles of his feet -a torture technique called "airplane." These acts of torture and beating were carried out by fellow security department officers Mavuso, Mokoena and Moima, all of whom had been Setlhoke's colleagues in the Department. Ultimately, Setlhoke was able to speak with Joe Modise about the beatings and prevailed on Modise to direct the other officers to stop the torture.

Setlhoke finally confessed to the treasonous acts with which he had been accused. He stated that the confession was false and was on account of the torture. Mavuso testified as to his role in the interrogation of Setlhoke at RC. According to him, Setlhoke was suspected of collaborating with the South African Police and was deemed untrustworthy, as well, because in Botswana, he associated with drug smugglers from South Africa. Mavuso conceded that the interrogation of Setlhoke, in which he participated, was intense, but he denied any torture or beating. He stated that Setlhoke was made to stand up for long periods of time in order to encourage him to be forthcoming about his role as a police agent.

¹ According to Setlhoke, and the Commission has not been shown otherwise, the person responsible for the leak of information resulting in the Botswana raid has been apprehended.

² According to Setlhoke, and the Commission has no evidence or reason to believe otherwise, the person that was responsible for the murder of Roger Nkadimeng has been apprehended.

³ Setlhoke is still married to Doris.

On 13 January 1986, Setlhoke was transferred to Nova Stella Sao. The conditions in Angola were very difficult and the food at Nova Stalla Sao was scarce. However, Setlhoke ate well because he received cooked food that was supplied by the ANC from Lawrence Sekwalo. Setlhoke believes that Sekwalo extended this courtesy to him because he had been a fellow member of the Security Department.

Setlhoke testified that at Nova Stella Sao, he was required by Sizwe Mkhonto and Stanley Brown to write his confession over and over again. The defence provided the Commission with a 64 page statement made by Setlhoke, that included a six page document dated 17 January 1986 - which was five days after Setlhoke arrived in Angola. This document corroborated Setlhoke's testimony regarding his interrogation at Nova Stella Sao.

One month later, on February 14, 1986, Setlhoke was transported to Quadro, where he was imprisoned without trial for the next two and a half years. His Quadro name was "Skuruskuru," which means a quarrelsome person. He was placed in isolation when he arrived, where he was held until April 6, 1986.

Upon his arrival at Quadro, Setlhoke was interrogated by Golden Rahupe ("Pro") and beaten into accepting his prior confessions. Rahupe told the Commission that, as camp commander, he was put in charge of the Setlhoke investigation, and that he interrogated Setlhoke over a period of many months. Setlhoke, he stated, wrote and rewrote his statement many, many times, with Rahupe's guidance. The final 64 page document was not completed until mid 1986, and it was not until December 1986 that Setlhoke's case was deemed ready for presentation to a tribunal. Rahupe stated Setlhoke admitted he was an enemy agent. Although he never said so directly, Rahupe implicitly denied that he applied any physical force in the course of the interrogation.

Setlhoke was beaten by the medico, Stalin, at Quadro, because on one occasion he spoke to him in English.

Although the conditions at Quadro were, in Setlhoke's words, "very appalling," he believes that he received favored treatment by the ANC security personnel because he had been one of them.

During the entire time of his incarceration, from RC through Nova Stella Sao and throughout Quadro, Setlhoke was never afforded a tribunal. Setlhoke knew about the tribunals and wished to be tried, but was never provided with that opportunity. Rahupe told the Commission that he had completed the investigation of Setlhoke's case and wished to take it before a tribunal, but that after the first round of tribunals in Luanda in 1987, no further inmates were brought before the body.

When Quadro was evacuated in December 1988, Setlhoke was sent on to Bokoloto Prison in Uganda. He was ultimately released from there and returned to the country in April 1991.

Setlhoke suffered permanent bodily injury from the beatings he received at the hands of the security members. He is still experiencing terrible, severe pain in his left foot

toes. At present, Setlhoke is not receiving medical attention, although he did undergo psychotherapy upon his return to South Africa. Setlhoke lost a wedding ring and watch on January 13, 1986, when he was taken to Nova Stella Sao by Lawrence.

COMMENT AND RECOMMENDATIONS

When asked what was his present attitude toward the ANC, Gabriel Setlhoke responded:

*" . . . I do not bear any grudge against the ANC, much as I have indicated earlier on, that I am a member of the ANC. And not just a member but a card-carrying member of the ANC. I am serving within the structures of the ANC. On the whole, I do not have anything against the ANC, and I still pay allegiance to the ANC. And I will pay allegiance to the ANC. "*¹

The Commission concludes that Setlhoke was mistreated as an arrested person and prisoner. The Commission credits the testimony of Setlhoke that he was beaten during the course of his interrogation at RC, as well as at Quadro. This treatment was a violation of Setlhoke's rights. Moreover, Setlhoke was wrongfully detained for an inordinate time without a trial on the allegation he was an enemy agent. Rahupe has testified that although his case was ready for a tribunal and Rahupe requested one be convened, a hearing was never organized.

The Commission recommends that the ANC issue an apology to Setlhoke and consider compensating him for the violation of his rights, including unlawful detention, beatings and loss of personal liberty.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF GABRIEL PHEMELO SETLHOKE

1. Basil Mavuso (Jomo) : excessive force (Lusaka)
2. Kwesh Mokoena (Aaron) : excessive force (Lusaka)
3. Robert Moima : excessive force (Lusaka)
4. Golden Rahupe (Pro) : excessive force (Quadro)
5. Stalin : excessive force (Quadro)

¹Tr. 984 (Setlhoke)

ROBERT VUSUMUZI SHANGE

INTRODUCTION

Robert Vusumuzi Shange was born on November 24, 1957. He is presently a resident of Soweto and is unemployed. He has been unemployed since his return to South Africa on April 24, 1990. Mr. Shange is not married and lives with his family.

Shange left South Africa in 1977 in order to join the liberation movement in exile. He joined the ANC, was trained as a soldier, and was deployed in various camps in Angola. He was a participant in the 1984 Viana mutiny, which resulted in his arrest and detention, first in Nova Stella Sao and then in Quadro. He was released from Quadro in November 1988. At that time he was reintegrated into the structures of the ANC in Dakawa, Tanzania. He left Dakawa and the ANC in December 1989, and was repatriated to South Africa the following year.

FACTUAL BACKGROUND

In April 1977, Robert Shange travelled to Swaziland and then to Tanzania, via Mozambique with the intention of joining a liberation movement. Shange joined the PAC in Dar es Salaam, and remained a member of the PAC for approximately two years, during 1977 and 1978. In 1978, Shange joined the ANC in order to receive military training and engage the regime in South Africa.

Shange was trained in Quibaxe, in northern Angola, and then at a new military camp at Caxito, where he was appointed platoon commander. Shange was then deployed at Pango camp in northern Angola, in a unit that was involved in anti-aircraft guns. Shange eventually became battery commander in charge and control of the overall anti-aircraft units at Pango. This was in the early part of 1982.

In June 1983, Shange was deployed in south-eastern Angola in a unit that was fighting the UNITA forces. It was during the course of these manoeuvres, as a result of the MK casualties, that Shange became disenchanted with the operations against UNITA, and participated with others in the mutiny at Kangandala. Shange was also protesting the use of excessive discipline at MK camps, especially unduly harsh punishment for smoking dagga. At one point later in 1983, Shange and others met with Chris Hani, Joe Nhlanhla and Lehlonhonglo Moloi (who were sent by the leadership in Luanda) at Kangandala and expressed their grievances, after which Shange went to Viana.

Shange participated in the mutiny at the Viana camp in early 1984. Although Shange supported the mutiny, as a more senior cadre he took it upon himself to attempt to restrain the mutineers from engaging the Angolan FAPLA forces when they came to overtake the camp on 16 February.

Shange was not elected to the Committee of Ten, but was appointed a commander during the mutiny and tried to prevent and control drinking, dagga smoking, and

fighters. Shange was among the about 26 cadres who were identified as ringleaders and arrested in the aftermath of the mutiny.

Along with the other mutineers, Shange was first transported to Nova Stella Sao, where he was detained for one year. Shange claims that he was "starved" at the prison, where he would receive only a handful of rice with oil once a day. Apart from the scarcity of food - which caused the inmates to suffer from anaemia and other serious medical ailments - Shange indicated that the prisoners were not otherwise mistreated at Nova Stella Sao.

After one year at that facility, Shange was, on 10 April 1985, taken to Quadro, where he was detained for another three years and nine months. The name he was given at Quadro was "Sibhengu Bhengu," which means "wild wind," and referenced Shange's alleged role as an agitator in the mutiny. He was given this name by Dexter Mbona, who was the chief recording officer at the time.

At Quadro, Shange was beaten on a regular, almost daily basis. The person who beat Shange most frequently was Fortunate. Other warders who assaulted him were Austin, Cooper, Kila, Sonwabo and Fury. Shange was administered "pompa" by Austin, Sonwabo and Kila; he was administered beatings with coffee sticks by Cooper; and he was ordered to put his body against the itching plant, "napalm".

At Quadro, Shange was told by Dexter Mbona and Dan Mashigo that he had no rights except the right to be beaten and to be subjected to hard labour. On a regular basis, for two years, Shange was ordered to chop wood from 8:00 a.m. to 12:00 noon non-stop, and then ordered to pull the 1,000 litre tank of water to the camp. He would then again be assigned equally arduous tasks in the afternoon.

Shange endured the harsh living conditions at Quadro that are described elsewhere in this Report.¹ There were no toilet facilities, no electricity, and scarce water. The cells were overcrowded and poorly ventilated. The food was insufficient and inadequate, resulting in people suffering from anaemia, swollen bodies and blood clots.

During his entire period of detention, Shange was never taken to a tribunal. He was informed of the existence of the tribunals by, among others, Chris Hani, and, on at least one occasion, was asked if he was prepared to face a tribunal, but ultimately, he never received a hearing.

Shange was released from Quadro on 16 November 1988. At that point, he was reintegrated into the ANC. He occupied an elected position at Dakawa, in Tanzania, as chairman of the Cultural Committee. However, Shange, like the other mutineers at Dakawa, was later banned from participating in elected positions in the ANC. Deeming that edict to amount to his effective ouster from the organization, Shange left Dakawa and travelled to Dar es Salaam where he reported to the offices of the United Nations High Commissioner for Refugees. There, he resigned from

¹See p. 41 above.

the ANC. He then proceeded to Malawi and, ultimately, was repatriated to South Africa on 24 April 1990.

Lost Property and Physical Injuries

Shange lost very little property as a result of his detention. He lost four pairs of trousers, valued at R800 today, and five or six shirts, which Shange did not place a value to.

Shange suffered bodily injuries that cause him to have constant pain on the left lateral side of his leg, between his pelvis and knee, and on his left back calf. Shange is still experiencing pain, but is not seeing a doctor because he does not have the financial resources. Shange also suffers from bad eyesight due to the darkness of the cells at Quadro. Again, however, Shange has not consulted with a physician to get glasses because of the prohibitive cost. For a few years after his release from Quadro, Shange suffered from piles and kidney problems, but he received treatment for these ailments upon his return to South Africa, and they no longer trouble him.

COMMENT AND RECOMMENDATIONS

Although, as with the other Viana mutineers, it appears there was *prima facie* cause for Shange's initial detention in February 1984, his rights were violated when he was held for more than four years without a hearing. His rights were also violated when he was banned from participating in the leadership structures of the organization at Dakawa.

The Commission recommends that the ANC issue an apology to Robert Vusumuzi Shange and consider compensating him for the violation of his rights. Consideration should also be given for him to receive compensation for loss of items of personal property, personal injury and loss of personal liberty. In addition consideration should be given to assisting him with medical treatment.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF ROBERT VUSUMUZI SHANGE

1. Fortunate : excessive force (Quadro)
2. Austin : excessive force (Quadro)
3. Cooper : excessive force (Quadro)
4. Kila : excessive force (Quadro)
5. Sonwabo : excessive force (Quadro)
6. Fury : excessive force (Quadro)
7. Dexter Mbona : cruel and inhuman treatment (Quadro)
8. Dan Mashigo : cruel and inhuman treatment (Quadro)

JOHN BONGINKOSI SIBISI

INTRODUCTION

John Bonginkosi Sibisi was born on 30 January 1949. He presently resides in Natal and has been unemployed since his return to South Africa on 28 February 1992. Sibisi served the ANC on the frontline during the mid-1980s. He came under suspicion as an enemy agent during his deployment in Swaziland and was arrested and taken to Lusaka via Mozambique. In Lusaka he was subjected to intensive interrogation, including beatings. He was moved from one place of detention to another in Angola and Zambia, and ultimately in 1991, after a tribunal considered his case, he was released from Tanga Maximum Security Prison, a facility run by the Tanzanian Government.

FACTUAL BACKGROUND

Sibisi joined the ANC in Swaziland in 1977. Sibisi received his military training at Nova Catengue in Angola and in Moscow. Sibisi returned to Angola in 1978 and was deployed at Nova Catengue Camp. After the camp was attacked by the South African Airforce during the March 1979 air-raid, Sibisi was transferred to Swaziland, where he worked in the Political Implementation Committee until 1982. Sibisi then attended a two month programme in the Democratic Republic of Germany, after which he was deployed in Mozambique and Swaziland.

Sibisi worked in the Ordinance Department in Swaziland from late 1983 until May 1985. His task in that unit was to ferry arms to South Africa. In late 1985, Sibisi began having difficulties with his contact person in Swaziland, Mapumulo, as a result of money shortages. For a period of six months, Sibisi was scarcely remunerated and fell into arrears in his rent and other payments. As a result of the money shortage, Sibisi met with Mapumulo and complained strenuously about his situation. Mapumulo gave Sibisi a R20 note and ordered him to meet with the leadership in Mozambique for a discussion of his problems.

Sibisi, however, decided not to go to Mozambique for personal reasons. He mentioned ill-health, as well as the security risk posed by the increased military activity in Mozambique during that period. Sibisi stayed in Swaziland, against the directive of Mapumulo and no longer working for the ANC, from late 1985 through May 1988 - a period of about two and a half years.

During that period, Sibisi associated with several persons who were later discovered to be "enemy agents" by the ANC Security Department, including Siphonhlanhla, Madjadji, Simelani (Commissioner of Police in Swaziland) and Warwick Dlamini. On one occasion in 1985 Sibisi was arrested by the Swaziland police because he was an ANC member and Simelane arranged his release. Sibisi was ordered to dissociate from these persons, but he did not do so. ANC Security also had information that implicated Sibisi in the disclosure to the enemy of the location of arms caches in Swaziland.

On or about May 1988, Sibisi was arrested by members of the ANC Security Department, including Nhlanhla¹ and Ribiero (the head of security in the region). Sibisi was taken from Swaziland to Maputo, Mozambique. Sibisi was ultimately taken to the headquarters of the Mozambique Security Police, where he was interrogated.

In May 1988 the Mozambiquan Police then handed Sibisi back to the ANC Security members, who took him to the Blue House in Lusaka, where he was detained for a period of two weeks and asked to rewrite his biography. At the end of the two weeks, Sibisi was subjected to an intensive three days of continuous interrogation by ANC Security member Stanley Brown and one other person. He was deprived of food during the all-day interrogations that lasted from 10:00 a.m. to 4:00 p.m. and from 5:00 p.m. to 4:00 a.m.

Sibisi was then transferred to the RC, where he was detained during July and August 1988. There, he was further interrogated by Stanley Brown and Jacob Sithole. He was beaten by Stanley - who took a 4 x 4 plank and assaulted him on the shoulders and head - but not by Jacob. He was also assaulted by a warder named J.J. J.J. beat Sibisi under his feet with a baton and electrical wires, while another warder, Peter, held an AK-47 at Sibisi.

Sibisi was then taken to an ANC residence in Luanda, where he was detained for three weeks to a month. He was interrogated by Joe Golela, but was not beaten or tortured at that residence. Sibisi was then taken to the Nova Stella Sao, where he was detained for one or two more months. There conditions were difficult. Sibisi did not have any blankets and had to sleep on a cement slab. He shared a cell with David Mbatha. He did not have any utensils or dishes to eat from. Sibisi was then transported to various locations, including Dexter Mbona's flat in Luanda, Teranov (an ANC residence in Luanda), and then back to Sun City, a prison in Lusaka, Zambia.

Sibisi was kept at Sun City from June 1989 to 15 June 1990. Sun City was an ANC prison operated by the ANC Security Department, that housed approximately twenty prisoners. There, Sibisi was beaten by Griffiths Seboni, who made him urinate in his pants and then threatened to have him drink his urine. Griffiths also forced him to do push-ups. During his stay at Sun City, Sibisi was visited by Advocate Skweyiya. Sibisi told Skweyiya about the conditions and beatings, and, according to Sibisi, the conditions improved after his visit. He began receiving newspapers, the food improved and Griffiths no longer visited him.

When, after the killing of Thabo Twala, Sun City was closed, Sibisi was transferred to the Tanga Maximum Security Prison in Tanzania, where he was detained from 16 June 1990 to 28 February 1991. In 1991, in Tanzania, Sibisi was taken before a tribunal.

¹ Nhlanhla was known in Lusaka as Socks, [See Tr. 2195 (Sithole)]. This is neither Siphó Nhlanhla nor Joe Nhlanhla.

He was represented by an attorney. The charges - associating with an enemy agent and defying the MK Code of Conduct - were withdrawn because he had been denied a timely hearing, and Sibisi was released.

Upon his release, Sibisi went to Dakawa, Tanzania, before returning to South Africa in February 1992.

Sibisi lost a watch and a belt in Angola, valued at R95 and R75 respectively. Sibisi lost other property estimated at R5,000 when he was arrested by ANC Security in Swaziland.

Sibisi also paid for the relocation/repatriation of his family from Swaziland back to South Africa, and incurred approximately R500 in the process.

COMMENT AND RECOMMENDATION

While there appears to have been good reason to detain Sibisi for investigation in 1988, he was not tried for his alleged wrongdoing until 1991. By that time, the evidence against Sibisi had undoubtedly grown stale. As well, the detainee would have been hard put - three years after his arrest - to put forth a creditable defence on his own behalf.

The Commission can draw no conclusions as to whether Sibisi was an enemy agent. The Commission does find that Sibisi was wrongly imprisoned and tortured, and that the hearing finally held in his case was excessively delayed.

The Commission recommends that the ANC issue an apology to Sibisi for the violation of his rights and consider compensating him for the loss of items of personal property and for wrongful imprisonment and physical abuse.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF JOHN BONGINKOSI SIBISI :

1. Stanley Brown : excessive force (Lusaka)
2. Jacob Sithole : aiding and abetting the use of excessive force (Lusaka)¹
3. Griffiths Siboni : excessive force (Sun City, Lusaka)
4. J.L. : excessive force (Lusaka)
5. Peter : excessive force (Lusaka)

¹ Sibisi alleges, and the Commission finds, that Stanley Brown and not Jacob Sithole hit him during his interrogation. Stanley Brown was Jacob Sithole's superior officer at the time [Tr 2203 (Sithole)]. Nevertheless, in the view of the Commission, Sithole had an independent duty to assure that the Code of Conduct was adhered to in regard to the treatment of detainees.

JAMIEL JACQUES THOMBISA

INTRODUCTION

Jamiel Jacques Thombisa is 45 years old and a second year student at the University of Cape Town where he is pursuing a degree in social work and social sciences.

As an ANC member who was part of the Dakawa Settlement in Tanzania, Thombisa worked as a nurse in 1987. In the course of his duties, a patient died and, after some investigation, the ANC Security came to suspect him of killing the patient. He was arrested and detained in Mazimbu Farm Settlement, accused of being an enemy agent and tortured. He spent two years in detention in Mazimbu, after which he was sent to Quadro. He was released from Quadro in December 1988 and transferred to Bokoloto Prison, Uganda. He returned to South Africa in 1991.

In addition to the testimony of the complainant himself and Gabriel Mthembu, the case investigator, during its visit to Tanzania the Commission discussed the Thombisa case with Mr Francis Tupa, the Tanzanian police official who, at the time, was assigned to the Mazimbu community, and who played an investigative role in this matter.

FACTUAL BACKGROUND

Thombisa joined the ANC officially in 1985 when he was in exile. Thombisa had worked for the South Africa Police from 1976 to 1982 while he lived in South Africa. During that period, beginning in 1979, Thombisa was a sympathiser and supporter of the ANC and considered himself, unofficially, a member of the ANC. His brother was a member of SASCO and the ANC and Thombisa provided safe refuge for ANC members.

From about 1986 Thombisa worked at Dakawa Settlement in Tanzania at the Raymond Nthlaba Residence, a centre for persons suffering from mental illness and physical health problems like malaria. Thombisa was a nurse by profession.

At some point in late 1986 or early 1987, Thombisa was given the task of escorting a former MK cadre who had become mentally disturbed, Savage Povo Minnie, from Dakawa to Dodoma Mental Hospital, a considerable distance from Dakawa. Because of lack of resources at the time, Thombisa was required to take public transport. During the course of the voyage, Savage Minnie died.

How Savage Minnie died was the unfortunate question that resulted in Thombisa spending the next four years of his life in detention.

Thombisa explained to this Commission that the patient became very ill during the bus ride, suffered from diarrhoea, and defecated in his pants. As a result of the stench, the local bus-riders demanded that Thombisa and the patient be thrown off the bus. Thombisa stated that a fight broke out between the local bus-riders and himself and that they were ultimately thrown off the bus around 2 or 3 in the morning in a remote and deserted rural area. Savage was lying flat on his stomach,

holding his belly, and he told Thombisa that he was hurting all over. Thombisa left Savage to locate some assistance. When he returned, Savage was not there. Thombisa proceeded to the nearest police station to report the patient missing. While he was there, the police received a report of a dead body. Thombisa identified the body as that of Savage Minnie and was later escorted back to Dakawa along with the body by the Tanzanian police. He resumed his work at the Residence.

The ANC Security, however, had a very different view of Thombisa's role in the patient's death. Gabriel Mthembu (Sizwe Mkhonto), who headed the Security Department in Tanzania, testified to this Commission that several key factors raised a suspicion in his mind as to whether Thombisa had actually killed Savage. First, the postmortem examination revealed that Savage died of a ruptured spleen, and the investigators questioned whether such an injury could have been caused by a fall from a bus, or whether it was more likely to have been caused by a direct blow to the spleen. Second, the Tanzanian police allegedly informed Mthembu that, based on their investigation, they had concluded that the local bus-riders had not assaulted Savage, thus ruling out the possibility that they ruptured his spleen. Third, Thombisa was a black belt karate expert and Mthembu alleged his reputation was of a violent man. Fourth, and perhaps most significantly, Thombisa had been an SAP member and he joined the ANC in exile just one year after he was ousted from the SAP for a dagga conviction.

Thus, one month later, Thombisa was arrested by two Security officers, Bani and Doctor, at Mthembu's direction, and detained for three weeks at the Medical Centre at Dakawa. He was taken before a Commission enquiring into Savage's death in Mazimbu, where he presented his explanation and was told that he could resume his work. However, during that detention, Thombisa began to feel threatened.

Thombisa decided to run away from Dakawa before the completion of the investigation. However, he was apprehended at Arusha near the Tanzania/Kenya border and detained for three weeks. He was then taken to Dar es Salaam, back to Dakawa and then detained at a Mazimbu detention facility run by the ANC Security Department for more than two years (from April 1987 to October 1988).

At Mazimbu, Thombisa was viciously beaten by Keith Masemola¹ and Doctor on the orders of Mthembu. They beat him with a wooden plank, and broke his right hand, dislocated both shoulders and elbows, and injured his knees, wrists and ankles. He was also subjected to electric shocks on his genitals and under his feet. Thombisa was smacked on his ears until they bled. He was beaten on the eyes, which became red and swollen. His nose and mouth were also bleeding. The beatings were conducted by Keith Masemola and Doctor. Mthembu was in charge of the interrogation and monitored the room where the detainee was being questioned at regular intervals. The officers beating him accused Thombisa of being an S.A.

¹ See TR 1896 (Mthembu - Mthembu identified Keith Masemola as the officer who took over the Thombisa investigation when he, Mthembu, left Tanzania.

agent, and told him he would be released immediately if he would admit that he was sent by the South African government to spy on the ANC.

Thombisa never received medical treatment at Mazimbu or elsewhere for his injuries, including his broken right hand, until his release from prison in Uganda in 1991 when the ANC arranged for him to receive treatment.

In 1988, Thombisa was taken to Lusaka by Cliff, and then transported to Viana, the transit camp near Luanda from the Mazimbu Detention Centre. Thombisa remained one night at Viana and was then taken to Quadro. He was detained in Quadro from October 1988 to December 1988, when he was moved to Uganda

Upon his arrival at Quadro, Thombisa was given the name "Mpungushe" which means a jackal. At Quadro, Thombisa was psychologically abused by one Sidney, who once took a loaded AK-47 and told Thombisa to say his final farewell. After three months at Quadro, Thombisa was taken to Bokoloto Prison in Uganda.

In Uganda, Thombisa was taken to a tribunal, chaired by Dan Mashego. Charges were put to him that he was a South African agent. Thombisa was not informed of the verdict, but was let free and told to resume his work. Thombisa was released in April 1991.

PERSONAL INJURIES

Thombisa has to undergo medical treatment for asthma and for injury to his ears. He has undergone physiotherapy for his broken joints. He suffers from ulcers. He had extensive dental work done as a result of the inability to brush his teeth for two years, and he has undergone, and is currently in, psychoanalysis. He describes himself as "a mental wreck".

Thombisa has asked the Commission for R300,000 as compensation for the physical and mental abuse he experienced at the hands of the ANC Security Department.

COMMENT AND RECOMMENDATIONS

The Commission heard two sharply different versions of the Thombisa case. Jamiel Thombisa vehemently denied any foul play in connection with the death of Savage Minnie, while Gabriel Mthembu insisted the deceased could not have died in the manner Thombisa described. Thombisa testified as to a vicious beating that he says Mthembu supervised, and he showed the Commission his badly deformed right hand as evidence of the torture he endured. Mthembu, on the other hand, conceded that he had authorised his subordinates to question the detainee aggressively after he was recaptured, but he denied he was ever beaten, and claimed the injury to his hand pre-existed Thombisa's detention in connection with the death of Savage Minnie.

The Commission credits the testimony of Thombisa as to his treatment in detention.

The role of the Tanzanian authorities in this investigation is not altogether clear. Captain Francis Tupa¹ confirmed that, as the Tanzanian police official responsible for the Mazimbu Settlement, he had headed an investigation into the Minnie Savage death, and that the post mortem did, indeed, put the cause of death down to a ruptured spleen. While he was not completely clear in his memory, he suggested that his office closed its investigation without a definitive finding and turned the matter over to the ANC Security Department, in as much as both the deceased and the subject of the investigation were ANC Dakawa residents.

The Commission is of the view that there was reasonable justification for the initial detention of Thombisa. Legitimate questions had been raised about the death, but before the Security Department's investigations could be completed, Thombisa fled. His flight apparently was taken as consciousness of guilt, and corroborated the suspicions of Mthembu and his team that he was culpable of the death.

However, although his arrest was proper, it was wholly improper to torture Thombisa in the manner he described. The Commission credits Thombisa's testimony on this score, and is particularly persuaded in view of the compelling physical evidence of his injuries.

Moreover, the investigation of Thombisa's case was not handled in an expeditious manner. Mthembu testified that he left Tanzania for studies in London before the investigation was completed. Thombisa was detained for more than two years in Mazimbu without being brought to trial, and then for a further two years in Angola and Uganda. The Commission was not provided with an explanation as to why this case was not brought before a tribunal until 1991. Finally, the Commission was not advised as to what, if any were the findings of the initial commission of enquiry established to investigate the death of Savage Minnie.

Thombisa told the Commission that what he now seeks is some recognition of the injustice done to him, and that he harbours no animosity towards the ANC as an Organisation:

"I haven't got anything personally against the ANC, I am still a loyal member of the ANC, so whatever I have said is not to destroy the ANC, or to do any harm to the ANC. I'll always support the ANC in the future, but the reason why I made a statement is, I want to make sure that these atrocities that occurred in the past will not happen again in the future when we have an ANC government, because I believe every person has got a right to have some freedom of speech, freedom of movement, and I also want all those people who perpetrated all the violences and atrocities against me, that the ANC should really bring those people to book because they won't allow such a people in the future government to rule the government, to rule the country, because it will be dangerous for people like that to have power in their hands which they can abuse. And I am doing this not just for the sake of my own

¹ See the discussion of the Commission's interview with Mr. Tupa at p above

personal wellbeing and personal safety, but for the safety of the whole of South Africa, as we need a government on which we can depend. So I think you must understand I have nothing against the ANC. Also, anybody who perpetrated this violence against me, I have got nothing personal against them also. They might have received the orders from above. So they, sort of, followed instructions, but I ask them please, let their conscience prick them a little bit, and I hope in the future they won't repeat the same mistakes again.¹

The Commission recommends that the ANC issue an apology to Thombisa and consider compensating him for his unlawful detention and the physical abuse he endured. With respect to compensation, considering the seriousness of his injuries, the Commission recommends compensation for this complainant's medical bills.

THE COMMISSION FINDS THAT THE FOLLOWING INDIVIDUALS VIOLATED THE RIGHTS OF JAMIEL JACQUES THOMBISA :

1. Gabriel Mthembu (Sizwe Mkhonto) : failure to properly supervise interrogation; either ordered or permitted complainant to be subjected to excessive force (Mazimbu)
2. Keith Masemola : excessive force (Mazimbu)
3. Doctor : excessive force (Mazimbu)
4. Sidney : excessive force (Quadro)

¹TF 1735-6 (Thombisa)

MWEZI RODNEY TWALA

INTRODUCTION

Mwezi Twala left the country in 1975 to join the MK in Swaziland. At the time he was 31 years old. After his training, he was deployed in Angola. He also spent some time in Mozambique and Zambia.

Twala related to the Commission that during his MK career, he had been twice detained, once for indiscipline in Mozambique and the second time in the wake of the Viana mutiny - first in Luanda and then in Quadro until his release in 1988.

Twala has left the ANC and is now employed as an organizer for the IFP.

FACTUAL BACKGROUND

In 1978, when Twala was living at an ANC residence in Matola, Mozambique, he was arrested and detained by Peter Raboroko, then head of Security in Mozambique, for attempting to bring beer into the residence. He was held in a Mozambiquan prison for 3½ months and then, after a visit to the prison by FRELIMO officials - who objected to the use of the Angolan facility for ANC prisoners - he was released. A Commission convened in 1979, whose members were Andrew Masondo and Tertius Margate, absolved Twala of any offense. Masondo later apologised to Twala for the detention.

In the fall of 1979, Twala, who was then deployed at Quibaxe, was given the task of constructing Quadro. He testified that the construction was overseen by Commander Johnson.² Twala's complaint that the cells being constructed had no ventilation or light was ignored by Johnson.

In 1982, when the MK members deployed in Angola were invited by O.R. Tambo to submit their views on the state of the armed struggle, Twala was among the authors of the paper submitted by Viana Camp. The Viana Paper, as it came to be known, constituted a frank discussion of a variety of problems in the camps as well as the concern that the MK was wasting its time in Angola rather than engaging the enemy inside the country. The paper was harshly criticized by Commissar Andrew Masondo. His reaction gave the impression that open criticism was not appreciated by the leadership.

When the Viana uprising took place in 1984, Twala was deployed at the Plot near Luanda. Upon hearing of the uprising at Viana Camp, he proceeded, with a number of others from the Plot, to that camp. He participated in the general meeting of 6th February that led to the selection of the Committee of Ten, and indeed he was one of

² Gabriel Mthembu testified that he was the first Commander of Quadro when it began to operate as a prison. Johnson had previously been Camp Commander during the construction phase of Camp 32.

the Ten. He states that the demands put forward by that meeting were very similar to those set out in the Viana Paper, i.e., 1) consultative conference to be convened to discuss direction of the movement, including the armed struggle; 2) a commission of inquiry be established to investigate abuses within the security department; 3) Quadro be closed; 4) an investigation of conditions within the camps be undertaken.

After the meeting, Twala returned to the Plot. Upon hearing that FAPLA forces were stationed at Viana early the following morning, Twala proceeded once again to Viana. He observed that FAPLA and MK forces were in a face-off, and he attempted to diffuse the confrontation. He then left, intending to proceed back to the Plot. However, on the way back, the vehicle in which he was travelling was ambushed by ANC security officers, who fired repeatedly at the vehicle and its passengers. Twala was not hit by the fire, but was beaten up as he lay on the ground seeking cover. He was then thrown into a Land Rover with about 15 other men and taken to a garrison outside Luanda. He was detained there for a few days and then he returned to the Plot.

On or about 16 February, at the Plot, Twala was ordered by Timothy Mokoena, the Regional Commander, to get into a Land Rover that was parked outside his tent. Twala observed that the MK leadership - Chris Hanu, Lennox Lagu, Urian Makwena, Joe Modise, and Timothy Mokoena - were all around the Plot at the time of his arrest. Upon seeing a passenger in the truck, who had been with the mutineers, poised to pull a pin from a grenade, Twala jumped out, intending to seek cover. As he ran away from the vehicle, he was shot in the back, sustaining a serious injury to the chest. The leadership apparently believed that the grenade - which in fact exploded in the vicinity of the truck - was directed at them, and that Twala was a part of this attack. As Twala lay on the ground wounded, Joe Modise, in a moment of great excitement and anger, stood over him and said, first in Afrikaans and then in Sotho "You'll die like a dog" - "Jy sal vrek soos 'n hond", "Gatsha stan jamine".

Twala, as he lay there wounded, then had a conversation with Chris Hanu, telling Hanu that the problems could not be solved through violence and reminding Hanu of a promise he had made that there would be no recriminations against those in the leadership of the uprising. Upon Modise's order, Twala was immediately taken to a military hospital in Luanda, where he was operated on. Twala testified that, in insisting that he be hospitalised rather than summarily punished, Modise acted in a "concerned and kind way"¹ notwithstanding his initial expletive.

In about March 1984, but before he had fully recovered from the surgery, he was taken from the hospital to a military prison hospital in Luanda, where he was locked in an isolation cell. He remained there until 16 April 1985, when he was taken to Quadro. He remained in Quadro until 16 November 1988, when, along with the other Viana prisoners, he was moved to Dakawa.

¹ TR 1759 (Twala)

Twala described the conditions in the military prison hospital as abysmal. They took a particularly heavy toll on him because he was still a very sick man. At Quadro, Twala was subjected to the routine of beatings described elsewhere in this Report. He described one particularly brutal beating wherein he was beaten on the buttocks more than 150 times, opening the flesh on his backside.

Twala ultimately returned to South Africa by way of Tanzania with a group of about ten others who had fled from Dakawa. He left Dakawa when he was barred from fully participating in the ANC structures because he had been a mutineer and a Quadro detainee.

Since April 1993, Twala has been employed as an organizer of Inkatha Freedom Party.

DISCUSSION AND RECOMMENDATIONS

Twala's central complaint concerns his detention in the wake of the Viana mutiny. The Commission finds that, while the initial arrest of Twala was based on reasonable cause, he was wrongfully imprisoned, first in Luanda, and then in Quadro, without a hearing.

At Quadro, Twala was subjected to beatings and other forms of torture, but, upon testifying, he declined to name the warders responsible for his ill-treatment. He said of them :

*"Those are youngsters - they were youngsters. You know, I never bothered myself about even trying ... to keep them in mind ... (I) immediately (when) I left that place I have tried to blank out those experiences, and, you know, I don't blame them, they were doing their work ... (T)hey were receiving orders."*¹

The Commission recommends that the ANC issue an apology to Twala and consider compensating him for the violation of his rights, including the loss of his liberty, torture and other injury to the person.

¹ Tr. 1750 (Twala)

DEFENDANTS

Each of the witnesses below testified before the Commission as to their knowledge of the matters under consideration.¹

1. Huna, Floyd
2. Kepadise, Mountain
3. Mavuso, Basil
4. Mbona, Dexter
5. Mokoena, Aaron Phuthsu
6. Mthembu, Gabriel
7. Nzimande, Itumeleng
8. Rahupe, Golden
9. Sekwalo, Lawrence
10. Sethuntsa, Bob
11. Williams, Tim

¹ The Commission rendered specific findings as to the allegations against each of the defendants listed herein, as well as in respect of other persons named as perpetrators who did not appear as witnesses. The findings regarding those who did not testify appear elsewhere in the Report.

FLOYD HUNA

Floyd Huna ("Spinks" or "Spinx") grew up in Alexandra Township. He presently serves as an investigator with the Security Department at Shell House.

Huna left South Africa in January 1977 for Swaziland, where he joined the ANC and MK. In 1978 he underwent military training in Angola. Thereafter he was trained in military engineering. He worked as a political organizer with the internal political unit in Maputo and then served as Chief of Ordnance of a battalion in Angola. In mid-1983 he was recruited by the Security Department and from 1985 until his repatriation he worked with the Department in Lusaka. His assignment in Lusaka was to screen new recruits arriving from South Africa. In 1986 he worked in the counter-intelligence section of the department under Peter Boroko.

The charge sheets placed before the Commission alleged that Floyd Huna arrested, detained, and interrogated, without cause to do so, John Bonginkosi Sibisi and falsely accused him of being an "enemy agent," (Lusaka, 1987); and caused Sibisi to be detained indefinitely at RC and Quadro.

In testimony before the Commission, Huna was also charged with the beating of Goodluck Mpungose (Lusaka); and with an assault on Henry Abrahams (Lusaka).

Huna denied all the allegations. He described in some detail his relationship with Sibisi. He stated he had come to know him when he worked in Maputo, and that when, in 1987, Sibisi arrived in Lusaka from Swaziland, it was Huna who was sent to conduct the initial interview because of the prior relationship. He further stated that he had nothing to do with the arrest of Sibisi in Swaziland.

As to Abrahams, Huna conceded that he was a member of the security team that arrested Abrahams on one occasion in Lusaka, but he denied that he used any excessive force in effecting the arrest. He stated that one member of the team, Mwzandili, did fire one shot in the air in the course of the arrest, but he stated that he himself was not armed.

As to Mpungose, Huna testified he was with Tim Williams when Mpungose was interrogated, but that neither he nor Williams applied any excessive force in conducting the interview.

At the hearing, Sibisi did not establish that it was Huna who was responsible for his arrest and detention. Rather, Huna appears to have been acting at the direction of a superior officer. There was no testimony that Huna personally assaulted Sibisi.

The Commission found that Mpungose's evidence as to the torture to which he was subjected, and the individuals who were the perpetrators, was of such detail that it was not likely to have been made up.

The Commission makes the following findings regarding Floyd Huna:

1. The evidence does not support the allegation of Henry Abrahams that he was assaulted by Floyd Huna;
2. There is no probative evidence that Huna participated in the arrest of Sibisi; and
3. The evidence supports the allegation of Goodluck Mpungose.

MOUNTAIN KEPADISE

Mountain Kepadise was born in Soweto on 16 September 1956. He left the country in 1978 to join the ANC in Swaziland. He received his basic military training in Angola, and completed a commander's course overseas.

Kepadise was section commissar of Quadro from 1980 to 1981. In 1981, Kepadise was sent overseas for a political course, and in 1982 was re-deployed to Quadro where he was a platoon commissar and political instructor.

In 1983, Kepadise was promoted to camp commissar at Quadro. As such, he was the deputy to the commander. In 1985, Kepadise went abroad for a political science course and stayed there for two years. Upon his return in 1987, he was deployed for two years as the camp commissar at the Barney Molokoane Training Centre in the Malange region of Angola. When all forces were withdrawn from north and east Angola, Kepadise was made camp commissar at Viana for a month or two and then coordinated the withdrawal from Angola to Tanzania, Zambia and Uganda. Kepadise commanded the first MK contingent to Uganda in May 1989, and then resumed his responsibilities in Camp 32, also known as Bokoloto Prison, in Uganda until his return to South Africa in 1991.

Kepadise left Uganda in June 1991, and was not present when Camp 32 was closed, but was at the Johannesburg Airport to receive the inmates in August of that year. Kepadise is presently employed at Shell House in the department of intelligence and security. He appeared before the Commission and, after the close of the hearings, presented two affidavits on behalf of the Security Department.

The evidence before the Commission was that Kepadise made genuine efforts to improve conditions when he served as Camp Commander of Camp 32 in Uganda. He was also credited with seeing to it that tribunals were convened on some of the older cases. Several witnesses testified that Kepadise would, from time to time, enquire of them whether they wished to go before a tribunal.

The charge sheets placed before the Commission allege that Mountain Kepadise :

1. detained and interrogated without cause, Xolile Solomon Sipunzi, falsely accused him of being an "enemy agent", tortured him and caused him to be indefinitely detained in Quadro (Angola 1984);
2. detained, interrogated and subjected to torture, Jamiel Thombisa (Uganda 1989).

In addition to these formal charges, at the hearing the Commission heard evidence that Kepadise was responsible for arresting Luthando Nicholas Dyasop under false pretences and assaulting him.

Thombisa testified that the assaults of which he complains occurred in Tanzania, when his hand was broken by his interrogators, not in Uganda.

Kepadise was also implicated in the beating of one Porko at Camp 32 in Uganda. Porko, a detainee, was accused of killing some pigs at the prison and was badly beaten by the warders. At the time, Kepadise was Commander of the Camp.

Kepadise denied all the allegations. He denied having anything to do with the interrogation of Sipunzi, stating that, at the time of the interrogation, he was not involved with investigations. He denied assaulting Thombisa, stating that at the time he arrived in Uganda, Thombisa's case had already been closed. While he readily admitted that he arrested Dyasop under false pretences, he stated that at the time it was deemed the best way to place the suspect under arrest.

As to the beating of Porko at Camp 32, Uganda, Kepadise stated he was in Kampala at the time of the incident.

The Commission makes the following findings regarding the allegations against Mountain Kepadise :

1. There is no probative evidence upon which the Commission could base a finding as to the allegation of Xolile Sipunzi, who did not testify and whose allegation was denied by Kepadise;
2. The evidence does not support the allegation of Thombisa;
3. The manner in which Dyasop was arrested did not constitute a violation of his rights;
4. There is no evidence upon which to base a finding that Kepadise ordered or sanctioned the beating of Porko.¹

¹ Kepadise's negligent supervision of the warders may have contributed to this unfortunate event, but on the evidence before it, the Commission cannot assign any greater degree of culpability to Kepadise in regard to this matter.

BASIL MAVUSO

Basil Mavuso ("Jomo Sono") was born on 25 November 1954. He is presently employed with the unit of the Security Department assigned to President Mandela.

Mavuso left the country in 1976 to join the ANC and MK. He received his military training in Angola, and studied political science in Bulgaria. In 1981 he was deployed in Lusaka as the bodyguard to then President Tambo, and he served in that capacity until his return to the country in 1990.

While Mavuso's principal duties in Lusaka were concerned with the President's security, he would from time to time, as he was available, be deployed on other tasks with the Department. He participated in the screening of new recruits, and occasionally in the interrogation of suspected enemy agents.

The charge sheets placed before the Commission allege that Basil Mavuso

1. beat Felix Nkosi in the course of interrogating him (Lusaka 1984); and
2. beat Gabriel Setlhoke in the course of interrogating him and caused him to be arrested and detained without good cause (Lusaka 1985).

Mavuso denied the allegations. He stated that he had nothing to do with the arrest and interrogation of Felix Nkosi and that, indeed, he was not even present when Nkosi was questioned.

As to Gabriel Setlhoke, Mavuso stated he was present when Setlhoke was interrogated. Setlhoke claimed that his arrest was at Mavuso's behest, and that it resulted from a personal dispute he had with Mavuso when he was stationed in Botswana. He claimed Mavuso held a grudge because Setlhoke denied him lodging when he arrived in Botswana unannounced.

Mavuso stated Setlhoke was detained because of suspicious conduct in Botswana, including fraternising with criminal elements. While the interrogation of Setlhoke was rigorous - Mavuso admitted the detainee was made to stand up for long period of time while being questioned - Mavuso denied that Setlhoke was in any way physically assaulted.

Both Nkosi and Setlhoke were members of the Department, and as such, they had each worked closely with Mavuso in Lusaka. Setlhoke is still an active ANC member. One must ask what motive either of these complainants would have to lie about their experiences with Mavuso, at present a prominent and well-positioned member of the Department.

The Commission makes the following findings as to Basil Mavuso :

1. The evidence supports the allegation of Felix Nkosi;
2. The evidence supports the allegation of Gabriel Setlhoke.

DEXTER MBONA

Dexter Mbona ("Dexter") was camp commander of Quadro from 1984 to 1985 and was also the regional chief in Angola for the period, 1985 to 1989. At present, Mbona is the secretary to the ANC chief representative in Lusaka. Mbona travelled from Lusaka to Johannesburg to testify before this Commission.

Mbona was born in Port Elizabeth on 22 February 1958. He joined the ANC in Swaziland in 1977. In 1978, Mbona received six month's training in guerilla warfare in Nova Catengue. During 1979 and 1980, Mbona attended a commanders' course in Moscow. Following that, he was deployed as camp administrator at Pango from 1981 to 1983. In 1983, Mbona studied counter-intelligence and security in the former German Democratic Republic.

From 1984 to 1985, Mbona was the recording officer at Quadro. Following that, he was the regional chief of the Intelligence and Security Department in Angola from 1985 to 1989. Mbona has held his present position in Lusaka since 1989.

The charge sheets placed before the Commission allege that Dexter Mbona

- (1) beat/tortured David Makhubedu (Quadro 1984);
- (2) beat/tortured Luthando Nicholas Dyasop (Quadro 1984); and
- (3) arbitrarily detained, falsely accused and beat/tortured Xolile Solomon Sipunzi (Quadro 1984).

In addition, the oral testimony of Robert Shange was to the effect that, upon his arrival at Quadro, he was told by Mbona that he had "no rights except to work and to be beaten." Other witnesses testified that they were similarly warned at the Quadro reception room.

While, in his evidence, Makhubedu stated he was beaten upon his arrival at Quadro, he made no specific reference to Mbona. Dyasop did state Mbona, among others, beat him on his arrival.

Mbona denied all the allegations. As to the alleged assault victims, he stated their cases were already completed and closed and he had nothing to do with them.

There was further testimony that, as recording officer, Mbona gave inmates derogatory names upon their arrival at Quadro. This, too, he denied, claiming that he had little to do with orientation, and that these tasks were the responsibility of the Commissar, who was Mountain at the time.

This testimony is not entirely credible. As the recording officer, it is likely that Mbona was involved in assigning names to new inmates. According to his own testimony, only the officers in the recording office knew the prisoners' real names.

Mbona further testified that he was present when Dyasop was brought to Quadro, and that Dyasop was not beaten. He was also present when Sipunzi was brought to Quadro, and Sipunzi was not beaten either.

The Commission makes the following findings in respect of Dexter Mbona:

1. There is no probative evidence to support the allegation of Sipunzi, who did not testify before the Commission, and whose allegations were denied by Mbona;
2. The evidence does not support the allegation of David Makhubedu;
3. The evidence supports the allegation of Nicholas Dyasop; and
4. The evidence supports the allegation of Robert Vusumuzi Shange.

AARON PUTHSU MOKUENA

Aaron Mokuena ("Kwesh") grew up in Pimville, Johannesburg. At present he is the First Secretary of the ANC in Uganda. He travelled to Johannesburg to give evidence before the Commission.

Mokuena left the country in 1976 to join the ANC and MK. He received his military training, including training in sabotage and intelligence from 1976 to 1982. He was, from 1983 to 1985, Regional Head of Intelligence in Lesotho. In 1986 he was deployed in Lusaka, and from 1987 to 1990, he held various positions in Tanzania.

The charge sheet placed before the Commission alleges that Aaron Mokuena

- (1) detained without cause and tortured Gabriel Sethloke (Lusaka 1985).

Mokuena testified that he was present during the interrogation of Gabriel Sethloke. He stated it was necessary to make Sethloke stand in one place for long periods of time - up to four hours - but that no other pressure was applied upon him during the interrogation.

He further stated that the Security Department was in possession of very strong evidence that Sethloke was, indeed, an enemy agent, and that there was good cause to arrest the complainant. He testified that the Botswanans had arrested Sethloke and informed ANC security that he was suspected of being an accomplice in the Gaborone Massacre of 1985.

The Commission makes the following finding as to Aaron Mokuena:

1. The evidence supports the allegation of Gabriel Sethloke that Aaron Mokuena participated in employing excessive force in the course of interrogating him.

GABRIEL MTHUNZI MTHEMBU

Mthembu ("Sizwe Mkhonto) was the first camp commander at Quadro. He is currently employed by the ANC's Department of Intelligence and Security at the ANC headquarters in Johannesburg.

Mthembu was born on 2 June 1960 in Soweto and he joined the ANC in Swaziland after the Soweto riots. Mthembu received his first military training for five months in Angola. Mthembu was then trained by Cuban specialists at Nova Catengue in southern Angola. In 1978, Mthembu was transferred to Quibaxe and then to the former German Democratic Republic where he was trained in urban guerilla warfare until December 1978. Mthembu was then deployed as an instructor at Fazenda in northern Angola. After a couple of months, Mthembu was sent back to the GDR for a six-month specialized course in security intelligence. On his return, Mthembu was deployed as a recording officer at Quibaxe until the end of 1979, when he was appointed to be camp commander of Camp 32.

Mthembu was camp commander at Quadro from 1979 to 1982 -- the first camp commander. At the time, he was 19 years old. The age of those persons serving under Mthembu ranged from 16 to 30 years old.

In 1982, Mthembu went to the Soviet Union for further studies. Upon his return from the Soviet Union in 1984, Mthembu worked in Luanda as the deputy head of the Intelligence and Security Department for the region for about two years. In 1986, Mthembu was transferred to Tanzania where he was the overall head of the Department of Intelligence and Security for the region for two years. In 1988, Mthembu went around the world with the Cultural Ensemble. Thereafter that six-month tour, Mthembu returned to Tanzania and assumed his former responsibilities. After that, Mthembu went to England to study film and video.

In 1991, Mthembu was doing a BA Honours degree in film and video in the United Kingdom. Mthembu did not complete his degree because he left England to return to South Africa and work for the ANC. He returned to South Africa in 1991.

The charge sheets presented to the Commission alleged that Gabriel Mthembu

- (1) arrested, detained and interrogated without cause, and tortured Mpho Samuel Motjuoadi (Tanzania 1986);
- (2) arrested, detained, and interrogated without cause, and tortured Jamiel Jacques Thombisa (Tanzania 1987); and
- (3) kidnapped, detained and interrogated Henry Abrahams (Lusaka 1989).

Mthembu denied the allegations. He stated he worked on the case of Mpho Rampa (Motjuoadi), but that no force was applied and that Rampa was extraordinarily cooperative.

As to Thombisa, he admitted that in extreme circumstances he has ordered security officers under his supervision to employ the "third degree," but he stated that there was no need to apply such pressure to Thombisa, because the crime had already been committed and Thombisa was not harmful while detained. Mthembu left Tanzania before the investigation of Thombisa's case was complete, and therefore did not know what became of the suspect.

Henry Abrahams retracted his allegations regarding Mthembu in his oral evidence. In any event, Mthembu denied assaulting Abrahams, and stated he was in the Soviet Union at the time he was alleged to have assaulted him.

The Commission makes the following findings in respect of Gabriel Mthembu:

1. There is no probative evidence upon which the Commission could base a finding as to the allegation of Mpho Motjuoadi, who did not testify and whose allegation was denied by Gabriel Mthembu;
2. The evidence supports the allegation of Jamiel Jacques Thombisa that Mthembu either ordered or permitted the complainant to be beaten during his interrogation;
3. The evidence does not support the allegation of Henry Abrahams.

ITUMELENG NZIMANDE

Itumeleng Nzimande, 38 years old, lives in Soweto, where he grew up. He presently works with the Security Department at Shell House.

Nzimande left South Africa in 1976 and joined the ANC and MK. He was trained in Angola in 1977, and in 1978 he began working for the Security Department in Luanda. In 1979 he was deployed as a recording officer in Nova Catengue. When that camp was bombed in 1979, Nzimande left Angola to further his training in the German Democratic Republic. Upon returning to Angola, he was deployed at Pango. His principal assignment in Angola was to liaise with the Angolan ministries of defence and state security. The focus of his work was intelligence, as contrasted with security.

The Commission was presented with charge sheets alleging that Itumeleng Nzimande

- (1) arrested, detained and interrogated Xolile Solomon Sipunzi and caused him to be imprisoned indefinitely at Quadro (Angola 1984); and
- (2) detained, interrogated and tortured Vusi Shange (Angola 1984).
- (3) In addition to these charging instruments, the Commission heard evidence from Diliza Mthembu that Nzimande caused him to be detained in a metal container at Viana Camp (Angola 1983).

Nzimande denied the truth of all the allegations against him. When he appeared as a witness before the Commission he was not questioned as to the veracity of the allegations of Sipunzi and Shange. As to Mthembu, Nzimande stated he was aware of the circumstances leading up to Mthembu's detention in the container, but he had no part in ordering the punishment.

The Commission was impressed by the detailed manner in which Mthembu recounted the circumstances of his arrest and detention, including the role of Nzimande. On the totality of the evidence, it found good reason to credit Mthembu's version of the events.

The Commission makes the following findings as to Itumeleng Nzimande:

1. There is no probative evidence upon which the Commission can base a finding as to the allegation of Xolile Sipunzi;
2. There is no probative evidence upon which the Commission can base a finding as to the allegation of Vusi Shange;
3. The evidence supports the allegation of Diliza Mthembu that he was confined in a container pursuant to the directive of Itumeleng Nzimande.

GOLDEN RAHUPE ("PRO")

Golden Rahupe ("Pro") was born in Pretoria and is presently a student at the University of Manchester in England, studying human resource management. Rahupe travelled from England to South Africa to testify before the Commission.

Rahupe joined the ANC in 1977 in Swaziland. Rahupe studied for a year at Thokoza, and then joined Umkhonto we Sizwe in 1978. Between 1978 and 1979, Rahupe attended the general military course in Angola and then was trained as a specialist in military engineering and sabotage. From 1978 to 1981, when he was in Angola, Rahupe was in the news department of the ANC at Quibaxe and Quadro. From 1981 to 1982, Rahupe attended school in Bulgaria. From 1982 to 1983, he was staff commander at Quadro and then, from 1983 to 1984, he was camp commander at Viana.

From 1985 to 1987, Rahupe returned as camp commander at Quadro. After further training abroad, he became the deputy head of the regional directorate of the Security Department in Angola. From 1988 to 1989, Rahupe was the head of the NAT in Uganda and, from 1990 to 1992, he was the administrative secretary of the ANC Mission in Sweden.

Rahupe readily admitted that there were on numerous occasions breaches of the disciplinary rules at Quadro by the security guards involving assaults. Rahupe indicated that the problem was so bad that he at some point had to resort to group punishment.

Rahupe was widely credited with attempting to impose discipline upon the warders at Quadro. For example, Gabriel Setlhoke testified that Rahupe stopped Stalin, the medico, from beating him.

Rahupe appeared to the Commission to be an honest and skilled member of the security apparatus. As camp commander he found himself saddled with an enormous responsibility with scarce resources. Too, a culture of brutality had already set in at Quadro by the time Rahupe took charge; although he tried, it was difficult to reverse all these practices.

The charge sheets placed before the Commission allege that Golden Rahupe

- (1) assaulted David Makhubedu (Quadro 1984);
- (2) permitted guards to humiliate Gabriel Setlhoke by calling him "Skuru Skuru;" accused Setlhoke of being an "enemy agent;" and assaulted him (Quadro 1986-88);
- (3) caused Abeod Laka to be tortured and called an "enemy agent;" and caused Laka to be detained indefinitely without hearing (Quadro 1987).

The Commission makes the following findings regarding Golden Rahupe:

1. The evidence does not support the allegation of David Makhubedu;
2. The evidence does not support the allegation of Gabriel Setlhoke that he was assaulted by Rahupe;
3. The evidence does not support the allegation that Rahupe caused Abeod Laka to be detained.

LAWRENCE SEKWALO

Lawrence Sekwalo was born in Johannesburg. He is 33 years old and an officer in the Security Department employed at Shell House. Sekwalo left South Africa in 1976 to join the ANC. He joined in Maputo and thereafter received his military training in Angola. He was trained in intelligence and counter-intelligence work, and also completed a six year course in organic chemistry in Cuba.

As a consequence of his education in Cuba, Sekwalo is fluent in Spanish and Portuguese. From 1983 to 1984 he was based in Luanda, attached to the Security Department and assigned as a liaison officer among the Angolan, Cuban, and South African military sectors. He left Africa for further training in 1984 but returned to Angola in 1986, where he was deployed until 1989.

Sekwalo had some responsibilities for the conditions of confinement of the detainees at Nova Stella Sao, and for the transport of detainees from that facility to Quadro. In that connection, some detainees complained that he failed adequately to look after the health and welfare of the Nova Stella Sao inmates, and that he participated in/or aided and abetted the abuse of detainees upon their arrival at Quadro. (Notably, one complainant, Gabriel Sethloke, told the Commission that Sekwalo saw to it that he was well fed while he was a prisoner in Nova Stella Sao. Sethloke thought this consideration was given to him because he was a former security officer).

Specifically, the charge sheets placed before the Commission alleged that Lawrence Sekwalo

- (1) caused Loyiso Jwara to be falsely arrested, detained, and interrogated, without cause; and subjected Jwara to torture (Angola 1984); and
- (2) detained and falsely accused John Bonginkosi Sibisi of being an enemy agent, and threatened to shoot Sibisi if he refused to admit that he was an enemy agent (Angola 1988).¹

Further, at the Commission hearings, Norman Phiri testified that Sekwalo was one of those who administered the "Beirut treatment" upon Phiri's arrival at Quadro.

Sekwalo denied all the allegations against him. He testified he had no responsibility for Quadro, and did not interfere with the prison administration. When, on occasion, he transported detainees to Quadro - and he admitted that he was part of the convoy in which Phiri was transported - he remained in an administration room and did not go to the reception room, where Phiri and others allege they were beaten. He testified he did not fraternize with the warders:

¹ A third charge sheet alleges that "Lawrence" violated the rights of Vusi Shange, but there was no further identification of this "Lawrence". There were two security officers named Lawrence operating in Angola in the 1980s.

"I was fighting the enemy from outside. I was mixing with doctors, intellectuals, lawyers, and that is where I gathered information, not within the warders."¹

Sekwalo also expressed grave misgivings about the allegations put forth against the Security Department, which, in his view, were aimed at weakening the Movement:

"I would like to say that the conditions in Angola. . . in general, was one of the most difficult situations we found ourselves in, where at a very young age, we had to sacrifice our lives as security officers. Whenever there was a problem that cropped up in Angola, it would always be the security of the ANC who should be in the forefront. We were not different to most of these complainants. We were all human beings, and the impression is created as if you know, the Security of the ANC was a bunch of kindergarten security officers who had no understanding, no human value. It is unfortunate that this thing has taken place. . . [W]e adhered [to] the Freedom Charter and that was how we respected human beings."²

The Commission makes the following findings:

1. There is no probative evidence upon which the Commission can base a finding as to the allegation of Loyisa Jwara, who did not testify and whose allegations were denied by Sekwalo;
2. The evidence is not persuasive that Sekwalo violated the rights of John Sibisi;
3. The evidence supports the allegation of Norman Phiri.

¹Tr. 2183 (Sekwalo)

²Tr. 2162 (Sekwalo)

BOB SETHUN TSA

Bob Sethuntsa ("Bob") was a commissar at Quadro while the facility was being constructed in 1979. Sethuntsa returned to Quadro as a recording officer in 1987 and worked there until he and the inmates were transferred to Camp 32 in Uganda, where he continued as a recording officer. Sethuntsa currently works with the Department of Security and Intelligence at the ANC headquarters in Johannesburg.

Sethuntsa was born on April 2, 1961, in Johannesburg. Following the 1976 student uprisings in which he participated, Sethuntsa joined the ANC in Lesotho and was sent back into South Africa to mobilise students on behalf of the ANC. Sethuntsa left the country again in December 1977 as a result of police harassment, travelled to Zambia and received military training from the Zimbabwean Peoples Revolutionary Army. He received further military training in the German Democratic Republic and, upon his return in December 1978 was deployed at Fazenda as a commissar.

In September 1979, Sethuntsa was sent to Quadro as a commissar to teach politics to both the inmates and the staff that was constructing the new prison.

In 1980, Sethuntsa was transferred to Nampula, Mozambique, where he worked for two years in the Finance Department of the ANC. In 1983, Sethuntsa was instructed to infiltrate into South Africa, but his mission was intercepted and he was interned for eight months in Swaziland. He was deported to Tanzania and then deployed at the Dakawa settlement as a recording officer from 1984 to 1986. In 1986, Sethuntsa was returned to the GDR for further training in intelligence and counter-intelligence work.

In 1987, Sethuntsa was again deployed to Quadro as a recording officer where he remained until March 1989, when he went to Uganda to continue working as a recording officer at Camp 32 in Uganda. In 1989, Sethuntsa was again sent abroad to for specialized training in counter-intelligence work, after which he returned to Lusaka and Kampala and assisted in the preparation of the tribunals that were convened that year in Uganda. Sethuntsa returned to South Africa in 1990.

The charge sheets placed before the Commission allege that Bob Sethuntsa

- (1) arbitrarily arrested and detained, and tortured Percy Peterson (Angola 1988);
- (2) arbitrarily detained, falsely accused and tortured Jamiel Thombisa (Uganda 1989).

Sethuntsa denied the allegations. In his testimony before the Commission, Percy Peterson stated that, in fact, Sethuntsa did not assault him, but merely transported him to Nova Stella Sao. Sethuntsa stated that after delivering the prisoner, he had no further control over his conditions of confinement. It was Lawrence Sekwalo, he testified, who was responsible for food, water and other necessities at Nova Stella Sao.

Sethuntsa denied any role in the Thombisa investigation, which, he testified, was already completed by the time Thombisa was brought to Angola.

The Commission makes the following findings in respect of Bob Sethuntsa:

1. The evidence does not support the allegation that Sethuntsa assaulted Percy Peterson, or that he was responsible for his arrest, detention, or conditions of confinement;
2. The evidence does not support the allegation that Sethuntsa assaulted Jamiel Jacques Thombisa.

TIM WILLIAMS

Tim Williams grew up in Soweto and is presently 42 years old. He left the country in 1975 for Botswana. His mission was to obtain military training. He joined the ANC in Botswana and, from 1975 to 1976, he received military training in the Middle East. He was further trained in Angola. He received special training in counter-intelligence work in 1989.

Williams was deployed in Botswana until 1985 when his home was destroyed in the 14 June raid by the SADF. He was then deployed to Lusaka, where, because he was familiar with personnel on the front lines, he was assigned to work with the security investigations of incoming prospective members. He worked in this capacity until 1991 when he returned to South Africa.

Allegations were made against Tim Williams by Goodluck Mpungose, who testified that Williams participated in a torture session in Lusaka, wherein Mpungose was burned on the bottoms of his feet, beaten all over his body, and taken on a scare trip to a secluded farm.

An allegation was also made against Williams by Thabo Mohale, who testified before the Skweyiya Commission but did not appear before this Commission. Reference was made to this allegation during the examination of Williams.¹

Williams denied all the allegations. He submitted that there was no truth to the allegation he beat Mohale up in Lusaka.

As to Mpungose, Williams strenuously denied the allegation that he tortured the complainant. He did say that he, along with Floyd Huna, participated in his interrogation, and he implied that the investigators employed aggressive tactics because they wanted information about what Mpungose had told the South African police about two cadres who were within the country.²

Although Mr. Williams was glad to be afforded the opportunity to put his story before the Commission, like most of the security officers who testified, he disparaged the motives of those who made allegations against the Department. He told the Commission:

"I am personally happy that I have this opportunity to speak because. . . it is four years now that allegations have been made against us, and we have been unable to answer to these allegations. . .

"[These allegations are being made] by people who are unrepentant, who are enemy agents, because. . . from all the lot of people that we have been working with. . . a number . . . are repentant, are in schools, they are not

¹Tr. 2267 (Williams)

²See discussion at p. 95 above.

*back yet, . . . people I think who would have given evidence contrary to these allegations that are made by these few.*¹

The Commission makes the following findings regarding Tim Williams:

1. The evidence supports the allegation of Goodluck Mpungose;²
2. There is no probative evidence upon which the Commission could base a finding as to the allegation of Thabo Mohale, who did not testify and whose allegation was denied by Tim Williams.

¹Tr. 2269-70 (Williams)

²See discussion at p. 132 above

MISSING PERSONS

Many of the witnesses who testified before the Commission gave evidence which clearly confirmed that quite a number of detainees disappeared or died at ANC camps between 1976 and 1990 either as a result of torture, execution, suicide, malaria, inadequate medical attention, ambushes by UNITA soldiers in Angola, desertion or due to unnatural causes.

In an attempt to secure complete and reliable information in this regard, the Commission made extensive reference to a large number of documents and reports in addition to the evidence obtained from the witnesses. The principal sources of reference were the reports of The Amnesty International, December 1992, The Douglas Commission, 1993, UNHCR reports on the persons who have not returned from exile and the lists submitted to the Commission by top security officials of the ANC.

The Commission also undertook a visit to Tanzania in an endeavour to follow up on specific cases of individuals who are alleged to have disappeared there in 1991.

Evidence by Witnesses

Reports on the missing persons were presented to the Commission by the witnesses during the hearings, and further evidence in this regard was later furnished through a sworn affidavit by Mountain Kepadise, a member of the Intelligence and Security Department of the ANC. The Commission had requested the ANC to provide a comprehensive list of its former detainees who had either died or disappeared whilst in exile.

The following persons that reported to have died or disappeared at ANC camps and places of detention.

1. **Abrahams, John : Codename "Gaika"**
This person, suspected of being an enemy agent, was detained at Quadro in 1979. In 1982 he, together with two other detainees are alleged to have attempted to escape from detention and it was at this time that he drowned at Donge River in Angola.

2. **Mangena, Phillip : Codename "Drake Chiloane"**
This person was originally at Fazenda Camp. He and two of his colleagues, Edwin and Solly, decided to resign from the ANC and went to Luanda where they were captured and sent to Quadro as its first detainees in 1979. Subsequently his two friends were released but nobody knows exactly what happened to Drake. In his written submission, Mountain Kepadise, a senior officer in the ANC Security and Intelligence Department, does not clearly indicate what happened to Phillip Mangena apart from pointing out that he was an agent of the South African Security Police since the early 1970s, and that he regularly passed on strategic information about the ANC camps to the enemy.

Apparently he must have been executed, as Kepadise ends his submission by merely stating : "Authorization: Tribunal: Time and place: 1981 Angola". What the authorisation was for, is unclear.

3. Dumela, David:

David Dumela was arrested by the ANC in 1977 and detained in the Angolan Prison Nova Instalacao. He was sent to Quadro in 1979 from where he was subsequently released. Following his release he served as a prison warden for some time at Quadro - but was rearrested after an effort to escape from Quadro with two other prisoners, Meshack Gaika and Escom Maluleka. According to the evidence presented to the Commission by the ANC Security: "a National People's tribunal found David Dumela guilty of having assisted two inmates to escape, and for having been responsible for the death of Meshack Gaika". This statement does not specify what happened to David Dumela after being found guilty, but ends by stating "time and place : 1982. Angola".

In the light of the above statement, the Commission assumes that David Dumela was executed.

4. Madakeni, Leon

The Commission heard evidence that Madakeni was arrested for rape in 1980 and then sent to Quadro - where he was later released. In 1984 he was again charged for a similar serious crime which necessitated his return to Quadro. In order to avoid being sent back to Quadro he decided to commit suicide by throwing himself under a moving tractor, at a farm in eastern Angola. This evidence is corroborated by the ANC Security Department's submission.

5. Errol (Bra Vido)

Errol (also known as Bra Vido) was at Quadro in 1986, when he developed an illness. His body swelled and he became anaemic. He was removed from prison but, but he never returned and has since not been heard from. The ANC Security has not provided information on this person. Errol is suspected by the witnesses to have died of scurvy and due to inadequate medical attention.

6. Oupa Moloi

This person was an MK officer by virtue of being a political instructor and a member of the Commissariat at Hoji Yahende in the Milange Province in Angola. Evidence presented to the Commission by witnesses indicates that Oupa Moloi was beaten to death for drinking "Kaprota" (a locally brewed beer) and exchanging meat for canned food in the village near the camp; and further that the camp commander Thami Zulu had explained that Oupa Moloi's death was due to "shock".

The ANC Security made a submission to the effect that Oupa Moloi was "beaten by his trainees for being a demagogue who was involved in illicit dagga dealings, and stealing of goats from the local people". Although the camp authorities came to his rescue, he died the following day. The ANC

Security submission further states that a commission found the culprits guilty of taking the law into their hands. The culprits were sentenced to long periods of hard labour.

7. Ndunga : Codename "Mahlatini Joel"

Two divergent versions of evidence were presented to the Commission about this person. One witness said that he had jumped from a moving vehicle in Luanda and died, but the ANC Security Officers' submission alleges that Mahlatini, while at Pango Camp, was discovered to be involved in "illicit dagga dealings". The Camp Commander, then Kenneth Mahamba, ordered and commanded a camp unit to beat him. Thereafter the Camp Commander authorised his detention at Camp 32, i.e. Quadro, but he was certified dead on arrival.

The ANC Regional Command subsequently instituted an investigation into the death of Mahlatini which "revealed Mahamba as a strong suspect, and thus leading to his detention at Camp 32".

This incident took place in 1981.

8. Labello Boithlemo Derrick : Codename "Mayekiso Vusi"

The witnesses who testified before the Commission allege that Mayekiso was killed by camp warders in 1981 because he was cheeky or obstinate; while the ANC Security submission on the other hand alleges that he was implicated in the food poisoning for "the whole camp personnel at Nova Catengue; in stealing ammunition and grenades for usage by UNITA to kill ANC cadres; sabotaged a transportation fleet in Angola and vilified Camp administration and national leadership". Apparently this person was executed, as the ANC Security submission merely states - "Authorization, Tribunal; time and place 1981 Angola".

9. Seremane Kgositsile Timothy : Codenamed "Kenneth Mahamba"

Kenneth Mahamba was a camp commander at Pango. Witnesses appearing before the Commission alleged that he was arrested there and then sent to Quadro for detention, where he was killed in 1981. None of the witnesses appear to have known the reasons for his death.

The ANC Security Department's submission, however, alleges that Mahamba "became a fully-fledged member of the SA Security Police in 1976". In that capacity he passed on strategic information on ANC camps and residences to "the SA Secret Services, which led to the bombardment and destruction of Catengue Camp in 1979."

Further he is alleged to have sabotaged a Land Rover and an ambulance belonging to the ANC resulting in deaths that could have been avoided; and also of stealing arms from Quibaxe : Fazenda and Catengue camps and supplying these to UNITA soldiers.

Apparently this person was executed since the ANC Security submission merely states "Authorization: Tribunal: Time and date 1981 Angola".

10. Maphikela

Maphikela was an inmate of Quadro around 1985, or 1986. Witnesses testified about rumours relating to his death at Quadro but no authentic information was available to the Commission concerning the circumstances of his detention that ultimately led to his death at Quadro.

The ANC Security Department's submission made no reference to this individual.

11. Minus

Evidence presented to the Commission about Minus suggests that this person might have been murdered and then thrown under a bus to give the impression that he was run over. This incident could have happened between 1990 and 1991 along the Great East Road in Lusaka. Minus was then working in the ANC Ordinance Department as a courier. In that capacity he travelled widely in the frontline states, and was not always searched. The witnesses told the Commission that they suspected that Minus had confidential information regarding the secret smuggling of weaponry to Renamo and diamonds from certain people in the ANC. Thus when it became evident that these secret deals might be exposed, a decision was taken to "do away with him". The witnesses argued strongly that Minus could not have been run over by a bus at the particular place where his body was found, because in most instances he was himself driving a car.

The suspicion of murder is strengthened by the ANC Security Department's submission that "his body was found with private parts missing".

The Commission has no evidence whether the ANC or the Zambian Police ever made a thorough investigation of the circumstances surrounding the incident after it had occurred.

12. Pule, Jimmy : Codenamed "Patrick Marks"

According to the evidence presented to the Commission, Patrick Marks was born in Cape Town where he matriculated from the Livingstone High School. He later came to Johannesburg and subsequently joined the ANC in Botswana. He proceeded to Lusaka and finally ended up in a camp at Quibaxe in Angola. While in Angola in 1978, Patrick got involved in a case of desertion by one cadre from an ANC camp. This particular escapee, whose name the witnesses could not remember, was found in possession of a gun which he claimed was given to him by Patrick Marks. Patrick was as a result arrested and detained at Quadro.

A witness told the Commission that according to information obtained in 1987 from an ex-detainee of Quadro named Duncan Mahlo, Patrick Marks had been killed by a certain Donald, presumably a guard at Quadro. Patrick Marks could have had a different pseudonym at Quadro. The same Donald

who killed Patrick was himself shot dead in Lusaka in 1990 whilst attempting an armed robbery on a senior member of the ANC

According to the ANC Security Department's submission to the Commission, Patrick Marks (Jimmy Pule) involved himself "in activities which threatened the security of other cadres. He assisted Victor a notorious Askari, to desert the movement whilst in Angola and also armed him with a weapon to shoot anybody who tried to apprehend him".

He was first detained in an Angolan prison as a suspect but transferred later to Camp 32 (Quadro) after an unsuccessful attempt to escape. Patrick was attacked by fits which resulted in him hitting his head on the ground and thus sustaining serious injuries. He died due to lack of medical attention.

13. Ephraim Nkondo : Codenamed "Zaba Maledza"

Ephraim Nkondo (Zaba Maledza) was detained at Quadro following the 1984 mutiny by Umkhonto we Sizwe (MK) cadres at the Viana camp in Angola. He committed suicide whilst at Quadro in May 1984. One witness expressed concern about the possibility of how Ephraim gained access to a rope, to hang himself under such strict surveillance as prevailed at Quadro. The ANC Security Department's submission, however, explains that "he committed suicide by hanging himself with a strap of a blanket".

14. Selby Ngele

Selby Ngele was one of the MK mutineers who died in detention in 1984 at the Angolan Central prison in Luanda called Nova Stella Sao. According to the evidence presented to the Commission by witnesses, this person died due to lack of food and sunshine which resulted in anaemia or scurvy. All prisoners in this Angolan prison were apparently grossly underfed and malnourished.

The ANC Security Department's submission confirms the death, but attributes it to malaria.

15. Nkutha Khehla : Codenamed : William Mngangwe

After joining the ANC in 1976, the Commission was told by Bafana Nkutha that his brother Khehla Nkutha, left the country. The family never made contact with him. In 1990, following the unbanning of the ANC and the return of exiles, Bafana Nkutha made repeated visits to the ANC Head Office at Khotso House to enquire about the whereabouts of his elder brother Khehla.

These visits proved fruitless as nobody appeared to know exactly what happened to Khehla. At one stage Bafana was given his brother's MK codename as given above. He was also informed that Khehla could have possibly died during one of the MK infiltration missions into South Africa during 1977, but the exact place of his death and burial could not be clearly identified in or near Swaziland.

The ANC Security Department's submission to the Commission confirms that Khehla Nkutha was brutally killed by members of the South African Secret Services in Swaziland and was buried in a shallow grave in the Eastern Transvaal in 1977.

The search to identify the grave of Khehla is being pursued by the family.

16. Paul:

The Commission was told by one witness that a person by the name of Paul whom he knew well had allegedly been killed at Mazimbu by Stalin, and two other ANC Security officers who were subsequently sentenced to five years' gaol term by the Tanzanian Government. The circumstances and reasons surrounding the death or detention of this person were not explained to the Commission. Further, no reference is made to this case in the ANC Security Department's submission to the Commission.

17. Piper:

Piper, according to the scant evidence given to the Commission, came from Zambia before he landed in Quadro. He disappeared there, and was never heard from nor seen again. A witness told the Commission that he had heard of Piper's arrest as an enemy agent.

No reference is made to this person in the ANC Security Department's submission to the Commission.

18. Pieterse, Phil : Codenamed Otto

Evidence presented to the Commission by witnesses on Otto is limited to his detention and illness while at Quadro. Otto is alleged to have suffered from anaemia which displayed symptoms like the swelling of his body and difficulty in walking and maintaining balance. He was also attacked by malaria. All these, coupled with inadequate medical care led to his death at Quadro in 1987. The ANC Security Department's submission stated that Otto was detained at Camp 32 because of his enemy activities, but there is no specific mention of what happened to him.

19. Ntobeka Mbukane : Codename Bhengu Similo

The evidence presented to the Commission about this person, is largely confined to the circumstances surrounding his death, together with another MK cadre called Tsatsane Amos at the Nova Catengue camp in 1979. Similo Chief of Staff and his friend, a senior officer are alleged to have transgressed the camp rules by visiting a nearby village where they apparently indulged in heavy drinking with the result that they lost their weapons. For contravening camp rules in this way they were both confined or detained to the barracks. During this period of partial detention, Similo and his friend Tsatsane accompanied a guard to the village; they took his gun and did not return with the guard to the camp until they were later fetched by their comrades. Upon arrival at the camp they were locked up in a room, beaten until they lost consciousness and died.

The ANC Security Department's submission corroborates the death of the two comrades, and suggests that disciplinary action was taken against Mompoti Mthembu, the Camp Authority, for ordering a camp unit to beat Similo and Tsatsane Amos. He was accused of having misused his authority which is contrary to the ANC policy.

20. Nhlapo Kenneth : Codename Solly Sibeko

Solly, described by some witnesses as a mentally disturbed MK member who was sometimes critical of the ANC leadership, was locked up in a metal container at the time of the Viana Mutiny in 1984, this resulting in his death. Some witnesses informed the Commission that after Solly's death, probably through suffocation in the metal container, he was shot through the head to give the impression that he died of causes other than from suffocation.

The ANC Security Department's submission corroborates the evidence of the witnesses that Solly died in a metal container where he was locked up, but explains further that due to the mutiny, "access to the area of detention became impossible especially with sporadic shootings at night". The submission goes on to state that the post mortem results "indicated that he (Solly) died from epileptic fits".

21. Peterson, Joseph : Codename : Sam Sireledi

According to the evidence presented to the Commission by certain witnesses, Sam Sereledi was detained at Quadro in 1981 and has since not been heard from nor seen again. The circumstances of his disappearance at Quadro could not be clearly established from the witnesses. The ANC Security Department's submission to the Commission, puts forward the allegations that :

- (i) Sereledi was a trained SAP member at the Bishop Lavis Police Training College in Cape Town.
- (ii) He was incorporated into the Security branch in 1974 as a Senior Staff Sergeant.
- (iii) He took part in the killing of freedom fighters in Mozambique and then Rhodesia.
- (iv) In 1976 he violently suppressed the students' riots in Cape Town.
- (v) He joined the ANC in 1976 for the purpose of espionage in collusion with the now notorious Askari Thabo Maxuyo or Peter Mogoai.
- (vii) He was fraternising with Jane Bergerol, agent of Western Secret Services bent on destabilizing the ANC's host countries."

The submission does not clearly indicate what happened to Sereledi, besides mentioning only "authorization : Tribunal; Time and place 1984 Angola".

It appears quite clearly that Sereledi was executed.

22. Shange, Wiseman

According to the text presented to the Commission, Wiseman Shange was from Natal. He and his son Baba joined the ANC and Wiseman ended up in Quadro. The reason and circumstances surrounding his incarceration were not made clear to the Commission by the witnesses nor by the submission presented to it by the ANC Security Department.

One witness who had met Baba in Natal during 1992, before he was killed by the police, told the Commission that his father, Wiseman Shange, had died at Quadro but could not explain exactly what happened to him and why he was arrested. The ANC Security Department's submission gives a different story, that Wiseman committed suicide in 1988 by shooting himself with an AXE 47 while at Pango Camp.

23. Ben Tibane:

The Commission heard evidence that Ben Tibane was a young man who was arrested in 1984 after the Viana Mutiny by MK cadres, and locked up with some of his colleagues at the Angolan State Security Prison called Nova Instalacao in Luanda. He died there a few months later understandably due to anaemia and malnutrition arising from a severe shortage of food in the prison.

24. Tsakane Phillip Hlungwane : Codename Makerere James

Evidence presented to the Commission indicates that Makerere was arrested in 1981 and sent to Quadro. The reasons and circumstances surrounding his arrest were not known to the witnesses.

In its submission to the Commission, the ANC Security explains that "Makerere was a camp commissar at Funda Camp in Angola until mid-1981. He was implicated in a daring plot to violently overthrow the ANC leadership. He was removed from this position, arrested and sent to Camp 32. He contracted Malaria and was given the necessary treatment, but he died two days after admission to Quadro".

The sudden death of this individual upon arrival at Quadro, raises some serious doubts and the Commission has strong reservations regarding the authenticity of the ANC Security Department's submission insofar as this case is concerned; because the truth of this evidence was not tested during the hearings. The family in Alexandra has not been informed about Makerere's death, the Commission was told.

25. Thabo Twala:

The evidence heard by the Commission identifies Thabo Twala as an ANC prisoner who was detained at a Zambian prison called Sun City in Lusaka. It happened one night when he went to the toilet that he managed to wrench the keys of the prison from the warder and, after locking up the warder in a cell, he opened all the 14 cells of the prison. The prisoners got out and demanded

to see the ANC leadership. Thabo was perceived to be playing a leading role in a protest against the authority of the Security Department of the ANC. After reinforcements arrived, the protest was quelled and the prisoners locked into their cells.

At that time, the Commission was told, "the beatings began and went on throughout the night". Among the guards who assaulted the prisoners were young people including Gift and Willie whom one witness remembers distinctly. Thabo Twala was beaten to death that night. Git and Willie were subsequently arrested by the Zambian Police and charged with murder, but a third guard, Siphon Kumalo, escaped to Malawi. This incident occurred in 1989.

26. Martin Jebe : Codename : Anthony Xaba

Mr Sakkie Isaac Jebe testified to the Commission that his brother Xolo Martin Jebe codenamed Anthony Xaba, had joined the ANC in 1979, while they were both living in exile in Lesotho. Since that time he has not had any contact with his brother.

After the unbanning of the ANC in 1990, Sakkie Jebe made repeated fruitless visits to Shell House in an effort to investigate the whereabouts of his brother, Martin Jebe. Sakkie Jebe further testified that a certain Ngalise who had returned to the country from exile had informed him that his brother had been arrested sometime in the early 1980's, in Angola, and the late Mr Chris Hani would have known more about this incident.

On another occasion Sakkie Jebe met a certain Mr Timothy Mokoena at Shell House, who informed him that his brother, Martin Jebe, had died in action in 1984, but was surprised that this information had not been conveyed to the family until 1991.

Only in October 1992 did two people from the ANC office come to report to the family that Martin Jebe had died in combat in the Northern Transvaal. They said Martin had been buried somewhere in the Soutpansberg, but the family is not aware of the exact location of the place of burial. The matter was left in the hands of the ANC to provide more information pertaining to the circumstances of Martin's death and his place of burial.

27. Hlophe, Joseph Arsenias : Codename Jabu Zikalala

Testimony given to the Commission by witnesses about Jaba Zikalala indicates that he made an attempt at committing suicide while at Quadro by swallowing pieces of broken and pulverized bottles : he was subsequently taken to hospital in Luanda and after his recovery Zikalala was returned to Quadro where he allegedly disappeared.

A submission presented to the Commission by the ANC Security Department describes Jabu Zikalala as a former prisoner at Leeukop Prison who served a 9 to 15 year term for murder and robbery. He joined the SA Police in 1970 before completing his sentence, then later joined the ANC in Swaziland in

1975 with the sole intention of indulging in espionage. He is alleged to have given the enemy detailed information which led to the bombardment of Nova Catengue Camp as well as topographical sketches of the ANC Camps, beginning from 1977.

28. Esau

This person Esau was reported as missing by one witness. Since he went to Quadro in 1981 or 1982 he has never been seen again nor heard from. Esau came from Natal. The Commission was unable to obtain any further information about this individual.

29. Jewel

A submission from one witness made reference to a young man by the name of Jewel who was allegedly beaten to death by Security officers of the ANC at Mazimbu. The responsible perpetrators, Stalin, Lancaster and Vusi, were subsequently arrested by the Tanzanian Government and charged with murder and sentenced. This incident occurred at the beginning of 1986.

30. Reggie
Was a member of a group of 14 detainees at Quibaxe in 1982 who was beaten to death on orders of the Commander. The reasons for this death were that he indulged in excessive drinking of gin and beer.
31. Alic Molebatsi
Was killed in north Angola, possibly Quibaxe, accused of smoking dagga in 1981.
32. Ralph (Fear or Cyril)
Was Thami Zulu's deputy and died at the hands of the ANC Security officers in 1989 at RC House in Lusaka. He is alleged to have choked on his own vomit.

VISIT TO TANZANIA - JUNE 12 - 16, 1993

1. INTRODUCTION

Members of the Commission travelled to Tanzania in order to conduct *in loco* inspections of former ANC settlements and a refugee camp run under the auspices of the United Nations High Commission for Refugees (UNHCR). They left Johannesburg on June 12 for Dar es Salaam and proceeded from Dar es Salaam on the same day to Morogoro where they spent the night.

On June 13, 1993, the Commission visited two ANC former settlements in the Morogoro region, one at Mazimbu and the other at Dakawa. On the next day, June 14, the Commissioners travelled by air from Dar es Salaam to the town of Tabora and from Tabora by road to Kigwa which is in the Tabora region of Tanzania.

During all these inspection visits, the Commission was accompanied by the ANC Chief Representative to Tanzania, Mr Henry Chiliza, his deputy Ms Natso Khumalo, a representative of the Tanzanian Prime Minister's Office (PMO) Mr Alex Francis, and his assistant, Mr Isaac Elly. Matters affecting liberation movements in Tanzania are the responsibility of the PMO.

2. THE MAZIMBU SETTLEMENT

Under the ANC, the Mazimbu Settlement was also called the Solomon Mahlangu Freedom College (SOMAFCO) after one of the ANC freedom cadres who was captured and executed in South Africa in 1979. The settlement and all its facilities were handed over to the Tanzanian Government by Chairman Oliver Tambo on behalf of the ANC on 9th July, 1992. The Tanzanian Government has now put the facilities to use as the Mazimbu Campus of the Sokoine University.

The Commission was met, introduced and taken around by the Acting Director of the Campus, Dr Fungo Ali Fungo with whom the Commission held lengthy discussions.

The ANC built the Mazimbu campus and operated the facilities from 1978 to 1992. The land on which the Mazimbu campus was built was given to the ANC by the Tanzanian government in 1978, and construction of the first dormitories, Block 1, commenced in 1979. The purpose of Mazimbu was to act as a transit camp and as a training camp for young men and women who fled South Africa in the wake of the Soweto uprising of 1976, but wanted to pursue academic training. Those who wanted to pursue military training went to camps in Angola. At first, the ANC rented houses in the town of Morogoro to accommodate the men and women who wished to further their education. Gradually, as the Mazimbu campus was built, it was there that the ANC's Department of Personnel would determine who would pursue primary and secondary education at Mazimbu and who would be sent abroad for higher education. The academic training at Mazimbu included studies up to the O Level. At the height of its operations, there were approximately 3,000 to 4,000 students at Mazimbu.

In addition to the educational facilities at Mazimbu, there were also agricultural facilities and industrial facilities. There were 450 hectares under cultivation for food crops, 100 hectares for grazing, a piggery, poultry and dairy production, a furniture factory, mechanical workshops and construction facilities. There was also a clinic.

The Commission was highly impressed by the beauty, cleanliness, technologically advanced and well organized nature of the facilities at Mazimbu.

The Commission also visited the cemetery where ANC members were buried. Construction of the cemetery complex is not yet complete but most of the graves are well protected under smart stone tombs. The Commission recommends that construction work be completed quickly, that all the graves be properly named and numbered and that regular maintenance arrangements be put in place in consultation with the Government of Tanzania.

Three months after its handing over to the Tanzanian Government, Mazimbu was directly utilized to house first year students of the Sekoine University and to accommodate academic and administrative staff. The main emphasis of this campus is in agriculture. There are approximately 300 students at the Campus (out of a total Sokoine student population of 700). The Mazimbu farm, where the ANC used to grow food crops is now run by the Tanzanian Ministry of Agriculture.

From what it saw, heard and observed, the Commission is completely satisfied that there is no one being detained or otherwise being kept at Mazimbu by the ANC and that since July 1992, the ANC ceased to exercise any control or authority over Mazimbu.

3. THE DAKAWA SETTLEMENT

The Commission was received at Dakawa by the director of the Dakawa Development Centre, Dr. Goodwin M. Mgendi. The Dakawa settlement is also now in the hands of the Tanzanian Government, having been turned over by President Tambo to the President of Tanzania on July 9, 1992. Dr. Mgendi was sent to Dakawa to assume control and responsibility for the facility in March 1993, after having been the regional development director in the Mara Region since 1985.

The facilities are now occupied by approximately 45 staff members who are predominantly Tanzanian and who are in charge of the high school, vocational training section, and the farm. In addition, there are approximately 33 national service members. The Dakawa facilities are being developed further to be used for agricultural, educational, vocational and administrative training.

Dakawa was given to the ANC by the Tanzanian government in 1982 at a time when Mazimbu could no longer accommodate all the people who were arriving from South Africa. The ANC built Dakawa from the ground, like Mazimbu, and began sending new arrivals to Dakawa for evaluation and classification. It was there that new recruits were assessed by teachers and placed into the appropriate educational level. Dakawa was also used for orientation of new arrivals and was therefore considered an orientation centre. The Commission was highly impressed by the facilities there.

The Commission visited the cemetery at Dakawa, which is not completed, and recommends that the ANC make a priority of completing the cemetery and provide caretaking for it regularly.

Although there is no longer any member of the ANC or any former member of the ANC occupying the Dakawa Development Centre, there are a handful of former ANC residents in the vicinity of Dakawa who have remained in the Morogoro region, either due to marriage or economic opportunities. The Commission was informed that there were four families of South Africans who had decided to remain in Morogoro region, and now live near Dakawa. One belonged to Mr Enoch Twala and another to Mr Matanzima. All four families are said to have arrived in Tanzania in the 1960's. There is also a young man, Mr Hod Huddleston, who is also known to have chosen to remain in Tanzania and is awaiting results of his application for citizenship of Tanzania.

Part of the Dakawa settlement is the Ruth First Centre, named after Ruth First, who was assassinated in 1983. The centre has three buildings, one used as an engine room for the electricity supply to the whole settlement and two as residential quarters. We were informed that Ruth First Centre was used to receive new arrivals to Dakawa.

Following its hand-over to the Tanzanian Government Dakawa, like Mazimbu, no longer accommodates any ANC members, former members or activities. The ANC has no authority any more in Dakawa.

4. THE KIGWA REFUGEE CAMP

The Commission was received at Kigwa by Mr. Francis Tupa, the commandant of the settlement and Mr. Brighton P. Kiobya, Co-ordinator for the Christian Council of Tanzania. Mr. Tupa is a civil servant with the Tanzanian Government and has been charged with running the refugee camp since July 1992. Prior to that he was the Tanzanian Government representative of that settlement at Mazimbu since December of 1986 as commandant.

The Kigwa Refugee Settlement was founded in 1972 and is funded 75% by the UNHCR. The Government of Tanzania administers the settlement. The Christian Council of Tanzania (CCT) has been chosen by the UNHCR to run the projects at Kigwa and, thus, contributes the remaining 25% of the budget. That budget is spent on the construction of roads and homes, food and clothing. From 1972 to 1979, the settlement served only Ugandan refugees. From 1979, however, Kigwa began to receive refugees from Burundi and Zaire. Then, in 1982, ANC and PAC members began to arrive at Kigwa.

Kigwa is strictly a refugee camp and any person from a liberation movement who wishes to stay at Kigwa is required to resign his/her membership of the liberation movement first. People who arrive at Kigwa have already been determined to be refugees. The eligibility determination is made in Tabora or Dar es Salaam by a joint review committee composed of representatives from the UNHCR and the

Tanzanian Government. The settlement at Kigwa does not keep track of refugees' previous associations, and thus there is no record that would indicate the names of all former ANC members who were ever settled at Kigwa. However, through talking to some officials and residents there, we were given some information.

At present, there are 493 people settled at Kigwa, including men, women and children. Only 15 of these are South Africans and we ascertained from some of them that all of them are former members of the Pan African congress (PAC). There are no members or former members of the ANC at Kigwa. The last two former members that left Kigwa were Thabo Ntze (who arrived at Kigwa December 7, 1992 and departed May 21, 1993) and Nceba Jongisizwa (arrived at Kigwa December 25, 1992 and departed May 21, 1993). These two men left for the UNHCR office in Dar es Salaam on May 21, 1993, and were given money and food and directions to hook up with the UNHCR for repatriation to South Africa. There is also one other former ANC member whose name the Commission was able to ascertain, one Siabulelo Campoi from Cape Town. Campoi died of meningitis at the Kitete Hospital near Kigwa on November 26, 1992. His body was flown back to South Africa by the ANC in December 1992 for proper burial. Somehow, the family requested the ANC to assist notwithstanding that Mr Campoi had resigned his membership of the ANC.

The Commission is satisfied that the Kigwa settlement is and has always been a refugee camp run under the joint auspices of the Government of Tanzania and the UNHCR. The ANC of South Africa has never had any authority over the settlement, nor any use of it. Indeed, this visit by the Commission was the first time that the ANC Chief Representative to Tanzania had been to Kigwa.

(a) Other Observations

Since Mr Tupa was formerly commandant of Mazimbu, the Commission took the opportunity of its discussions with him at Kigwa to raise some matters about Mazimbu.

- a) He described the relationship of the commandant and the ANC at Mazimbu as that of the liaison person between the ANC and the Tanzanian Government whose duties included ensuring that peace and order were maintained.
- b) He had a detention facility in which were held persons who infringed the laws of Tanzania pending their processing by the police.
- c) The ANC also had its own detention facility where people who breached disciplinary rules of the ANC at the settlement were kept.
- d) His memory of the Tombisa case was not clear although he handled it and confirmed that the post mortem on Savage put the cause of death down to a ruptured spleen - consistent with beating.¹

¹ See pp. 128 below

- e) He remembered that during his time at Mazimbu, some ANC members there had been arrested, tried and three of them are still serving sentences either at Morogoro or other State prisons.

5. MEETINGS WITH REPRESENTATIVES OF THE TANZANIAN GOVERNMENT, THE UNHCR AND THE ANC

On 15 June 1993, the Commission met separately with representatives of the Tanzanian Government, Office of the Prime Minister, and with the representative of the UNHCR in Dar es Salaam. The Commission was accompanied at these meetings by Henry Chiliza. The Commission then met with Mr Chiliza separately.

6. MEETING WITH THE PRIME MINISTER'S OFFICE (PMO)

On June 15, 1993, the Commission held discussions with Mr Wilfred Kaihula (head) and Mr Alex Francis (deputy head) of the Department of Refugees in the PMO. This department is in charge of liberation movements while refugees generally are dealt with by the Ministry of Home Affairs.

During these discussions, the Commission was advised that -

- a) Tanzania gave the liberation of Africa a very high priority in its foreign policy and therefore treated members of liberation movements as freedom fighters and not refugees. They were given their own camps separate from refugees and not supplied with assistance from UNHCR.
- b) Mazimbu and Dakawa settlements represented Tanzania's effort to accommodate large numbers of South African exiles, particularly after the Soweto Uprisings of 1976 - and through these settlements humanitarian assistance to the exiles was channelled by Tanzania in order to meet the needs of mothers, babies, children and adults from South Africa who were shunned by the UNHCR and other international aid groups because they were affiliated to the ANC, a liberation movement.
- c) The Tanzanian Government did not run or manage Mazimbu and Dakawa. It let the ANC do so subject to the maintenance of law and order through the settlement commandant.
- d) Only persons who were not affiliated to a liberation movement were admitted to Kigwa.
- e) After the hand-over of Dakawa and Mazimbu to the people of Tanzania in July 1992, the ANC was left with no more structures in Tanzania other than the office of the Chief Representative.

7. MEETING WITH THE UNHCR

Mr Kolude O. Doherty, the UNHCR resident Representative in Tanzania, gave the Commission an audience in his Dar es Salaam offices. He explained that official relationships between the UNHCR and the ANC only started after the ANC was unbanned and once again allowed to operate legally in South Africa in the 1990's. The UNHCR was given the specific responsibility of repatriating South Africans who desired to return home from exile. Repatriation began with the exile applying to the UNHCR, followed by clearance by the South African Government to ensure that only those who do not have pending criminal charges in South Africa would be returned to South Africa. Once cleared, the exile would be brought to Dar es Salaam and thence transported to South Africa.

At the end of March, 1993, 3,647 persons had registered for repatriation to South Africa and had been deemed eligible South African refugees. Of these, 2,747 had already departed, 564 persons had been cleared for departure but had not yet departed and 336 were awaiting clearance. In addition to these 3,647 persons, 231 students in Tanzania will be repatriated after they have completed their studies in colleges and other training institutes. It is anticipated that all these students will be back in South Africa by 1996.

The Commission is grateful to the UNHCR for its assistance in repatriating many South Africans. A list of all South Africans repatriated by the UNHCR has been made available to the Commission.

8. MEETING WITH CHIEF REPRESENTATIVE HENRY CHILIZA

The Commission also met with the Chief Representative of the ANC in Tanzania, Mr. Henry Chiliza. Mr. Chiliza became the Chief Representative in September, 1991, but has been in Tanzania since 1988.

Mr Chiliza stated to the Commission that no ANC or former ANC members are in detention in Tanzania, except those individuals incarcerated by the Tanzanian Government under State laws. Mr. Chiliza also stated that no one is being detained by the ANC in Tanzania. The Commission was satisfied by Mr. Chiliza's statements which were consistent with other information received by the Commission.

Mr Chiliza recalled several instances where ANC members were arrested by Tanzanian police. In 1985-1986, a young cadre by the code name Jewel was killed. Three ANC members, Vusi, Stalin and Lancaster, were arrested by the Tanzanian Government and served prison sentences. They were released in 1989. Mr. Chiliza recalls that another ANC member, Chippendale, was also incarcerated by the Tanzanians. In addition, Mr. Chiliza confirmed that three ANC members are presently in Tanzanian prisons either awaiting trial or serving a prison sentence. Mr. Chiliza received reports about such cases as they were proceeding.

Mr. Chiliza was also of assistance to the Commission with respect to certain persons whose whereabouts have been questioned : Justice Gumbi, Albert Bhengu, Terror

Wonder, Schaft Lwane Khoza and George Kitseng. Mr. Chiliza indicated that these five men had been questioned about the stabbing of one Martin, and that Gumbi and Kitseng have been repatriated officially by the UNHCR to South Africa. Another detainee, Terror Wonder, has gone to Lusaka. Mr. Chiliza, however, was not familiar with the other two cases.

One final area that Mr. Chiliza shed some light on concerned the status of former Quadro detainees at Dakawa. Mr. Chiliza indicated that a decision was made at headquarters in Lusaka that detainees from Quadro would be placed under probation at Dakawa upon their release and would be allowed to hold any political positions. Chris Hani came to Dakawa on an official visit following that decision and informed the former detainees that they could hold political posts but not leadership positions. Following that visit by Hani, some of the former detainees decided to leave Dakawa and ask for protection from UNHCR in Dar es Salaam.

The Commission returned to Johannesburg via Harare on 16 June 1993.

RECOMMENDATIONS

The Commission undertook its work on the basis that its mandate was not a general audit report on the overall performance of the ANC while it was in exile, but that it was to advise on specific and limited areas concerned with allegations of human rights abuses as set out in the Terms of Reference.

An attempt has been made in the earlier sections of this Report to examine all the Terms of Reference thoroughly and, consistent with the available evidence, arrive at certain findings in respect of each of the Terms of Reference.

The following summary of the recommendations of the Commission are based on those findings.

1. Regarding allegations of cruel and inhuman acts towards prisoners and detainees and/or abuses of these people's human rights, the Commission found that the great majority of the complainants were treated in a cruel and inhuman manner while in detention or prison.

The fact that, in some of the cases, detention was warranted, did not justify the treatment meted out to the detainees/prisoners.

Accordingly the Commission recommends that the ANC should issue an apology to each victim of cruel and inhuman acts.

2. The ANC's Code of Conduct was breached in many respects but more particularly in relation to maintenance of principles of legality (Section B.2), to methods of investigation (Section C.5), and to general legal procedures (Section E.2). It is recommended that the NEC takes all necessary steps to ensure that the Code of Conduct is known, respected and implemented by all organs of the ANC.
3. It is further recommended that the information procedures of the NEC up-down and down-up be reviewed with the view to speeding up its capacity to intervene, especially where human rights are threatened.
4. It is further recommended that the persons who violated the Code of Conduct should be disciplined in accordance with the Code of Conduct itself having regard to the peculiarity and extent of the violation in each case.
5. The Commission recommends that the ANC should establish a Claims Settlement Agency to:
 - (a) award compensation for human rights violations which occurred in the past, and that the findings of this Commission regarding certain victims be used - - without further hearings -- as a basis for compensating each such victim.

- (b) consider future claims on the same basis, namely, for detention without trial, unlawful solitary confinement, injury to the person, death, loss of personal property, etc.
- 6. It is recommended that consideration be given to assisting with their medical bills those victims who were seriously injured or whose health was seriously affected by the abuses.
- 7. Recognising that it will take many years before all the persons who are missing can be accounted for, it is recommended that the ANC publishes periodically a bulletin containing those persons whose cases have been determined and those still outstanding.
- 8. It is recommended that the ANC reconciles with, and reintegrates into its ranks, all victims of human rights abuses who are willing to continue working with the Organisation towards creating a better South Africa.
- 9. It is further recommended that the supervision of all organs of the ANC by the NEC be improved in order to increase greater accountability and avoid future incidents of serious violations of human rights on the part of any person who deals with the ANC, whether as friend or foe.
- 10. The Commission recommends that every person who at the material time was -
 - (a) the immediate superior of every perpetrator of violations as determined under recommendation 4 above, or
 - (b) the overall head of the organ to which such perpetrator belonged, be brought before the NEC to show cause why he/she should not be held indirectly responsible for the relevant violation and dealt with in accordance with the Code of Conduct.
- 11. Finally, it is recommended that in the interest of the principles of accountability and transparency to which it is committed, the ANC authorises that this Report be made public.

CONCLUSION

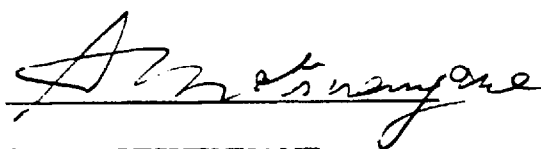
This Commission traversed much ground in its consideration of the matters placed before it by the Terms of Reference. It heard the painful stories of prisoners who suffered unbearably and for long years. It considered the grief of the mothers, comrades and lovers of those soldiers who have not yet - and may never - come home. It heard, too, the bitter voices of young men who were thrown into the wilderness and told to guard the enemies of their people - only now to be scolded for abiding by a code of brutality that nearly all deemed to be the order of the day. And it was made mindful that, in the South African context, where for decades an outlaw regime perfected instruments of personal violence in the service of repression, it is virtually impossible to separate human rights enforcement from *realpolitik*.

When the Commission was appointed, its members received the personal salutation of President Nelson Mandela, who stated that he and his colleagues viewed this enterprise as a necessary, if not entirely pleasant, phase in the life of the Organization and the country it endeavours to serve. If mistakes were made, the President asserted, it was now time to acknowledge and rectify them. It would be wrong to ignore the historic significance of the investigation the ANC, through this Commission, has undertaken - a first in the annals of human rights enforcement. By its commitment to this inquiry, the ANC seeks to breath life into the lofty principles proclaimed in the Freedom Charter - to render fundamental human rights the Golden Rule to be applied in good times and bad, peace times and war.

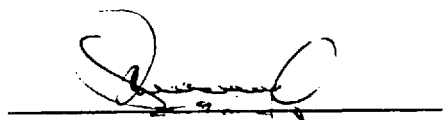
But the task the Organization has set for itself is now, with the completion of this Report, only half done. Indeed, the victims of the abuses catalogued here have now been heard, but, in the view of the Commission, they have not yet received the full measure of justice due them. The Organization must consider what further steps should be taken to close the book for these individuals. Perhaps as important, the horrific experiences of the victims here illustrate that, especially where human relations are strained by war, meaningful human rights enforcement requires constant vigilance, and an unyielding commitment to sanctions - no matter how worthy the cause for which one is fighting.

It was the privilege of this Commission to bear witness to the stories of men and women of extraordinary character and intelligence - people whose commitment to the cause of liberation, while sorely tested, has hardly waned. South Africa will be the richer for these partisans, the experiences and enthusiasm that they bring to the new day adawning.

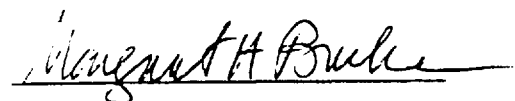
Thus done and signed this 20th day of August, 1993 at Johannesburg.

A handwritten signature in cursive script, appearing to read 'S.M. Motsuenyane', written over a horizontal line.

S.M. MOTSUENYANE

A handwritten signature in cursive script, appearing to read 'D.M. Zamchiya', written over a horizontal line.

D.M. ZAMCHIYA

A handwritten signature in cursive script, appearing to read 'Margaret H Burnham', written over a horizontal line.

M. BURNHAM

APPENDICES

1. **Terms of Reference**
2. **Witnesses who Appeared Before the Commission**
3. **Affidavits Received by the Commission**
4. **References**
5. **Missing Persons, ANC and Amnesty International (1993)**

AFRICAN NATIONAL CONGRESS

TERMS OF REFERENCE OF COMMISSION OF INQUIRY

WHEREAS:

The African National Congress (ANC) appointed a commission of inquiry into complaints by former ANC prisoners and detainees, which reported that prima facie evidence exists that certain members of the ANC had committed cruel and inhuman acts towards such prisoners and detainees and that some people are unaccounted for;

WHEREAS:

According to such evidence, certain named ANC members allegedly perpetrated such acts and certain others, having been in positions of authority, allegedly failed to do anything to stop the abuses when in a position to do so;

WHEREAS:

The persons who allegedly committed such abuses (or who allegedly failed to do anything to stop same) have not been afforded an opportunity to be heard, and for this reason, their identities have not been made public;

WHEREAS:

The ANC considers that in accordance with the recommendation of the Commission it is the responsibility of the ANC itself to take the necessary action against those persons in respect of whom allegations have been made and prima facie evidence exists, and to protect those against whom false allegations have been made;

AND WHEREAS:

It is necessary to account to our membership and to the public as soon as possible with maximum exposure, transparency and fairness to all concerned for what happened, and publicise all findings made after due process has been followed.

NOW THEREFORE, I, NELSON R. MANDELA, by virtue of powers vested in me by the constitution and practice of the ANC, hereby appoint:-

- a) Sam Motsuenyane
- b) David Zamchiya
- c) Margaret Burnham

Firstly to enquire in respect of each of the persons identified as aforesaid:

1. The truth or otherwise of such allegations,
2. The manner, if at all, in which the ANC's Code of Conduct was breached,
3. Whether such persons acted in any manner which brings the ANC into disrepute or in anyway whatsoever which justifies disciplinary action and;

Secondly, to enquire and report into the allegations that there are people who are unaccounted for, and investigate the circumstances under which they are alledged to have disappeared, and


Thirdly report to me personally on their findings and recommendation as to appropriate disciplinary or other action to be taken if any, including what publicity should be given to the findings and recommendations.

I direct that each such person(s) who appears before you on disciplinary charges shall have the right:-

- a) to be informed of the precise terms of the allegations against him/her
- b) to be represented by a person of his/her choice
- c) to cross examine witnesses
- d) to give evidence himself/herself, and
- e) to call witnesses to give evidence

The manner in which the allegations are to be put against such persons, the place(s) where and when are to sit, the manner in which the persons are to be summoned before you either as "accused persons" or as "witnesses" and all other procedural matters shall be at your discretion within the framework of the principles of natural justice and subject only to the limitation that the proceedings will be heard in camera.

THUS DONE AND SIGNED IN JOHANNESBURG THIS 12th DAY OF JANUARY 1993.


NELSON R. MANDELA
PRESIDENT

WITNESSES

The Commission heard the evidence of the following persons :

1. ABRAHAMS, HENRY JOSEPH
2. ASMAL, KADER
3. DYASOP, LUTHANDO NICHOLAS
4. HLONGWANE, MNCEDISI PATRICK
5. HUNA, FLOYD
6. JEBE, SAKKIE
7. JORDAN, PALLO
8. KASRILS, RONALD
9. KEPADISE, MOUNTAIN
10. KHOSA, DUMISANI
11. LAKA, ABEOD
12. MABENA, OBBEY JUNE
13. MAKHANDA, GIBSON
14. MAKHUBEDU, DAVID
15. MASEKO, CHARLIE
16. MAVUSO, BASIL
17. MBATHA, DAVID
18. MBONA, DEXTER
19. McBERRY, HAGGAN
20. MLANGENI, ANDREW
21. MNGQIBISA, OLEFILE SAMUEL
22. MODISE, JOE
23. MOKOENA, AARON PHUTHSU
24. MPUNGOSE, GOODLUCK
25. MTHEMBU, GABRIEL
26. MTHEMBU, DILIZA
27. NHLANHLA, JOE
28. NKOSI, FELIX
29. NKUTHA, BAFANA
30. NZIMANDE, ITUMELENG
31. NZO, ALFRED
32. PETERSON, PERCY
33. PHIRI, NORMAN
34. PILISO, MZWANDILE
35. RAHUPE, GOLDEN
36. SEKWALO, LAWRENCE
37. SETHUN TSA, BOB
38. SETLHOKE, GABRIEL
39. SHANGE, ROBERT VUSI
40. SHOPE, GERTRUDE
41. SIBISI, JOHN
42. SITHOLE, JACOB
43. SKWEYIYA, ZOLA
44. STUART, JAMES
45. THOMBISA, JAMIEL JACQUES
46. TWALA, MWEZI
47. WILLIAMS, TIM
48. ZUMA, JACOB

AFFIDAVITS

The following Affidavits were received by the Commission :

1. ABRAHAMS, HENRY *
2. DUBE, GEORGE
3. DYASOP, LUTHANDO NICHOLAS *
4. HLONGWANE, PATRICK MNCEDISI *
5. JEBE, ISAAC SAKKI *
6. JWARA, LOYISO
7. KEPADISE, MOUNTAIN
8. LAKA, ABOED *
9. MAKHANDA, GIBSON *
10. MAKHUBEDU, DAVID *
11. MARUMO, ABEL MOLEFE
12. MBATHA, DAVID NDABAKAISE *
13. MNGQIBISA, SAMUEL *
14. MOTJUOADI, MPHO SAMUEL
15. MPUNGOSE, GOODLUCK *
16. MTHEMBU, DILIZA ABEDNAGO *
17. NKOSI, FELIX *
18. NKUTHA, BAFANA *
19. NZIMELI, NONTANTYAMBO
20. PETERSEN, PERCY *
21. PHIRI, NORMAN PHILLIP *
22. SETLHOKE, GABRIEL PHEMELO *
23. SHANGE, VUSI ROBERT *
24. SIBISI, JOHN BONGINKOSI *
25. SIPUNZI, XOLILE SOLOMON
26. THOMBISA, JAMIEL JACQUES *
27. TWALA, MWEZI *

* These witnesses also gave oral evidence

REFERENCES

1. The African National Congress Code of Conduct (1985)
2. The Freedom Charter (1955)
3. The Geneva Convention Relative to the Treatment of Prisoners of War (1949)
4. A Statement by O.R. Tambo (former) President of the African National Congress on the occasion of the making of a Declaration of adherence to the Geneva Convention (20 November 1980)
5. Report of the Commission of Enquiry into Complaints by former African National Congress Prisoners and Detainees (Skweyiya Report - 7 August 1992)
6. The Report of the Douglas Commission (1993)
7. Amnesty International Report "South Africa. Torture, ill-treatment and executions in African National Congress Camps" (2 December 1992)
8. Report of Commission of Enquiry into the circumstances leading to the death of Mzwakhe Ngwenya (Thami Zulu 1989)
9. UNHCR List of Repatriated South Africans - March 1993
10. Amnesty International : List of Missing and Deceased Persons, Angola 1976 - 1989

A. LIST OF MISSING PERSONS SUBMITTED TO THE COMMISSION BY THE ANC MILITARY DIVISION (MK)

N.B. The names appearing in this list are those of MK cadres who were infiltrated into South African during the 1980's and never again heard from:

1. Real Name : Padi Jacob
Trav. name : Mananga Matome
Home Address : Box 65 Magaliesburg
Date : 11 Nov. 1985
: Vanished believed dead

2. Real name : Thwala Gwaza
Trav. name :
Home Address : Umtata
Date : 11 Nov. 1980
: Last seen at Engcobo

3. Real name : Madondo Ronald
Trav name : Prince
Date : Not known

4. Real name : Mlotshwa Bokale
Trav name : Sindela Rocky
Home Address : 418 Emdeni North
Date : Not known
: Disappeared

5. Trav name : Zola
: Disappeared in Natal
Date : 1986

6. Trav name : Felix
: Disappeared in Natal
Date : 1986

7. Trav name : Jabu
: Disappeared in Natal
Date : 1986

8. Real name : Ceku Mvula
Trav name : Vukani Benny
Home address : Gugulethu
: Disappeared in PE/TKEI

9. Real name : Tshabalala Veli
Trav name : Sefaku Vuyisile
Home address : 2444 Zone 2 Diepkloof
 : Mysteriously died / Tladi
Date : 1988
10. Trav name : Phala George
Date : Not known
11. Real name : Ngono Mbulelo -buried in shallow grave
Trav name : Ntsizwa
Home address : Kwazakhele Port Elizabeth
 : Since he was arrested in Lesotho
Date : 1988
12. Real name : Monametsi Dada
Date : Not known
13. Real name : Dali Sureboy
Date : Not known
14. Trav name : Shezi Mandla
 : Disappeared since 1986
Home address : 1098 Mamelodi East
Date : Not known
15. Real name : Mapua Tiro
Trav name : Mbele Sidwell
Home Address : Bloemfontein
Date : Not known
16. Real name : Molehe Duncan T.
Trav name : Boitumelo
Home address : Bloemfontein
Date : Not known
17. Real name : Pepe
Trav name : Reggy
Home address : Bloemfontein
Date : Not known

B.THE MISSING PERSONS - AMNESTY INTERNATIONAL LIST AND ANC SECURITY DEPARTMENT'S AFFIDAVIT

The Amnesty International list of the missing people contains the names of 265 ANC cadres who have died from various causes in Angola during the period 1976 to 1990. Although the list is quite comprehensive and fairly accurate in most instances, it also has quite a number of obvious shortcomings, such as the omission of codenames in certain places; and information gaps relative to place, year and the causes of deaths.

The names of a few people appearing on this list also appear on the list of missing persons which was compiled by the commission from the evidence of the witnesses during the hearings.

In this section of the Commission's report on the missing persons, we propose to deal only with part of the Amnesty International list, which encompasses the names of persons on whom additional information has been obtained by sworn affidavit since the hearings. Clearly, the Commission has not been enabled to test the veracity of the evidence submitted to it after the hearings, but nevertheless regards it as fair and essential to reflect such information for purposes of giving greater clarity on the circumstances surrounding each of the reported cases of disappearances and deaths. A full copy of the Amnesty International list is appended to this report to provide a broader source of reference.

A/I Reg. No. 6

Real Name:

Travelling Name: Tsetsane Amos

Died : 1978 at Benguela

Cause : Beaten to death

According to the affidavit presented to the Commission, the above person was a senior member of the Camp Administration at Benguela. He, together with Bhenu Similo (Ref. 7 A/I), a Chief of Staff, violated camp rules by continuously sneaking out of the camp, leaving his post unmanned and soldiers without a commander. Also taking part in the drinking of illicitly brewed beer.

Camp authority under Mompoti Mthembu, ordered a unit of MK to beat Tsetsane and his colleague and the beatings resulted in their death. The Regional Command reprimanded Mompoti Mthembu for his abuse of authority by using beatings as a form of punishment, contrary to ANC policy.

A/I Reg. No. 9

Real Name:

Travelling Name: Hakhangwa Aridadi

Died : 1978 in Luanda

Cause : Shot by a guard in prison

The circumstances surrounding this death are as described by the ANC Security Department submission, that Aridadi was shot in an attempt to escape from the Angolan Central Prison where he was detained as a suspected enemy agent.

A/I Reg. No. 25

Real Name : Maseke Isaac

Travelling Name : Sibathi Freedom

Died : 1981 at Caxito

Cause : Accident

This person, according to the submission obtained, was accidentally shot by Patrick, during game hunting outside the Caxito camp. Patrick was subsequently found guilty of negligence by a Commission of Enquiry which imposed a five year prison sentence at Camp 32 until 1986.

A/I Reg. No. 66

Real Name : Nhlapo, Kenneth

Travelling Name : Sibeko, Solly

Died : 1984 in Luanda at Viana Camp

Cause : Epilepsy

The ANC Security submission corroborates this death which occurred in a metal container during the 1984 at Viana camp.

A/I Reg. No. 69

Real Name : Albert

Travelling Name : Hlungu Don

Died : 1984 at Cacaluma, Milange Province

Cause : Bazooka accident.

This death occurred during a tactical exercise where a mock raid on an enemy installation was conducted. He died of severe burns sustained when the hot gasses emitted from his gun rebounded against a tree where he had taken position, according to the submission given to the Commission.

A/I Reg. No. 74

Real Name: Makhubethe Thabo

Travelling Name : Maphalie Ruphus

Died : 1984 in Luanda

Cause : Shot (rapist)

This person is alleged to have raped an Angolan woman, thus tarnishing the ANC's image, and generating friction between the organisation and the villagers around the camp. According to the submission presented to the Commission, a military tribunal decided to have Makubethe executed by a firing squad.

A/I Reg. No. 75

Real Name : Lwana Meshack

Travelling Name : Duze Lesley

Died : 1984 in Luanda

Cause : Fire weapon accident

The submission presented to the Commission indicated that Lwana Meshack was a Security Guard at Camp 32. He was shot by another guard who mistook him for an enemy and died whilst being taken to the military hospital in Luanda.

A/I Reg. No. 83

Real Name : Jonas Zakhele

Travelling Name : Masupha Jonga

Died : 1984 in Quibaxe

Cause : Suicide

The ANC Security Department's submission, contrary to what Amnesty International claims to be the cause of death, states that this person died at Quibaxe Hospital of Malaria.

A/I Reg. No. 84

Real Name : Nkwe Sam

Travelling Name : Poho (Pooe) Wolpe

Died :

Cause : Shot accidentally

This person was a recording officer that the Catengue camp until 1977. He was transferred later to Morogoro where he died from asthma, according to the ANC Security Department's submission presented.

A/I Reg. No. 92

Real Name : Takatso Douglas Kopola (Seleka Douglas)

Travelling Name : Lebogang Kitso

Died : 1984 in Quibaxe (Pango)

Cause : Grenade accident

This person is described in the affidavit as a recording officer at Pango who died when his grenade exploded on him during the confrontation with the mutineers.

A/I Reg. No. 93

Real Name : Mabithe Patrick

Travelling Name : Mazibuko Gibson

Died : 1984 at Quibaxe (Pango)

Cause : Shot

This person was shot by mutineers at Pango camp.

A/I Reg. No. 94

Real Name : Mhlebeya Mfana, Travelling Name : Mkhwanazi Ian

A/I Reg No. 96

Real Name : Sonatla Samson Tsotsi, Travelling Name : Mphefu Clifford

A/I Reg. No. 97

Real Name : Nkonyokazi Lungile, Travelling Name : Phungalwa Zanzile

A/I Reg. No. 98

Real Name : Sojaka Samuel, Travelling Name : Mehlomakulu Fezi

A/I Reg. No. 99

Real Name : Phaahla Jomo, Travelling Name : Khumalo Jilly

All these persons were killed by mutineers at Pango in 1984

A/I Reg. No. 102

Real Name : Moyi Cekiso, Travelling Name : Msome Ronald

A/I Reg. No. 103

Real Name : Mamba Mlomli, Travelling Name : Mkambi James

A/I Reg. No. 104

Real Name : Tahisi Maxwell, Travelling Name : Hobo Walter

A/I Reg. No. 105

Real Name : Malope Edward, Travelling Name : Mashiani Joseph

A/I Reg. No. 106

Real Name : Jele Reuben Mandla, Travelling Name : Nyembezi Stopper

A/I Reg. No. 107

Real Name : Ondala Irvin Vusimuzi, Travelling Name : Mashiqane Wandile

A/I Reg. No. 108

Real Name : Maga Eric, Travelling Name : Jongile Mzwandile

According to the affidavit presented by the ANC Security Department, the above seven persons participated actively in the bloody mutiny at Pango in 1984 and brutally murdered 7 ANC cadres, including camp administration staff. They were found guilty by a National People's Tribunal and sentenced to death by a firing squad.

A/I Reg. No. 110

Real Name :

Travelling Name : Norman Seku

This person is referred to in the affidavit as having participated in the mutiny at Pango in 1984; and thereafter disappeared without trace.

A/I Reg. No. 124

Real Name : Rabkin David

Travelling Name : Riga Alex

Died : 23-06-1985 in Luanda

Cause : Limpet Mine Accident

The incident is referred to in the affidavit presented to the Commission where the limpet mine exploded during an engineering class, killing Alex Riga. Subsequently Nicholas, the Chief convenor of Instructors, was found guilty of negligence and sentenced by a tribunal to a three year prison term at Camp 32, from where he was released in 1988.

A/I Reg. No. 127

Real Name : Mdungu Mncedisi

Travelling Name : Hoho Vic

Died : 26-05-1985 at Quela in Milange.

Cause : Tortured by UNITA

The death of this person is confirmed in the affidavits presented to the Commission. He was an MK officer and commissar at the farm. He, together with a FAPLA captained, Mncedisi Mdingi, was captured by UNITA soldiers while game hunting around Quela and was found killed with private parts burnt.

A/I Reg. No. 133

Real Name : Wala Tarzan Nkululeko

Travelling Name : Zaphalela Joe

Died : In March 1986 in Milange

Cause : Suicide

This person cited in the affidavit presented to the Commission, as having killed Sibongile (Ref 134 A/I list) who jilted him, and thereafter turned the weapon on himself, dying instantly.

A/I Reg. No. 135

Real Name : Khethelo Johannes

Travelling Name : Vuyani King

Died : In Luanda on 18-01-87

Cause : As described in the affidavit.

This person contracted malaria two or three days before his death. He collapsed suddenly after some physical training exercises and after drinking a bowl of water. Amnesty International gave no cause for this death.

A/I Reg. No. 137

Real Name : Ndebele Lucky

Travelling Name : Mkwanzazi Patrick

Died : 30-04-1987 at Milange

Cause : Fire weapon accident

Patrick Mkwanzazi was an engineering instructor. According to the submission made to the Commission, while he was writing on the blackboard he turned around to find his trainees fiddling with a limpet mine. Fearing reprisals, the students threw the mine on the floor prompting the instructor to cover the mine with his own body. This heroic deed saved the lives of the whole platoon.

A/I Reg. No. 224

Real Name : Ntile Colenso Mike

Travelling Name : Malebane Moses

Died : November 1988 at Quibaxe

Cause : Murdered by S Ndlazilwane

This person, according to the affidavit presented to the Commission, was accidentally shot by his childhood friend Bolosha Molani (Ref 225 A/I list) while participating in a rescue mission of cadres ambushed by UNITA soldiers.

A/I Reg. No. 225

Real Name : Bolosha Molani

Travelling Name : Ndlazelwane Erasmus

Died : In Quibaxe in November 1988

Cause : Suicide

This person allegedly turned the gun on himself after accidentally killing his friend Malebane (Ref 224 A/I).

A/I Reg. No. 226

Real Name : Thogorosi Boiki Mathews

Travelling Name : Maje Letlola

Died : 13-11-88 at Quibaxe

Cause : Shot by Rupert Dlamini

This person was allegedly shot by his friend during a quarrel following a drinking spree.

A/I Reg. No. 227

Real Name : Mohanu Victor

Travelling Name : Rupert Dlamini

Died : 13-11-88 at Quibaxe

Cause :

Rupert Dlamini is cited in the affidavit presented to the Commission as having committed suicide in fear of reprisal after killing his friend Letlola Maje (Ref 226 A/I).

A/I Reg. No. 231

Real Name : Matiwane David Mdudusi

Travelling Name : Ximba Ben

Died : Milange on 10-09-88

Cause : Shot after killing S. Zuluhlange

He, according to the affidavit presented, killed himself after shooting a friend, Zwalonke Zulu (Ref. 232 A/I list) to death.

A/I Reg. No. 234

Real Name :

Travelling Name : Mabuza Leonard

Died : Shot after hurling a grenade to Comrade Jackson Mba in September 1988

A/I Reg. No. 236

Real Name : Hlongwane Sydney

Travelling Name : Mavuso Dick

Died : At Milange in 1989

Cause : Firing Squad

According to the affidavit presented to the Commission, Dick Mavuso quarrelled with his Commander at Caculama Camp and threatened to kill him. His gun's striker pin was however removed by the other cadres to prevent Mavuso from killing the Commander; but he nevertheless assaulted the Commander with the butt of his gun. A tribunal subsequently found Dick guilty and imposed the death penalty.

A/I Reg. No. 237

Real Name : Malhobane Josiah

Travelling Name : Dumakude Shaka

Died : 1989 at Milange

Cause : Firing Squad

Shaka Dumakude and his friend Zwani Mdingi (Ref. 238 A/I list) were, according to the affidavit submitted to the Commission, accused of having indulged in heavy drinking in Milange town and neglecting the important assignments that they were given. In their drunken state they randomly shot shoppers at a local market, killing two Angolan women and seriously injuring another and a child. The two were subsequently given a maximum sentence by a firing squad.

A/I Reg. No. 238

Real Name : Maleka Jeremiah Kagiso

Travelling Name : Mdingi Zweni

Died : 1989 at Milange

Cause : Firing Squad

This person was executed by a firing squad together with his friend Shaka Dumakude (Ref. 237 A/I) in Milange.

A/I Reg. No. 241

Real Name : Tladi Lazarus

Travelling Name : Mnini Lucas

Died : Luanda in 1989

Cause : Stabbed by Felicia Dlamini.

Lucas Mnini was according to the affidavit presented to the Commission, an officer of the ANC Security Department who was assigned to investigate the theft of a confession cassette from Luanda by Nomsa Khumalo. During the investigation Nomsa Khumalo stabbed Lucas Mnini to death. Consequently she was detained and although a tribunal recommended maximum sentence for her, Nomsa received Presidential clemency and is now back in South Africa.

A/I Reg. No. 243

Real Name : Mzoba David

Travelling Name : Baloi Mando

Died : Luanda in December 1989

Cause : Shot by Movers, thought to be an enemy

Information contained in the affidavit presented reflects that this person was shot accidentally by Movers at night mistaken to be an enemy at an ANC Centre called Plot near Luanda. A Commission of Enquiry instituted to investigate the incident found extenuating circumstances and gave Movers a two year prison sentence from 1989 to 1991.

A/I Reg. No. 247

Real Name : Johannes

Travelling Name : Sethlagelo Peter

Died : Luanda in 1989

Cause : Shot by unknown gunman.

This person was a member of the Military Police based at the ANC Plot near Luanda. According to the submission presented to the Commission, he had gone out driving and was later found dead with gun wounds on the outskirts of Luanda.

CONCLUDING COMMENTS

The list of missing persons reflected in this report does not purport to represent a complete picture of all the cases of disappearances and of deaths resulting from acts of cruelty and human rights abuse in former ANC camps and places of detention in countries like Angola, Zambia, Uganda and Tanzania. These lists cover primarily those cases which were reported to the Commission by witnesses at the hearings or those published in documents that were specifically placed before the Commission for reference. A few other cases of disappearances through desertion from the Organisation were brought to the attention of the Commission during its visit to Tanzania.

Quite clearly it is likely that a number of persons who are alleged to have disappeared could be totally untraceable, particularly if they are dead. Others could have simply remained in the countries of exile or moved further away to some other country. There are cases of persons which some reports allege have disappeared but who, in fact, have returned to South Africa or are overseas studying. In Tanzania the Commission found that, of the five people alleged to have disappeared at Dakawa on or about August 1991, two - George Kitseng and Justice Gumbi - had been repatriated back to South Africa, while Terror Wonder went to Zambia. It was only Shaft Lwane Khoza and Albert Bhengu whose whereabouts could not be traced. But the Commission has no evidence that they could have died.

Other allegedly disappeared persons whose present whereabouts are known are :

1. Maljope Victor Mahlomola (Reggine Mpongo) now works for Matla Trust in Johannesburg.

2. Matsila Jerry - he is ANC Chief Representative in Tangarie in Japan.
3. Ntombela Oscar - stays at 641 Mushoni Drive, Sobantu Village, Pietermaritzburg.
4. Mei Litrietsi Meshack - stays at No. 3109 Phomolong Township, Kroonstad.
5. Stalin T.D. Ngakane - stays in Orlando West.
6. Mose Weleame- presently stays at 5444 Mdadane, East London.
7. Segoe Maureen - she is back at home in Alexandra.
8. Matevese Nombulelo Olivia - she is presently studying in the United Kingdom and can be contacted through the ANC office in London.
9. Ndlova Mbalwa (Spider) Robert - He recently worked in the NCCR offices in Johannesburg.
10. Lusaba Butiki Jacob - presently stays in Mapetla Township, Soweto.
11. Diseko Mathews - He is studying at Oxford University in the United Kingdom

In Tanzania the Chief Representative of UNHCR told the Commission that a significant number of ANC members in that country have not yet been cleared for repatriation and that there were also 231 students who are still training in various educational institutions in that country.

The ANC will for many years have to keep looking for the missing persons - to put the record straight. Some are indeed still alive, but others who are dead shall never be found. It is, however, important to continue the search for information relating to any other disappearances which, because of limited time and the narrow scope of its investigation, the Commission was unable to secure.

