

## A CAN OF WORMS IN LUSAKA: THE IMPRISONMENT OF HUBERT SIPHO MBEJE

The following are extracts from a letter sent on 27 January 1992 to Mr Matthew Ngulube, deputy chief justice of Zambia, concerning a former member of Umkhonto we Sizwe, Hubert Siphon Mbeje, then held in prison in Zambia.

After more than two years in jail, Mr Mbeje was released from Lusaka Central Prison the following month and was repatriated to South Africa. The letter was written after a dossier of documents concerning Mr Mbeje had been provided by his brother Mr Linda Mbeje, who had been trying to secure the exit of his brother from Zambia since 1987. From late 1991, additional efforts to secure Mr Mbeje's release were made by Bill McElroy of the support grouping, Justice for Southern Africa, and Paul Trehwela of *Searchlight South Africa*.

The fate of Hubert Siphon Mbeje in Zambia is important for several reasons. There is no doubt he was brutally assaulted and kidnapped by members of the ANC security department both in 1987 and in 1989, acting with complete impunity. He appears to have been the victim of a serious miscarriage of justice by the Zambian judiciary, acting on behalf of the ANC, which bent the law in Zambia to suit itself.

Mr Mbeje and other South African exiles who had resigned from the ANC (primarily on political grounds) appear further to have been used as scapegoats by very senior figures in the ANC in Zambia in 1989. They appear to have been singled out as a screen for individuals in authority in the ANC after a series of mysterious incidents involving the bombing of ANC premises in Lusaka and the murder of a number of ANC members, including security officials, on the eve of the release of Nelson Mandela and the unbanning of the ANC in South Africa.

Those who died mysteriously in Zambia during this period include members of the ANC security department investigating penetration of the ANC in exile by undercover agents of the South African state security forces, following the arrest and interrogation by ANC security of a senior Umkhonto commander, 'Comrade Cyril'. Of those who died mysteriously in Zambia at this time, the best known was Comrade Cyril's former commander in Umkhonto, Muzi Ngwenya (Umkhonto travelling name, Thami Zulu). Two others were the security officials Jackie Mabuza (a nephew of the ANC security chief Joe Nhlanhla) and Zakithi Dlamini, whose deaths were reported by Ellis and Sechaba in their book *Comrades Against Apartheid; The ANC and the South African Communist Party in Exile, 1960-1990* (pp 192-93).

The letter to the Zambian deputy chief justice, which was submitted through the office of the Zambian high commission in London but did not receive a reply, argued that these unsolved killings suggest high level penetration of the ANC security department itself by South African state security forces. The implication,

if this were correct, is that very important 'assets' of the South African regime have returned as heroes to South Africa, along with other prominent exiles.

It was believed at the time by ANC exiles that the investigation of allegations made by Comrade Cyril — after his own death by poisoning — was discontinued on the orders of the then ANC president, Oliver Tambo, because of the high rate of casualties among the investigating officers.

### *Re: THE CONVICTION OF HUBERT SIPHO MBEJE*

Dear Mr Deputy Chief Justice,

...We were approached towards the end of last year by Mr Linda Mbeje, the older brother of Mr Hubert Siphon Mbeje, who is currently in Lusaka Central Prison. From Mr Linda Mbeje we received a very full collection of documents relating to his efforts to bring his brother out of Zambia since 1987. We have sent copies of these documents to the Zambian High Commission in London, as well as to the British government, in an effort to secure the earliest possible release of Mr Siphon Mbeje; urgent medical attention for his pneumonia, apparently contracted in prison; and asylum in Britain. You will find that the documents make painful reading. They are all too characteristic of the lost hopes and abused good faith of very many fine young people who fled South Africa after the crushing by the state of the Soweto school pupils' revolt of June 1976. Siphon Mbeje was one of that generation, which revived the ANC, provided it with hundreds of new members and eventually helped to bring it to the brink of government in South Africa. But at heavy cost.

Mr Mbeje was born in Soweto in 1958, in a family whose first language is Zulu. As a teenage school pupil he and his friends prepared banners on 15 June 1976 for the children's demonstration that was to begin the political revival, after the defeats of the 1960s. He and they faced the police bullets the next day. After massive state repressions, he disappeared overnight with many other young people from his street, joining the ANC in exile and receiving military training in the ANC army, Umkhonto we Sizwe, under the ANC 'travelling' name 'Kaizer Khumalo'. He became a political commissar in Angola when the ANC was fighting in the civil war there. (*Africa Confidential*, 25.8.89) At some stage, still as a member of the ANC, he came to live in Zambia in Lusaka, under the name Kaizer Khumalo.

Differences of some kind arose between Mr Mbeje and the ANC authorities in Lusaka towards the middle of 1987, or earlier. From several documents in the collection it appears that these differences were political and that a number of other ANC members in Zambia felt they were in the same situation as Mr Mbeje. (Letter from anonymous 'S.African Refugees in Lusaka' to the World Council of Churches, 23.8.89, and to the British Council of Churches, 29.8.89) This appears also in a letter from a Zambian friend of Siphon Mbeje, a supporter of the multi-party system then in exile in Swaziland who had been in prison in Zambia, Mr M. Chasemena. (Letter from Mbabane, Swaziland, to Linda Mbeje in London, May 1990) Reports published in the press in 1989, referring to Mr Mbeje and three other South Africans in Zambia, stated that they 'disagreed with ANC policies' (Reuters, from Lusaka, 23.8.89); that they had 'complained about poor food and conditions in the camps and preferential treatment for the leadership' (*Africa Confidential*, 25.8.89); and that they were 'complaining about lack of democracy in the movement and the poor conditions of those in exile'. (*Independent*, Britain, 14.8.89) All these comments were written after the assault and abduction of Mr Mbeje from a house in Lusaka by eight armed members of the ANC on 5 August 1989: the event that immediately preceded his trial and conviction in the Zambian courts the following October.

### The Assaults

According to Siphon Mbeje, he was the victim of two very serious assaults in Lusaka carried out by 'ANC security personnel' on 17 September 1987. After the second assault he was kidnapped by his attackers and taken to the ANC prison known as 'RC' ['Revolutionary Council'] at Villa Park, Lusaka. He was threatened with being forcibly taken to an ANC prison at Dakawa in Tanzania. After two weeks he escaped, and was in hiding for three weeks. He was then again arrested by ANC security personnel, beaten and again imprisoned at RC prison. After getting away again, the same procedure was repeated a third time after he had already spoken to the Lusaka officer of the United Nations High Commissioner for Refugees, Miss Brouwer. After these episodes of assault and kidnapping, he was seen by an ANC doctor at Emmersdale Clinic in Lusaka, Dr Mpho, and by medical staff at the University Teaching Hospital. (Statement by Hubert Siphon Mbeje, Lusaka, 29.12.87)

No effort appears to have been made by the Zambian police or legal authorities to arrest or prosecute any of the ANC security officials named by Mr Mbeje. These are listed as: Duma, Makhandu, Elliot, Dlokolo, Mugabela, Blackman, Brown, Maria, Job, Ayob, Rasta, German and Terrance. ANC security officials appear to have been free to do whatever they liked in Zambia, with immunity from the law. In a letter of resignation to the ANC Chief Representative in Lusaka written at this time, Mr Mbeje stated that 'no action had been taken against these culprits' and that his wrist watch had been stolen. He had enrolled himself under the UNHCR 'because my life has been threatened'. (Undated statement, signed Kaizer Khumalo, written in Lusaka, late December 1987) In a separate statement dated 29.12.87, signed under his real name, Mr Mbeje says that what he needed from the UNHCR was 'protection of which my life was in danger here in Zambia'.

Evidence concerning Mr Mbeje's medical condition in November 1987 appears in statements by Dr Mpho of the Emmersdale Clinic, Lusaka, 11.11.87; the Zambian officer for the UNHCR, Miss Brouwer, 18.11.87; an undated statement by Mr Mbeje's brother, Linda, written in Lusaka after his arrival on 28.11.87; and a statement of the same period (also undated) by Mr Mbeje giving details of serious physical and psychosomatic injuries received by him. The medical attention he received appears to have been utterly inadequate.

The UNHCR in Lusaka took the view in December 1987 that Mr Mbeje's position in Zambia was 'very insecure' and could lead to 'very unfortunate consequences'. (Letter to the Zambian Commissioner for Refugees, Home Affairs Ministry, Lusaka, by UNHCR Representative Abdallah Saied, 30.12.87) He was still suffering from what appeared to be a 'severe beating'. If he continued to stay in Zambia his life was 'in great danger'. He was living mainly in hiding and claimed that the ANC was looking actively for him. (Telex from UNHCR in Lusaka to UNHCR headquarters in Geneva, Switzerland, 30.12.87) An effort was made to get him a UN Convention Travel Document and also to get him temporary asylum in Switzerland, where his sister lives. Asylum was refused by the Swiss authorities. (Telex from UNHCR headquarters in Geneva to UNHCR, Lusaka, 31.12.87) Mr Mbeje's status in Zambia continued to be discussed by the UNHCR representative in London through 1988. (Letter from London office of UNHCR to Linda Mbeje, 18 July 1988)

Two years after this initial series of assaults, which may well have had a permanent effect in undermining Mr Mbeje's health, he was again the victim of a brutal assault and kidnapping at gunpoint by eight armed members of the ANC in Lusaka on 5 August 1989. (Letter to Mr Mbeje's sister, Mrs Nothemba Wyss, in Switzerland, by Ms Vinus Muyaya Choobe, Lusaka, 7.8.89) The violence of the assault is vividly described by Mr Mbeje's companion of the time, Ms Vinus Choobe, in whose house the assault and kidnapping took place. She immediately reported the assault and abduction, which was witnessed by 'lots of people' on the street, to the nearest police station at Kabwala, Lusaka. She writes: 'I didn't get any positive response for I was told to go there on Tuesday 8th' (ie three days later). Ms Choobe placed the matter in the hands of a firm of solicitors (Chifunu Banda and Associates, PO Box 31025, Lusaka). She also reported the matter to the Zambian military at Forces Headquarters, who

said 'they would get in touch with the ANC to find out'. Ms Choobe ends the letter by saying 'ANC have connected all former ANC members to be enemy agents'. This last comment is important for indicating the political climate in which Mr Mbeje's trial and conviction took place two months later.

Mr Mbeje was imprisoned by the ANC for two weeks. One report states that he and three other men — Richard Sikhosana, Norman Phakhati and David Lephoto — had been taken to an ANC house in Lilanda township and that an attempt had been made (later abandoned) to take them to Tanzania. (*Africa Confidential*, 25.8.89) The present documents give no indication what happened to them during this time. However, this further episode of assault, kidnapping and imprisonment by the ANC becomes directly material to the present circumstances of Mr Mbeje, since it leads directly to his prosecution and conviction in court in Zambia on a charge of wounding a former girlfriend, resulting in a three year prison sentence in prison.

During this latest period of abduction of Mr Mbeje by the ANC, a Lusaka magistrate served two summonses on the secretary general of the ANC, Mr Alfred Nzo, requiring him to explain the whereabouts of Mr Mbeje. The ANC stated at this time that it had already released Mr Mbeje. A number of reports appeared in the *Zambian* and *South African* press at this time concerning the matter. There appears to be no evidence that the court or police took any action against the ANC for this latest assault, kidnapping and imprisonment of Mr Mbeje: a matter that places the subsequent prosecution, conviction and imprisonment of Mr Mbeje in prejudice. The police and judicial authorities seem to have concurred in according parastatal and extra-judicial powers to the ANC, in which the ANC security department was permitted to act as proxy for the *Zambian* state in matters affecting its own members or former members, beyond the reach of normal civil law. This leaves open the question how far the *Zambian* legal system has to be considered as acting in proxy for the ANC in its subsequent conviction and imprisonment of Mr Mbeje.

### The Bombings

Mr Mbeje and the other three men were 'handed over' by the ANC to the *Zambian* state authorities, apparently on 18 August 1989. (*Reuters*, from Lusaka, 23.8.89) The assault and kidnapping of Mr Mbeje by the ANC and his subsequent trial and conviction in court took place in an atmosphere of extraordinary tension in Lusaka involving the ANC. A 'spate of bombings' at this time rocked Lusaka 'almost every month'. (Letter from 'SA Refugees in Lusaka' to the World Council of Churches in Geneva, 23.8.89) These bombings were directed frequently against ANC premises in Lusaka. It is suggested in this anonymous letter, which carries an authentic tone, that — perhaps under torture or threat of torture — former ANC members in Zambia who had resigned on political grounds were being accused by ANC security officials of responsibility for these bombings. This is the context to the remark by Ms Vinus Choobe that 'ANC have connected all former ANC members to be enemy agents'. (Letter to Linda Mbeje, 7.8.89)

This is the context also to the remarks by the anonymous 'S.African Refugees in Lusaka' to the British Council of Churches, written immediately after the handing over of Mr Mbeje by the ANC to *Zambian* state authorities. There they state:

We are kindly appealing to your serious considerations about the critical situation we are facing in Zambia.

There are no human rights for S.African refugees in that country, as a result it is meaningless to talk about security under the UNHCR because there is none. The *Zambian* govt ignores the atrocities being waged by the ANC against S.A. refugees, as a result the UNHCR succumbs to that too...

We would wish to bring to your attention four of our friends, refugees, who have been kidnapped by the ANC and framed under diabolical schemes. We say diabolical schemes because we know that they are genuine refugees. (Letter, 29.8.89)

In their letter to the World Council of Churches, addressed care of the former South African student leader, Rev Barney Pitso Moseneke — then a leading official of the WCC — these anonymous refugees suggest that critics who had resigned from the ANC were being forced under torture to confess to having planted these bombs. The letter asks: 'don't you suspect something sinister and ominous?' (Letter, 23.8.89)

Mr Mbeje and the other three men were indeed branded by senior ANC officials with responsibility for the bombings in Lusaka over this period, as well as with spying, drug-smuggling and car-racketeering. A Reuters report from Lusaka stated:

The Lusaka-based ANC said its security officers detained the four on August 4 and 5 for their suspected involvement in recent bomb attacks against the ANC. Relatives of the four said they were abducted because they disagreed with ANC policies. (23.8.89)

According to *Africa Confidential*,

The ANC has accused the four of involvement in at least one of the bombings which has hit Zambia in recent weeks. After they and others who had left the organisation had met the UNHCR some weeks ago, the ANC denounced them as spies, drug-traffickers and car-racketeers. (Vol 30 No 17, 25.8.89)

However, at no stage then or subsequently did either the ANC or the Zambian government attempt to present even a shred of proof concerning these extremely serious charges concerning bombing, spying, drug-trafficking and car-racketeering. No attempt was made to present evidence concerning any such charges before the Zambian courts. Yet the effect of these allegations concerning Mr Mbeje and the others was to poison the atmosphere around him in the period immediately preceding his prosecution and conviction before the Zambian courts on a totally different charge. There was no mention of the criminal charge under which Mr Mbeje was eventually prosecuted in the initial flurry of allegations that accompanied his abduction and assault by the ANC.

This alone could suggest prejudice to Mr Mbeje in the prosecution by the Zambian state, which followed immediately after his abduction by the ANC. There was no attempt by the state to prosecute the members of the ANC security department who had carried out the severe beating and abduction of Mr Mbeje in 1987, despite communication between the UNHCR representative in Lusaka and the Home Affairs Ministry; and there was no prosecution of ANC members for the abduction, imprisonment and assault of Mr Mbeje in 1989, despite widespread international attention to the matter. (Reuters, 9.8.89 and 23.8.89, *Independent*, 14.8.89, *Africa Confidential*, 25.8.89, Radio Botswana, 11.8.89, Malawi Broadcasting Corporation, 23.8.89, *Star*, Johannesburg, 24.8.89, *Citizen*, Johannesburg, 24.8.89)

The authors and causes of the bombings in Lusaka in 1988 and 1989 still require to be uncovered. It would be surprising if a relation to South African Military Intelligence were not eventually found, in view of the Zimbabwe bombing case of October 1988. (South African Race Relations Survey, 1988/89, p 527; also discussed in the Channel Four television programme 'The Hidden Hand', Britain, December 1991) There was also a mysterious series of deaths of ANC security officials and other personnel in Zambia in 1989, in some cases involving the use of poisons available to the Directorate of Military Intelligence in South Africa. In the case of the death in Lusaka in November 1989 of the former Umkhonto commander, Muzi Ngwenya (ANC name Thami Zulu), there has been media speculation that the person or persons responsible for his death must have been within the ANC. (Weekly Mail, Johannesburg, 6.9.91; *Guardian*, London, 6.9.91) This suggests to me that at least one DMI operative in Lusaka — the headquarters of the ANC in exile — was working in a senior position in the ANC, probably within the security apparatus. This person or persons would now have returned to South

Africa. I am convinced that Siphon Mbeje, as a known critic of conditions in the ANC, was used as a scapegoat in the bombing upheavals in Lusaka in 1989.

This applies also to the unproven accusations against him from senior ANC sources that he had been involved in drug-smuggling and car-racketeering. From my own information, the trail of smuggling of gems and drugs from Angola through Zambia and the reverse trail of cars stolen in South Africa through Zambia into Angola proceeded through Umkhonto we Sizwe command structures. ANC troops were ordered to guard the transports conveying these goods in the same way that they were ordered to undertake other tasks. My own understanding is that there was indeed a criminal network within the ANC reaching from South Africa as least as far north as Luanda; that this had a certain 'official' status extending to Umkhonto we Sizwe command structures; and that this would have provided an ideal means of penetration by the South African state security forces. Zambia was a transit route for this two-way traffic. In my view, Siphon Mbeje was used also as a scapegoat for this criminal network, which was in place at least as far back as the early 1980s. The critic of corruption was slandered with the same charge that he had made himself against official structures in the ANC...

### The Trial

It appears that Mr Mbeje's abduction by the ANC and subsequent conviction by the Zambian court prevented him from taking up asylum in Britain in 1989, which had previously been arranged through the UNHCR. (Communication from Mr Linda Mbeje, 19 January 1992) It is possible that this was the real purpose of his abduction and subsequent trial and conviction. At the time of his assault and abduction, I understand that Mr Mbeje was planning to leave Zambia for Britain and was in possession of a Geneva Convention travel document, issued by the UNHCR in Lusaka, and stamped with a travel visa for Britain. (Communication by Mr Linda Mbeje) When Mr Mbeje was abducted, this travel document was removed from him and is no longer in his possession. This in itself should have been a matter for investigation. The abduction of Mr Mbeje by the ANC security department, and the failure of the Zambian authorities to act against his assailants, thus involved a serious infringement of British consular facilities. This criminal act appears not to have been investigated. I am not aware of any approach from British consular staff in Zambia or by Zambian police to Mr Mbeje about the matter.

My information is that there were further serious irregularities in the trial of Mr Mbeje. After he was handed over by the ANC to the Zambian authorities on 18 August, the case proceeded with unheard of speed through the Zambian courts, resulting in Mr Mbeje's final conviction in October, two months later. Such dispatch deserves investigation in its own right. It suggests a high level decision to proceed with the charge against Mr Mbeje as a matter of exceptional urgency. This in turn suggests that non-judicial criteria governed the preferment of charges.

In the second instance, I understand that the case was dismissed when initially brought to court. (Communication from Mr Linda Mbeje, 19.1.92) My understanding is that this decision was then appealed by the state to another judge, sitting without jury, when it proceeded to trial and conviction. In the light of the non-prosecution of members of the ANC security department for a far more damaging offence committed against Mr Mbeje himself, this appeal by the state suggests the possibility of a prior decision behind the scenes at a high level to secure conviction by whatever means necessary. Under the circumstances, the decision to appeal the case might warrant investigation, as also the speed with which other business at high court level must have been set aside to hear this case.

Thirdly, the person who would normally have appeared as the principal witness — the victim of the alleged assault, a woman named Esther — apparently did not appear in court at all. I understand that this woman is the daughter of a Zambian father and a South African mother, and that she is now living in South Africa. Mr Mbeje was living with her at the time he was assaulted and abducted in September 1987. (Statement by Siphon Mbeje, 29.12.87) By the time of the assault and abduction of Mr

Mbeje in August 1989 he was no longer living with Esther but with Ms Choobe. It is not possible to guess the exact nature of Esther's feelings towards Mr Mbeje at the time of the state's decision to prosecute him on a charge of having allegedly assaulted her, supposedly in November 1988. But doubt must be thrown on her own desire to prosecute by a letter written by her to Mr Mbeje's brother, Linda, in London on 29.8.89. (The letter is in the collection of documents presented to the British Foreign Office and the Zambian High Commission in London). This letter, written after Esther had seen Mr Mbeje (then in the hands of the Zambian authorities) on Friday 25 August, concludes with the extraordinary words: 'I am prepared to die for him'. She refers to his abductors in the ANC as 'this [these] terrorists' and states that she had approached his lawyer, Mr Banda.

Even had she appeared in court as a witness, doubt would surely have been thrown on her testimony by this letter, written immediately before the decision to prosecute must have been taken. That she apparently was not called as a witness suggests that the alleged assault on her was a mere device by which to keep Mr Mbeje in prison. There is the grave suspicion that she was herself a victim of coercion on the part of unknown parties interested in securing conviction of Mr Mbeje. Taking everything into consideration, I think that Mr Mbeje was the victim of a miscarriage of justice deliberately perpetrated by individuals at a high level in the Zambian state and its judicial system, and that it is essential not only for Mr Mbeje but also for judicial conditions in Zambia that the matter be investigated and the conviction set aside...

Yours sincerely,

*Paul Trehwela*

Co-editor, *Searchlight South Africa*

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