

STATEMENT FROM THE TRC ON AMNESTY GRANTED TO DIRK COETZEE, 4 August 1997

The Amnesty Committee of the Truth and Reconciliation Commission today granted amnesty to Dirk Coetzee, David Tshikalange and Butana Almond Nofomela in respect of the murder of Durban attorney, Mr Griffiths Mxenge, in November 1981.

The Committee said that while "there may be some doubt" about the identify of those who ordered or advised Coetzee to kill Mr Mxenge, there was no doubt that Coetzee had acted on "the advice, command or order of one or more senior members of the Security Branch" of the South African Police.

The Committee placed on record its "strong disapproval" of the conduct of the police in "arranging for the assassination of an attorney who was doing no more than his duty in providing adequate representation for persons facing criminal charges."

In its findings, the Committee said:

"On the evidence before us we are satisfied that none of the Applicants knew the deceased, Mxenge, or had any reason to wish to bring about his death before they were ordered to do so. We are satisfied that they did what they did because they regarded it as their duty as policemen who were engaged in the struggle against the ANC and other liberation movements. It is, we think, clear that they relied on their superiors to have accurately and fairly considered the question as to whether the assassination was necessary or whether other steps could have been taken...."

The three amnesty applicants were convicted of Mr Mxenge's murder during a trial in Durban after their amnesty application had been heard. As a result of the granting of amnesty, it will not be necessary for the trial court to proceed with the question of sentence.

The committee noted that Coetzee, Tshikalange and Nofomela had sought amnesty in respect of many other acts. It limited its decision at this stage, however, to the application in respect of Mr Mxenge's killing.

The full text of the Committee's decision follows:

AMNESTY APPLICATION OF:

DIRK COETZEE (0063/96) (1st APPLICANT)

DAVID TSHIKALANGE (0065/96) (2nd APPLICANT)

BUTANA ALMOND NOFOMELA (0064/96) (3rd APPLICANT)

(HEARD IN DURBAN ON 5 - 7 NOV 1996 AND IN JOHANNESBURG ON 20 - 23 JANUARY 1997)

DECISION

We are dealing now with the applications for amnesty made by the three Applicants in respect of the murder of Griffiths Mxenge. The three Applicants, who were at all relevant times serving members of the South African Police Force, have applied for amnesty in respect of many acts committed by them. The First Applicant seeks amnesty in respect of twenty-three incidents of which fourteen were crimes or acts involving gross violations of human rights; the Second Applicant has applied for amnesty with regard to seven acts of which five were gross violations of human rights, and the Third Applicant has applied for amnesty in respect of twenty-two acts of which five were not gross violations of human rights.

The applications have been heard by the Committee and not surprisingly, many other members of the South African Police Force were named as implicated parties. Despite the fact that notice was given to parties implicated by the Applicants it was felt that in view of the fact that the Applicants had at that

time not been convicted of any offence and were not in custody, that a decision on the applications should not be made until it was possible to ascertain with some degree of certainty whether any of the persons implicated had themselves applied for amnesty in respect of the same acts and would accordingly be giving evidence which might possibly conflict with the evidence that we had heard given by the Applicants.

The final cut-off date for applications for amnesty has now passed and the three Applicants have been charged and convicted of one of the offences in respect of which they applied for amnesty, that is for the murder of Griffiths Mxenge. They were charged with a Brigadier Van der Hoven and a Captain Andy Taylor, who were both found not guilty at the trial. Both of these persons had been implicated by the Applicants in their applications. They had not, as far as we were able to ascertain, applied for amnesty themselves in respect of this killing. In the light of the fact that certain of the co-accused had not applied for amnesty we did not feel that this was a proper case for requesting that the proceedings against the Applicants be postponed in terms of the provisions of sec 19 (7) of the Promotion of National Unity and Reconciliation Act should be invoked. Nor did we feel it right for us to give a decision which might have necessitated setting out facts which might not be led in evidence before the Trial Court. In the light of the decision of the Trial Court these reasons have now fallen away. The only persons convicted were the three Applicants who have in fact all applied for amnesty.

The evidence led before us disclosed that the three Applicants were stationed at a place called Vlakplaas, which was a base established in the country where the police stationed what could perhaps fairly be described as hit squads. We do not propose to deal further with Vlakplaas in the present decision, but will comment on it in the reasons we give when dealing with the other applications made by these Applicants.

At the relevant time all four groups from Vlakplaas were in Durban for various purposes. The First Applicant who was the commander reported, so he said, daily to Brigadier Van der Hoven, the regional security commander at about 7.30 am and again at 4 pm. On one such occasion, a few days before the 19th of November 1981, Brigadier Van der Hoven called him to make a "plan" with Mxenge. He understood this to mean that he was to make arrangements to eliminate Mxenge. He was told in very brief terms that Mxenge, who was the victim in this application, was an ex Robben Island prisoner and was an attorney practising in Durban. He acted on behalf of members of the liberation movement and others who were charged with criminal offences arising out of the struggle against apartheid, and a large amount of money was known to have gone through his account. There was no suggestion in the evidence before us that this money was improperly used in any way. Anyone having any experience of the workings of an attorney's office, particularly one engaged in defending long complicated trials in the High Court, will realize that most, if not all of this money, would have passed through his account to the advocates briefed on behalf of his clients.

He was told that the security police had been unable to bring any charges against Mxenge and that he had accordingly become a thorn in their flesh by enabling persons charged with political offences to obtain the protection of the courts. The First Applicant said that Brigadier Van der Hoven told him that they must not shoot or abduct Mxenge but that they should make it look like a robbery. He was then taken to Captain Taylor who gave him certain information about Mxenge. This information related to where his office was, where his house was, what car he drove and matters of that nature. It appeared from the evidence given to us that Captain Taylor also supplied them with a photograph of Mxenge. The First Applicant said that at some stage he asked Brigadier Van der Hoven to arrange for one Joe Mamasela to be sent down to him from the Transvaal, because he felt that he had the killer instinct and could form the core of the hit squad. At that time Mamasela was working on the West Rand with a

certain Captain Coetzee, but he was almost immediately sent down to Durban. It should be recorded that neither Brigadier Van der Hoven nor Captain Taylor were called to give evidence before us.

The First Applicant took charge of arrangements and set up a squad which was to be responsible for killing Mxenge, consisting of the Second and Third Applicants, Mamasela, and a certain Brian Ngulunga, because he was from the Umlazi area and knew the vicinity well. The First Applicant took charge of the general planning of the murder and arranged details such as obtaining strychnine to poison the four dogs owned by the Mxenge family. He however left the details as to the actual killing to the four members of the squad he had appointed, save that he instructed them as to the necessity of taking nothing with them which could be identified and of wearing clothing which could later be destroyed. They intercepted the car in which Mxenge was travelling and dragged him out of it. While Brian Ngulunga stood by with a pistol in his hand, the others commenced to stab their victim. One of the blows struck by Tshikalange resulted in his knife being stuck in Mxenge's chest. He managed to pull the knife out and fought for his life. Such resistance as he was able to put up was brought to an end when he was struck on the head with a wheel spanner causing him to fall to the ground. The stabbing continued until he was dead. He had been disembowelled; his throat had been cut and his ears had been practically cut off. His body was found to have 45 lacerations and stab wounds.

It is quite clear from his evidence and from the evidence of the other two Applicants, that they considered this to be an act performed as part of their duties as policemen on the instructions of senior officers who would undoubtedly have satisfied themselves as to the necessity for it.

In this regard the First Applicant said the following during the course of his evidence before us:

"Did you regard this request or instructions from van der Hoven to kill Mr Mxenge as an order? - That is correct. In short, yes. Did you regard it as - in that Security Police culture as an order which emanated after an assessment of the necessity thereof had been done? - That's correct, Mr Chairman.

Do you still today believe that those were necessary or lawful orders? - Absolute not.

Why do you think differently today? - Well, at the time, yes, but with hindsight absurd and absolutely - I mean unjustifiable."

On the evidence before us we are satisfied that none of the Applicants knew the deceased, Mxenge, or had any reason to wish to bring about his death before they were ordered to do so. We are satisfied that they did what they did because they regarded it as their duty as policemen who were engaged in the struggle against the ANC and other liberation movements. It is, we think clear, that they relied on their superiors to have accurately and fairly considered the question as to whether the assassination was necessary or whether other steps could have been taken. We feel it is perhaps necessary for us at this stage to place on record our strong disapproval of the conduct of the police in this regard. That is in arranging for the assassination of an attorney who was doing no more than his duty in providing adequate representation for persons facing criminal charges.

The evidence before us also disclosed that sometime after the killing Brigadier Schoon gave the First Applicant R3 000 (three thousand Rand) which he had apparently received from Brigadier Jan du Preez and which was to be given to the three persons who actually participated in the killing. This included the Second and Third Applicants. Although they received this reward for having acted as they did, we do not feel that in killing the deceased they acted for personal gain as referred in sec 20(3)(i) of the Act.

Regarding the source of instructions on which the Applicants acted, a distinction ought to be made between the First Applicant on the one hand, and the Second and Third Applicants on the other hand. The latter two testified that they acted on the instructions of the First Applicant. The evidence of First Applicant confirmed this. Accordingly, Second and Third Applicants fall within the category of persons

referred to in Section 20(2)(b) of the Act. With regard to the First Applicant, there was no direct evidence to confirm that he acted on the orders of Van der Hoven or Taylor. In fact, it is a matter of public knowledge that Van der Hoven and Taylor denied any involvement; they did so during their recent trial in which they were co-accused with the Applicants on a criminal charge in respect of this very incident. While there may be some doubt about the identity of the person or persons on whose advice, command or order, the First Applicant acted, the fact that he acted on the advice, command or order of one or more senior members of the security branch, admits of no doubt; particularly if regard is had to the following:

He knew nothing about Mxenge and had never heard of him.

He was not based in Durban, but in Vlakplaas, near Pretoria. It is inconceivable that he would have, on his own, come all the way to Durban to launch an operation of this magnitude.

Being from Pretoria, he must have been given the necessary logistical and other support on the orders of someone who was his superior.

In order to carry out the operation he requested that Joe Mamasela, who was at that time based in the North West area, be brought to Durban. This was done; Mamasela was released and sent to Durban to be part of the squad.

The murder was indeed covered up and the truth did not emerge until later when it was revealed by the First Applicant. This gives credence to the allegation of security branch involvement on a high level as alleged by First Applicant.

An amount of R3 000,00 (three thousand Rand) was paid to the Second and Third Applicants and to Mamasela by the security police for their part in the killing of Mxenge.

We are accordingly of the view that the three Applicants are entitled to amnesty in respect of this offence, that is the murder of Griffiths Mxenge on the 19th of November 1981, and it will accordingly not be necessary for the Trial Court to proceed with the question of sentence.

SIGNED ON THE 4TH DAY OF AUGUST 1997.

MALL, J: (Mr Justice Hassen Mall)

WILSON, J: (Mr Justice Andrew Wilson)

NGOEPE, J: (Mr Justice Bernard Ngoepe)

ADV C DE JAGER SC: (Adv. Chris de Jager, SC)

MS S KHAMPEPE: (Ms. Sisi Khampele)

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