

Amnesty in South Africa:  
A study of the Committee on Amnesty in Transitional  
South Africa

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## Abstract

Many countries have faced the pains of authoritarian governments. South Africa is one of them. Wracked by a history of violence and suffering, South Africa became an all inclusive democracy in 1994. The transition in South Africa has now become one of the most talked about transitions. Unlike the countries of Latin America, South Africa embarked on a search for not only truth, but for reconciliation as well. This thesis will provide the reader with an analysis of the transition. By analysing select cases from the Amnesty Committee, this thesis will provide the reader with a deeper understanding of the transition, as well as the amnesty process in South Africa.

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## Introduction

South Africa is a country with a history wracked by violence and oppression. For many years the majority of those within South Africa were violently oppressed by a European minority, starting with the Dutch East India Company, and ending with the Nationalist Party in the late twentieth century.

The first European settlers were members of the Dutch East India Company, who settled in the present day Cape Town area with the sole purpose of becoming a refuelling station for Company ships rounding the horn of Africa on their way to and from the East Indies. Jan van Riebeeck, a Company employee, with orders to fortify the area as well as to farm the land in order to supply Company ships with fresh produce, founded the Cape Colony on 6 April 1652. Upon his arrival van Riebeeck planted an almond hedge marking the boundaries of the colony and creating the first barrier between black and white South Africa. Through the years the Cape Colony grew, attracting not only Dutch settlers, but other Europeans as well, most notably British settlers under the British East India Company. With time settlers started moving east settling the land that is now present day South Africa, all the while killing, subduing, or pushing the native population out of their way.

Throughout the years the white minority grew stronger creating new ways to oppress the native population. The culmination of this oppression came to fruition with the election of the Nationalist Party to power on 4 June 1948. It was under the rule of the

Nationalist Party that Apartheid<sup>1</sup>, the ultimate solution to the native problem, was put into place. Apartheid was not only a political solution; it was a way of life. It regulated everything from where someone could live, and shop, to whom they could love. Apartheid lasted until 9 May 1994, with the first fully democratic elections in the history of South Africa.

This thesis will focus on what happened after Apartheid. More specifically I will conduct a historical analysis of the Amnesty Committee, one of three committee's under the umbrella of the Truth and Reconciliation Commission. I will seek to answer the question: Did the Amnesty Committee fulfil the goals set forth in Chapter 4 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995, specifically following the strict guidelines of granting amnesty only to those who disclosed the whole truth of their crimes as well as proved that there was a political motive behind their crimes (Act No. 34 of 1995, Ch. 4 S. 20) This question is an important question not only because it will give us a better perspective on how effective the Amnesty Committee and more broadly the Truth and Reconciliation Commission were in bringing about justice and reconciliation in South Africa. A better understanding of the Amnesty Committee procedures will also help to provide a clearer blueprint on how to successfully go through a process of granting amnesty for future transitional societies.

My hypothesis for this project is that as time progressed the Amnesty Committee stopped following the regulations and guidelines set forth in Act No. 34 of 1995, and rather started to use their own familiarization with the process of amnesty hearings, as well as their own judgement to determine whether amnesty shall be granted. I hypothesis that

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<sup>1</sup> Afrikaans for "Apartness"

my research will show that the cases presented from the first few years will follow much more strictly the regulations for the granting of amnesty, while the cases that I present from later years of the Committee will prove to be more lenient when it comes to meeting the requirements for amnesty. I hypothesize that I will be able to see a slight yet continual shift away from a strict interpretation and following of the regulations, to a more lenient interpretation and following of the regulations as the years that the Committee is active progress. The outcome of this research will be important in both understanding how effective the amnesty committee was in South Africa, as well as understanding how best to deal with countries going through a transition from authoritarian/totalitarian rule to democracy.

In order to answer the above questions, as well as defend my hypotheses, I will first provide the reader with a brief yet comprehensive history of South Africa. The history will cover briefly the period of colonization in the country, the first encounters of Europeans and Natives, the period of Unionization, as well as the rise of Afrikaner nationalism. Next I will give a more thorough history of the Apartheid era. This history will provide the reader with the knowledge necessary for a better understanding of the transitional constraints and reasoning behind the Truth and Reconciliation Commission, and more importantly the Amnesty Committee itself. For this history I will primarily rely on secondary sources such as: *A History of South Africa* by Leonard Thompson; *Diamonds, Gold, and War: The British, the Boers, and the Making of South Africa* by Martin Meredith; *The Making of Modern South Africa: Conquest, Apartheid, Democracy* by Nigel Worden; *The Making of South Africa: Culture and Politics* by Aran S. MacKinnon; and *A Short History of South Africa* by Leo Marquard. The above books are some of the

more popular and easy to read books on South African history, while at the same time providing very thorough accounts of South Africa's past.

After presenting the history of South Africa, I will move to a presentation of the transition. This chapter will focus primarily on the Convention for a Democratic South Africa (*CODESA*), the negotiations between the ruling National Party and the opposition parties<sup>2</sup>, as well as the events that took place under the Justice Portfolio Committee<sup>3</sup>. Understanding these two crucial steps in the transition process is paramount to understanding the Promotion of National Unity and Reconciliation Act 34 of 1995, the act that put into effect the Truth and Reconciliation Committee, and to understanding the Amnesty Committee itself. To better understand the Justice Portfolio Committee and Act 34 of 1995 it is important to first understand the results of *CODESA*, primarily South Africa's Interim Constitution Act 200 of 1993. The Interim Constitution clearly states in its post-amble that parliament must "...adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed" (South African Constitution, 1993).

For this section I rely primarily on secondary sources. Some of the authors that I will use include Antjie Krog and her book *Country of My Skull*, and Hassen Ebrahim's *The Soul of a Nation*. This chapter will be helpful in creating the parameters for my actual case study. The knowledge that I gain from this part of the study will provide me with

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<sup>2</sup> The African National Congress being the primary opposition force in the negotiations.

<sup>3</sup> The Justice Portfolio Committee was the committee put in power by Parliament to draft the legislation for a Truth and Reconciliation Commission.

the knowledge necessary for answering my research question. What were the actual goals put forth in the legislation, as well as what were the demands placed on the committee members will come to light in this chapter. Not only will these parameters be made clear, but the reasoning behind creating such parameters, and for writing into law certain rules and regulations for the Committee will be made clear.

Once I have established the goals and regulations of the Amnesty Committee that were set in place by Act 34 of 1995 I will look into the Amnesty Committee itself. By doing a case study of the Amnesty Committee I hope to answer the question of: whether or not the overall goal of bringing about truth, reconciliation, and justice were met. In order to answer this question I will look into individual cases that appeared before the Amnesty Committee. I will read the minutes of cases, both high profile and low profile using discourse analysis to better understand what was actually taking place.

For my case study I will cover a wide range of Amnesty hearings, focusing on both white perpetrators as well as black. I will look at multiple regions within the country. I will look at cases ranging from the assassination of "terrorists" by the secret police, to cross-border raids. I have chosen to take one case from the first year of amnesty hearings, and two cases from the remaining four years of amnesty hearings. . I will examine both one case concerning a white perpetrator/perpetrators, as well as one case concerning a black perpetrator/perpetrators.

By researching specific cases that went before the Amnesty Committee I will be able to see exactly what was happening. I will be able to see what kind of questions were being asked by Committee members while hearing testimony from applicants. I will also be



able to see what factors played the largest part in their decision process by reading the decisions handed down. This process will prove crucial to helping me defend my hypotheses.

## Chapter 1 – History of South Africa

The purpose of this chapter is to establish a history of European settlement in South Africa. In order to understand the events of post-Apartheid South Africa, in particular the Truth and Reconciliation Commission and the Amnesty Committee it is necessary to understand the history of white and black relations since the establishment of first the Cape Colony, and further the period of National Party rule and the establishment of Apartheid as a political ideology.

### 1.1 Colonization

#### 1.1.1 Dutch Rule at the Cape

The Cape of Good Hope was first put on the map by Portuguese sailors who rounded the Cape in 1487 in hopes of finding a sea route to India (Omer-Cooper 1994, 17). However, it was not until the mid seventeenth century that the Cape of Good Hope received its first settlers. In 1651 the *Vereenigde Oost-Indische Compagnie* (VOC)<sup>4</sup> made the decision to establish a halfway point for Company ships to re-supply and receive repairs on the way to and from India. On 4 December 1651 the Hon. Lords Directors of the VOC drafted a resolution commanding Jan van Riebeeck to take a fleet to the Cape of Good Hope and establish a halfway house for Company ships. (Marquard 1968, 28-34).

Upon arriving at the Cape, van Riebeeck went about fulfilling his orders to establish a halfway house. This expansion and permanent settling of Europeans on traditional Native<sup>5</sup> grazing lands brought about the first conflicts between European and Native.<sup>6</sup>

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<sup>4</sup> Dutch East India Company

<sup>5</sup> The first natives that Europeans came into contact with were the KhoiSan and the Hottentots.

<sup>6</sup> See e.g. *The Early Cape Hottentots*, Van Riebeeck Society Publications No. 14, pp. 14-16.

Due to wars with England and France in the later part of the seventeenth century the VOC started to view the Cape as more than just a refuelling station, but as a strategic position on the global trade route with India. This change led to an increased need for *free burghers* at the cape. An increase in population would mean an increase in the Cape Militia, and hence a stronger defence of VOC interests. Thus, the VOC started a policy of granting free one-way passage to the Cape as well as granting land to new settlers. (Marquard 1968, 39-42).

In 1685 French King Louis XIV revoked the Edict of Nantes, an edict guaranteeing religious freedom to Protestants within the country. This led to mass migration of French Protestants, known as Huguenots, to neighbouring countries. The VOC viewed this as an opportunity to increase the population of the Cape: the Huguenots were granted free passage and free farms upon arrival to the Cape. Ultimately 164 French and Belgian Huguenots made the trip to the Cape Colony (Omer-Cooper 1994, 19).

As time progressed the Cape Colony started to expand further into the heart of Africa. This expansion was brought about by the *trekboer*<sup>7</sup> who according to company policy could occupy a farm up to 6,000 acres in size for a small payment of five pounds. This expansion led to increased contact with native populations. The increased contact often times resulted in the expulsion of the native populations from their lands and the establishment of farms. This expulsion led to increased problems between settler and native and many small-scale battles were fought over control of the land. Do to VOC policies of cost cutting, those settlers on the outer frontiers were left to themselves, they

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<sup>7</sup> Word for migrant farmer. The *trekboer* was someone who ventured into the heartlands to find land and establish farms.

had no rule of law, and what we saw was an eventual back slide from settlement and development to that of the nomadic farmer. These policies led to a strong individualist culture amongst the *trekboers*, one that did not believe in the rule of one man over the other, and that believed justice was best served by the individual and not by the rule of law of Government. It is in this *trekboer* culture that we see the start of what later would become an Afrikaner ideology (Marquard 1968, 52-55; Omer-Cooper 1994, 25).

By the late eighteenth century the Cape Colony had expanded north of the Olifants River and as far east as the Great Fish River. Most of the land was sparsely populated, and had been obtained by battles with at first the native Hottentots and as they moved East eventually with the Xhosa peoples. The frontier settlers were far removed from the more developed Cape area and had become a hardened people both by the struggle for survival on the arid lands of the Karroo and by their many violent encounters with the native Xhosa populations. "His freedom and individualism were bred in isolation, far from the settled society in which a man's rights are limited by the rights of his neighbours" (Marquard 1968, 53). It was all of these factors that eventually led to the establishment of the Afrikaner as a new and distinct nationality from that of the original Dutch settlers, the Afrikaner who would one day rule South Africa under the racist ideology of Apartheid.

## 1.1.2 British Rule in South Africa

### 1.1.2.1 Initial Colonization of the Cape

In 1792 Britain became involved in a war with France, which lasted through the Revolution and throughout the era of Napoleonic rule. As a result of this war Britain sought to defend its interests globally. In 1795 the British took control of the Cape Colony from the Dutch where

they ruled until 1803, giving the Cape back to the Dutch. However, in 1806 the British retook the Cape, this time with no intention of giving it back to the original rulers (Omer-Cooper 1994, 35). The British conquering of the Cape in 1806 marked a dramatic change in the life of the Cape Colony.

The Cape Colony that the British took over in 1806 was a colony in chaos. There were two distinct groups, that of the established colonials in the West, Cape Town and the Drakenstein Area, and those in the East, the *trekboers*. These two societies were disconnected, having very little in common, those in the West had advanced, while those in the East were still living a nomadic life in harsh conditions, and were strongly opposed to governmental intervention in their lives (Marquard 1968, 91).

Despite the problems facing the Cape the first decade of British rule was very prosperous. Reforms made in the trade sector led to large increases in both exports and imports, the cattle population tripled in size, slavery was abolished bringing about more economical production, and the living standard rose across the board. However, this increase in wealth and in living standards did not mean that there was no resentment of the British by the already settled Dutch.

As stated above, the Cape Colony had been separated from Europe for roughly 150 years by the time of the British arrival. Many of the developments in Europe that were brought about by the enlightenment had yet to reach the small Cape Colony. The ideology of those in South Africa was that of their seventeenth century ancestors, not that of the nineteenth century. This ideological gap proved to cause many problems between the new British rulers and the established settlers. The initial period of British rule “marks the introduction of the Cape to

the new ideas that stirred Europe at the end of the eighteenth and the beginning of the nineteenth centuries, and this process too, was often painful; and it was not less so because the introducer was Britain, not Holland, the language English, not Dutch, and the most vigorous apostles of the ideas were missionaries of denominations different from that to which the Dutch colonists were accustomed” (Marquard 1968, 109). This only helped to enhance the already strong sentiment among the settlers of being a distinct people, and marks the first problems between British and Boer<sup>8</sup>.

#### 1.1.2.2 Expansion: The Great Trek, and Settlement in the East

By the year 1835 many changes had been made at the Cape. In 1833 the British Parliament passed a bill abolishing slavery throughout the British Empire (Marquard 1968, 116). While this was ultimately a beneficial move for the Cape farmers, at the time it brought about much hardship, and many farmers even went bankrupt. This abolition movement was just one more check on the Boers list of evils the British had committed against them in the Cape. Not only did the British abolish slavery, they also started to establish a stronger government at both the central and local levels. While these changes proved to be beneficial for the Cape Colony, at the time they were strongly opposed by the established Afrikaner settlers as being an attack on their way of life. As discontent grew, the Afrikaner started looking north, to a land where they could be their own people, a land that was not ruled by the British.

In 1836 the Boer decided to go out on their own. Farmers and families packed their wagons and headed north. This exodus has been termed the Great Trek due to the sheer quantity of Boers that left the Colony and moved north.

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<sup>8</sup> Boer with a lowercase is the Dutch word for farmer, when it is written with a capital B it is another name for a settler of Dutch origin.

Just as the American colonists had published their Declaration of Independence in 1776, so to the *Voortrekkers* published theirs in February 1837. The *Grahamstown Journal* published a letter written and signed by Piet Retief, a leader amongst the *Voortrekkers*, saying:

“... as we desire to stand high in the estimation of our brethren, and are anxious that they and the world at large should believe us incapable of severing that sacred tie which binds a Christian to his native soil, without the most sufficient reasons, we are induced to record the following summary of our motives for taking so important a step, and also our intentions respecting our proceedings towards the native tribes which we may meet with beyond the boundary” (quoted in Marquard 1968, 124).

The Great Trek lasted for many years, with Boers moving in small groups northwards across the Orange River, and into the Transvaal and Natal areas of South Africa. The Trek was not an easy experience for the Boer. There was the constant fear of sickness, and of battle with the Native populations.

By 1838 a large Boer population had moved into the Natal area of South Africa. This area was traditionally Zulu. (Marquard 1968, 137).

The Boers faced many problems going beyond that of disease and fear of war. The chief problem was that of not being a united group. The *Voortrekkers* were frontiersmen, they feared the law, and resented the idea of one being ruled by another. This distrust of leadership brought about much distrust amongst the different *trekker* groups and made it difficult for Boer to truly settle down and establish themselves in the newly acquired lands. This problem of being a loosely connected group with no real sense of unity was brought to an end in December 1838, when Boer won a decisive battle against Zulu. This battle is known as the battle of Blood River, and the day, 16 December is still a holiday in South Africa (Marquard 1968, 139).

This event marked a turning point in the lives of the *Voortrekkers*, with the victory at Blood River the Boers were able to unite as a group. Just four years after they had departed the Cape Colony they had their own state, which they could rule as they saw fit. However, this state was not to last long. In 1843 (history, info.gov.za) the British annexed Natal, taking away the Boers hopes of having their own state in Natal, and only driving the wedge deeper between the two European groups.

The loss of Natal did not deter the Boer from further fights for independence. After the annexation of the Natal Province, the Boer started to disperse northwards into the Transvaal area, fleeing "*die juk van Engeland*"<sup>9</sup> (Meredith 2007, 65), and searching for a land of their own. Finally in 1852, the British government granted the Boer independence north of the Vaal River. The treaty granting independence was signed at the Sand River Convention, establishing the first truly independent Afrikaner state the *Zuid-Afrikaansche Republiek*<sup>10</sup>, informally known as the Transvaal Republic (Worden 2007, 18). Just a short two years later the British granted the Afrikaner yet another independent state. The *Oranje-Vrijstaat*<sup>11</sup> was granted independence by Britain with the signing of the Bloemfontein Convention in February 1854. The difference between the Sand River Convention and the Bloemfontein Convention was that the Bloemfontein Convention not only granted independence to the Afrikaner peoples, it replaced British sovereign power over a region with Afrikaner sovereignty (sahistory.org.za).

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<sup>9</sup> "The yoke of England"

<sup>10</sup> South African Republic (area of the present-day Gauteng Province as well as a large part of the present-day North-West Province)

<sup>11</sup> Orange Free State (area of the present-day Free State Province)



The Afrikaners had finally received their freedom and their independence from British rule, however it was to be short lived. With the founding of diamonds in 1867 in what would become the city of Kimberley, the Boer saw the ever so familiar encroachment of the British imperial machine. In 1871 the territory of Griqualand West and the diamond fields within were annexed to the British Crown (Meredith 2007, 26).

By the late 1870s the South African Republic was in financial and political turmoil. President Burgers, "a liberal *predikant*<sup>12</sup> from the Cape, educated in Utrecht in Holland" (Meredith 2007, 66), was highly unpopular amongst his Boer constituents most notably for his attempts at liberalizing the Republic. The most problematic of his reforms however was his liberalization of the educational system. His Boer constituents were outraged at this move claiming that Burgers was "taking the Bible out of schools" (Meredith 2007, 66). Burgers efforts at reform were further hindered by ongoing land disputes with the Pedi nation.

In 1877 the Republic was annexed to the British. Burgers was outraged, as were the burghers of the Republic. However The Volksraad and Burgers finally caved to British power, stating that they only reason they agreed to annexation was to avoid violence, and because the British were the superior power. The annexation of the Transvaal while accepted without resistance by the Boer, led to an ever deeper resentment of the British, as well as a strengthening of an ultra conservative national identity relating the Boer to the Israelites of past as God's chosen people in Africa (Meredith 2007, 70-73).

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<sup>12</sup> Minister in the Dutch Reformed Church

It was not until the mid 1880's that the British took up a keen interest in the Transvaal again. With the discovery of gold on the Witwatersrand in 1886, like with the discovery of diamonds, the British started to compete for control of the land. At first there was a just a large influx of British migrants to the gold fields on the Rand, however by the 1890s the British were desperately seeking to gain control of the Transvaal and the gold mines of the Witwatersrand. Repeated attempts by the British to gain control of the Boer republic that led to the Anglo-Boer War.

On the ninth of October 1899 President Kruger on behalf of the *Zuid-Afrikaansche Republiek* gave the British an ultimatum, withdraw all British troops from within the borders of the Republic along with all reinforcements within forty-eight hours or "with great regret be compelled to regard the action as a formal declaration of war" (Meredith 2007, 422). The British failed to comply. What would ensue was one of the bloodiest wars the sub-continent had ever seen, lasting for three years, and resulting in the deployment of 450,000 imperial troops, and in roughly 75,000 deaths, approximately 26,000 of which were Boer women and children who had died in British concentration camps (Meredith 2007, 457-468). The outcome of the war may have been a British victory in essence, but the Boer never truly surrendered. They took the loss to heart, claiming that the British had murdered their women and children, and declared that they would one day rise again to power.

Just eight years after the end of the Anglo-Boer War Unionization was declared, and the Union of South Africa was created. The Union was no longer formerly under British control, but was similar to Canada in that it was part of the British Empire, but had the power to rule over itself independently. Throughout the next thirty-eight years the

British ruled the country in such a way that English South African's interests were placed above all others interests, going so far as to establish the first racial segregation laws of the country. There policies of English supremacy also lead to an increase in Afrikaner discontent and ultimately led to the rise of the National Party under the leadership of Daniel Francois Malan in 1948.

## 1.2 National Party Rule and the Apartheid State 1948-1990

The Afrikaners first rose to power under the leadership of Daniel Francois Malan<sup>13</sup>, a well-known advocate of Afrikaner Nationalism, and the leader of the pro-Afrikaner National Party. From its outset was a party based on an ideology of the superiority of whites over blacks, and even further, the superiority of the Afrikaner people over all others within South Africa. It was through the use of both propaganda tools such as what was taught at the pulpit on Sunday mornings, or what was taught in the classroom, as well as blaming the *swart gevaar*<sup>14</sup>, for all the woes that had befallen the white population, and more importantly the Afrikaner population that enabled Malan and his National Party to come to power. This fear of blacks was indeed understandable. At the beginning of the 1940s, after years of blacks remaining quiet and accepting the oppressive segregationist policies enforced on them had taken to forms of militant opposition against the white population. Malan and his National Party promised many things, "its primary appeal lay in its determination to maintain white domination in the face of rising mass resistance;

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<sup>13</sup> Malan was born in the Cape Colony, and received a doctorate in divinity from University of Utrecht Netherlands after finishing his pre-doctoral studies at the University of Stellenbosch. He was an ordained minister in the Dutch Reformed Church of South Africa, and an ardent supporter of Afrikaner Nationalism. He fought strongly for the use of Afrikaans as the language of the Afrikaner, and eventually started his own political party in 1938, later combining forces with J. Hertzog's National Party to win the majority in the 1948 elections. (Britannica.com)

<sup>14</sup> Black Threat

uplift poor Afrikaners; challenge the pre-eminence of English-speaking whites in public life, the professions and business; and abolish the remaining imperial ties" (history, info.gov.za). The most compelling move by Malan was his proposal for complete racial segregation. It was claimed, and more importantly believed, that the only way to protect whites from the black heathen was through complete segregation as well as through establishing laws protecting whites both politically and economically.

Immediately after coming to power Malan put into place an all Afrikaner cabinet, establishing a precedent of Afrikaner superiority in politics, which would last for the next forty-six years. During his inauguration address Malan stated, "For the first time since Union<sup>15</sup>, South Africa is our own, and may God grant that it will always remain so" (Meredith 2007, 525). The obvious meaning behind this declaration was that South Africa was now an Afrikaner State, and that he (Malan) would do all that he could to ensure that it remained an Afrikaner State for the rest of time.

From the start Malan and the newly elected Parliament put the National Party's goal of complete segregation into practice. The first law, which they passed in 1949, was the Prohibition of Mixed Marriages Act, banning any interracial marriages within South Africa. This law was only the beginning of what was to become "...the most elaborate racial edifice the world has ever seen – a vast apparatus of laws and controls to enforce white supremacy" (Meredith 2007, 525).

As the National Party became stronger, so did their entrenchment of segregationist laws. By the year 1958 Hendrik Verwoerd was elected as Prime Minister (Hendrik

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<sup>15</sup> 1910

Verwoerd, sahistory.org.za). It was under the leadership of Verwoerd that segregation became entrenched in South African life under the name of Apartheid. Until the time of Verwoerd's nomination as Prime Minister, the segregation policies of the National Party government had been disorganised and somewhat mild. Verwoerd turned that around. Verwoerd introduced Apartheid after becoming Prime Minister, in essence it was the continuation of segregationist policies into all spheres of life, it was social engineering in the strictest sense (history, info.gov.za). With the new ideology of apartheid in place, the government started to pass laws at an alarming rate. At the start, all citizens of South Africa were required to register with the state, and were assigned to one of the four colour groups, White, Bantu, Indian, and Coloured. The government then started to forcefully remove blacks from their homes, and move them into what were known as Bantustans, and what later became semi-autonomous native states (history, info.gov.za). Soon enough blacks were required to carry passes that designated where in the country they were allowed to be. If a black person was stopped by the police without a valid pass they were automatically taken to jail.

Ant-Apartheid resistance came into the international spotlight with the Sharpeville Massacre in March of 1960. Sixty-nine protesters were killed when police opened fire into the crowd. After the massacre the government imposed a state of emergency and detention without trial was introduced (history, info.gov.za). From that point relations between blacks and whites only got worse. However, it was not until the 1980s that all out violence broke out. The armed wing of the ANC, Umkhonto weSizwe, started launching armed attacks on state organisations throughout the country. This was met by a tightening of control by the government. The Security Police, specifically with the help of its covert unit based at Vlakplaas started to play an ever-important role in

supporting the state. Assassinations, as well as daily police violence became the norm in South African society. By the time de Klerk became President in 1989, South Africa was in an all out civil war.

## Chapter 2 – Negotiations and Democracy in South Africa

On February second 1990 F.W. de Klerk, the newly elected President of the Republic of South Africa, stood before Parliament for his first ever speech as head of the Republic. What happened in the next few minutes has gone down in history books across the world. Frederik Willem de Klerk was viewed by all as being a conservative member of the National Party, someone who would fight for the preservation of the Afrikaner as well as for Apartheid. It was this perception of de Klerk that made his opening address such a shock the world over. De Klerk opens with the statement: “The general elections on September the 6<sup>th</sup> 1989, placed our country irrevocably on the road of drastic change” (de Klerk 1990). One must automatically ask, “What is this ‘road of drastic change’ that de Klerk speaks of?” South Africa at that time had been under the rule of the pro-Apartheid National Party for forty-two years. Things had been ok with scattered violence for the first thirty years, but that all came to an end in the 1980s with large-scale violence by both the Government and the resistance movements becoming an everyday occurrence. De Klerk went on to say: “Underlying this is the growing realisation by an increasing number of South Africans that only a negotiated understanding among the representative leaders of the entire population is able to ensure lasting peace” (ibid). De Klerk further argued that the only other option South Africa had was to continue with the violence and conflict, which he states is in nobody’s interest. The coming together of the leaders from all groups of society was the only way in which South Africa could hope to preserve its future as a country. This speech can be argued was the start of the end of Apartheid, it was F.W. de Klerk’s statement that “the Government will accord the process of negotiation the highest priority...Practically every leader agrees that negotiation is the key to reconciliation, peace and a new and just dispensation” (ibid) that ultimately led to the start of the South African transition away from Apartheid and to a new democratic nation.

One of the first moves that de Klerk made as a start to the negotiation process was to release Nelson Mandela from prison. Mandela was released from Victor Verster prison, outside of Paarl, where he spent the last three years of his twenty-seven year long sentence for sabotage and conspiracy against the South African State. Releasing Mandela, the figurehead for the ANC and resistance in South Africa, within days of his parliamentary address proved that de Klerk was serious about what he said. Furthermore, from the beginning of negotiations Mandela had made the argument that negotiations could not take place as long as there were so many men locked away in prison, and as long as opposition parties such as the ANC and PAC were banned. The fact that during his speech de Klerk heeded Mandela and unbanned the opposition parties as well as released many of the political prisoners gave much legitimacy to the initial stages of negotiations in South Africa. “The prohibition of the African National Congress, the Pan Africanist Congress, the South African Communist Party and a number of subsidiary organisations is being rescinded. People serving prison sentence merely because they were members of one of these organisations or because they committed another offence which was merely an offence because a prohibition on one of the organisations was in force, will be identified and released” (de Klerk 1990).

Formal negotiations started in December 1991 in Johannesburg. The time between de Klerk’s opening speech at Parliament on 2 February 1990 and the start of formal negotiations in December 1991 was used as a time to assure the necessary measures had been met for successful negotiations. The first stage of the negotiation process was for de Klerk and leaders of the ANC to sit down for a discussion about how the Country would proceed with the transition to a democratic state. The opening lines of the Groote Schuur Minute state: “The Government and the ANC agree on a common commitment towards the resolution of



the existing climate of violence and intimidation from whatever quarter as well as a commitment to stability and to a peaceful process of negotiations” (Groote Schuur Minute)

The meeting further established what would be necessary for the National Party government and the African National Congress to enter into formal negotiations. The first thing mentioned in the document is the necessity of creating some form of immunity so that members of formerly banned groups, in particular members of the African National Congress, who up to this point were considered enemies of the state, could re-enter South Africa without threat to enter into negotiations. The Government elected to go through with select indemnity. (Groote Schuur Minute)

In 1990 the government passed the Indemnity Act (Ntoubandi). The act essentially allowed for the President to temporarily grant amnesty to members of formerly banned groups, such as leaders in the African National Congress or the Pan African Congress, whom he saw as being necessary to the negotiation process, so that they could return to South Africa and take part in the Convention for a Democratic South Africa. The Indemnity Act was a very important move by de Klerk and the National Party government in showing the black majority in South Africa that they truly were serious about entering into negotiations and that they truly were willing to make the system more equal. Had the government not allowed for the temporary granting of amnesty to members of formerly banned groups then the negotiation process would have never been able to get to a point where transition was a possibility.

The most important part of the negotiations in South Africa was the Convention for a Democratic South Africa. Opening on 20 December 1991 with the National Party government and the African National Congress being the two leading figures. The goal of the

Convention was to establish a new constitution, which would establish a new democratic South Africa. The Convention took place at the World Trade Centre in Kempton Park, just south of the administrative capital of Pretoria.

From the very beginning the African National Congress and the National Party had different ideas of how a new constitution should be drafted. The African National Congress “insisted that only an elected constituent assembly could draw up a constitution, while the National Party and the Inkatha Freedom Party<sup>16</sup> opposed this, fearing that an elected body, with a probable ANC majority, would have a blank cheque to draft a constitution that suited ANC needs” (Giliomee and Bernard, 2007). However, a Declaration of Intent was finally signed by nineteen of the twenty participants<sup>17</sup> “committing them to a united, democratic, non-racial and non-sexist in which sovereign authority is exercised over the whole of its territory” (Giliomee and Bernard, 2007).

In early 1992 five working groups were established, each with a different task and role to fulfill. The Convention however, faced many problems. The Conservative Party, an ultra right-wing party made up of conservative Afrikaners threatened the country and the negotiations with a series of attacks throughout South Africa. This strong sign of discontent with the direction that the country was moving in, led the government to a whites only referendum on 17 March 1992.

The referendum is perhaps one of the most significant points in South African history. Whites in South Africa were asked if they wished for the negotiation process for a new democratic constitution to progress. The results came back with 68 percent of the white population

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<sup>16</sup> An ethnically Zulu political party

<sup>17</sup> The government of Bophuthatswana declined to sign

saying yes. This landmark moment in South African history showed the government, and the world that the people of South Africa were ready for an end to Apartheid, and for a new democratic nation.

The Convention soon came to a standstill in May of 1992 with the withdrawal of the African National Congress from the negotiating table. The breakdown in negotiations was due to fundamental differences between the National Party and the African National Congress. The National Party proposed “enforced coalitions, a collegiate presidency composed of the leaders of the major parties, serving as president on a rotational basis, and a senate that gave generously weighted representation to minority parties. It advocated a federal system with strong regional and local governments” (Giliomee and Bernard, 2007). The African National Congress strongly rejected the proposals made by the National Party. They rejected enforced coalitions, and minority vetoing powers. They further argued that “minority parties would be adequately protected under majority rule by their assured representation under proportional representation, their ability as opposition to keep the government on its toes, and the development of a vigorous civil society” (Giliomee and Bernard, 2007). The African National Congress was also suspicious of federalism “regarding it as a means whereby wealthier regions could protect their advantages” (Giliomee and Bernard, 2007), giving them a disproportionate amount of power.

The tables turned however in June of 1992. The massacres in both Boipatong and Bisho<sup>18</sup> tipped the scales of power. No longer were the National Party and the African National Congress equals in the negotiation process, but rather the scales had tipped in favor of the

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<sup>18</sup> The capital of the Ciskei

African National Congress, giving them the necessary power to make demands and re-enter into negotiations with the National Party.

On 26 September 1992 de Klerk and Mandela signed the Record of Understanding making way for the resumption of formal negotiations in 1993 (Giliomee and Bernard, 2007). The Record followed de Klerk's earlier proposal that the Convention should establish an interim constitution that should be drafted through multilateral negotiations, and enacted into law by the current Tricameral Parliament. The Constitution would establish free and fair elections in which a new all-inclusive Parliament would be established, as well as a Government of National Unity. The newly elected Parliament would then establish an elected Constitutional Assembly whose job would be to establish a new and final constitution for South Africa. The African National Party agreed to these terms adding a strict timeframe for which the interim government had to establish a new constitution.

Formal negotiations were resumed in April of 1993, under the new name 'Multiparty Negotiation Process' (Giliomee and Bernard, 2007). The Multiparty Negotiation Process "was imbued with a sense of urgency" (Giliomee and Bernard, 2007). South Africa was in a time of crisis. Economically the country was facing sanctions by most of the western world, causing the economy to spiral into economic decline. Likewise, the country was experiencing an increase in violence. This increase in violence showed that neither de Klerk nor Mandela were in full control of their respective armed forces. This recognition of the mutual weaknesses created a mutual interdependency. "It was this recognition of mutual interdependence that ultimately kept the process on track despite many vicissitudes" (Giliomee and Bernard, 2007). It became obvious to the actors involved that they must work together, and end the negotiations quickly in order to save South Africa from self destruction.

As the negotiations continued it became obvious that the largest hurdle to cross was how to deal with South Africa's past. The National Party from the beginning desired, and fought for a system of blanket amnesty for all those involved with crimes of the past, particularly those who worked in some way to uphold Apartheid and the National Party. They wanted to cover up the past, and to just move forward. The African National Congress on the other hand pushed for retributive justice. However, in a last minute deal the negotiating parties were able to come to an agreement on how best to deal with the atrocities of the past.

The postamble of the constitution states clearly what is needed for South Africa to be able to transition away from its violent past, into a new free and fair democracy. The opening lines of the postamble read as follows:

“This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex” (Interim Constitution, 1993).

These words tell of the history that South Africa has faced, as well as of the future that is sought. In paragraph four of the postamble it is said “These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation” (Interim Constitution, 1993). The above statement is so crucial to understanding what happens next in the South African transition process.

The next paragraph of the postamble sets out clearly what must be done to achieve the above mentioned goals. “In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past” (Interim Constitution, 1993). This

decision to grant amnesty for certain crimes of the past was a very important step for the future of South Africa. As stated above the National Party and the African National Congress had different opinions of how to deal with the crimes of the past. The African National Congress, and the popular support of the citizens, and so had the power in the negotiation process, yet the National Party still controlled the military, and the police force, in essence giving them the power to destroy all that had been achieved up until that point. It was the threat of a relapse into violence that led the two parties to come to this momentous compromise.

The final part of the postamble is a directive to the newly elected Parliament. “To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed” (Interim Constitution, 1993).

## Chapter 3 – Amnesty in South Africa

### 3.1 Writing the Law

One of the first things that the newly elected Parliament did upon meeting was to establish the Justice Portfolio Committee. The Justice Portfolio Committee was tasked with job of creating the laws necessary to fulfill the demands of the Interim Constitution. At the beginning of the process it was decided that what was necessary was the introduction of a Truth Commission. In an interview in 1994 then Minister of Justice Dullah Omar said:

“The idea of a Truth Commission goes back to ANC decisions. When the National Executive Committee of the ANC discussed what had happened in the country, and in particular what happened in ANC training camps like Quatro, there was a strong feeling that some mechanism must be found to deal with all violations in a way which would ensure that we put our country on a sound moral basis. And so a view developed that what South Africa needs is a mechanism which would open up the truth for public scrutiny. But to humanize our society we had to put across the idea of moral responsibility – that is why I suggested a combination of the amnesty process with the process of victims’ stories” (Krog, 1999:8).

The ANC at the time stated it bluntly: “Victims, and not perpetrators, should be the beginning, the focus and the central point in the legislation” (Krog, 1999:8).

Johannes de Lange a white Afrikaans member of the African National Congress is elected as the chairperson of the Justice Portfolio Committee. The Committee

“spent six and a half hours on the Truth Commission Bill before any public submission was made. It listened for more than twenty hours to submissions and it discussed, compiled and drafted various clauses of the Bill in 100 hours and 53 minutes. Many a time the civil servants turned up at the meeting with red eyes and wrinkled clothes, having worked through the night to prepare a new discussion document. In total, the Committee spent 127 hours and 30 minutes on the Truth Commission Bill” (Krog, 1999:14)

The Promotion of National Unity and Reconciliation Act was signed into law by President Nelson Mandela on 19 July 1995. It is the most complex and controversial law ever passed by the South African Parliament.

<sup>19</sup>The process of establishing the Truth Commission was an important aspect of the transition process as much as the simply establishment of the Truth Commission. The fact that every citizen no matter how weak, or how strong, was able to write to the Committee and share their idea of what should be considered when writing the law. The core group of the Committee was made up of Afrikaans speakers. This was important. Like the journalist from *Beeld* says to Antjie, it was those responsible for the crimes of the past who were the ones fighting to rectify those wrongs.

### 3.2 Promotion of National Unity and Reconciliation Act No. 34 of 1995

The final Truth Commission law, formally known as the Promotion of National Unity and Reconciliation Act No. 34 of 1995, established the most thorough truth commission that the world had ever seen. The opening words of the Act are an explanation of intent.

“To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 ... within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make *full disclosure of all the relevant facts relating to acts associated with a political objective* committed in the course of the conflicts of the past during the said period; ... and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission...” (Act No. 34, 1995).

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<sup>19</sup> Journalist Antjie Krog<sup>19</sup> writes in her book: “A journalist from *Beeld* reminds me: ‘Do you remember that the finalizing of the legislation by the core committee was done in Afrikaans? It was Johnny de Lange as chair, Willie Hofmeyr from the ANC, Dene Smuts of the DP, Koos van der Merwe of the IFP, Danie Schutte for the NP and Corné Mulder for the Freedom Front. I like it, those responsible for the past working to rectify it” (1999:14-15).



The established Truth and Reconciliation Commission consisted of three Committees, the Committee on Human Rights Violations, the Committee on Amnesty<sup>20</sup>, and the Committee on Reparation and Rehabilitation.

The Commission consisted of seventeen members, and was chaired by Anglican Bishop Desmond Tutu. President Nelson Mandela was given the power to elect the chairman, as well as to, along with consultation from the cabinet, elect the other commissioners. Chapter Two section Seven of the Act states: "...commissioners shall be fit and proper persons who are impartial and who do not have a high political profile" (Act No. 34, 1995). It was important that the commissioners were not highly active in either the support of the past Apartheid regime, or of one of the opposition groups of the past. The seventeen commissioners "were supported by approximately three-hundred staff members" (USIP). The most important information for this thesis is found in Chapter Four of the Promotion of National Unity and Reconciliation Act No. 34 of 1995.

Chapter Four of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 establishes the Committee on Amnesty. "The President shall appoint the Chairperson, the Vice-Chairperson and, after consultation with the Commission, the other members of the Committee: Provided that at least three of such other members of the Committee shall be commissioners" (Act No. 34 Ch. 4 S. 17 Sub-S 2, 1995). Unlike the other Committees, the Amnesty Committee had independence from the Truth and Reconciliation Commission. It was to act like a judicial body, with its Chairperson being a Judge. While members of the Truth and Reconciliation Commission were present on the Amnesty Committee; power was held by judges, who were to be impartial and make

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<sup>20</sup> The focus of this Thesis

their judgements on the facts presented to them in each of the cases. It was the independence granted to the Amnesty Committee to act as a court of law that allowed it to function as well as it did.

The following paragraphs will go through Chapter Four of Act No. 34, which not only established the Amnesty Committee, but set forth its mandate. Section Eighteen of Chapter Four moves into the procedure of applying for the granting of amnesty. It states that any person who is responsible for any "act, omission or offence ... associated with a political objective..." (Act No. 34 S 18 Sub-S 1, 1995). Once receiving an application the Committee would review the application, at which point they could either accept it as is, they could return it to the applicant with an explanation of things that must be changed for it to be accepted, or they could reject the application on the grounds that it does not meet the requirement of being for an act associated with a political objective in the allotted time frame.

The Committee was required to give precedent to cases involving incarcerated applicants. Likewise, if an applicant was currently involved in a court trial then the committee had the power to suspend those proceedings in order to consider and dispose of the application at hand.

Section Twenty of Chapter Four deals with the granting of amnesty and the effects that arise. The Act states that for an application to be considered, it is necessary that the crime be (1) associated with a political objective, and (2) the applicant has made a full disclosure of relevant facts (Act No. 34 Ch. 4 S. 20 Sub-S 1, 1995). Sub section two of Section twenty states what requirements must be met for the crime to be considered to

have had a political objective. (1) it must have fallen between the 1 March 1960 and the cut-off date; (2) it must have been committed by a member or supporter of a publicly known organisation or liberation movement, and have been committed in support of the and furtherance of the political struggle waged by the organisation or movement; (3) be committed by an employee of the State, in the scope of his/her duties, against a publicly known organisation or liberation movement; (4) be committed by any member of an organisation or a liberation movement with the bona fide belief that the crime would further the political struggle; and (5) if the applicant was attempting a coup d'état (Act No. 34 Ch. 4 S. 20, 1995). In essence, Section Twenty is the blueprint for amnesty. The section sets forth clearly what requirements must be met in order for an applicant to receive amnesty.

The writers went even farther in setting forth strict guidelines on how the Committee members were to determine whether or not the act committed was indeed a politically motivated crime.

"(a) the motive of the person who committed the act, omission or offence; (b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto; (c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence; (d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals; (e) whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and (f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued, but does not include any act ... committed ... (i) for personal gain ... or (ii) out of personal malice, ill-will or spite..." (Act No. 34 Ch. 4 S. 20, 1995).

It is these above requirements that I will use as my starting point for my case study. While reading through the cases, I will be closely looking for questions by Committee members, or presentations by applicants lawyers showing me that the above principles were indeed the ones used as the backdrop of judgement. Likewise by reading the Committee's decisions I will be able to get a grasp on exactly what factors they took into account when making there decisions.

### 3.3 The Amnesty Committee in South Africa

The Committee on Amnesty opened its doors on 20 May 1996 in the small community of Phokeng. It consisted of three judges, Justice Hassen Mall<sup>21</sup>, Justice A.B.M. Wilson, Justice B. Ngoepe, as well as two commissioners, Advocate Chris de Jager, and Mrs. Sisi Khampepe. Justice Mall was elected as the chairperson of the Committee, with Justice Wilson holding the position of Vice-Chairman.

The Amnesty Committee was active from May 1996, until its last hearing in December of 2000, completing their final decisions in 2001. Practicing the powers granted, the Amnesty Committee established a number of sub-committees in order to better cope with the number of applications and hearings that were put before it. These sub-committees were granted the power to hear cases, and to grant or deny amnesty to applicants.

The purpose of this section is to provide an analysis of the Committee's work.. This analysis will seek to answer the questions: Did the Amnesty Committee hold strictly to the guidelines

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<sup>21</sup> Justice Mall passed away during the lifespan of the Committee.

set forth in Act No. 34 of 1995 while determining the eligibility of applicants for amnesty?; If not, then what factors did they take into account most frequently in making their decisions?

In order to answer the above questions I have taken ten cases that went before the Amnesty Committee. I took two cases from each year that the Committee was active, 1996 to 2000, one of the cases dealing with a white perpetrator, usually a member of the security apparatus, as well as one black perpetrator. Cases were chosen in order to get the fullest range of understanding as possible. The first case that I look at for example was the first case that went before the Amnesty Committee. The last case that I look at was one of the last cases that went before the Amnesty Committee. The other cases were selected due to the actors in the cases. For example most of the cases dealing with white perpetrators are dealing with former police officers that were fighting for the Apartheid state. Most of the cases dealing with black perpetrators are very well known cases internationally. I selected these cases because they are representative of some the worst things that happened during the struggle for democracy in South Africa. The case selection was not random. Cases were rather selected, based on research done, so that as wide a range of crimes could be shown and covered in my analysis.

### 3.3.1 The Case of Boy Diali and Christopher Mokgatle

Boy Diali and Christopher Mokgatle were both members of the Baphokeng tribe. During the Apartheid years their tribe was a part of the tribal homeland of Bophuthatswana. Bophuthatswana was an independent homeland under the leadership of President Lucas Mangope. Mangope was a terrible dictator who ruled Bophuthatswana with an iron fist. During his reign Mangope removed many of the traditional tribal leaders throughout his state, and placed his own people in the empty seats of power.

The Baphokeng tribe from the beginning of Bophuthatswana in 1977 defied the leadership of Lucas Mangope. Chief Molekhehle the rightful chief of the Baphokeng tribe refused to fly the flag of Bophuthatswana or to recognize Mangope as having authority over the Baphokeng people. As a result Mangope threatened the tribe, and Chief Molekhehle in particular, eventually resulting in the fleeing of Chief Molekhehle to Botswana. Upon fleeing Chief Molekhehle installed his right hand man, Cecil Timochole as acting Chief. President Mangope on the other hand came into Phokeng and installed Chief Molekhehle's brother George Molekhehle as acting chief. George was a supporter of President Mangope, and was not supported by the people of the Phokeng tribe.

By 1990 South Africa had entered into negotiations with the newly unbanned ANC. However, this prospect of freedom caused President Mangope to tighten his control on the citizens of Bophuthatswana. The Phokeng Tribal Action Committee decided to fight back. They believed that Bophuthatswana should cease to exist, and that all of its citizens should be incorporated into South Africa. In part this was the message of the African National Congress at the time, and in part the Baphokeng were tired of living under the leadership of President Mangope and the leaders that he put in place. It was with this goal of ending the rule of President Lucas Mangope and the existence of Bophuthatswana that the two men committed their crime.

As stated above both Boy Diali and Christopher Mokgatle were members of the Baphokeng Tribal Action Committee. On the 29<sup>th</sup> of December 1990 the Phiris<sup>22</sup> held a meeting where the topics of both the return of their exiled Chief, and the disestablishment of Bophuthatswana were discussed. The Phiris also talked about how

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<sup>22</sup> The active male members of the tribe between the ages of eighteen and twenty-five.

important it was that they regained control over the affairs of the tribe. They realised that in order for them to regain control over tribal affairs they would need to gain control of the Civic Centre in Phokeng. The Civic Centre was the centre of tribal affairs. In essence who ever had control of the Civic Centre had control over the affairs of the tribe.

The men left the meeting with the goal of tracking down the keys to the Civic Centre so that they could fulfil their goal of tacking back control of Tribal Affairs. Boy Diali makes it clear while he is giving testimony that taking back the keys for the Civic Centre was the political motive<sup>23</sup> behind the crime. The men went to the home of Mr. Billy Ramoresi the Secretary of the Baphokeng tribe. "We left as a group and we went to Mr. Billy Ramoresi's house and we found him at his place. We were surprised to see police there and we demanded to speak to Mr Ramoresi because he is Baphokeng and we are also the Baphokeng and the police started harassing us. They shot at us with rubber bullets and they were throwing tear gas at us. We ran away.... We were 10 in number" (TRC Hearings, 20 May 1996). Diali then goes on to tell us that the ten men regrouped at Legato, even more set on receiving the keys to the Civic Centre. The men decided that since they were unable to receive the keys from Mr Ramoresi, they would go to the home of Mr Glad Mokgatle who was the new chairman of the tribe, put into power by President Lucas Mangope.

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<sup>23</sup> Act No. 34 of 1995 clearly states that in order for the applicant to receive amnesty their crime must have had a political motive. It is for this reason that Diali stresses repeatedly that getting the keys was in fact a political motive.

The men were finally able to track down Mr Glad Mokgatle at the home of his girlfriend. However upon their arrival Mr Glad Mokgatle attacked the men with a Panga<sup>24</sup>. "Mr Mokgatle came from the bedroom and he had a panga in his hand. It was sharpened on both sides.... Because I was close to him, I managed to jump and stopped the panga with my hand and it chopped my hand, but at least I have already saved Mr Mgopani's<sup>25</sup> life. I took the panga. Because the people who were with me by that time were now angry. They gave him a few claps and they took him with them" (TRC Hearing, 20 May 1996). Mr Diali makes it clear that between having been attacked by the police, and again being directly attacked by Mr Glad Mokgatle, the group of men had become angry, they had left their meeting peacefully only to be attacked by men working for President Lucas Mangope who they despised.

After capturing Mr Glad Mokgatle they locked him in the van that they were driving and drove off. They started to question him about the location of the keys to the Civic Centre. "We asked him where are the civic centre's keys, because we want to lock it up. We told him that the trive was crying, the tribe was complaining about his administration, we want the keys back" (TRC Hearing, 20 May 1996). Mr Mokgatle refused to give the men the keys, as well as to tell them where they were. According to Diali, Mokgatle's refusal to cooperate only served to stir the men into more of a rage. They were upset because President Mangope and the men who served under him were not listening to the Baphokeng tribe; they were not serving the tribe well. Diali then explains how the men became very emotional and they started to attack Mr Mokgatle. "We hit him until he died" (TRC Hearing, 20 May 1996). Diali tells the Committee that in killing Mr Mokgatle,

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<sup>24</sup> A panga is a tribal weapon. It would most resemble a machete.

<sup>25</sup> One of the 10 men with Boy Diali.



the servant of President Mangope, they hoped to send a message to the President that they were serious about their demands to gain independence from Bophuthatswana.

The Committee chose to focus on some very particular aspects of Mr Diali's testimony. One of the first questions concerned the role of the Action Committee, and about its affiliation to the Liberation movements. The purpose behind establishing this connection was very important to the Amnesty Committee. Act No. 34 of 1995 clearly states that those who commit a crime must be part of a recognized liberation movement. If those who committed the crime were not members of a liberation movement, then their acts would be construed as being for personal gain rather than for the furtherance of liberation in the country. Mr Diali tells the Committee that the Action Committee was aligned with the African National Congress; they were fighting to further the goals of the ANC, one of which was to do away with the Tribal Homelands. The Committee spends quite some time establishing the legitimacy of the Action Committee as being a part of the Liberation struggle. The Committee members questioned Diali extensively about whether killing Mr Glad Mokgatle was ANC policy, or whether it was simply the policy of the Action Committee. Going beyond this the Committee questioned Diali extensively about the murder of Glad Mokgatle, whether or not it was simply an act that was committed in the heat of the moment, or if they had a goal in mind while committing the murder.

Mr. Currin, the representative for the Committee asked Mr Diali: "I would like to take you back to the question about your intention at the time. It is quite clear from the judgement on sentence which we have read, and also from your evidence, that it was not in fact your intention to kill Glad Mokgatle on that particular day. Is that correct"

(TRC Hearing, 20 May 1996)? Mr Diali responds that “Yes, that’s correct” (TRC Hearing, 20 May 1996). While Diali admits that the initial intention of the men was not to kill Mr. Mokgatle, when they realised that he was unwilling to cooperate with them and hand over the keys to the civic centre they killed him in order to send a message to the government of Bophuthatswana. “When we attacked Mr Glad, we wanted the Bophuthatswana Government to realise, we wanted South Africa to realise, that we don’t want the Bophuthatswana Government.... We wanted Mr Mangope to realise how serious we were about the returning of our chief. We wanted to tell him that we don’t want this government any more” (TRC Hearing, 20 May 1996).

In addition to the question of affiliation, the second important issue was the reasoning behind killing Mr Glad Mokgatle. Did the men kill Mr Mokgatle simply because they were in an emotional state of mind, or did they have a political reason for the killing of Mr Mokgatle?

In their decision the Committee makes it clear that “there was overwhelming evidence that the killing of the deceased was due to the fact that he was Chairman of the Tribal Council in the Baphokeng district. He had been appointed to that position by Mr Lucas Mangope” (TRC Decision, AC/96/0001). The Committee further establishes that the Baphokeng tribe did not respect the regime of Bophuthatswana, or the leaders that Mangope had put into place. By making this decision, and declaring it, the Committee is saying that the killing of Mr Glad Mokgatle was indeed a political crime. The killing itself therefore met the requirements of Act No. 34 of 1995. Furthermore the Committee decided to recognize the Action Committee as being a legitimate political organization that was involved with the liberation struggle. In so doing the Committee made it clear

that the two applicants had met the requirement of being a part of a Liberation organisation. "We have come to the conclusion that their conduct meets the requirements of the criteria set out in Section 20(3) of the Act. They are hereby Granted Amnesty in respect of the murder of Mr Glad Mokgatle on the 29<sup>th</sup> of December 1990" (TRC Decision, AC/96/0001). We see from this case that the requirements set for by the Act were indeed met, and adhered to strictly by the Committee in coming to their decision.

### 3.3.2 The Case of Amy Biehl

The killing of Amy Biehl on the 25<sup>th</sup> of August 1993 became an international event. Amy Biehl was an American Fulbright Scholar studying at the University of the Western Cape. Ms. Biehl was studying for her PhD in Political Science at the Community Law Centre located at University of Western Cape. On the day of her murder Ms Biehl was driving some of her colleagues to their homes in the Guguletu township located outside of Cape Town. While driving down the NY1<sup>26</sup> Ms Biehl's car was attacked by a mob an angry mob of Black youth. The mob threw stones at her car, one of which broke through her windshield and injured her. Ms Biehl got out of the car and tried to run away, but was hunted down, stoned, and then stabbed to death. The four men responsible for her murder applied for amnesty for their crimes.

The applicants were Vusumzi Samuel Ntamo, Ntobeko Ambrose Peni, Easy Mzikhona Nofemela, and Mongezi Christopher Manqina. The four men testified that they were members of PASO (Pan African Student Organisation, an affiliate of the PAC (Pan African Congress), a Liberation Organisation that was fighting for the return of the land to its

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<sup>26</sup> One of the main roads running through the township.

original Black owners, and who were against the negotiations that were going on at the time.

On the day of the murder, the four applicants had attended a relaunching meeting of the Langa High School branch of PASO. At the meeting the men had heard speeches given by prominent members of PASO and of the PAC. One of the things discussed at the meeting was the declaration of 1993 as being the "Year of the Great Storm," an operation in which the Blacks were to try and make the country as ungovernable as possible in order to stop the negotiations and regain control of the land. Those who attended the meeting were taught the slogan "One Settler, One Bullet," the slogan of the Azanian Peoples Liberation Army<sup>27</sup>. According to the testimony of the applicants the students left the meeting in "high spirits" and eager to fulfil their orders to make the country ungovernable, starting first with the township of Guguletu (TRC Hearing, 8 July 1997).

Upon leaving the meeting the crowd went into the streets chanting the slogan "One Settler, One Bullet" and toy-toying<sup>28</sup>. From the moment the crowd left the PASO meeting they put into effect the policy of making the country ungovernable. They stoned government vehicles, as well as delivery vehicles that they saw in the street. At one point the crowd came across some police vehicles, which they then attacked. The police retaliated by opening fire on the crowd, causing them to disperse and split up. Later on in the day the two crowds came together again at the place of Amy Biehl's attack.

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<sup>27</sup> The armed wing of the PAC.

<sup>28</sup> Toy-Toy is a South African term for rioting or protesting.

When the applicants went before the Committee they testified to their actions that day. Peni, who was the Chairman of the Langa High School division of PASO admits that on the day of Amy Biehl's murder him along with the others who had attended the PASO meeting were in high spirits. They were extremely emotional due to the speeches that they had heard, and they were eager to follow what they believed were orders to help APLA in their goal of making 1993 "The Year of the Great Storm." Peni tells his story about how he came across Amy Biehl, and "admitted to throwing stones at his victim when he was three to four metres from her" (TRC Decision, AC/98/0030). When questioning of Peni started, we see that to Mr Brink (the representative for the Committee), as well as the Committee members themselves choose to focus on *why* Amy Biehl was murdered that day. Mr Brink starts off his questioning by asking Peni if he knew that at the time of the murder negotiations for a new and democratic South Africa were at an end, that a new constitution existed. Peni informs the Committee that he was aware of these facts. This question helps the Committee to better understand Peni's motives. The fact that Peni was aware of the end of negotiations, and still acted in the manner that he did that day shows that he was not content with the outcome. When questioned about the motive Peni repeatedly answers that by killing Amy Biehl he hoped for "the return of Africa to the African people" (TRC Hearing, 8 July 1997)<sup>29</sup>.

As the others gave testimony it became increasingly obvious that the main focus of the Committee was the motivation behind the killing. It was very important to the Committee that the murder of Amy Biehl have political motive. If the killing had been a result of the "high spirits" that the crowd was in then they would not meet the

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<sup>29</sup> This was in response to the important question by Committee member Adv. De Jager. De Jager asked Peni directly what it was that he hoped to achieve by killing Amy Biehl.

requirement of Act No. 34 of 1995, that their crime have a political motive. Mr Brink ends his questioning of Peni with this: “Mr Peni, isn’t it the position that on that dreadful afternoon you were involved in a mindless, savage attack on this young woman, and that it was not politically motivated at all” (TRC Hearing, 8 July 1997)? Peni responds: “Our killing Amy Biehl had *everything to do with politics*” (TRC Hearing, 8 July 1997). [emphasis is my own]

When we look at the decision made by the Committee it is made more clear that the motive was the most important issue for them. The Committee states that: “As members of PASO, which was a known political organization of students, they were active supporters of the PAC and subscribed to its political philosophy and its policies” (TRC Decision, AC/98/0030). By declaring this in their decision the Committee is making it clear that the four applicants meet the requirement of being members of a political organization when they committed the crime. The Committee goes farther by stating: “Although they did not act on the orders or instructions of APLA or PAC on that day, they believed they owed loyalty to the same cause” (TRC Decision, AC/98/0030). This decision by the Committee allows for the applicants to not have to meet the requirement of their actions following an order. The fact that the men believed that it was their duty as members of PASO, as well as the fact that they believed the slogan “One Settler, One Bullet” to be an order is enough of a justification. This could be viewed as problematic since it does not follow the law strictly, however the Committee in its power, decided that belief of an order having been given was in the case equivalent to an order having been given. This reasoning behind this decision becomes clear when reading the hearings. The four men had very low levels of education. As a result the Committee is more lenient on the men. The Committee chose to deviate slightly from the law in order to take into

account the education level of the applicants. The last issue dealt with in the decision is that of motive. The Decision references the slogan “One Settler, One Bullet” stating:

“To them<sup>30</sup> that meant that every white person was an enemy of the Black people. At that moment to them, Amy Biehl, was a representative of the white community. They believed that by killing civilian whited, APLA was sending a serious message to the government of the day. By intensifying such activity the political pressure on the government would increase to such an extent that it would demoralize them and compel them to hand over political power to the majority of the people of South Africa. When the Conduct of the applicants is viewed in that light, it must be accepted that their crime was related to a political objective” (TRC Decision, AC/98/0030).

Again we can see here that the Committee took into account the level of education of the applicants. They accept that to the applicants the killing of Amy Biehl was a legitimate way to send a message to the government of the day. As a result, amnesty was granted to all applicants for their involvement in the murder of Amy Biehl.

### 3.3.3 The Case of the Motherwell 4

The Case of the Motherwell Four dealt with the killing of three black Security Police personnel as well as one askari<sup>31</sup>. The names of the three police personnel were, Warrant Officer Mbalala Glen Mgoduka, Sergeant Amos Temba Faku, and Sergeant Desmond Daliwonga Mapipa. The name of the askari was Xolile Shepard Sakati, alias Charles Jack. Mgoduka, Faku, and Mapipa were members of the Port Elizabeth branch of the Security Police, while Sakati was a member of Vlakplaas on loan to the Port Elizabeth Security Police. Nine former Police Officers applied for amnesty for this crime. Eugene Alexander De Kock, Daniel Lionel Snyman, Nicolaas J Janse Van Rensburg, Gerhardus Jacobus Lotz, Jacobus Kok, Wybrand A.L. Du Toit, Nicolaas Johannes Vermeulen, Marthinus D. Ras, and Gideon Johannes Niewwoudt. The men not only

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<sup>30</sup> The Applicants

<sup>31</sup> An askari was a former member of one of the liberation movements that had been turned by the Secret Police to work for them.

applied for amnesty in the case of killing the four deceased, but applied for amnesty for the crime of defeating the ends of justice as well.

In 1989 Officer Nieuwoudt, the regional commander for the Black Affairs Unit in the Easter Cape branch of the Security Police started to suspect the three deceased Police Officers as being responsible for a series of leaks that had led to the deaths of Police Officers in the Port Elizabeth area. Heading his suspicions, Nieuwoudt started to investigate the three now deceased officers in order to substantiate his suspicions. Nieuwoudt's investigation only furthered his suspicions, leading him to go to his commanding officer Brigadier Gilbert. Nieuwoudt stressed to Gilbert that the man had been turned by the ANC and had to be dealt with. Due to knowledge of certain illegal activities of the Security Police, it was determined that the men could not be tried, but must rather be eliminated.

Brigadier Gilbert called Van Rensburg who was stationed at Security Police Headquarters in Pretoria, and was head of C10 the unit in charge of Vlakplaas, and asked if he could receive help on eliminating the men. Van Rensburg testified that due to his belief that those in command had authorized the orders was glad to loan out Eugene De Kock and some of his Vlakplaas officers to complete the job. On orders from Brigadier Gilbert, Nieuwoudt flew to Pretoria on the 12<sup>th</sup> of December 1989, where he met with De Kock and van Rensburg on the morning of the 13<sup>th</sup> of December at the home of Van Rensburg. It was determined at this meeting that De Kock along with some of his Vlakplaas personnel would assist in the removal of the three police officers as well as the askari known as Charles Jack.



After the meeting De Kock accompanied by Nieuwoudt went to the technical support division of the Security Police where they met with Du Toit in order to figure out the most effective way to complete the mission. It was determined by the men that a car bomb would be used in the case. Du Toit supplied the men with the necessary bomb. That night Nieuwoudt along with three Vlakplaas officers, Vermeulen, Snyman, and Ras returned to Port Elizabeth. The following night the bomb was planted in a VW Jetta. The three deceased officers, along with Charles Jack were ordered to meet at the Motherwell Crossing in Port Elizabeth and fetch a VW Jetta. The Jetta had been driven to the location by Mr Lotz, who had no knowledge of the operation, and upon arrival had been armed. When the four deceased arrived they got into the vehicle, and after driving approximately one hundred metres Nieuwoudt remotely detonated the bomb killing the four occupants.

The amnesty hearing of these four men was very different from the others discussed. Throughout the hearing the Committee as well as the different legal representatives asked repeatedly about the order of events, as well about the motivation behind the killings of the four men. With so many men, who all played different, yet interconnected roles throughout the crime one would expect some variation within stories. However, as time progressed, and more and more testimony was given, it became obvious to the judges that there were more than just slight differences in testimony. For example Eugene De Kock testified that after the meeting with Nieuwoudt and Van Rensburg on the morning of the 13<sup>th</sup> he went to Van Rensburg's office to question him about the legitimacy of the planned murder of the four men. Nieuwoudt had told De Kock that morning that the four men were being murdered because of their involvement in a fraud scheme. De Kock however felt that this did not justify the murder of the men, so

he went to talk to Van Rensburg who informed him that the men if tried could make disclosures of secret and illegal Security Police operations. Van Rensburg never once made reference to Nieuwoudt's allegations that the men had been recruited by the ANC. Van Rensburg however, repeatedly states that he was not in his office at all on the day of the 13<sup>th</sup>, but had engagements elsewhere. "Nieuwoudt, on the other hand, testified that the only reason, and the one which he gave to De Kock, for the intended killings was the fact that the deceased had been recruited by and was working with the ANC. He emphatically denied that the fraud played any role in the decision to kill the deceased" (TRC Decision, AC/99/0345). In fact when questioned about whether or not the fraud was ever mentioned at the meeting between him, De Kock, and Van Rensburg, he was unable to provide any sort of answer. De Kock's version however, was confirmed with the testimony of Ras, one of the Vlakplaas officers, who states that he accompanied De Kock to Van Rensburg's office on the 13<sup>th</sup>. These were not minor discrepancies, but rather large discrepancies that dealt with the issue of motive. With the facts presented before them, the Committee chose to accept the version of De Kock. "He [De Kock] has impressed us as a credible witness and we have no hesitation in accepting his version as true" (TRC Decision, AC/99/0345). This decision to accept the version of De Kock meant that the others had not met the requirement of disclosing the entire truth.

Going beyond the issue of discrepancies, and the requirement of disclosing the full truth, the court found that the motive behind the killing was not a political motive. "We accordingly find that the reason for killing the deceased was to avert their threats and to conceal the illegal activities of the Security Police. This was patently not associated with a political objective and the action was clearly not directed against members or

supporters of the ANC or any other liberation movement or publicly known political organisation as required by the Act" (TRC Decision, AC/99/0345).

When we look at this case we can see that the Committee followed very closely the law set forth in Act No. 34 of 1995. They repeatedly focused on the issues, of motive, worked hard to establish whether the entire truth was disclosed, as well as determining if the crime was committed against one of the liberation movements as required by the law. After determining that all three of these requirements had not been met they ruled to refuse the applications for amnesty. "In the circumstances and after having carefully considered all of the evidence, arguments and material placed before us, we are not satisfied that the applications comply with the requirements of the Act" (TRC Decision, AC/99/0345).

#### 3.3.4 The Cradock 4

The murder of the Cradock Four took place "on or about 27<sup>th</sup> June 1985" (TRC Decision, AC/99/0350). The Cradock Four consisted of Mathew Goniwe, Sparrow Mkhonto, Fort Calata, and Sicelo Mhlauli. Goniwe, Mkhonto, and Calata were all residents of Cradock, a township located near the Eastern Cape city of Port Elizabeth, while Mhlauli was a permanent resident of Oudtshoorn located in the eastern part of the Western Cape. The applicants, Eugene Alexander De Kock, Eric Alexander Taylor, Gerhardus Johannes Lotz, Nicholas Jakobus Janse Van Rensburg, Harold Snyman, Johan Martin Van Zyl, and Hermanus Barend Du Plessis were all members of the Security Police.

Mathew Goniwe was a former high school teacher in Cradock who had been removed by the Government. He became very politicized, and started to become heavily involved in

CRADORA (Cradock Residents Association), an affiliate of the United Democratic Front, of which he eventually became the Regional Organiser. Calata, and Mkhonto, friends of Goniwe were also members of CRADORA (TRC Decision, AC/99/0350). These two organizations were contributed to being responsible for much of the unrest that had arisen in the Eastern Cape. Van Zyle testified: “that it was the view of his unit that the United Democratic Front was responsible for politicizing the people and consequently for the unrest experienced in the various Eastern Cape areas ... The whole unrest situation worsened and was totally politically motivated. The deceased were regarded as pivotal to the causes of the unrest as it occurred in the Eastern Cape which unrest was considered to be based on the ‘G’ plan attributed to Goniwe<sup>32</sup>” (TRC Decision, AC/99/0350). The removal of Goniwe from his teaching position, as well as his affiliation to the United Democratic Front eventually gave rise to discussions about him in various government circles. (TRC Decision, AC/99/0350).

Throughout the giving of testimony, the applicants, save De Kock, talk extensively about the motivation for killing the deceased. According to the applicants the motive was indeed a political motive. The men are very insistent about the four deceased having been prominent member of CRADORA and of having a large say in the actions of the UDF in the Eastern Cape, and hence playing a large role in the unrest. Likewise the applicants talk extensively about how they were following orders from above. Van Zyl, who was ordered to remove the men, and elicited the help of Taylor and Lotz, claims that the first time he heard about killing Goniwe was three weeks prior to the murder. The testimony of Van Jaarsveld (who was not one of the applicants) directly contradicts Van Zyl’s testimony, as Van Jaarsveld claims that he was sent to the home of Goniwe in 1984, along with Van Zyl, to determine the feasibility of killing Goniwe at home. Beyond this there was testimony given that the government was

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<sup>32</sup> Summary of the testimony given by Van Zyl, found in the decision by the Committee.

possibly thinking of re-instating Goniwe as a teacher, again calling in to question any orders to remove Goniwe from society.

Throughout the hearing it became obvious to the Committee that there were many holes in the testimony presented by the applicants. De Kock who was applying for amnesty for the crime of defeating the ends of justice, he counseled Van Zyl to throw the gun used in the murder into the ocean, was the only witness that the Committee found to be satisfactory. The Decision handed down by the Committee makes clear the holes, which they saw in the testimony. They call into question the motive for the murders. While there may have been motive for killing Goniwe, there was no possible motive for killing the other three men. There is no evidence that the three men held any sort of position that would provide them with the necessary power to have any sway over the actions of the UDF, especially Mhlauli who was not even a resident of the Eastern Cape. Likewise the issue of any orders being given to remove all four men is then called into light. The applicants say that they were given orders to remove all four men from society, however this contradicts the testimony given that the government was considering re-instating Goniwe as a teacher.

Overall the Committee was unsatisfied. “Because of the lacunas in the applicant’s version (except De Kock) and the lack of details ... we have reservation as to whether the requirement related to political objectives have been complied with. On the other hand, apart from De Kock, they have failed to disclose everything they know about the murders. In the result we are not satisfied that the applicants, but for De Kock, have complied with the requirements of the Act” (TRC Decision, AC/99/0350). All applicants save De Kock were refused Amnesty on the grounds that their crime did not have a political motive, and that they did not disclose the entire truth.

### 3.3.5 The Bombing of Wimpy Bar

The bombing of the Wimpy Bar in Benoni took place on 30 July 1988, the 67<sup>th</sup> anniversary of the South African Communist Party. One person was killed in the explosion, while 66 others were injured. The applicants responsible for the bombing are Tebego Christopher Kebotlhale, Elfias Mabore Ndhlovu, Molwedi Mokoena, and Phumuzi Ernest Sigasa. All four men were members of the uMkhonto weSizwe, the armed wing of the African National Congress. Sigasa was the commander of the Regional Command Structure, Johannes Nkosi Unit. Kebotlhale was the Commissar of the Regional Command Structure, he was responsible for the political work, as well as the training of men and the distribution of arms. Dlovu was a member of the Command Structure, he was responsible for training men, executing attacks, as well as being the primary military tactician for the unit. Mokoena also a member of the Command Structure was responsible for the overall welfare of the unit (TRC Hearing, 7<sup>th</sup> September 1998).

The men applied for amnesty for multiple crimes, however I will focus primarily on that of the bombing of the Wimpy Bar located in Benoni. According to the opening statement by Sigasa, "Wimpy Bar was not the target at first, the actual target was the notorious Security Branch headquarters in Benoni next to the Benoni Railway Station" (TRC Hearing, 7<sup>th</sup> September 1998). However, as the men planned and did reconnaissance they learned the Wimpy Bar located only a few metres from the Security Branch Headquarters, and located frequently by Security Police personnel would provide for an easier attack. Sigasa testifies: "To us Wimpy Bar was an ideal place to attack the security personnel where they least expected" (TRC Hearing, 7<sup>th</sup> September 1998). Sigasa ends his opening address with a plea for reconciliation, an important recognition of the pain caused to the victims of their attacks, as well as the argument that they personally

through their actions have contributed “to the establishment of a democratic dispensation” (TRC Hearing, 7<sup>th</sup> September 1998).

Upon the beginning of the questioning of Sigasa the Committee starts to focus heavily on Sigasa’s role in the Wimpy Bar attack. The Chairperson questions him extensively if he played a role. Sigasa testifies that he was not directly involved in the attack, but as the overall commander of the unit that launched the attack he was responsible for the decision to attack Wimpy Bar. This questioning is important for the Committee because someone cannot seek amnesty for a crime that they did not commit. The Chairperson sought to make it very clear to Sigasa:

“Chairperson: You see people can’t get amnesty for something that occurred that they didn’t know about, they have to be guilty of something in order to obtain amnesty, not so?

Sigasa: Yes.

Chairperson: And that is why I’m asking these questions, to see to what extent you were involved in this. And in respect of the Wimpy, you do say that you were party to the planning.

Sigasa: Yes.” (TRC Hearing, 7<sup>th</sup> September 1998)

We see here that the Committee is following the law very closely. They are seeking to see if Sigasa meets the requirements of having committed the crime for which he seeks amnesty.

When the representative for the Committee, Advocate Steenkamp, cross-examines Sigasa he focus’s heavily on the motivation behind the Wimpy Bar attack. He brings up the fact that not a single member of the Security Police was present at the time of the attack, and that all of the victims were in-fact civilians. He argues that that being the case how could the attack have met their political motive of attacking Police personnel. Sigasa comments that the civilians involved were considered, and that their deaths or injuries were decided to be an acceptable risk given the possibility of killing police

personnel, likewise the applicants reconnaissance had led them to believe that several Police personnel would be present at the bar at the time of the attack. Therefore, the motive was to kill Police personnel, not to attack innocent civilians. Steenkamp also questions about orders. He asks Sigasa if there were orders to attack the Wimpy Bar. Sigasa says no, that the orders the men received were to attack security personnel wherever they were. Sigasa makes it very clear to Steenkamp, that Wimpy was not a target, the target was security personnel: "we would have hit them in whatever restaurant" (TRC Hearing, 7<sup>th</sup> September 1998).

It becomes obvious from the questions asked by both the Committee and its representative Advocate Steenkamp, that the most important factors were in-fact ones that were set out in Act No. 34 of 1995. They questioned about the involvement in order to make sure that the requirement of committing a crime was met, they question about the motive, was it political, as well as about the whether or not the applicants were following orders.

In the decision passed on by the Committee it is declared that the attack led on the Wimpy bar met the requirements of Act No. 34 of 1995. "With regard to the offences for which amnesty is being sought, the applicants acted under the command of Sigasa. The plans were made within the political climate of the time. It follows therefore that these attacks fall within the ambit of the Act" (TRC Decision, AC/99/0294). This decision is an important one for the applicants. While Act No. 34 of 1995 states that the crime must be committed against "the state or another publicly known political organisation," the Committee decided that while it was only civilians caught in the attack, that the reconnaissance and planning that went into the Wimpy Bar attack, as well as the strong



belief that it would be full of Security personnel met the requirements. "The attack on the Wimpy Restaurant was based on the *bona fide* belief that certain members of the Security Police patronised the establishment..." (TRC Decision, AC/99/0294). The Committee further states in their decision that: "The offences were clearly directed at enhancing the position of the anti-apartheid forces, and in this instance, the cause of the ANC. There is nothing to distract the evidence of the applicants regarding the actual facts related to the commission of the offences" (TRC Decision, AC/99/0294). Due to these circumstances the Committed granted the four applicants amnesty for their crimes.

### 3.3.6 The Case of Robert McBride and the Bombing of Why Not Restaurant and Magoo's Bar

The bombing of the Why Not Restaurant and Magoo's Bar, located in the city of Durban in the former Natal Province, took place on 14 June 1986. At the time of the attack Robert McBride was the commander of the Special Operations Unit based in Natal. There were two separate Special Operations Unit's at the time, one being commanded by Gordon Webster, and one being commanded by McBride. Webster had received orders from the high command of SOU to carry out a car bomb attack on Natal Military Personnel. He elicited the help of his fellow commander McBride to engage in reconnaissance and planning of the attack. Before the attack was put into action however Webster was arrested, and McBride assumed command of both of the Natal based SOU units.

The initial plan was to attack the Security Police station located at CR Swart Square, but do to tight security it was aborted. Further reconnaissance led McBride to the Why Not

Restaurant, a restaurant and bar frequented by the Security Police. McBride obtained the necessary material for a car bomb, and was instructed by High Command to launch the attack on the 14<sup>th</sup> of June. McBride then elicited the help of Zarah Nachardien and Matthew Lecordier to carry out the attack.

Nachardien being kept in the dark of the operation was simply told to go to the Why Not Restaurant and obtain a parking spot close to the restaurant. McBride and Lecordier, the latter being kept in the dark about the operation, drove the armed vehicle to the restaurant at a later point. Upon arriving at the restaurant Nachardien relinquished her parking spot to the armed vehicle. McBride armed the bomb and then drove away with the other two SOU members. The bomb went off as planned causing extensive damage to the Why Not Restaurant, as well as to the neighbouring Magoo's Bar. The attack resulted in the death of three people, and seventy-one injured.

Like the attack on Wimpy Bar in Benoni, this attack resulted almost exclusively in the death and injuring of civilians. However the Committee used the same line of argument for this case as the others. Given the *bona fide* belief that the restaurant was frequented by Security Police personnel, and given the fact that it was the police personnel who were the targets, the attack was deemed to meet the ambits of Act No. 34 of 1995. Furthermore the Committee ruled that the applicants met the requirements of both having a political motive for the attacks, as well as having provided the entire truth. All of the applicants received amnesty for the crime. The Committee followed the requirements established by the Act, particularly that of the crime having a political motive.

### 3.3.7 The Case of Goodwill Sikhakhane

Goodwill Neville Sikhakhane was an askari working for the "Terrorist Location Unit" located at Camperdown, Natal. Sikhakhane was a former member of the ANC who had deflected after the ANC made it known that he would be sent to Angola as a result of *inter alia* disciplinary problems (TRC Decision, AC/2000/090). With the help of the Security Police in 1988, Sikhakhane along with his child, and wife was brought illegally into South Africa. The applicants, Eugene Alexander De Kock, David Jacobus Brits, Johannes Jacobus Swart, Willem Albertus Nortje, Lawrence John Hanton, Andrew Russel Cavill Taylor, and Johannes Albertus Steyn applied for amnesty for the crimes of:

- " 1. The Conspiracy, planning and killing of Goodwill Colin 'Neville' Sikhakhane on 29 January 1991 at or near Greytown in the then Natal
2. The relevant Contraventions of ACT 75 of 1969 arising from the unlawful possession of an AK-47 automatic rifle, a Makarov pistol and the ammunition for both firearms in connection with the killing;
3. The abduction of Sikhakhane prior to the killing;
4. The assault on Sikhakhane prior to the killing;
5. Defeating the ends of justice in connection with the killing;
6. Assisting Sikhakhane and his family to enter the Republic of South Africa unlawfully during April 1988;
7. Fraud and theft of State monies in connection with the killing" (TRC Decision, AC/2000/090).

In late 1990 or early 1991, Colonel Taylor<sup>33</sup> the commander of the Terrorism Unit approached General Steyn, commander of the Natal Branch of the Security Police, to inform him of problems that he was encountering with the discipline of the deceased, as well as that he may be a security risk. Steyn testified that upon hearing this news, he along with Taylor approached the deceased and counselled him that if his behaviour did not change he would face grave consequences (TRC Hearing, 20<sup>th</sup> September 1999). The deceased however did not heed the warnings of his superior officers, and continued to

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<sup>33</sup> Col Taylor who was deceased at the time of the hearings did not testify. Every other applicant testified.

behave in an inappropriate manner<sup>34</sup> presenting himself as a security risk. As a result of these actions Colonel Taylor under suspicion of Sikhakhane being a security risk fed the deceased false information. It was later confirmed by Security Police networks in Swaziland that the information fed to the deceased had been passed on to the ANC. As a result, :after thorough consideration further discussions with Col Taylor and in protection of aforementioned interests, I decided that Sikhakhane had to be eliminated and I stated it as such to Taylor. I also stated that external aid would have to be used in order to accomplish this" (TRC Hearing, 20<sup>th</sup> September 1999).

De Kock testifies that General Steyn approached him one day in the halls of Security Headquarters in Pretoria and asked him for help in the elimination of the deceased. Being familiar with such requests, and under the assumption that it had been cleared by higher ups, De Kock agreed to help. General Steyn asked De Kock to send men to Durban to "make a plan" for the deceased. De Kock was also ordered to liaise with Colonel Taylor the deceased's commanding officer. De Kock testifies that he then contacted Taylor and informed him that he would be sending Warrant Officers Nortje, Britz and Swart to Natal. Before sending the men away, De Kock outfitted the men with the necessary funds, approximately R5000 to R7000, for the operation, as well as a silenced AK-47. Nortje was already in possession of the Makarov pistol.

Upon arriving in Natal, the three Vakplaas officers met up with Taylor and Larry John Hanton, one of the officers under Colonel Taylor's command. Hanton was ordered by Taylor to assist the officers from Vlakplaas with the removal of the deceased. The four

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<sup>34</sup> According to the testimony of Steyn, the deceased had a major drinking problem, which caused him to on many occasions lose control of himself.

men subsequently captured the deceased and drove off with him. Upon capturing, the deceased, Nortje and Britz who were hiding in the back of the van overpowered the deceased, and then proceeded to hit him over the head with a baton until they arrived at the pre-arranged place for the murder. Upon arrival, Nortje, Britz, and Hanton got out of the van taking the deceased with them. Swart who was driving departed, according to testimony, in order to not draw unwanted attention. The men marched the deceased away from the road and shot him dead. The officers then reported back to their respective commanders that the mission had been completed. Upon returning to Vlakplaas, De Kock took the remaining funds that he had given to Nortje for the operation and handed it over to Nortje as payment. According to Nortje's testimony he had not expected this, and had no knowledge that he would receive payment for his actions. Do to the circumstances Nortje was not determined to have committed the crime for personal gain.

Throughout the hearings great attention was given to the issue of motive. The issue of following orders was also of great importance. As the assassination of people, was against the law, it was important for the Committee to understand the thought process of the men involved. It became obvious through testimony, that the men would follow the orders of their superior officers without question. However, unlike in the case of the Motherwell Four, the Committee found that the applicants had a *bona fide* reason for believing that the deceased posed a threat to national security. "It is clear to us that most of the applicants believed that Sikhakhane posed a serious security risk to them and their colleagues and that the information at his disposal could have seriously embarrassed the then Government and weakened its negotiating position. Alternatively, some of the applicants acted upon the orders of senior officers whose judgement they

trusted and in any event would not have questioned. We are thus satisfied that the applicants have complied with the requirements ... of the Act" (TRC Decision, AC/2000/090). All of the applicants received amnesty for crimes one through six of the above list, but were refused amnesty in terms of crime number seven, fraud and theft of state money.

### 3.3.8 The Case of Hendrik Rakgotho

The applicant Hendrik Rakgotho applied for amnesty for the murder of Violet Masemola, a supposed witch in 1990. Rakgotho was a member of the African National Congress at the time, as well as a member of the Civic Committee for his village of Matempule. On the night before the murder of the deceased, Rakgotho along with some of his colleagues saw Ms Masemola sprinkling water in the streets of the village. According to Rakgotho's testimony, when questioned about her actions, Ms Masemola responded by saying that "she was stopping the members of the ANC not to go to their meetings" (TRC Hearing, 28<sup>th</sup> February 2000). Ms Masemola also told the applicant that she was not a supporter of the ANC, and that by sprinkling water on the streets it would ensure that the members of the ANC would flip over in their cars while driving to their meetings. In response, Rakgotho called a community meeting for the next day.

The day after the encounter with Ms Masemola, there was a village meeting. At the meeting Rakgotho told the community about Masemola being a witch, and how she was trying to sabotage the ANC. The community was very upset by this and sent five representatives to talk with Masemola. Rakgotho, along with five other men then left the meeting and proceeded to the house of Masemola. Upon arriving at the home of

Masemola, the five men asked her to release the baboons<sup>35</sup>, which she admitted to having in the house. Shortly after arriving the men smelled fire, and heard a large crowd chanting. Members of the community had left the meeting and come to the house of Masemola. The crowd had set fire to a shed that was in the yard of Masemola, and started chanting for the release of the baboons. Upon the request of the five men, Masemola went outside to address the crowd. Once outside, Rakgotho shoved her towards the shack that was on fire. As Masemola tried to flee the fire someone in the crowd through a stone at her, hitting her and causing her to fall, the deceased then caught fire and was burned to death. (TRC Hearing, 28<sup>th</sup> February 2000).

Throughout the hearing the Committee members questioned Rakgotho about the motive of the crime. According to the testimony given, the motive was political in that the members of the committee believe the deceased was using witchcraft to prevent members of the African National Congress from meeting. The deceased was actively fighting against the ANC. Having established the motive for the murder, the Committee starts questioning Rakgotho about his level of education. Rakgotho testified that he had achieved Standard Two, meaning he had a very low level of traditional education. The Committee then questions him on his belief in witchcraft. Rakgotho said that he does believe in witchcraft, and that he truly believed the deceased to have been a threat to the ANC and to the members of the village, who for the most part were supporters of the ANC. (TRC Hearing, 28<sup>th</sup> February 2000)

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<sup>35</sup> The baboons were a form of talisman that allowed her to perform magic and witchcraft.

In their decision the Committee pays heed to the level of education of the applicant, as well as to his strong belief in witchcraft. They state that the actions of the applicant in terms of the murder of Violet Masemola "had a political objective as they believed that the deceased constituted a threat to the ANC and its members in the area. The Committee also found that the applicant had met the requirement of disclosing the full truth before the Committee. Hendrik Rakgotho was granted amnesty for his role in the murder of Violet Masemola. (TRC Decision, AC/2000/210)

### 3.3.9 The Case of Henri Van Der Westhuizen

Henri Van Der Westhuizen was a member of the Civil Cooperation Bureau<sup>36</sup> and applied for amnesty for multiple crimes including, defeating the ends of justice in multiple cases, including that of the attempted murder of Justice Albie Sachs, violating the Arms and Ammunition Act by unlawfully supplying arms and explosives to the security forces of the then Ciskei homeland, as well as to the CCB for use in Mozambique, as well as preparing the files for the targets of security forces.

Westhuizen was an office worker. He was never directly involved with the incidents that he is applying for, but rather played the role of providing necessary information, and the necessary means for the crimes to be committed. (TRC Hearing, 9<sup>th</sup> October 2000) The Committee found that while Westhuizen was never directly involved with crimes committed, the role that he played still allowed for him to seek amnesty under Act No. 34 of 1995. Furthermore, the Committee found that the offences committed by the applicant met the requirements of Section 20(2) of Act. No 34 of 1995 in that the acts committed, were committed during the conflict of the past. Likewise they found

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<sup>36</sup> The highest branch of the State security apparatus. All things went through the CCB.



that the motive behind the applicant's involvement in the above-mentioned crimes was political in nature, therefore meeting the requirements of Section 20(3) of Act No. 34 of 1995. Westhuizen was subsequently granted amnesty for all of the crimes other than that of preparation of target files. While Westhuizen's role in preparing target files, led to, in some instances, crimes being committed, he was unable to provide the court with specific acts or offences, he did not meet the requirements of the Act requiring that application for amnesty can only be accepted if for specific offences committed in the past. (TRC Decision, AC/2001/257)

### 3.4 Findings

I found that contrary to my original hypothesis, the Amnesty Committee did follow the rules and regulations regarding the granting of amnesty set forth in Act No. 34 of 1995 very closely. While I originally thought that the Committee would have strayed from the law on many instances, the research shows that this was not the case. I originally believed that the Committee would have strayed from the law as time went by for two main reasons. The first reason was simply that as the Committee became more familiar with the types of cases, as well as with dealing with applicants they would become more comfortable and would loosen up on how closely they followed the law. Second I believed that as time progressed and the members of the Committee became more familiar with the proceedings they would start to rely more on intuition and their interaction with the applicants to determine whether or not the applicant would receive amnesty. However, by reading the nine hearings presented above, as well as the decisions passed down by the members of the Amnesty Committee it was shown that while making their decision the Committee took the regulations set forth in Section 20,

the section dealing with the requirements that must be met for amnesty to be granted, of Act No. 34 of 1995 quite closely.

Let us look at the first case presented, that of Boy Diali and Christopher Mokgatle. As the first case that went before the Amnesty Committee, one would expect a very close following of the law. We see exactly that. Section 20(3) of Act No. 34 of 1995 explains that while determining if the crime committed was committed with a political objective in mind, the motive of the applicant shall be considered. We see that in this case, the motive of the applicants was indeed the most important issue for the Committee. If the offence committed had been done so in the heat of the moment, or for some sort of political gain then it would automatically disqualify the applicants from receiving amnesty. However, the committee did find that the applicants did have a political objective in mind, removing President Mangope from power and becoming a part of South Africa, when they committed their crime.

It is not surprising that the Committee adhered so strictly to the law in the first case that it heard. I however expected that while time progressed, and the Committee dealt with more and more applications, there would have been an easing up on how strictly they followed the law. However as you can see in section 3.3 above, this was not the case. In fact I was only able to find one case in which the ruling of the Committee could be questioned for not having strictly followed the law. That is the case of the murder of Amy Biehl.

As shown in the above section, when dealing with the applicants responsible for the death of Amy Biehl, the members of the Committee showed great attention to the issue

of motive. The problem was that the killing of a single white girl in no way seemed proportional to the stated goal of having the land returned to the African people. The testimony of the applicants shows that they believed that by killing Amy Biehl they would have the land returned to them. In many ways the motive that was presented in the hearing could not justify the brutal murder of this single white female. However, the Committee also questioned the applicants extensively about their levels of education. After finding out that the applicants all had very low levels of education, as well as very primitive understandings of politics, it became clear why the applicants believed that their crime was in fact proportional to their stated motive. The leniency that the members of the Committee show these men is not seen in the other cases. At the same time though the Committee did keep strictly to the law in that it was ultimately the motive of the applicants that determined the granting of amnesty.

Based on the above findings, and that only one of the nine cases studied can be questioned at all for falling outside the strict guidelines of Section 20 of Act No. 34 of 1995, I must reject my initial hypothesis. I must therefore conclude that the rules and requirements set forth in Chapter Four of Act No. 34 of 1995 were strictly adhered to by the Committee which said law established.

## Conclusion

South Africa has faced many hardships throughout its history, none so important as that of Apartheid and National Party rule. From the founding of the Cape Colony in the late 17<sup>th</sup> century, to the rise of the National Party to power in 1948, South African society was based on a system of segregation, and rule of the majority by the minority. The rise of D.F. Malan's National Party government only solidified this segregation. The passing of strict segregationist laws laid the foundation for the entrenchment of the Apartheid system.

Apartheid was more than a system of government rule; it was an ideology that affected every aspect of life. It established a system of separate and unequal living standards between the races. This complete segregation of Blacks and Whites in all aspects of life led to a violent revolutionary movement by the oppressed majority, for more than forty years, culminating in a violent civil war that was fought in the streets, through secret assassinations, bombings, and the deaths of innocent civilians on both sides of the racial spectrum. However in 1989 F.W. de Klerk was elected President and that all changed.

South Africa entered a period of negotiated transition. The Blacks under the leadership of the African National Congress, and the Whites under the leadership of the National Party came together to establish a new constitution, and a new democratic nation. The outcome was a new country, holding its first all-inclusive elections in 1994. Despite the successful transitions, South Africa was still bleeding, the wounds of the past had to be dealt with.

In 1995 the Parliament passed the Promotion of National Unity and Reconciliation Act No. 34 establishing the Truth and Reconciliation Commission. One of the most important roles that the TRC played was that of the granting of Amnesty. The Amnesty Committee was established as a forum where perpetrators of political crimes from the time of Apartheid could apply for amnesty for their crimes. If the perpetrator told the entire truth, as well as was able to prove that their crime had a political motive they could receive amnesty for the crimes they committed. This proved to play an important role in providing the people of South Africa with the closure necessary for them to move forth as one united nation.

This case study was very small in nature. Therefore my findings are limited, and can only go so far in negating my hypothesis. In order to strengthen the findings it would be necessary to research many more cases. It would also be necessary to interview members of the Amnesty Committee as well as to interview applicants who went before the Committee. The limitations that I faced in completing this study however inhibited me from being able to do this. However, with time one could do further research leading to an overall better understanding of what exactly took place in the Amnesty Committee.

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