

AMNESTY INTERNATIONAL

COUNTRY: SOUTH AFRICA

SUBJECT TITLE: POLITICAL KILLINGS BY SECURITY FORCE
"DEATH SQUADS" - UPDATE

JUDICIAL COMMISSION OF INQUIRY INTO POLITICAL KILLINGS BEGINS PROCEEDINGS

May 1990

SUMMARY

AI INDEX: AFR 53/20/90

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On 7 March 1990 Almond Nofomela testified before the government-appointed commission of inquiry into political killings on his involvement, as a member of a police anti-terrorist unit, in the 1981 abduction and murder of civil rights lawyer Griffiths Mxenge. Almond Nofomela was one of the first of the many witnesses who are to be summoned to give evidence to the commission, which was appointed by State President F W de Klerk on 2 February 1990 and chaired by Judge Louis Harms from the the Transvaal provincial division of the Supreme Court. Judge Harms is authorized to inquire into and report on unsolved, politically-motivated murders committed within the

borders of South Africa. In addition to hearing the testimony of Almond Nofomela and two other members of his unit, the commission also has heard considerable evidence from witnesses on the operations of a secret military unit, known since the mid-1980s as the Civil Co-operation Bureau (CCB). It is expected that the commission will continue its hearings for some months.

President De Klerk's decision to appoint a full judicial inquiry into the allegations of security force involvement in politically-motivated killings is a positive measure. But the commission's terms of reference which prevent the commission from inquiring into extra-territorial incidents excludes from the inquiry major instances of human rights violations allegedly committed by the security forces.

This summarizes a five-page document, South Africa: Political Killings by Security Force "Death Squads" - Update: Judicial Commission of Inquiry into Political Killings begins Proceedings (AI Index: AFR 53/20/90), issued by Amnesty International in May 1990. Anyone who would like to have further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

INTERNAL (for AI members only)

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SOUTH AFRICA

POLITICAL KILLINGS BY SECURITY FORCE "DEATH SQUADS" - UPDATE JUDICIAL
COMMISSION OF INQUIRY INTO POLITICAL KILLINGS BEGINS PROCEEDINGS

In January 1990 Amnesty International issued a document entitled "Political Killings by Security Force "Death Squads", AI Index: AFR 53/01/90. The text now attached updates that previous document.

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed with the previous document of the same title, AFR 53/01/90, for future reference. In addition please undertake as many of the following recommended actions as possible.

1. Sections are asked to ensure that the attached information is used in

conjunction with the previous document AFR 53/01/90, in response to any inquiries about Amnesty International's concerns relating to allegations of "death squad" activities in South Africa, or in any further publicity on this subject. Sections are not urged to actively promote publicity at this stage, but this information is External and may be used publicly as required.

2. Sections were asked to distribute the previous document AFR 53/01/90 to lawyers, trade union, teachers and other organizations and to urge such organizations to press for an independent judicial inquiry into the allegations of "death squad" activities. Sections should now ensure that the attached information is distributed to all organizations which received the previous document AFR 53/01/90, drawing their attention to the fact that Amnesty International welcomes President de Klerk's decision to appoint a full judicial inquiry and to Amnesty International's continuing concerns (see AFR 53/20/90, page 5).

3. SAN groups currently engaged in letter-writing as requested in SAN 9/89 will receive a separate Update direct from the Research Department (Southern Africa).

DISTRIBUTION BY THE IS

This circular has been sent direct by the IS to:

All Sections Southern Africa, SAN and SADA coordinators Groups with South Africa case dossiers AI representatives at the UN and EC Project Officer

EXTERNAL (for general distribution)

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Amnesty International

International Secretariat

1 Easton Street

London WC1X 8DJ 10 May 1990

United Kingdom

SOUTH AFRICA: POLITICAL KILLINGS BY SECURITY FORCE "DEATH SQUADS" - UPDATE

JUDICIAL COMMISSION OF INQUIRY INTO POLITICAL KILLINGS BEGINS PROCEEDINGS

In October and November 1989 three former members of the South African security police claimed in separate accounts that they had been involved in the early 1980s in the "death squad" murder of political opponents of the government. The first claim came from Almond Nofomela shortly before he was due to be hanged in October 1989 for murder. The Minister of Justice granted a stay of execution pending the outcome of investigations into the defendant's allegations. Almond Nofomela's

allegations were corroborated by both his former commanding officer, Captain Dirk Johannes Coetzee, and David Tshikalange, a former member of Captain Coetzee's unit. (The nature of these allegations are described in South Africa: Political Killings by Security Force "Death Squads" (AFR 53/01/90), issued by Amnesty International in January 1990.)

On 7 March 1990 Almond Nofomela testified before the government-appointed commission of inquiry into political killings on his involvement, as a member of a police anti-terrorist unit, in the 1981 abduction and murder of civil rights lawyer Griffiths Mxenge. Almond Nofomela was one of the first of the many witnesses who will be called to provide evidence to the commission, which was appointed by State President F W De Klerk on 2 February 1990 amidst mounting allegations linking sections of the military, as well as the police, with the harassment and murder of dozens of government opponents. State President F W De Klerk's decision to appoint a judicial commission of inquiry reversed the government's earlier position of relying upon a senior police officer and a provincial attorney general to investigate the allegations and to limit prosecutions to Almond Nofomela, Captain Coetzee and David Tshikalange, each of whom publicly admitted their involvement in the alleged police assassination squads.

The commission is chaired by Justice Louis Harms, a judge in the Transvaal provincial division of the Supreme Court. His terms of reference are broad. He is authorized to inquire into and report "on the alleged occurrence of murders and other unlawful acts of violence committed in the Republic of South Africa (including

the self-governing territories) [i.e. including non-independent "homelands" and excluding the nominally independent "homelands" of Transkei, Venda, Ciskei and Bophuthatswana, as well as areas outside South Africa] in order to achieve, bring about or further any constitutional or political aim in the Republic of South Africa and in respect of which the judicial process has been completed or which have not been solved or in respect of which the investigations are, owing to a lack of evidence, not progressing."

When the commission began its proceedings on 5 March 1990, Tim McNally, the attorney general who was appointed by President De Klerk in November 1989 to investigate the allegations of police involvement in political assassinations, submitted a list of 71 cases of unsolved politically-motivated murders (see attached Appendix). The list includes the names of murdered anti-apartheid opponents dating from the late 1970s, as well as the names of policemen and farmers killed in landmine attacks in the northern Transvaal. South African-based human rights organizations and lawyers representing the families of murdered and "disappeared" persons have expressed concern about the terms of reference in so far as they exclude any inquiry into incidents which took place outside the country's borders or within the borders of the nominally independent "homelands". These incidents range from individual assassinations through to massacres of dozens of South African refugees and civilians in Mozambique, Lesotho and Botswana during the 1980s.

The consequences of this territorial limitation to the scope of the inquiry quickly became apparent when the commission was asked to consider evidence relating to the assassination of South West Africa People's Organisation (SWAPO) leader,

Anton Lubowski. The commission was unable to receive testimony on who may have authorized or carried out the murder as it took place in Windhoek, the capital of Namibia. President De Klerk has refused to extend the commission's terms of reference to enable it to hear evidence on this issue, permitting it only to receive testimony from the Defence Minister, General Magnus Malan, regarding his claims that Anton Lubowski was a paid South African Defence Force (SADF) agent. The evidence was given to the commission in closed proceedings, from which even the legal teams representing the interests of the deceased Anton Lubowski were excluded.

Although Judge Harms later gave the lawyers conditional access to the documentation presented to the commission during the closed session, the representatives of the Lubowski family subsequently withdrew from the proceedings. At the end of April 1990, they announced to the commission their decision to "take no further part under present circumstances in the proceedings. . . because of the restrictive terms of reference and the limitations and exclusions imposed on [the commission] by the South African Defence Force."

The commission's restricted brief also will preclude it from inquiring into the major proportion of the activities of a secret military unit, known since the mid-1980s as the Civil Co-operation Bureau (CCB). According to the testimony of South African Defence Force Chief of Staff Major General Jan Klopper, CCB aims were restricted to operations outside South Africa. (The commission has already heard testimony regarding some of the CCB's alleged internal operations.)

Lawyers representing Almond Nofomela applied unsuccessfully to the commission in late March 1990 for permission to introduce evidence regarding cross-border raids by alleged hit squad members. They made the application following cross-examination of the witness by legal counsel for the police, who challenged, among other things, Almond Nofumela's allegations regarding abductions and assassinations in Swaziland. Denis Kuny, senior counsel for Almond Nofomela, argued to the commission that it would be unable to evaluate or verify the credibility of evidence so far heard, unless it was prepared to admit evidence regarding cross-border raids. The judge rejected the application.

During proceedings in London in late April 1990 when David Tshikalange and Dirk Coetzee testified, the witnesses frequently alluded to their activities, while members of the police unit, in Swaziland, Lesotho and Botswana. Legal counsel for the witnesses were unable to introduce further evidence on these extra-territorial incidents which included alleged bombings, abductions and killings.

At the conclusion of the commission of inquiry, Judge Harms is required to

report to the State President and identify the individuals or organizations responsible for those politically-motivated murders or acts of violence he concludes have occurred, whether as principal offender, accomplice or by helping to conceal the fact. He is also required to identify who is or has financed the persons or organizations committing the murders. The commission heard a considerable amount of evidence during March 1990 regarding the funding of the operations of the army's CCB. According to reported police statements, alleged members of the CCB have been linked, in police investigations, to the murders of Anton Lubowski and the human rights activist and academic, David Webster. Commission testimony revealing that there were minimal controls over the apparently lavish CCB budget has prompted the South African parliament to order a probe into the Defence Ministry's secret 4.6 billion Rand (about 1.09 billion pounds sterling) Special Defence Account. Finally, Judge Harms is to inquire into and report on any other matter he considers relevant to his brief. The report is to remain secret unless and until the State President authorizes its release.

Government-issued regulations govern the conduct of the inquiry. Testimony is to be given under oath, and in secret if so requested by the witness. Penalties are provided for any violation of the rules on confidentiality. At the chairman's discretion, witnesses may be assisted by legal counsel. Some nine teams of lawyers have been attending proceedings which, in the main, have been open to the public. However Judge Harms allowed military witnesses to give evidence in camera regarding General Magnus Malan's allegations about Anton Lubowski. The regulations empower the commission chairman to inspect premises and to demand and seize documents relevant

to the inquiry. Penalties are provided for any attempt to obstruct his right of access. While the commission has the power, under the 1947 Commissions Act, to subpoena witnesses, there is no penalty provided where a person refuses to answer questions put to them by the commission. A number of CCB witnesses, including Major General Edward Webb, chairman of the CCB and commanding general of the SADF's Special Forces, have refused to answer some questions about the CCB on the grounds that the answers could incriminate them. After Major General Webb refused to answer a particular question, Judge Harms asked the witness if he was refusing to answer on the grounds that he might be incriminated. Major General Webb's legal representative replied by telling the judge that the question, which concerned violence, was one of the "links in the chain" which could lead to the possible incrimination of the general and other members of the CCB. Major General Webb also said he was unable to place before the commission documentation of CCB projects, claiming that he had no knowledge of the whereabouts of the documents. Commission officials failed to find the documents when they inspected the Pretoria premises of the CCB in early March.

The apparent refusal by the military to fully disclose documentation about CCB activities was openly discussed during commission proceedings in mid-April. The discussion arose as a consequence of an application to the commission judge by counsel for the (David) Webster Trust and Family and the Independent Board of Inquiry into Informal Repression (IBIIR) for an order that all documentation held by the CCB should be made available to the public. The application was opposed by counsel for the South African Defence Force on the grounds that the public did

not have the right to know about all the activities of the CCB. Judge Harms said that he could not make the requested order at this point in the proceedings and that relevant police and military witnesses who know where project documentation can be found will be called at some later stage. The judge then indicated that General Malan had expressed his agreement to testify.

The commission is explicitly precluded from hearing or receiving any evidence which "may influence pending, instituted or existing judicial procedures. . .until such time as such procedures have been completed." This regulation would have prevented the commission from taking evidence from Almond Nofomela, who was charged with the murder of Griffiths Mxenge in the Natal Supreme Court in December 1989. His trial was due to resume in February 1990. However, on 21 February the Natal Attorney General withdrew the charges against him temporarily, to enable him to testify before the commission. The Attorney General reportedly commented that "Nofomela's allegations will be of considerable relevance to the commission's deliberations and continuing the prosecution at this stage could impair...the full investigation of the broader issues involved." During the second week of March 1990 Almond Nofomela described to the commission with frankness and in gruesome detail, his role, as a member of an alleged police hit squad, in kidnapping, torturing and murdering government opponents. Following the completion of his testimony, legal counsel for the police subjected him to intense cross-examination.

In the wake of the allegations made last year by Almond Nofomela about his involvement in a security police "death squad", Amnesty International urged the

South African government to order a full, independent, open and impartial inquiry into these and other allegations that "death squads" linked to the security forces had carried out extrajudicial executions. Such an inquiry, in Amnesty International's view, should have the power, among other things, to recommend for prosecution any individual against whom there is evidence of involvement in torture, "disappearances" or extrajudicial executions. Amnesty International welcomes President De Klerk's decision to appoint a full judicial inquiry, as well as his reported pledge that any official found to be implicated in political assassinations would be brought to justice. However, Amnesty International is concerned that the terms of reference which prevent the commission from inquiring into incidents which occurred in the nominally independent "homelands" or outside South Africa's borders excludes from the inquiry major instances of human rights violations allegedly committed by the security forces. Furthermore, the exclusion of evidence relating to such incidents may hamper the commission in its assessment of the credibility of witnesses and the reliability of evidence relating to incidents which occurred within South Africa's borders. Amnesty International regards the investigation of unlawful acts by members of the security forces as vital, not just as a means of exposing how things happened and of ensuring that wrongdoers are punished, but of preventing future repetitions through establishing proper safeguards.

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Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

SOUTHERN AFRICA NETWORK 9/89 - UPDATE

SOUTH AFRICA: "DEATH SQUAD" KILLINGS

To: SAN coordinators and selected groups for action
Southern Africa and SADA coordinators for information

From: Research Department (Southern Africa)

Date: 10 May 1990

RECOMMENDED ACTION FOR SAN COORDINATORS

1. SAN coordinators will receive from the IS three copies of a new external

document entitled South Africa: Political Killings by Security Force "Death Squads" - Judicial Commission of Inquiry into Political Killings Begins Proceedings (AI Index: AFR 53/20/90), together with three copies of this document updating SAN 9/89 actions.

SAN coordinators asked to distribute one copy of the external document and one copy of this document to each of the two groups selected to work on SAN 8/89.

2. SAN coordinators should send the same materials to any groups in other RANs who are also working on SAN 8/89.

3. The Dutch SAN coordinator should bring the external document to the attention of the Amnesty International Police Group in the Netherlands, and ask them to write follow-up letters as requested in the following recommendations to SAN groups.

RECOMMENDED ACTIONS FOR SAN GROUPS

1. Groups selected to work on SAN 8/89 are asked to write one follow-up letter only to each of the government addressees given in SAN 8/89 (State President, Minister of Law and Order, Minister of Justice, Head of Security Police, Commissioner of Police, and Major-General Joubert of the police Criminal Investigation Division).

In your letters you should:

- welcome the government's decision to establish a full judicial

commission of inquiry which will look into, among other things, allegations of security force involvement in politically motivated killings;

- welcome the fact that the government is reported to have given an undertaking that any official found to be implicated in political assassinations will be brought to justice;
- express concern that the commission's terms of reference prevent it from inquiring into incidents which occurred in the nominally independent "homelands" and outside South Africa's borders. This will exclude from the inquiry major instances of human rights violations allegedly committed by the security forces;
- back up this concern by stating that Amnesty International regards the investigation of unlawful acts by members of the security forces as vital, not just as a means of exposing how certain events happened and of ensuring that wrongdoers are punished, but of preventing future repetitions through establishing proper safeguards;
- urge that the State President, once he has seen the commission's report, make its contents public as soon as possible.

2. Copies of these follow-up letters should be sent to the diplomatic representative of South Africa in your country.

3. Please also send a copy of at least one of these follow-up letters to one of the three opposition members of parliament named in SAN

8/89 (Tian van der Merwe, Peter Soal, and Jan van Eck).

4. Please also send a copy of at least one of these follow-up letters to:

South African Press Association

The Weekly Mail

South African Council of Churches

Vrye Weekblad

at the addresses given in SAN 8/89.

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