



05 December 2022

OPEN LETTER TO THE MINISTER OF POLICE

Dear Honourable Minister Bheki Cele,

APARTHEID ERA CASES: COSAS 4 & CAIPHUS NYOKA: REFUSAL OF SAPS TO PAY LEGAL COSTS OF FORMER SAP OFFICERS

We write to you on behalf of the families of apartheid-era victims in the [COSAS 4](#) and [Caiphus Nyoka](#) cases, whom we support in their efforts to reach justice and closure.

The COSAS 4 murders took place more than 40 years ago while Caiphus Nyoka was murdered more than 35 years ago. The window of opportunity to bring justice to the perpetrators in these cases is fast closing. Most of the suspects have already died and the few remaining are in their twilight years and could die at any time or become medically unfit to stand trial.

Ms Maide Selebi, the sister of the late Eustice Madikela; Ms Tryphina Mokgatle, the sister of the late Zandisile Musi; Ms Thandi Nhlapo, the niece of the late Fanyana Nhlapo; Mr Tshepo Matabane, the son of the late Ntshingo Matabane (the families of COSAS 4); and Ms Alegria Nyoka, the sister of the late Caiphus Nyoka have asked us to bring to your attention their disappointment with the [refusal](#) of the South Africa Police Service (SAPS) to pay the legal costs of the former South African Police (SAP) officers accused of the murders of the COSAS 4 and Caiphus Nyoka in official police operations during the 1980s.

But for the refusals, both trials could very well have been concluded this year, bringing much needed closure to the families and their communities. It would also have demonstrated the commitment of the State to finalizing the long-delayed apartheid-era cases.

The refusals will result in the delay of both trials by several years, leading to their likely collapse. The approach of SAPS has become the biggest obstacle to the finalisation of the few remaining apartheid era cases. Ironically, this means that the work of the Directorate for Priority Crimes Investigations (DPCI) in unearthing evidence of these decades old crimes is likely to come to naught.

The refusal flies in the face of the 2018 [judgment](#) in the *Coetzee case* in which the SAPS were ordered by the Pretoria High Court to [pay the legal fees](#) of the former Security Branch officers accused of the murder of Nokuthula Simelane in 1983. Your office declined to appeal this judgment. The litigation delayed the criminal trial by years during which time 2 of the 4 accused died. That case is now further delayed, potentially for years, as one of the two remaining accused prepares to challenge an assessment declaring him mentally fit to stand trial.

Although there is no material distinction between *the Coetzee case* and the COSAS 4 and Nyoka cases, the SAPS have refused to pay the reasonable legal costs in the latter cases. The refusal in the COSAS 4 matter is also in defiance of a [court order](#) handed down by Judge Mokgoathleng on 4 May 2022. Your office has appealed this order on purely technical and procedural grounds. This appeal will take years to resolve.

The intransigence of SAPS on this matter is also inconsistent with its past practice of covering the legal costs of former police officers in the reopened inquests into the deaths in detention of Ahmed Timol, Neil Aggett and Hoosen Haffeejee. Had the SAPS refused such payments these historic cases would not have proceeded.

While the payment of the legal fees of police officers who murdered anti-apartheid activists sticks in the throat, the officers in question were acting under orders and carried out such crimes in the course and scope of their employment with the former SAP. The extra-judicial killing of opponents of apartheid was state sanctioned policy at the time. The SAPS is the successor in title to the SAP and must assume its legal responsibilities, as held by the court in the *Coetzee* matter.

It is not clear why you would want to associate yourself with an approach that is likely to see the collapsing of the last few remaining apartheid era cases. Aside from the long delayed Nokuthula Simelane case there are currently only 2 apartheid era cases before the courts (COSAS 4 and Nyoka). The [political interference](#) that suppressed the investigation and prosecution of the apartheid-era cases has ensured that the vast majority can never be resurrected. This is because most suspects and witnesses have already died. It is likely that only a handful of these cases will ever make it to court. Accordingly, the impact on the policing budget will be modest.

Since the financial implications on the State are not unduly substantial, it must be asked what is driving the approach of the SAPS that is upending decades-long delayed criminal trials, involving cases of great significance to South Africa's struggle for freedom and democracy.

The families are of the view that there are elements within the SAPS who wish to protect apartheid-era perpetrators from justice through the orchestrating of further delays, which will result in the collapse of the few remaining cases. In this regard it is telling that the former Security Branch accused in the COSAS 4 case, Lt Col C S Rorich, is not opposing your appeal of the court's 4 May 2022 order compelling you to pay his legal costs.

We urge you to change course and not inadvertently advance the interests of apartheid-era perpetrators. It is their strategy to engineer endless delays in order to escape justice. Your current approach to the legal costs question plays directly into their hands.

After waiting some 40 years for justice and closure the families should not have to endure the pain, suffering and indignity of further delay. Should the accused die or become mentally unfit to stand trial at the end of the litigation, the prejudice visited upon the family and the community will be irreversible and incalculable. Responsibility for such an outcome will be laid squarely at your door.

Please do not hesitate to contact the writer should you need any further information or if you would like to meet with the Foundation and the families.

Yours faithfully,

Dr Zaid Kimmie



Executive Director

Foundation for Human Rights

For media queries, please contact Mx. Kholekile Mnisi, Media and Communications Specialist
Tel: 0656710399 | Email: kmnisi@fhr.org.za