FOUNDATION FOR HUMAN RIGHTS

THE UNFINISHED BUSINESS OF THE TRC PROGRAMME

FACTSHEET: THE CASE OF THE COSAS 4

WHO WERE THE COSAS 4?

Eustice 'Bimbo' Madikela, Peter 'Ntshingo' Matabane, Fanyana Nhlapo and Zandisile Musi were young anti-apartheid activists and members of the Congress of South African Students (COSAS) from Kagiso Township, Johannesburg. On, 15 February 1982, Musi was seriously injured while Madikela, Matabane and Nhlapo were killed by the members of the Security Branch of the South African Police on in a pump house near Krugersdorp. Madikela, Matabane, Nhlapo and Musi were teenagers at the time of the attack.

Image: South African History Archive

WHAT HAPPENED TO THE COSAS 4?

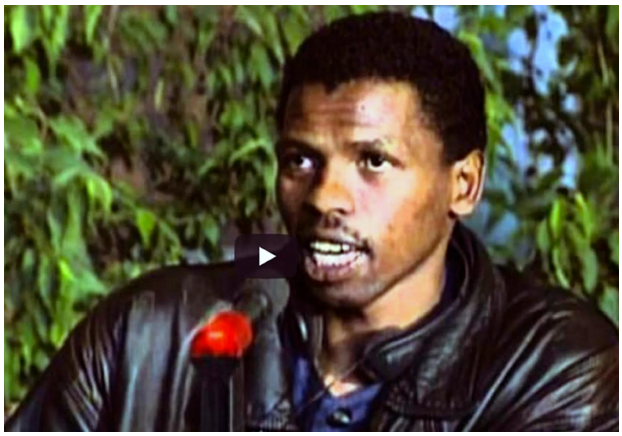
Madikela, Matabane, Nhlapo and Musi wanted to join the African National Congress in exile in order to undergo military training. For this reason, Musi contacted an old friend of his Tlhomedi Ephraim Mfalapitsa whom he erroneously considered a member of the ANC's military branch, uMkhonto weSizwe (MK). As it later turned out, Mfalapitsa was an informer for the Vlakplaas at the Security Branch of the South Africa Police at the time of his conversation with Musi. Mfalapitsa reported the conversation to his superiors at Vlakplaas, namely Jan Carel Coetzee and Willem Frederick Schoon (both deceased). Schoon and Coetzee ordered the killing of four students.

The four students were driven to an abandoned pumphouse on the outskirts of Krugersdorp by Joe Mamasela and intercepted by Tlhomedi Ephraim Mfalapitsa, men the students believed were their comrades, but were, in reality, askaris (erstwhile members of the liberation movement that changed sides and joined the apartheid police).

Mamasela left the scene once Mfalapitsa and the four students had entered the pump house. Once inside, Mfalapitsa handed over the hand grenades to the students and showed the COSAS 4 how to use them. Mfalapitsa then left the pump house under the pretext that he was going to fetch more equipment. Once he was out of the pump house, Jan Carel Coetzee and Christiaan Sebert Rorich, the Security Branch explosive expert, detonated the explosives, killing three of the COSAS 4 and severely injuring Musi.

WHY WERE THEY TARGETED?

The COSAS 4 were active members of the anti-apartheid struggle and significantly strengthened the student movement. COSAS was an anti-apartheid student organisation established in 1979 following the June 1976 Soweto Uprising and the banning of its predecessor, the South African Students Movement in 1977. In 1982, the organization adopted the theme "student-worker action" and provided essential support to striking workers and community struggles around issues such as transport increases, rent hikes and the like. The four young men wanted to leave South Africa to obtain military training with the ANC in exile. This placed a target on their backs and served as a source of worry to the South African Police (SAP). Thus, on the orders of Jan Carel Coetzee and Willem Frederick Schoon, the assassination plot was executed by Christian Sebert Rorich, Abraham Grobbelaar and the two askaris (Mamasela and Mfalapitsa). Coetzee was also present at the scene and together with Rorich detonated the explosives.



Zandisile Musi. Image: Daily Maverick

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WHAT UNFOLDED AT THE TRC?

The Truth and Reconciliation Commission (TRC) heard the case of the COSAS 4. Initially, it was made to appear that the young activists had blown themselves up during a military training exercise. Only in 1999, at a TRC hearing, was it found that the activists were assassinated.

Jan Carel Coetzee, Willem Frederick Schoon, Christiaan Sebert Rorich, Abraham Grobbelaar and Tlhomedi Ephraim Mfalapitsa had applied for and were denied amnesty. Although he did not apply for amnesty, Mamasela testified on camera at a Section 29 investigative hearing, before the TRC. Post-TRC, the case was then passed on to the South African Police Services and the National Prosecuting Authority (NPA) for further investigation and prosecution.

Image: Institute for Justice and Reconciliation

WHAT CHARGES WERE BROUGHT AGAINST THE ACCUSED?

Several individuals involved in the COSAS 4 trial were implicated in the kidnapping and murder of the COSAS 4 yet were not ever criminally charged in the period post-TRC.

In August 2021, Christiaan Sebert Rorich, the explosives expert, and Tlhomedi Ephraim Mfalapitsa, the askari responsible for luring the four men into the pumphouse, were charged with kidnapping and murder. Both Rorich and Mfalapitsa played integral roles in the kidnapping and murder of the COSAS 4.

WHAT ARE THE CHARGES OF CRIMES UNDER INTERNATIONAL LAW?

In November 2021, charges of the crime against humanity of murder and the crime against humanity of apartheid as per Section 232 of the Constitution were added to the indictments of two accused.

Under customary international law, crimes against humanity of murder and of apartheid are prohibited and are considered particularly serious. All states are under obligation to prevent and to respond to these crimes by promptly investigating and punishing the perpetrators. The Constitution of South Africa and the international customary and treaty law oblige the South African state to prosecute both domestic and international crimes in South Africa. The addition of these international charges is significant. This is the first case in South African history which has ever included international charges, and it is the first case in the world that includes the international charge of the crime against humanity of apartheid.

WHAT ARE CRIMES AGAINST HUMANITY?

Crimes against humanity are defined by a set of inhuman acts committed in a particular context; as part of a widespread or systematic attack directed against any civilian population or the systematic oppression or domination of one racial group over another. At the time of the attack, the four COSAS students were non-armed civilians. In the case of the COSAS 4, the accused have been charged with crimes against humanity of murder as three young men were assassinated in the context of a widespread and systematic attack by the apartheid state against black population as well as other opponents of the Apartheid regime. The members of the Security Branch involved in the kidnapping and murder of the COSAS 4 were upholding and perpetuating the unjust and brutally racist institutionalised system of apartheid. In 2005, the South Africa Constitutional Court in the case S v Basson (1) SA 171 (CC) found that "the practice of Apartheid constitutes crimes against humanity."

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WHY WERE THE PERPETRATORS ONLY INDICTED IN 2021?

In 2019 with the assistance of the Foundation for Human Rights and Webber Wentzel, the families able to enter substantive discussions with the SAPS Directorate for Priority Crimes Investigations and the National Prosecuting Authority, which reinvigorated investigations into the COSAS 4 matter. As a result, in 2021 Mfalapitsa and Rorich were indicted for their roles in the murder and serious injury of the COSAS 4. Other perpetrators went to their graves without having faced justice. In 2021, the last remaining survivor of the COSAS 4, Musi, succumbed to his injuries and passed away.

The delay in the indictment of the perpetrators was caused as a result of political interference by the Executive into the work of the NPA and the South African Police Services and the suppression of the cases arising from the TRC process, in the period 2003-2017. The political interference resulted in the decision to neither investigate nor prosecute any of the several hundred serious criminal cases in which amnesty had been denied or not applied for. Among others, it included efforts by the Executive to introduce 'back door amnesties' for the perpetrators of gross human rights violations. A former National Director of Public Prosecutions (NDPP) and a former head of the NPA's Priority Crimes Litigation Unit (PCLU) have provided affidavits describing how they were pressured to drop the TRC cases, in the 2015 matter of Nkadimeng v National Director of Public Prosecutions. This was confirmed under oath by senior officials representing the NPA in 2019 in Rodrigues v National Director of Public Prosecutions of South Africa. The High Court and the Supreme Court of Appeal in Rodrigues's stay of prosecution proceedings expressed their dismay at how such interference could take place in our new constitutional order. The political interference has resulted in massive delays in the prosecution of apartheid-era crimes in several hundred cases, which were handed over by the TRC to the NPA in the late 1990s.

WHEN AND WHERE WILL THE TRIAL START AND TAKE PLACE?

The start of the trial has been delayed repeatedly due to the South African Police Services (SAPS) refusing to pay the legal fees for one of the accused, Rorich. The court has since ordered SAPS to do so.

The trial is finally due to begin on 21 August 2023, and last until 1 September 2023 at the High Court in Johannesburg.

HOW CAN I ACCESS MORE INFORMATION ABOUT THE COSAS 4 CASE?

In order to obtain more information about the upcoming COSAS 4 case, you can consult the 'Future Cases' section of FHR's TRC Programme website at https://www.unfinishedtrc.co.za

You can also contact Kasia Zdunczyk at kzdunczyk@fhr.org.za or Moray Hathron at moray@lrc.org.za. Moray Hathorn of the Legal Resources Centre acts as an instructed attorney for the COSAS 4 families.

Tlhomedi Ephraim Mfalapitsa. Image: eNCA

REFERENCES

- Full Application Bundle in the COSAS 4 Case
- Rodrigues v National Director of Public Prosecutions of South Africa and Others, South African Legal Information Institute
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