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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

12 July 1988

Dear Mr. [unclear]

PRIME MINISTER'S MEETING WITH MISS JOYCE MOKHESI

The Prime Minister saw Miss Joyce Mokhesi for half an hour this morning. Miss Mokhesi summarised the background to the case of the Sharpeville Six and expressed appreciation for the interest which the Prime Minister had taken in it, for the work of our Embassy in South Africa and for the various appeals for clemency made bilaterally and through the European Community. She went on to express the number of concerns about the conduct of the South African courts in the case.

The Prime Minister said that we could not intervene in the judicial process in South Africa. In her experience, the South African courts had generally shown themselves to be quite independent of the government. But because of the exceptional circumstances in this case, we had been ready in March to make an appeal to President Botha for clemency for the Sharpeville Six. We would renew that appeal if the death sentences were confirmed, although we hoped that would not arise. In seeking support for a further appeal for clemency Miss Mokhesi was, therefore, knocking on an open door.

Miss Mokhesi said that she feared that President Botha was determined on executions in this case, and any others where convictions had been made on the basis of the doctrine of common purpose, as a deterrent. She hoped that the Prime Minister could make clear to President Botha that she felt as passionately about her appeal for clemency as she did about her opposition to economic sanctions. Otherwise there might be a risk that President Botha would think that Britain was half-hearted. The Prime Minister said that there was no danger that President Botha would reach such a conclusion. When she asked for clemency, it meant that she wanted it. Far from being reluctant, Britain had been among the first to seek clemency and she had appealed to President Reagan and Chancellor Kohl to join her in seeking it. The issue had subsequently been discussed at the Economic Summit in Toronto and at the European Council in Hanover and all had agreed that appeals for clemency should be renewed.

Miss Mokhesi expressed concern that our appeal for clemency might be limited to only two of the defendants, against whom the prosecution had admitted that there was no direct evidence of complicity in murder. The Prime Minister made clear that our request for clemency would cover all six defendants. The Prime Minister continued that she sometimes felt that not enough sympathy was expressed for Mr. Dlamini, who had been murdered, and for his family. If the courts found that murder had been committed and convicted persons for that murder, then they should be punished. Our request for clemency related only to imposition of the death penalty in the special circumstances of this case.

Miss Mokhesi said that she believed the Prime Minister's voice carried special weight with the South African government. The Prime Minister said that she would ensure that President Botha knew the strength of her views on this case. The fact that she was known to be a supporter of capital punishment might give her request for clemency greater weight. But she emphasised that she could not guarantee what the outcome would be. The South African government was very sensitive to anything which appeared to be outside intervention.

I enclose:

- a note handed over by Miss Mokhesi at the end of the meeting which was obviously intended to be the basis for her remarks;
- the briefing note used by the No. 10 Press Office after the meeting.

your sincerely,

Charles Powell

C. D. POWELL

Lyn Parker, Esq.,
Foreign and Commonwealth Office

BRIEFING NOTE - PRIME MINISTER'S MEETING WITH MISS MOKHESI

The Prime Minister today met Miss Mokhesi, sister of one of the Sharpeville Six for half an hour over coffee. Miss Mokhesi handed over a summary of the case.

Miss Mokhesi was chiefly concerned to ensure that the Prime Minister made a further plea for clemency if that became necessary and that the plea would cover all six people involved.

The Prime Minister gave an assurance that if unfortunately that situation arose she would renew her appeal for clemency to President Botha and that the appeal would indeed embrace all six.

The meeting took place in a calm, low-key atmosphere. Miss Mokhesi expressed appreciation for all that the Prime Minister had done in the case and asked her to maintain her interest because of the weight which her voice carried in South Africa.

The Prime Minister made the point that a murder had in fact been committed and she had great sympathy for the victim and his family. Those found guilty of murder should be punished and the British Government was not intervening in the South African judicial process; but it was asking for clemency. This was the first case in which the doctrine of common purpose had been applied in a South African murder trial and the British Government did not think that the death penalty was appropriate in these circumstances.

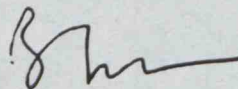
Background

Miss Mokhesi said on her way out that she felt much better for having seen the Prime Minister.

If asked why the Prime Minister declined to meet the 10 year-old niece of one of the Six, you can say that the Prime Minister does not believe that children should be involved in such cases.

In the course of the discussion the Prime Minister said that when she asked for clemency she believed that President Botha knew that she meant what she said. As a supporter of capital punishment her appeal perhaps carried even more weight on that account.

The UK Government through the Prime Minister has made one appeal for clemency and has been associated with further appeals from the European Community and the Economic Summit.



BERNARD INGHAM

12 July 1988

THE SHARPEVILLE SIX

The Sharpeville Six have touched the conscience of the world because they have been victims of injustice, and because as Lord Scarman said the quality of the evidence against them is so thin:

it is unjust that the Six should be found guilty of murder when the courts accept that they did not contribute causally to the death of Dlamini and when the police are not even looking for his killers;

it is unjust that both the trial judge and the court of appeal failed to find extenuating circumstances for people who were found not to have actually killed the deputy mayor;

it is unjust that President Botha should have said that he could not grant clemency to the Six because he would not intervene in the proceses of justice, when he simultaneously halted the trial of soldiers accused of murder in Namibia and granted clemency to George John Sindane, a black policeman convicted of "a cold blooded murder" of a black pedestrian who had been in his way in the street.

the Court of Appeal was unjust in ruling that the Six should pay with their lives for the failure of their lawyers properly to ask the trial judge to waive Manete's privelege, a legal issue which had not previously arisen in South Africa.

the trial judge was unjust to rule at the recent hearing that it would be "extravagent" even to consider that there could have been a failure of justice since the defence had offered evidence that only two state witnesses (rather than all of them) claim to have been forced to lie to the court.

Some say putting pressure on President Botha to grant clemency will be counter-productive. The truth is that President Botha wants to kill the Six and only unrelenting and concerted pressure can save them. That is why it is important that Botha does not think Britain is being half-hearted, and that the West speaks with a single voice.

President Botha should be left in no doubt that Mrs Thatcher is as committed to saving the Six as she is to vetoing sanctions.

President Botha must understand that he cannot satisfy Western leaders by hanging some of the Six and granting clemency to others. There can be no compromise with injustice.

If President Botha thinks that it is necessary to hang the Six in order to show potential Black councillors that he can protect them, he is out of date. If he hangs the Six, anyone standing in elections will be seen to have the blood of the Six on their hands. Furthermore, the tension that the impending execution of the Six created last March, could easily have led to another uprising. That is not just my opinion. Both the German Foreign Office and that great Afrikaaner Beyers Naude tell me that they too smelt violence in the air.

THE SHARPEVILLE SIX

Summary: The Sharpeville Six are six young Black South Africans who were sentenced to death in December 1985. They won a stay of execution on March 17, 1988 pending legal decisions on whether South Africa's courts can hear evidence that two state witnesses were forced by the police wrongly to implicate two of the accused.

On June 6th and June 7th the judge, Acting Justice Human, heard legal arguments as to why this new evidence should be heard in court. On June 13th the Judge rejected the defence application, and refused to allow an appeal against his judgement. He extended the stay of execution to July 19th.

On July 1st the defence submitted their application to the Acting Chief Justice, arguing that the judge was mistaken in saying that only President Botha could order the new evidence to be heard. If the Acting Chief Justice rejects their application, a final appeal can be made to President Botha. He has already turned down petitions for clemency on the grounds that he would not intervene in the judicial process.

The Six were found guilty of the murder on September 3 1984 of the deputy mayor of Sharpeville, Khuzwayo Dlamini. They were found guilty of murder, even though South Africa's Court of Appeal stated:

"It has not been proved in the case of any of the six accused [who have been] convicted of murder that their conduct had contributed causally to the death of the deceased."

The death sentence was upheld on the basis of "common purpose". The Court of Appeal allowed an unprecedented extension of this principle, so as to cover anyone who is part of a crowd only some of whom are engaged in a crime.

The Court of Appeal stated that: "It would constitute a drastic departure from a firmly established practice to hold now that a party to a common purpose cannot be convicted of murder unless a causal connection is proved between his conduct and the death of the deceased."

The Appeal Court stated that it was "implicit in the findings of the trial court, but in any event quite clear on the evidence, that each of these accused shared a common purpose, to kill the deceased with the mob as a whole, the members of which were intent upon killing the deceased".

The conviction and the Court of Appeal's decision to uphold it have aroused great concern. The following are just some of those who have already appealed for clemency: the Pope, Cardinal Hume, the Archbishop of Canterbury, the South African Catholic Bishops Conference, the South African Council of Churches. The EEC has presented a collective demarche appealing for clemency as has the UN Security Council with a unanimous vote, the governments of Israel, Japan, Australia, Norway, Sweden, Canada, Switzerland, Austria and the USA.

THE SHARPEVILLE SIX

Who they are:

Mojalefa Reginald Sefatsa is now 33 years old. He is married to a Catholic with one daughter who was borne 2 weeks after his arrest. Before his arrest was a fruit seller. His wife is now living with her parents;

Oupa Moses Diniso is 31 years old. An Anglican, he is married with a son of nine and a daughter of four. Before his arrest was an inspector at a steel firm;

Reid Malebo Mokoena is 25 years old. His son is aged four and he is an Anglican;

Theresa Ramashamola is 27 years old and single. She is the oldest — and the breadwinner — in a family of three daughters. A Catholic, she worked as a waitress and lived at home with her widowed mother;

Duma Joshua Khumalo is 27 years old. He is married with a son aged eight. At the time of his arrest he was studying at a teacher training college. His family receives support from the South African Council of Churches;

Francis Don Mokhesi is 31 years old. A Catholic, he has one daughter aged ten and is a professional soccer player. His team is the Vaal-Professional Soccer Club.

What happened:

In the summer of 1984 there were nationwide riots against South Africa's new constitution which allowed the Asian and Coloured communities representation in Parliament. The Black majority were given local councils. Elections to these were boycotted. When the councils in and around Sharpeville increased rents a day of protest was called for September 3rd. The destination of the marches was the Orange-Vaal Development Board, an organisation which channels funds into local townships. By the end of the day the police admitted they had killed 10 people in breaking up the demonstrations.

The marches were planned to pass by the homes of local councillors; and the councillors were to be asked to join the protestors. However, the deputy mayor of Sharpeville, Khuzwayo Dlamini, on seeing the crowd approach his house opened fire, wounding one person. The crowd, incensed, stoned him, threw him into his car and set light to it and him. In separate incidents, two other councillors also shot at the demonstrators and were killed.

Eight people were arrested in the months up to March 1985 and charged with subversion, murder, arson and malicious damage to property. The trial started in September 1985. The trial judge — Acting Justice Human and two lay assessors — found all but two guilty of murder on December 10th 1985. The appeal was heard on November 2nd 1987 and the judgement upholding the death sentence was announced on December 1st.

The prosecution's witnesses:

There were three main witnesses for the State, although a fourth witness (Johannes Mongaule) retracted his evidence at the start of his cross-examination. He has since said that he was forced by the police to commit perjury.

The main prosecution witness was a man called Mabuti. He went to the police the day after the riot on September 3rd 1984 and told the police what and whom he had seen. The first of the accused, however, was not arrested until November; the last (Francis Mokhesi) the following April. The defence were suspicious about this delay. The defence lawyers say they sub-poened the officer responsible for the case, but he only took the case over from Easter time. His predecessor, apparently, could not be traced. The notebooks of the police officers mysteriously went missing.

Mabuti did not testify against everyone. One of the Six, Reid Mokoena, confessed, tried to retract his confession at the trial saying he was tortured; the judge did not believe him.

Another of the six, Oupa Diniso, was convicted because the gun of the deputy mayor (the murdered man) was found in his house; another of the accused (Sefatsa) apparently told the police it might be found there. The judge did not believe Diniso's explanation — that he found children playing with the gun in the street and took it off them. Instead, he said that the evidence of the gun proved that this defendant had wrestled with the deputy mayor for possession of the weapon during the riot.

A further defendant (Sefatsa) was convicted because he was identified by the wife of the deceased and the main state witness, Mr Mabuti.

Mr Mabuti was the sole witness who testified to the presence of the only woman among the defendants, Theresa Ramashamola. The judge said she had shouted "he is shooting at us, let's kill him" and had slapped a woman's face who called for the mob not to kill the deputy mayor. The judge found that these words and actions were enough to have actively associated her with Dlamini's murderers and, therefore, to have made her guilty of murder under the doctrine of common purpose. The evidence that any of those who were murdering the deputy mayor actually heard what she is alleged to have said — she denies she was there when the deputy mayor was killed — is inferred from the fact that Mabuti said she spoke the words.

The final two are implicated by two witnesses, Mabuti and Joseph Manete. Manete gave some damning evidence about the role particularly of Francis Mokhesi (saying he had prepared petrol bombs etc). However, some six months before the trial Manete sought legal advice, from coincidentally, the defence solicitors, Ismail Ayob and Partners. According to the lawyer's notes of the conversation Manete said that the police had detained him, assaulted him and told him to implicate Mokhesi and Khumalo, both of whom were found guilty of murder. The defence

sought to cross examine Manete on what he had told his lawyer. However, the judge said Manete could claim privilege for his statement, which he did.

Two more people were acquitted of murder but convicted of subversion. The judge found that they might not have been in the crowd (or been there against their will) at the time the deputy mayor was killed.

The witnesses for the defence:

Against this prosecution evidence, was the evidence of various defence witnesses. A neighbour said that Mabuti could not have been correct in testifying that petrol bombs were being made in her yard because she would have seen it and she did not; nor could he have been correct in saying he hid in her shed because she kept it locked. A local car mechanic said Mabuti's evidence that petrol had been taken from cars in his yard was not true. The judge said he found neither of these witnesses reliable.

Francis Mokhesi is a professional footballer. It is common ground between the prosecution and the defence that Francis had an ankle injury which prevented him from playing, though not from walking. He said he spent the day at home resting his ankle. The judge, accepting the medical evidence about the injury, held that nonetheless Francis had pushed a car out of a garage and made petrol bombs.

The Court of Appeal:

The Court of Appeal accepted all the findings of fact which the judge and two lay assessors had come to. In their judgement they devote no space to the troubling factual aspects of the case. However they devote a considerable amount of space to firstly, the nature of common purpose — some courts had hitherto accepted this doctrine and some had not. The other issue of concern was Manete's privileged statement.

On this the Court of Appeal held that the trial judge was wrong to have said privilege could never be withdrawn from a communication between a client and his lawyer. However, in this particular case the defence had erred in two ways: first it had sought to have privilege removed as a right, rather than by appealing to the judge's discretion; secondly, even if defence counsel had asked the judge to exercise his discretion, he had not furnished the judge with sufficient evidence on which he could have exercised his discretion had he been asked to do so.

The Court of Appeal accepted that Manete's evidence was highly prejudicial to Khumalo and Mokhesi and that if his confession were true (neither the trial court nor the Court of Appeal were willing to hear the evidence) the prosecution case would have to be re-examined. However, because the defence counsel had erred on this hitherto novel point of law in South Africa the Appeal Court upheld the conviction.

The Court of Appeal upheld the convictions on the basis of the South African concept of common purpose. The unprecedented extension of common purpose to cover anyone who is part of a crowd only some of whom are engaged in murder has been widely discussed in the press, and is referred to in the summary.

The stay of execution and the current hearings:

The day before the Six were due to be executed, the original trial judge, Justice Human, granted a stay of execution. The defence lawyers had contacted Manete's new lawyers, and Manete had agreed to waive the privilege that attached to his earlier communications.

At the current hearings (June 6-7) the defence sought either to have a retrial, or failing that to have the 'new evidence' reviewed by the Appeal Court under the rules of Special Entry. The State argued that the judge did not have the power to order a retrial, and in a reserved judgement Justice Human rejected the defence applications on June 13th. He said only the State President could order new evidence to be heard.

He also held that even though two prosecution witnesses (Mongaule and Manete) have now claimed that they were forced by the police wrongly to implicate the defendants, that does not establish grounds for arguing that there was a failure of justice. The defence suggested that nobbling two witnesses would constitute a systematic attempt to procure false evidence. However Acting Justice Human said that the defence would have to provide evidence that the police behaved in a similar way to Mrs Dlamini and Mabuti before he could take the claim seriously.

The judge wrote: "This is indeed a very extravagant claim because there is not the faintest suggestion in the papers before me, to mention just the names of two state witnesses, Mabuti and Mrs Dlamini, that the police by systematic intimidation and a system of procuring of false evidence persuaded them to give false evidence."

On March 17th Acting Justice Human ordered a stay of execution after reading the contents of Manete's privileged conversation with his lawyer. Less than two months later, he described the same application as "frivolous and absurd", and as "an abuse of the process of the court", adding that there was still ample evidence to hang the accused.

The South African legal system is thus in the extraordinary position of having first said that if the judge had blundered in allowing Manete to claim privilege, the whole prosecution case would have to be re-examined. Then when Manete waived his privilege and a stay of execution had been granted, the court refused either to hear the new evidence or to re-examine the prosecution case, on the grounds that the application was "frivolous and absurd" and the court anyway had no power examine the evidence.