

PRIME MINISTER

MEETING WITH MISS JOYCE MOKHESI

You are to see Miss Joyce Mokhesi tomorrow morning. She is the sister of Francis Mokhesi, one of the Sharpeville Six. Her purpose in coming is to ask you to intervene personally with President Botha to obtain clemency for her brother and the other five accused.

Miss Mokhesi sought a similar interview with you in March, together with Mrs. Ramashamole, mother of another of the accused. I saw them on your behalf. Miss Mokhesi obviously feels very strongly about her brother's case, but is calm and rational, and does not herself appear to have any particular political axe to grind. But she is exploited by the Anti-Apartheid League and others, and what you say to her is likely to find its way to the press.

Miss Mokhesi is convinced that you have decisive influence with President Botha, and that if you pick up a telephone and ask him personally and directly for clemency, he will grant it. You will want to explain, gently but insistently;

- that we have as a Government made repeated representations seeking clemency;
- that our Ambassador delivered a letter to President Botha on 15 March expressing your personal hope that President Botha would consider exercising the prerogative of mercy;
- that you are prepared to reiterate your call for clemency if the result of the legal process is that the sentences are confirmed; but that
- too direct an approach, such as a telephone call, would make it impossible for President Botha to exercise

clemency without seeming to succumb to obvious external pressure. It would thus in all likelihood be counter-productive;

- you do not for a moment underestimate the travail suffered by Miss Mokhesi, and you are ready to do anything which you believe would be effective to try to secure clemency. But there is a very difficult line to be trod between legitimate representations and interference.

I think the line that we would want to be able to give to the Press afterwards is that you listened to Miss Mokhesi's representations, expressed sympathy, repeated your willingness to renew your appeal to President Botha to exercise clemency once all other legal recourse was exhausted, but made clear that it must be for you to judge what was likely to be the most effective method.

The full background is set out in the attached letter from the FCO.

C.D.P.

CDP

11 July, 1988.

You said that you would not
see the 10-year old ~~niece~~ niece,
Mamolise Mokhesi. But you may like
to autograph the attached No. 10 booklet
for her.

JD3BLG

CDP



cc PC
LBup

Foreign and Commonwealth Office

London SW1A 2AH

11 July 1988

Dear Charles,

Sharpeville Six: Call on the Prime Minister
by Miss Joyce Mokhesi

/ Thank you for your letter of 5 July. I enclose an up to date background note on the Sharpeville Six.

The Foreign Secretary suggests that the Prime Minister may wish to tell Miss Mokhesi that it is not our normal practice to intervene in such cases. But in the exceptional circumstances of the Sharpeville Six (which are set out in the background note), we have done so repeatedly: in 1986, 1987 and many times this year. In addition, on 15 March the Prime Minister asked our Ambassador to pass on her personal hope that President Botha would see fit to exercise his prerogative of mercy. Mr Renwick has recently again discussed the case with the South African Ministry of Justice, reminding them of the Prime Minister's earlier appeal.

The Prime Minister may wish to add that all our representations - public and private - have been intended to help the Six. It is not true, as suggested in the press, that we tried to water down appeals by EC leaders or the Toronto Summit. Our overriding objective has been to secure clemency for the Sharpeville Six. We suggested changes to drafts in each case in order to increase the chances that the representations would have the right effect. In our judgement, the Six would be harmed by public threats to the South African Government.

The Prime Minister may wish to say that if the result of the legal process is that the sentences are confirmed she will reiterate her call for clemency. (The Prime Minister told the House on 30 June that we would repeat our call for clemency if the sentences are confirmed. The modalities of how this might be done will need to be decided in the light of circumstances at the time. But, in brief, either Mr P W Botha's attention could be drawn once again to the Prime Minister's original appeal of 15 March or it could be reiterated by means of an oral or written message from the Prime Minister to President Botha.)



Miss Mokhesi may well argue that the Prime Minister should telephone President Botha to urge him to exercise clemency. She appears genuinely to believe that the Prime Minister has decisive influence with the State President. If so, Mrs Thatcher may wish to explain that we think it best to avoid high profile gestures which in our view only make it more difficult for President Botha to exercise clemency (since to do so would be seen as succumbing to external pressure). Miss Mokhesi has previously been receptive to this argument. But for obvious and understandable reasons she feels very strongly and emotionally about her brother's plight. She is otherwise, as you will recall, quiet, intelligent and no firebrand.

Yours ever, L Parker

(L Parker)
Private Secretary

C D Powell Esq
10 Downing Street

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.



CALL ON THE PRIME MINISTER BY MISS JOYCE MOKHESI,
9.30 AM TUESDAY 12 JULY

BACKGROUND

1. The "Sharpeville Six" were sentenced to death on 13 December 1985 for the murder of the Deputy Mayor of Lekoa, Mr Dlamini, on 3 September 1984. At the original trial, there were eight defendants two of whom were found not guilty. Mr Dlamini was killed by a mob which surrounded his house to protest at rent increases in the township. He fired on the mob and while attempting to escape from his house was killed.

2. We have not taken a view on the legal process. Our concern stemmed from allegations made during the course of the trial that three of the Six were tortured during detention and that torture had been used to extract confessions. The District Surgeon gave evidence that some of the accused had injuries consistent with the torture they claimed to have suffered.

3. Further concern was generated by the statements of a prosecution witness, Mr Joseph Manete, who claimed that the police beat him up and forced him to make a statement identifying two of six as having taken part in the events leading up to the murder. The defence case for a retrial is based in part on the need to take Mr Manete's retraction into account (it was not admitted at the first trial). In the event of a re-trial, Mr Manete's evidence would affect directly only two of the Six - Francis Mokhesi (brother of Miss Mokhesi) and Dumo Khumelo. But if admitted, it would serve to call in question the safety of all six convictions, given the light it sheds on police methods in connection with the trial.

4. British jurists have expressed their doubts about the conviction of the Six. After reviewing a transcript of the court proceedings, Lord Scarman said that it did not seem to him that there was enough evidence, and particularly evidence of intent to murder, for a safe conviction.

5. We have made representations at various stages on behalf of the Six:-

/on

JF2AJW



- on 25 February 1986 (ie shortly after the original conviction) we made bilateral representations to express our concern at the allegations that torture had been used against some of the accused;

- on 4 December 1987 the German Ambassador, called on the South African Deputy Foreign Minister and appealed for clemency on behalf of the European Community;

- on 18 December 1987 we supported a statement issued by the UN Security Council;

- on 14 January 1988 Mr Renwick expressed the Government's concern directly when he called on the Director General of the South African Department of Justice;

- on 15 March 1988 Mr Renwick delivered a letter to the South African Government expressing the Prime Minister's hope that President Botha would consider exercising the prerogative of mercy in these cases.

We have also participated in the statements issued by Foreign Ministers of the Twelve on 14 June, and by the Toronto and Hanover summits on 20 and 28 June which expressed the hope that all legal options available in South Africa should be used to secure clemency for the Six. We supported UN Security Council Resolution 615 of 17 June which called on the South African Government to commute the death sentence. Mr Renwick raised the Sharpeville Six bilaterally when he called on the Director General of the South African Department of Foreign Affairs on 22 June and the Director General of the SA Department of Justice on 28 June. We have drawn recent statements to the attention of the SA Ambassador here.

6. The Six's appeal against conviction was dismissed on 1 December 1987. In dismissing the appeal, the judge noted that for the purpose of his judgement he would assume that it had "not been proved in the case of any of the six accused convicted of murder that their conduct had contributed causally to the death of the deceased". The judge nevertheless confirmed sentence on the basis that the six shared the "common purpose" of the mob to kill Mr Dlamini. He held that the acts of the mob which had caused Mr Dlamini's death, and which he believed had the intention to kill the deceased, must be imputed to each of

/the



the accused, all of whom had actively associated themselves with the conduct of the mob. Those who committed the specific acts which caused the death of Mr Dlamini have not been identified.

7. The current state of play in the legal process is that the defence petition to the Acting Chief Justice for leave to appeal against the Supreme Court's decision not to allow the re-opening of the trial was submitted on 4 July. There is no prescribed time limit for his consideration of this petition. The defence lawyers do not expect a decision for two weeks at the very earliest.

8. In addition, there are two further routes open. First the defence could petition President Botha to grant clemency under his general constitutional prerogative. Secondly, the defence could petition President Botha to re-open the trial or to grant clemency under statutory powers granted to the State President under the South African Criminal Procedures Act. Any new petition to the State President is not strictly speaking a legal proceeding but rather a request to the President to exercise his prerogative. There is no reason why such an approach should not be made while the Acting Chief Justice is still considering the legal appeal. The defence have not yet decided when to petition President Botha.

9. We expect the stay of execution to be extended to allow time for proper consideration of whatever moves the defence make.

