



Volume **SIX** • Section **FOUR** • Chapter **TWO**

**Report of the Human Rights  
Violations Committee**

**EXHUMATIONS**

# Exhumations

## ■ INTRODUCTION

1. The Truth and Reconciliation Commission (the Commission) undertook a number of exhumations with the aim of providing healing to the families of victims. When successful, exhumations allowed families to retrieve the last physical remains of their loved ones, so that they could bury them according to ceremonies of their own choice. In this way, many families could begin the process putting to rest the painful questions and memories that had haunted them for so long.

### **The cases of Barney Richard Molokoane, Victor Lunga Khayiyana and Vincent Seleke**

2. One of these cases involved the exhumation of the remains of three MK operatives who had been shot dead near Piet Retief in the Transvaal on 28 November 1985.
3. Mr Barney Richard Molokoane, Mr Victor Lunga Khayiyana and Mr Vincent Sekete were killed while on a Special Operations sabotage mission, and were buried as paupers. Following an investigation carried out by the Commission's Johannesburg office, their graves were traced and the remains exhumed. Their families attended the exhumation and were able to rebury them. The Molokoane and the Khayiyana families had suffered other losses of family members during the political conflict, and these exhumations provided some relief.<sup>21</sup>

### **The case of Phila Portia Ndwandwe**

4. The remains of Ms Phila Portia Ndwandwe, an MK operative known as Zandile, were exhumed from Elandskop Farm in KwaZulu-Natal on 12 March 1997.
5. Members of the Port Natal Security Branch had abducted Ms Ndwandwe from Swaziland in October 1988. After a failed attempt to recruit her, Ms Ndwandwe was shot dead and secretly buried. Her whereabouts remained a mystery. Indeed, many believed that she had defected to the security forces. This painful

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<sup>21</sup> See Volume Two, Chapter Six, p. 549.

suspicion was dispelled when amnesty applications from her killers revealed the truth about her disappearance and led Commission investigators to her grave.

6. Forensic examination of her remains revealed that she had been shot in the head execution-style, probably while kneeling. Following press reports on the exhumation, Ms Ndwandwe's young son was united with his grandparents for the first time.<sup>22</sup>

### **The case of Ntombikayise Priscilla Khubeka**

7. Six members of the Terrorism Investigation Section of the Port Natal Security Branch and two C1/Vlakplaas operatives applied for amnesty for their role in the abduction, death and subsequent disposal of the body of Ms Ntombikayise Priscilla Ngcobo (née Khubeka) in April or May 1987.
8. Ms Khubeka lived in KwaMashu, a township to the north of Durban, and was suspected of acting in a co-ordinating capacity between external and internal units of MK. She was allegedly responsible for the storage of weaponry, organising safe-houses and collecting intelligence on possible MK targets.
9. Two C1/Vlakplaas askaris, Xola Frank Mbane and one Dube, part of a C1 team under the command of Captain Adriaan David Baker working with the Port Natal Security Branch, were tasked with making contact with her. This they successfully did. Mr Mbane, who did not apply for amnesty, alleged that their infiltration efforts resulted in the entrapment and killing of three MK combatants. This was denied by all applicants.
10. In April or May, possibly two months after the operation had commenced, Mr Mbane drove Ms Khubeka to Battery Beach. She was abducted by the Port Natal team, blindfolded, possibly bound and taken to an abandoned shooting range at Winkelspruit, south of Durban. Still blindfolded, she was then subjected to interrogation by a team consisting of Colonel Andy Taylor, Captain Hentie Botha, Sergeant Laurie Wasserman, Sergeant Cassie van der Westhuizen, Joe Coetzer and Warrant Officer 'Bossie' Basson.
11. During the interrogation, which was conducted largely in Zulu by Colonel Taylor, he struck Ms Khubeka across the back with a sjambok. According to Captain

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<sup>22</sup> See Volume Two, Chapter Six, pp. 543,545.

Botha, this was not a severe assault but intended to convey the gravity of the situation and persuade her to co-operate with them:

CHAIRPERSON: *Did he hit her hard with this sjambok?*

MR BOTHA: *Chairperson, I would say yes, he hit her hard; but the blows with the sjambok were not the type of blows which would be dealt to grievously injure the person. It was to indicate, 'I'm serious with what I'm asking you to do now' ...*

MR LAX: *How could he hit her hard and not hurt her?*

MR BOTHA: *I'm trying to describe that the degree of the blow was not to the extent that it was taken out and hit hard in comparison to a form of torture. It was more to indicate: 'I'm hitting you in order to prove a serious point.'*

12. While Botha testified that the interrogation lasted approximately fifteen to twenty minutes and that Taylor struck her approximately ten to fifteen times with the sjambok, Sergeant van der Westhuizen's testimony suggests an interrogation of about an hour. Both these accounts were disputed by *askari* Mbane who alleged that the interrogation lasted for about two hours and, although he was outside, he could hear 'screams of pain'.

13. Botha and other applicants testified that, during the course of the interrogation, Ms Khubeka agreed to co-operate with them, but that:

*She then suddenly began to gasp for breath, grabbed her chest and fell over. While her body was shaking, she urinated and within seconds lay dead still. I was frightened and someone went to fetch water outside and poured it on her because we thought that she had fainted. She did not respond to the water which I splashed on her face. She had no pulse rate and W/O Basson brought a mirror and held it in front of her mouth. There was no breath. I realised that she was dead, possibly from a heart attack. Khubeka was physically a big woman and in my opinion overweight.*

14. According to the applicants, they then decided to dump her body in the vicinity of her home and tasked Sergeants Wasserman and Salman Gerhardus du Preez to do this. This decision was informed by the fact that she had died of natural causes and they thus expected that no foul play would be indicated by a post mortem examination. Inexplicably, however, her body was dumped that night somewhere near the Bhambayi informal settlement, some distance away from her home.

15. Later Captain Botha established that her family was unaware of her death and appeared to believe that she had gone into exile. It was subsequently rumoured that she had left the country for Mozambique because of the attentions of the Security Branch.
16. However, the version given by the applicants was seriously challenged when the Commission's Investigative Unit exhumed remains believed to be Ms Kubeka's from a pauper's grave at Charlottedale Cemetery, Stanger. After the exhumation, DSR Naidoo of the SAP Medico-Legal laboratory conducted a post-mortem examination of the remains, concluding that they matched those of Ntombi Khubeka. In addition, a spent 7.65 bullet fell from the skull, indicating that she had been shot in the head. This was contrary to the perpetrators' account of her death.
17. An attempt to use DNA testing from samples of bone and teeth failed as these had deteriorated and could not be used for DNA typing. The skull was then sent to Dr P Venezis, Regius Professor of Forensic Medicine and Science and Head of Department at the University of Glasgow, a recognised authority on a facial identification technique that entails the use of video superimposition.
18. Dr Venezis concluded that the skull-to-photo superimposition he carried out revealed an excellent match in all respects with the photographs examined.  
*I am satisfied that there is an excellent match between the photographs examined and the skull in question and I am of the view therefore that it is highly likely that the skull is part of the remains of Ntombi Kubheka.*
19. The applicants challenged these findings and demanded that another expert, based at the SAPS Forensic Science Laboratory in Pretoria, examine the skull.
20. Sergeant TM Briers of this laboratory concluded that:  
  
All the above landmarks have been taken into consideration and it is found that the skull and face on both photographs are consistent with each other. No contradictions were found.
21. The applicants did not challenge Brier's conclusions, although they continued to contest the results of the investigation. In reviewing the evidence, the Amnesty Committee found the forensic evidence 'compelling':

*What is striking in the final analysis is that, in our view, all the above aspects taken together point to the inescapable conclusion that the body exhumed from the grave at Charlottedale Cemetery, Stanger, is in fact that of the deceased, Ntombikayise Priscilla Khubeka.*

22. Applicants Botha, Du Preez, Wasserman and Van der Westhuizen were refused amnesty for failing to make full disclosure. Applicants Radebe and Baker, who had not been present during the interrogation or involved in the disposal of the body, were granted amnesty for her abduction.<sup>23</sup>

## **WORK ON EXHUMATIONS AFTER 1998**

23. The Commission received hundreds of requests from families requesting that it trace and exhume the bodies of loved ones. Unfortunately it was not possible to deal with them all: once the Commission's operational period came to an end, it was not permitted by law to continue with this process.
24. Given the fact that the families of victims were expressing a clear need for continued exhumations, the Commission undertook to discuss future exhumations with the Minister of Justice and the Inter-Ministerial Committee established to deal with matters relating to the Commission. At the end of 1998, the Commission advised then Minister of Justice and the Inter-Ministerial committee that many more families were requesting exhumations. In a number of instances, the requests related to the return of remains from exile and places outside the country. The Commission also advised the Minister that any future exhumation programme would require the establishment of clear guidelines and parameters to ensure its success.
25. One of the outcomes of the consultation was a commitment by the Commission to provide the Ministry of Justice and the Inter-Ministerial committee with a comprehensive report on exhumations already carried out, in order to assist government in making a decision on how it would deal with the matter. This was one of the most significant recommendations made in the Reparation and Rehabilitation Committee's reparation policy.

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<sup>23</sup> The Amnesty Committee made no finding on Applicant Roelof Visagie as he was outside South Africa at the time of the hearing and did thus not give evidence. Given the disputed evidence, the Committee felt it was not able to dispose of his application in chambers.

26. The compilation of a comprehensive report on exhumations was one of the major tasks assigned to the Human Rights Violations (HRV) Committee in the period after the handing over of the Commission's Final Report in October 1998.
27. The HRV Commissioner put a task team in place to produce this report. The report was intended to deal not only with exhumations that had been carried out, but also to allow the Commission to focus on guidelines and criteria for future exhumations. This process was facilitated at a management level by the Commission's acting CEO, who made the necessary resources available.
28. A further issue that had to be considered was that the Commission had, in the early part of 1998, carried out an exhumation at Boshhoek farm near Rustenburg in the Transvaal, which rendered up fifteen bodies instead of the two that had been expected. While the two bodies identified as activists had been handed over to families for reburial, the remaining thirteen needed to be identified so that arrangements for reburial could be made. As an interim measure, the Commission had contracted with Saffas Undertakers to hold the remaining thirteen bodies until such time as the Commission took a decision on how to finalise the matter.
29. The Commission decided that it would be proper to perform a forensic examination on the bodies before taking any decision on dealing with reburial. The matter was placed before the Amnesty Committee which approved the proposed forensic examination. The HRV Commissioner was able to obtain the assistance of the Argentine Forensic Anthropology Team (EAAF), who agreed to perform the forensic tests.
30. Using the facilities of the University of the Witwatersrand, the two EAAF members conducted forensic examinations and were able to establish conclusively that the thirteen bodies exhumed were deceased hospital patients and not political activists at all. Their report is available and is fairly conclusive in this respect.<sup>24</sup> This raised concerns regarding the exhumation procedures adopted in certain cases and was one of the reasons a more detailed audit was then undertaken.
31. The HRV Commissioner set up a task team to conduct a complete audit of all exhumations conducted by the Commission. The team was made up of the HRV Commissioner, the former Commissioner in charge of the Investigation Unit (IU), the former IU director and two researchers.

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<sup>24</sup> The Commission extends its thanks to the EAAF for its generous assistance, and to the University of Witwatersrand's Department of Anatomy for making both facilities and personnel available.

32. A review of each of the exhumation case files was conducted in order to confirm the correctness and integrity of the process. All existing documentation relating to exhumations was collected, collated and analysed.
33. Investigators from the Johannesburg office and KwaZulu-Natal provided the task team with the case files. In addition, the chief investigator in charge of exhumations in the Johannesburg office gave the task team a verbal briefing and handed over all case folders, folders containing working notes and reports, various post-mortem and inquest documents, lists of MK deaths supplied by the ANC and a Security Branch photograph album with an index. This was to form the basis of the report.
34. The compilation of the report and dealing with the enquiries that were generated took a year. In the course of that year, the task team scrutinised each individual exhumation case. The task team also dealt with the following issues:
  - a An incident list of MK persons killed in combat, ambush or arrest situations was compiled, using a range of documentary sources. This was essential in order to link those exhumed with specific incidents – thus locating the correct post-mortem, inquest and gravesite documentation.
  - b Additional mortuary, inquest, photographic and fingerprinting records were sought and obtained.
  - c Statements and photographic albums were obtained from the SAPS Forensic Unit that had attended certain of the exhumations.
  - d Contact was made with former MK operatives and commanders who had survived and had information about incidents in which those exhumed had died.
35. Information was obtained according to the internationally accepted exhumation procedures used by bodies such as the United Nations.
36. The IU Director canvassed each exhumation case with the various investigators who had been involved with the exhumations.

## **Evaluation**

37. The task team established that the Commission had carried out at least fifty exhumations throughout the country. It also established that a number of exhumations had not been carried out, due to the expiry of the Commission's operational mandate.



38. The task team also established that the methodology followed differed from region to region. In KwaZulu-Natal, the process included the services of a forensic expert and pathologist, who participated in the exhumations and conducted forensic examinations of the remains.
39. Exhumations carried out in Johannesburg placed a greater emphasis on returning the bodies to the families as quickly as possible. Autopsies were not performed due to resistance from families in some cases.
40. The Johannesburg unit also made greater use of the South African Police Services (SAPS), including the SAPS video and canine sniffer units.
41. The KwaZulu-Natal unit relied to a large extent on the pointing out of grave sites by amnesty applicants. Many of the exhumations were carried out at the 'safe houses' of the former Security Branch, where certain activists who had been abducted were interrogated and killed.
42. The sites where bodies were believed to have been buried were cordoned off, and a team for a specialist undertaker's firm would test the soil for signs of recent disturbance and demarcate an area for excavation. This unit also relied on police sniffer dogs to seek out the presence of lime below the soil surface, as lime was often poured over the bodies to hasten their decomposition.
43. Once the correct spot had been located, a pathologist would supervise the removal of soil until the body was located. The pathologist would enter the grave and remove the body – bone by bone. In many cases, the flesh had disintegrated. The presence of the pathologist during the exhumation process ensured that the integrity of the site was protected.
44. The Johannesburg unit focussed its attention on a number of disappearance cases that had been reported to the Commission, involving Umkhonto we Sizwe (MK) operatives who had disappeared or lost their lives, mainly near the borders of South Africa with Lesotho, Swaziland, Zimbabwe and Botswana.
45. MK operatives in a number of incidents had been intercepted while travelling in and out of the country. Many had been killed in shoot-outs with the police or the army. In a number of cases, operatives were abducted and attempts were made to turn them into askaris. Those who did not co-operate with the police were brutally killed and often buried in secret locations or in unnamed graves in cemeteries.

## **The case of Dikgope ‘Magic Bones’ Madi**

46. The difficulties attending the identification process before an exhumation are illustrated by the case of Dikgope ‘Magic Bones’ Madi, one of the cases dealt with by the Johannesburg unit.
47. The case involved three MK combatants who had been killed at Tshipise, Venda, in August 1983. The family of one of the combatants, Mr Patrick Motswaletswale, contacted the Ministry of Safety and Security to ask them to investigate the incident. The Ministry, which passed the matter on to the Commission’s Johannesburg office, had established that the remaining two combatants were Mr Humbulani Mulaudzi and Mr Andrew Madi. While they had managed to trace the family of the former, the only information they had about Mr Madi was that he was originally from Alexandra. The Ministry of Safety and Security, via their Pietersburg office, further established that the three operatives had been buried at Mbaleni in Sibasa and that the location of their graves was known.
48. The Commission was requested to establish the identity of Andrew Madi and to carry out the necessary exhumations. The investigation identified Andrew Madi as Andrew ‘Magic Bones’ Madi, and his body and that of Motswaletswale were exhumed. According to the investigator, identification was made by an MK commander (now deceased) who had been based in Zimbabwe at the time.
49. The case illustrates some of the numerous difficulties and contradictions the task team encountered while auditing exhumation cases
50. The ANC submission to the Commission, which listed deaths in exile, contained no record of an Andrew Madi. However, it did list an Andrew Madi as having been killed by ‘enemy forces’ in Zimbabwe in 1979. No record of Andrew Madi or Madi could be found on the additional lists of MK combatant deaths obtained from ANC headquarters at Shell House, although both contained the names of Patrick Motswaletswale from Sibasa and an MK Basil Zulu as having been killed in 1983. One of the lists indicated that the incident had occurred in Venda sometime in August 1983. There was no reference to a third person, further complicating the matter.
51. The task team located an HRV statement submitted by Mr Matsutse Elias Madi (JB05983/01MPPIT) from Alexandra, Johannesburg. Mr Madi told the Commission

that, on 28 August 1978, his son Dikgope Molefe 'Magic Bones' Madi had told him that a friend had promised to take him across the border into exile. Although the deponent was suspicious and warned his son not to go, Dikgope went out that evening and never returned. The deponent reported the disappearance to the police but was told to search for his son himself. He returned home, 'my heart bleeding'.

52. Some three to four years later, he received an anonymous letter saying that Dikgope was in Tanzania. He heard nothing further until after the unbanning of organisations in 1990. At this stage, another son, Ephraim, informed him about a woman, Ms Lovinest Nyerende from Malawi, who claimed to be Dikgope's girlfriend. According to Ms Nyerende, she had last seen Dikgope in 1978 in Tanzania. He had then gone to Zimbabwe to fetch other exiles, but had never returned to Tanzania. She later heard rumours that he was dead. In July 1992, two ANC officials informed Mr Madi that his son had died in the war in Zimbabwe.
53. This version appeared to confirm the information contained in the ANC submission that Andrew Madi had been killed in Zimbabwe in 1979, thus suggesting that Andrew Madi could not be the same person as the Andrew Mandi who was killed in the Venda incident in 1983. However, the names were virtually identical and there was a strong coincidence in the fact that both were said to have come from Alexandra.
54. Two further HRV statements made to the Commission confirmed that there were indeed three people killed in the Venda incident, but neither shed light on the identity of the third person. Mr Mavhunga Abram Mulaudzi (JB01268/02NPVD) made a statement regarding the death of his son, Humbelani Elvis Tshifhiwa Mulaudzi, at Tshipise in 1983. According to the statement, Mr Mulaudzi identified the body of his son and one of the remaining two as one Mongqretswari (presumably Motswaletswale), also from Venda.
55. Ms Jane Denga (JB01414/02NPVEN) made a statement to the Commission about the torture of her husband, Alfred Mafhungo Denga, who was detained on 4 November 1983 and taken to Masisi Police Station in Mutale. Her husband had been involved in the transportation of three MK operatives, one of whom was a Mutswaletswale from Thohoyandou.

56. Additional information in other records<sup>25</sup> indicated that Mr Denga had subsequently given evidence in the trial of several persons charged with harbouring MK operatives. Denga had told the court that he had been introduced to three MK operatives in November 1981 and had assisted in transporting them on numerous occasions. Evidence to the court by the second in command of Venda Security Branch was that one of the three men had been killed in a joint SAP and Venda Defence Force operation on 29 August 1983.
57. These statements confirmed the incident of August 1983 and, notwithstanding the apparent evidence by the second in command of the Venda Security Branch that only one person had been killed, the identities of Mulaudzi and Motswaletswale. However, neither cast light on the identity of the third victim.
58. Finally an MK operative who had been based in Zimbabwe was able to confirm the identity of the third victim as Dikgope Andrew 'Magic Bones' Madi. This operative, who had been based near Beit Bridge, had fought with ZAPU<sup>26</sup> forces in the late 1970s. In 1983 he infiltrated South Africa but was detained shortly thereafter. While detained, he was taken to identify the bodies of three MK operatives killed in August 1983. He positively identified one as a person he knew as 'Magic Bones.' According to him, he had known 'Magic Bones' well as they had both been in Zimbabwe and had also played soccer together.

## **Outcome of audit**

59. The task team established that more than 60 per cent of the exhumations had been adequately performed by the units in KwaZulu-Natal and Johannesburg.
60. However, it also established that there were certain serious corroboration problems in 20 per cent of the cases. In the case of the remaining 20 per cent, additional corroboration was required and no determination could yet be made on the accuracy of the exhumations.
61. On the basis of the EAAF report, the task team also determined that the thirteen bodies exhumed from the Boshhoek Farm were not political cases, and the Commission arranged for their re-interment.

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<sup>25</sup> Focus 53, p. 4.

<sup>26</sup> Zimbabwe African People's Union.

62. The task team also established that a further fifteen exhumation cases had yet to be dealt with by the Commission.

## **OVERVIEW OF PROBLEMS EXPERIENCED IN THE EXHUMATION PROCESS**

63. A comprehensive report of the task team's audit will be handed to the Minister of Justice when the Codicil is handed over in March 2003.
64. The task team's report highlighted the following problems:

### **Inadequate investigations**

65. In a number of cases, gravesite identifications were done without first corroborating the incidents concerned. Without clearly establishing the date and place of an incident, gravesite identification becomes tentative at best. Although many documents have been destroyed by the Security Branch, certain state records often remain. These include occurrence books, inquest registers, state mortuary registers, and municipal burial orders.
66. The Johannesburg IU unit established that, in the former Transvaal, those exhumed were formally buried in cemeteries as paupers. They thus passed through a number of bureaucratic processes, including the records of the judiciary, local authorities and undertakers.
67. In certain cases, these corroborative sources were not consulted. Where they were obtained, they were not always properly correlated, leading to potential errors in the location of cemeteries and grave sites and rendering the identification process questionable.
68. Further, there was a range of secondary sources that could have been used to corroborate incidents, such as contemporaneous newspaper reports and NGO publications.

### **Absence of forensic examination**

69. In the Eastern Cape and KwaZulu-Natal exhumations, forensic examinations of the skeletal remains were carefully conducted to ascertain age, sex, cause of

death and so on. However, the exhumations carried out on in the former Transvaal had not been subjected to forensic appraisal, making identification uncertain.

70. There was also insufficient and sometimes no pre-mortem investigation. The forensic examination carried out on the 'Boshoek remains' sharply highlighted this issue. Families and fellow-combatants could have provided accurate details of age, physical characteristics and photographs. This was done in very few cases.
71. In addition, the absence of a professional exhumation procedure probably resulted in the loss or destruction of forensic evidence. The absence of forensic examination also meant that, in cases where the version provided by the security forces is contested, no evidence exists to challenge their version of events. This has consequences for the possibility of future prosecutions where proper forensic evidence would be required.
72. While the SAPS Forensic Unit was used in certain cases, the task team discovered that they had only participated in the digging and in identification.
73. There was also a failure to make a photographic record of the exhumations and remains. Only the SAPS Forensic Unit photographs are available. Regrettably, they did not generally photograph individual remains.

## **Documentation**

74. The task team also established that documentation was handled poorly by the Johannesburg unit.

## **Over-reliance on the ANC lists and information**

75. The Johannesburg unit placed a great deal of reliance on two lists that the ANC gave to the Commission. These lists detailed the names of MK operatives who had died inside South Africa. The first lists only the name of the operative and the date and place of death, where known. The second list contains real names, combat MK names, place of origin and place and date of death, where known.
76. In many cases, there were several serious discrepancies regarding place and date of death between the two lists. The lists were defective in a number of instances, and this had an impact on the investigations carried out by this unit.

## **Failure to make use of the Commission's database**

77. The Johannesburg unit did not appear to have used the Commission's database to cross-reference its work, nor did it access the HRV statements in the possession of the Commission, many of which contained valuable corroborative information.

## **Inadequate consultation with MK commanders/operatives**

78. Although the unit did, in certain instances, consult with relevant MK personnel and/or commanders, consultation should have been done in every case to establish the nature of the mission and to confirm the identities of the operatives involved. Consequently, identities were sometimes assigned to the deceased without proper corroboration from commanders based inside South Africa or neighbouring countries.

## **Problems in identification**

79. In the course of its audit, the task team discovered that it was extremely difficult to make positive identifications. One example of such a difficulty is the case of Richard 'Bushy' Lentsela. This case also demonstrates the considerable difficulty encountered in attempting to establish the fate of Mr Lentsela, and how important it is to corroborate each piece of information received.

## **The case of Richard 'Bushy' Lentsela**

80. Richard 'Bushy' Lentsela disappeared from Schweizer-Reneke during the mid-1980s.
81. According to one of two HRV statements received from family members, it was believed that Mr Lentsela was an MK operative who was killed with three others in an incident near Warrenton. The statement also referred to a community pamphlet that circulated in the Schweizer-Reneke area during 1986, listing the identities of the four persons killed in this incident. This information provided the first line of enquiry.
82. Mr Lentsela's name was not contained in the ANC submission, nor was it on either of the lists of MK combatant deaths. Various sources confirmed that an incident had occurred near Warrenton on 13 December 1986.<sup>27</sup> However, all of these sources indicated that one person, and not four, had been killed.

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<sup>27</sup> Terrorism Research Centre; SAP documents; CIS list of MK deaths in combat.

83. Two sources identified the MK operative shot dead as Zonwabele Livingstone Ntlokwana, also known as Lungile, whose name is recorded on the MK lists. The sources indicate that Mr Ntlokwana died on an unknown date in 1987, although one of the lists records the place of death not as Warrenton but Mafikeng. Despite this contradictory information, the identity of the person killed in the Warrenton incident was established as Livingstone Ntlokwana (on the basis of an HRV statement by the Ntlokwana family and an entry in the Warrenton mortuary register). This ruled out the possibility that Mr Lentsela had been killed in this incident.
84. Former activists in the Huhudi-Vryburg-Schweizer-Reneke area were contacted with a view to locating the pamphlet referred to in the HRV statement, said to contain photographs of four persons, including 'Bushy' Lentsela. All three former activists spoken to believed he had been killed in the Warrenton incident, although one indicated that he had heard that Lentsela had been killed in a skirmish elsewhere in the Transvaal. One of the activists traced a copy of the pamphlet, which turned out to have been issued by the SAP. It contained the photographs of four activists wanted by the SAP, one of whom was indeed 'Bushy' Lentsela. While this confirmed police interest in Mr Lentsela, it provided no clue as to his fate.
85. One of the Security Branch photograph albums in the Commission's possession contained photographs of suspected MK combatants, including a photograph of Mr Lentsela. The photograph had been crossed out and his name cancelled on the index. The 'cancellation' of an activist from the album generally indicated that the person concerned was no longer of interest to the Security Branch, because s/he had either died or been arrested or recruited. This suggested that sometime after the pamphlet had been issued, the Security Branch lost interest in Mr Lentsela.
86. Further investigation and research indicated that 'Bushy' Lentsela had, in all probability, been killed near Nietverdiend in the Western Transvaal. The incident took place on 25 June 1986, when a group of four MK operatives entering from Botswana were shot dead. This incident is confirmed by several sources. Two of these indicate that one of the four people killed was one Tumagole Richard Lentsela. However, Lentsela's name does not appear in the record of the Rustenburg state mortuary which received the bodies, although one of the names is recorded as one Wilson *Bushy* Senne. It is possible that the names recorded in the mortuary register were obtained from false identity documents carried by the operatives, as none was identified by their families at the time.



87. Attempts to locate the inquest documentation were unsuccessful. Several Western Transvaal Security Branch operatives applied for amnesty for this incident, but subsequently withdrew their applications. In a final attempt to establish whether Mr Lentsela was involved, the Commission approached two MK commanders who had been based in Botswana at the time of the incident. They were only able to identify one of the persons in the incident, although one of them thought it possible that one of the others may have been a person named 'Bushy.'
88. While the evidence suggests that Richard 'Bushy' Lentsela was killed in the Nietverdiend incident, further investigation is required to confirm this. Although it is known that the bodies of the 'Nietverdiend Four' were buried as paupers at Hartbeesfontein, no exhumation was conducted, and the identities of a further two need to be established.

## **LESSONS AND RECOMMENDATIONS**

89. The Commission notes that the issue of exhumations is a sensitive one, requiring further work. The Commission will hand the Ministry of Justice a comprehensive report on the work of the task team, detailing successful exhumations, problematic exhumations and a list of the exhumations that still need to be carried out.
90. The Commission notes, for the benefit of the agencies that will carry out exhumations in the future, the lessons that have been learnt through the exhumation process:

### **Dealing with families, relatives and communities**

91. Any investigation or exhumation carried out by any body or structure must be done in consultation with the families or their representatives, and the community.
92. Prior to any exhumation, families should be approached for ante-mortem information.
93. Undignified or unskilful handling of remains may further traumatise families.
94. Families must be given a realistic expectation of the outcome of any investigation or exhumation – given the state of the remains, the number of bodies and problems with identification.

95. Families must be provided with proper information and psychological support.
96. The subsequent process of identification must be explained to the families.
97. The families must be told whether the identification process will rely on simple or traditional techniques or whether more sophisticated technology will be used. In this regard, it is important to advise that sophisticated technology will only be used if it is available and necessary for the process.
98. The notion of what constitutes a family may vary with cultural context. In addition, clear guidelines need to be developed to deal with divided families.

### **Dealing with identification responsibly**

99. In carrying out exhumations, the identification process is critically important.
100. The EAAF<sup>28</sup> has stated that ‘the habitual and in our view mistaken procedure often followed is to open a grave first, and conduct the rest of the investigation afterwards’. The investigation and exhumation process should, in their view, be broken into three phases, each of which is intimately connected to the others:
  - a Prior to the exhumation taking place, there should be an investigation of the oral and written sources, which allows for the construction of the case history and a working hypothesis.
  - b The fieldwork phase includes the retrieval of the body and associated evidence, whether from the site of the discovery or from a regular grave.
  - c In the laboratory work phase, the corresponding analysis of remains and other physical evidence should be carried out.
101. In this regard, it will be important for any structure carrying out exhumations to take the following steps into account:
  - a ‘Identification’ is defined as ‘individualisation by the attribution of birth, name or other appropriate name to human remains’.<sup>28</sup>
  - b Identification is one aspect of the investigation into a death, which seeks answers to other questions (e.g. the cause of death).

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28 Luis Fondebrider, *Human Remains Management*. Argentine Forensic Anthropology Team (EAAF).

29 International Committee of the Red Cross (ICRC), *The Missing*, 10.2002.EN/3.

- c An identification can generally be made in three different ways:
  - i. visual or customary (relatives or acquaintances viewing the remains, identity documents or tags);
  - ii. the weight of circumstantial evidence (matching of ante-mortem data with information collected during the examination), and
  - iii. scientific/objective methods (use of dental records, fingerprints or DNA).

102. These three steps do not necessarily follow on one another. However, the usual practice is that, as identification becomes more difficult, the emphasis moves from one to the other. Where possible, visual identification should be complemented by any one of the other two methods. Whatever the approach to identification, it must be adapted to the context.

103. The identification of human remains through DNA typing should be undertaken when other investigative techniques of identification prove inadequate.

### **Responsibility and accountability for the examination and identification of human remains**

104. A number of different civil society structures may decide in the future to embark on exhumation program. In this regard it is important to note the following:
- a The state is the authority with the responsibility to ensure that human remains are examined and identified by qualified and competent people.
  - b The examination of remains should be carried out by qualified forensic specialists.
  - c Identification is carried out and confirmed by a medically qualified or legally competent person. Such identification should be confirmed only when all the relevant information has been integrated properly.
  - d The issuing of a certificate of death is the responsibility of a medically qualified person or the legal officer responsible for making the identification.

### **Exhumation of human remains**

105. The Commission recommends that the following guidelines should be taken into account and strictly applied:
- a the grave site should be located;
  - b a security perimeter should be established;
  - c the surface and features should be photographed and documented;

- d the boundaries of the grave should be established;
- e the soil covering the remains should be removed;
- f the remains should be exposed;
- g the location of the remains should be carefully mapped and photographed;
- h the position of any personal effects or other objects not attached to the remains (e.g. keys and bullets) should be carefully noted, labelled distinctly and kept separate;
- i the remains should be carefully removed, keeping them together as an entire body or parts of bodies;
- j the remains should be stored;
- k where appropriate, the family should be permitted visual access to the remains.

## **Cultural rites**

106. In most cultures, sacred rituals dealing with the dead are extremely important. In certain local contexts in Africa, custom demands that 'the spirit of the dead' be officially brought home and inaugurated as an 'ancestor'. Such rituals introduce the spirit to the living. It is believed that such rituals bring the spirit home out from the wilderness and into the home to rest and to watch over the living.
107. The tragedy of politically motivated deaths and disappearances impacts on traditional cultural and spiritual rituals, which can often not be performed. Families are left bereft and kept in a state of suspended mourning, knowing that the dead that can never rest. Certainty about their dead brings families small consolation, as it also renders up memories of how the loved one may have been treated before death.

## **The need for support**

108. Graves may provide answers, but these answers may not be what the families had anticipated. Exhumations may therefore impact negatively on families and communities. Families should be prepared to deal with unexpected outcomes.
109. Families should be carefully prepared by the organisation or institution carrying out the exhumation:
- a An empty grave will cause additional pain to a family.
  - b The grave may contain fewer or more individuals than were expected. The search for identity and for relatives of the deceased then begins.

- c The remains of women who were pregnant at the time of death result in a double sense of loss.
- d Skeletal evidence of great suffering prior to death (such as multiple fractures or dislocations) can provide painful proof of events that occurred before death.
- e Witnessing the bones forces families to accept the reality of death, for which they may be inadequately prepared.

110. Amani Trust, an NGO involved in exhumations in Mataberland, Zimbabwe, has argued that, 'to carry out exhumations without ensuring that families of the exhumed have access to psycho-social and emotional support is irresponsible'.<sup>30</sup>

## CONCLUSION

111. The Commission learnt some painful lessons during this process. While exhumations are a powerful mechanism to break the silence and establish the truth, they can do great harm if not conducted properly and with adequate support for families. Those organisations carrying out exhumations must ensure that they are carried out in proper consultation with families and communities.

112. It is only then that exhumations may contribute to a process of healing. (...p570)

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<sup>30</sup> Shari Eppel, Amani Trust, *Healing the dead to transform the living*, ICRC/The Missing/10.2002/EN/3.