

THE MYTH THAT BLACK LIVES MATTER IN SOUTH AFRICA :

THE TRIUMPH OF APARTHEID POLICING AND JUSTICE

For the past few years former KZN Organized Crime Head Johan Booyesen has been trading on public sympathy because of an ill-conceived racketeering charge brought against him by then Deputy National Director of Public Prosecutions, Nomgcobo Jiba. He has continued to hog the media limelight whenever possible, including by giving dubious evidence (some allegedly fabricated) to the Zondo Commission. He claims that the racketeering charge had been brought to stop his investigation into a World Cup SAPS tender involving a Jacob Zuma family member and a well-connected Zuma tenderpreneur, Thoshan Panday. Tellingly, though, he fails to tell the public why only Panday and the then KZN Provincial Commissioner, Mmamonye Ngobeni (elevated to that position from being station commissioner at Ulundi by then National Police Commissioner Cele) have been charged for this World Cup fraud. *Why has his patron Bheki Cele not been charged since it was Cele who signed the tender documents?*

A recent Open Secrets article waxes lyrical about Booyesen's apparent persecution by Jiba. Afriforum, too, is baying for Jiba's blood. Conspicuously missing in this frenzied, misplaced, support for Booyesen, is any mention of the suffering of, and complete absence of justice for, families of dozens of people killed and tortured by members of the unit under his command. There may be a lack of evidence about his own personal involvement in these heinous crimes, but questions are not even being asked about whether he simply turned a blind eye to what members of the unit were doing as they continued their apartheid era operational methods. These crimes were well publicized in the media at the time, and Booyesen himself defended his unit in opposing a High Court Interdict granted in 2008, when his evidence points to his having lied under oath. All charges were withdrawn against all the members of this unit in 2019 and, despite ample evidence to merit testing in court in at least some of the cases, there has not been a single prosecution. *Would the media response be different if they had killed and tortured dozens of white people, whose families, having suffered grievously, had also been denied any semblance of justice?*

Booyesen, the Organized Crime unit and the continuation of apartheid policing

The racketeering charge against Booyesen was linked to those brought against members of the detective unit which became known as the 'Cato Manor hit squad' (the area where their office was). This unit was part of the Directorate for Priority Crimes Investigation (DPCI known as the Hawks) established by an amendment to the SAPS Act in 2008. In September 2009, during the time the offences involving his members were taking place, Johan Booyesen was overseeing the operations of this unit as a Director (Brigadier) in the office of the Assistant Provincial Commissioner KZN SAPS. Taxi-related killings, which had previously been handled by Taxi Task Teams, had become part of their investigations, and many of the crimes the members were subsequently charged for occurred in areas which were being closely monitored in the period of their involvement. When letters were sent to the Head of the Unit about it the response received was signed by Colonel Olivier, by repute an apartheid era security policeman. In the 1980s and early 1990s membership of the Security, Narcotics and Murder and Robbery units, were interchangeable. Members of these units, especially Murder and Robbery, became part of the Organized Crime component. Prior to 1994, this unit was notorious for shooting dead people they described as 'criminals', some of whom were underground liberation fighters. Judge Goldstone, in reviewing some of these cases (in which he names certain members who later became Cato Manor unit members, including CMM referred to below) notes a common modus operandi in the killings, and expresses serious concerns about the absence of proper investigations into them. The same modus operandi he refers to was noticeable in some of the Cato Manor Unit killings, as was the conspicuous absence of any thorough investigation into them (it was only in 2012 that it became compulsory for killings and torture by police to be investigated by IPID). The torture and abuse of suspects by Murder and Robbery, which had been routinely used to try and extract confessions, continued after 1994. Examples are on record in correspondence in the latter 1990s and they include men arrested for Cato Manor unit crimes. *In other words, nothing had changed : Police members notorious for their brutal apartheid tactics were simply serving new political masters.*

The period 2008 to 2011 saw a rapid rise in killings by this unit, encouraged by the then MEC and subsequently National Commissioner, Bheki Cele, who urged police to 'shoot to kill' and praised them when they did. Recently appointed SAPS National Commissioner Masemola headed KZN Crime Prevention during

this period, then transferred to become Deputy National Commissioner after Cele's national appointment in 2009

Many – but not all – of these killings were linked to taxi-related conflicts in areas around Kranskop, kwaMaphumulo, KwaDukuza (previously Stanger) and Mandeni. KwaDukuza has long been a taxi conflict hub, involving various local and long-distance operators. During Bheki Cele's tenure as KZN Community Safety MEC (2004 to 2009), millions of rand was reportedly paid to a prominent long-distance operator to 'mediate' between competing operators, such as those from Kranskop, kwaMaphumulo and Stanger associations (This same long distance taxi boss has taken over farming land, which was subject to a land claim in Kranskop, and it is alleged that a business venture with a prominent politician is planned). Historically, there has been no political appetite to deal with taxi conflict because of taxi ownership by politicians and police. Well-armed security companies guarding taxis, not necessarily registered with PSIRA, raise the violence stakes. When credible detectives make breakthrough arrests their units are shut down before they finger political allies. Both police and the Department of Transport may turn a blind eye to, or collude with, an association without a permit using violence to take over a route for which a local association has a permit (as happened in Mandeni). Police members may take kickbacks from one or other taxi faction and, at a price, docket easily disappear. This is the broad context relating to such investigations, but in the Cato Manor taxi-related investigations and killings during that period, the deaths of a serving policeman, Kranskop Station Commissioner Zethembe Chonco, and Inkosi Mbongaleni Zondi of Msinga, reportedly a former policeman, and a close political ally of Zuma, had been shot dead. Those Killed by the Cato Manor members were supposedly (i.e. according to them) suspects. In the case of Zondi, allegations have been made that orders went out to kill those who had murdered him.

Colonel Chonco's investigations included the theft of forty- three guns from the kwaMaphumulo SAPS storeroom. The theft was an inside job as only specific exhibits had been stolen, other guns and even money had been left. On 27 August 2008 he was shot dead in an ambush in which colleagues were injured near kwaMaphumulo. In the weeks that followed six suspects had been shot dead, one of them allegedly trying to escape from custody. The KwaZulu-Natal Law Society, calling for a full investigation into these killings in September 2008, questioned whether the police were taking the law into their own hands. The investigation did not happen and killings implicating the same police continued. By early February 2009, following the shooting dead of

Inkosi Zondi in Umlazi (possibly taxi or politically linked), when taxi boss Bongani Mkhize was killed, eleven suspects had been killed in five days.

Bongani Mkhize was the Chairperson of the KwaMaphumulo Taxi Association. When, by September 2008, six of his members had died at the hands of the police he applied for a High Court Interdict against The Minister of Safety and Security, the MEC for Community Safety and Liaison (Cele) the SAPS Provincial Commissioner and Provincial Commander Organised Crime KZN J Booysen.

Mkhize's founding affidavit was accompanied by documentation from his lawyers which had been sent to police management, and statements and affidavits from his associates who had been tortured and, in one case, a witness to the killing of one of them by unit members. One of the men who had been abused had advised him that during his interrogation he had been told that that Mkhize's name was on a list together with others allegedly implicated in the killing of Chonco, all of whom had already been killed. If there were an arrest warrant, Mkhize indicated his willingness to hand himself over to the police in the presence of his lawyer. One of the affidavits accompanying the application was from Thandeka Sokhulu, the common law wife of one of the victims, Lindelani Buthelezi. She describes how the police kicked open the doors of their home while they were in bed (this apartheid tactic is regularly used right up to the present time, usually by police who do not even identify themselves). She says her husband had nothing in his hands when they pulled him out of their bedroom. She then heard shooting from another room. She herself had been assaulted by police who demanded to know where firearms she knew nothing about were.

In his replying affidavit Booysen claimed that Mkhize had no grounds to fear for his life, and that 'he was relying on 'innuendo, hearsay, unconfirmed rumour...'. He denied that a warrant for his arrest had been issued. Should it become necessary to arrest him, he said, he would have all the constitutional rights that police were obliged to respect and observe. All the others had been killed, he continued, because they had shot at the police, who had returned fire.

The High Court was not convinced, and granted an Order, on 14 November 2008, interdicting the Respondents from 'unlawfully killing, injuring, threatening, harassing or in any way unlawfully intimidating the Applicant'. For the four Respondents, especially Cele (who knew about the threats to Mkhize) and Booysen (who claimed he was not in danger), a High Court Order was clearly not worth the paper it was written on. Mkhize was

shot dead on 3 February 2009. From being an alleged key suspect in the killing of Chonco, he had become an alleged key suspect in the drive-by shooting of Zondi the month before. Predictably, the police claimed that he had shot at them while trying to avoid arrest. Their version was contradicted by independent ballistic and forensic evidence which found that the windows of the car he was travelling had all been closed, and that the police had fired with rifles and pistols from behind. They had continued to rake his car with bullets while overtaking him, before firing a final shot into his head. Mkhize's widow lodged a successful civil claim and has been paid out for loss of support for her children and herself.

Booyesen's sworn statement that those shot dead by members of his unit were firing at the police is contradicted by witnesses. Thandeka Sokhulu denied that her husband had tried to shoot the police before they killed him. 'He certainly did not do so in my presence and the police had full control over him. When he was taken to the other bedroom he was unarmed' Further evidence is supplied by a witness, X, who happened to be in the vicinity in which two suspects in the Chonco killing were shot dead, 'there was no shoot out with the police' who had pulled alongside the vehicle they were in and had 'executed them' Two policemen then fired shots into the side of the road (from the sound, a pistol, not the automatic rifle the police had used), The back window of the vehicle had been intact but with a couple of bullet holes in it. 'I personally saw one of the policemen smash the rear window with his gun, obviously to hide the fact that shots had only been fired into the vehicle and not out of it'. X was a disinterested party who had nothing to gain by making this story up, but understandably feared the consequences of being identified, so the evidence could not be used in court. However, this version corresponds to that of internal police (black) sources who have long been opposed to, and reported, this type of conduct, who claimed that the men had been shot dead in cold blood. The problem is that investigators are colleagues of the killers themselves, and – unlike in the Mkhize case – the crucial independent ballistic, forensic or crime scene evidence is non-existent. There are, however, witnesses to what happened in many of the cases for which these members were charged, including from family members like Thandeka Sokhulu.

This unit did not work in isolation, and in some cases, they were implicated in matters in which taxi operators had been tortured or killed by other units in the same area, as in Mandeni. In 2009 members of the Mbonambi family, local route taxi operators under siege by illegal operators linked to police members, had been tortured by K9 members. On the night of 25 March 2010 five heavily

armed men (including with police-issue issue R4 or R5 rifles) opened fire on Mbonambi family members injuring Siyabonga Mbonambi, his brother Mdu and a toddler nephew. Mdu and the toddler died of their injuries. One of the attackers was identified as a member of an unregistered security company guarding a long- distance taxi operator. In September 2010, a large group of men claiming to be police members, who were not in uniform and did not produce identification (which is usual, but illegal), demanded to be let into the home, pointing guns at family members, including the elderly frail grandmother of the murdered toddler. They then searched everywhere, looking for someone, almost certainly Siyabonga, who had gone into hiding. Among these men was CMM from the Cato Manor Unit. He and other unit members had been seen moving around the area, on occasion with alleged criminal taxi operators who were targeting Mbonambi operations. On one occasion he arrested another taxi operator, BM, who was already under threat, and whose life was probably saved by his having been able to make a telephone call reporting the arrest by CMM for what turned out to be a non-existent charge. In responding to a letter addressed to the Head of Organised Crime about these irregularities, Colonel Olivier, who described himself as 'Operational Manager for DPCI in KZN) offers no explanation about CMM's activities, and denies that they were looking for either Mbonambi or BM.

The clearest example of how this unit used other police members to do their dirty work is the case of Stanger Taxi Association member R N Xaba, who placed on record with the Umhlali SAPS (near KwaDukuza), in 2010, that he feared for his life from members of the association and the police. He and other members were being excluded from the use of their Association's rank because they refused to pay protection money to a faction linked to the police. He and others sought the help of the then MEC, who claimed he was busy with the World Cup so the fact that their lives were at risk would have to wait. Xaba had said in his statement to the police that if he did not receive assistance 'my life will always be in danger or cease to exist'. Two months later it ceased to exist when he and a neighbour, who had no taxi connections, and was giving him a lift to where he was in hiding, came under heavy gunfire while travelling on a local road. With their bodies riddled with bullets they both died. The driver of the vehicle which shot at them worked for another unit and, when confronted with the registration number of that vehicle, the head of the unit spilled the beans. Members of his unit were assisting Durban Organized Crime in two investigations (CAS numbers given), their member driving the vehicle was the 'team leader and was liaising with Organized Crime. A civil claim was

lodged for support of the children of the two deceased, and, as with the Mkhize case, the State conceded liability.

The 'death squad' media reports and the aftermath

In December 2011, after extensive investigations which had started with the taxi industry, the Sunday Times published factually correct articles on what became known as the Cato Manor 'death squad'. Booyesen was given ample space to respond. The subsequent persecution of the journalists, and a later public apology by the editor of the newspaper, must rank among the most shameful episodes in the history of South African journalism. The capitulation of the Sunday Times reminds us that editorial independence is non-existent, since the prime aim of media houses is to sell newspapers and the apology was made amidst shocking bullying accompanied by the threat of financial and advertising boycotts. What is, however, incomprehensible, is the way in which respected journalists joined in the unjustified mud-slinging chorus against their own colleagues.

Investigations into at least some of these killings started soon after publication of the first story, while the current KZN Provincial Commissioner, Mkhwanazi, was Acting National Commissioner. A Hawks team from the North-West Province was formed, working with prosecutors who were not based in KZN, because of mistrust of police and prosecutors in the province. At least one of the dockets had disappeared by the time these investigations, which included the reconstruction of the crime scenes, commenced. Support for their work, however, was said to have declined after the appointment of Riah Phiyega as National Commissioner.

Arrests of twenty members of the Cato Manor Unit of varying ranks followed, in 20 June 2012. Counterfeit money was reportedly found during the arrests and searches of homes. Charges included murder, defeating the ends of justice, attempted murder, assault, theft and being in unlawful possession of arms and ammunition. Further arrests and charges, including those of racketeering, followed.

The type of support by many whites shown for these police members who had killed so many black people - supporters were urged to wear black for their heroes, and funding for them was sought through Facebook – was a chilling reminder of how little had changed in South Africa in almost twenty years when black victims of police brutality described as criminals having never been tried and convicted, receive such support from people who would doubtless

oppose vigilantism in their own communities, It was, of course, not only white people who supported them : They also had black fans, especially taxi and political allies who approved of their actions, with the current Minister of Police Cele leading the pack.

Booyesen was not among those initially arrested. He had been suspended from the SAPS in March 2012 but was reinstated by the court. Murder and racketeering charges were subsequently brought against him but were withdrawn in court in March 2014 only to be reinstated two years later. He also successfully opposed attempts to discharge him from the SAPS that year, but subsequently retired.

Despite regular announcements that trials were imminent, the cases against the members who had been charged (the number had increased to twenty seven), dragged on for seven years, with regular remands, and time-worn legal delaying tactics. In July 2019, the NPA announced that a panel comprising the National Director of Public Prosecutions and Deputies had decided to withdraw the charges as they then currently stood (including racketeering and the killing of fort- five people).

The re-opening of the charges had brought hope to victims' families, but also fear that family members would be targeted, especially if they were witnesses. Already severely traumatized – a child in one of the families was terrified when he saw a police vehicle that they would be killed – they had had to endure years of saturation media coverage of the men who had killed their loved ones, only to have their hopes, mercilessly, dashed. Compared to the type of coverage given to policemen who had killed people using the same apartheid tactics, their suffering seems to count for nothing in the eyes of the media that is quick to condemn the journalists who exposed what these men were doing.

Rubbing salt into their wounds was the conduct of the KZN DPP who, after all the charges were withdrawn nationally in July 2019, had been specifically tasked with re-assessing the evidence in each of the cases to decide on whether any prosecutions should take place. She was to notify the families of the victims of the decisions she had taken. Over a year later, when families had heard nothing further, the office of the KZN DPP was approached about these cases. Her response was that all the cases had been referred for an Inquest, without informing the families of the decisions (they might have wanted to contest the decision). She claimed that the blame for not notifying the families lay with IPID (the Independent Police Investigative Directorate) which had failed to send out the letters she had written. So, despite the

seriousness of the crimes for which they had been charged, in some of which cases strong evidence exists (as, e.g. the Bongani Mkhize case) there is no intention to prosecute.

In other words, respect for the families of tortured and murdered victims, including those spelled out in the Department of Justice's own Service Charter for Victims of Crime in South Africa, is completely absent. Is it because they are black and still, almost thirty years after liberation, powerless? While they continue to suffer, Booysen and his Cato Manor crew are basking in public sympathy, and laughing all the way to the bank, as they sue the State for many millions of rand of taxpayers' money because of the bungling by the NPA.

The stated commitment by the office of the NDPP, which has established an internal ethics office, has a very hollow ring. How can the public accept that this office is independent when dozens of people have died, families have lost breadwinners and suffered immense trauma, exacerbated by the conduct of the same NDPP for the past eight years, which initially raised their expectations, but then robbed them of any hope of justice? Would the NPA have treated killers of dozens of whites with the same kid gloves? Truly, apartheid policing and justice have triumphed.

We need to get to the bottom of why the racketeering charges were allowed to derail investigations into extremely serious matters – murder, torture, theft and defeating the ends of justice. It is not sufficient to simply scapegoat Jiba and Abrahams. We need full interrogation, and it is important to get to the bottom of why the racketeering charges were brought, and whether they were a deliberate red herring to make a martyr out of Booysen, and divert attention from the torture and killings. Only a full inquiry into the conduct of the NPA in their handling of these Cato Manor unit cases will suffice if it wants to show that it is serious about ethics, and really does intend to clean up the Augean stables it has become in the past twelve years.

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