

CONTENTS

1. Brief background of Thami Zulu case	1
2. The terms of reference	2
3. The relevant sections of the Code of Conduct of the African National Congress	2
4. The general context in which the investigation took place	6
5. The question of TZ's personality and style of work	8
6. The cause of death	10
7. The Commission's findings on:	
7.1 Was there sufficient evidence to justify TZ's detention?	15

REPORT OF A COMMISSION OF INQUIRY SET UP IN NOVEMBER 1989
BY THE NATIONAL WORKING COMMITTEE OF THE
NATIONAL EXECUTIVE COMMITTEE OF THE AFRICAN NATIONAL CONGRESS
TO INVESTIGATE THE CIRCUMSTANCES LEADING TO THE DEATH
OF MZWAKHE NGWENYA (ALSO KNOWN AS THAMI ZULU OR TZ)

8. Conclusion: Was Thami Zulu a spy?	21
9. ANNEXURE: True copy of TZ's interrogation document.	21

CONTENTS

1.	Brief background of Thami Zulu case	1
2.	The terms of reference	2
3.	The relevent sections of the Code of Conduct of the African National Congress	2
4.	The general context in which the investigation took place	6
5.	The question of TZ's personality and style of work	8
6.	The cause of death	10
7.	The Commission's findings on:	
7.1	Was there sufficient evidence to justify TZ's detention?	15
7.2	Was there sufficient evidence on which TZ could be detained and arraigned on suspicion that he was an enemy agent?	16
7.3	Was the length of his detention reasonable?	19
7.4	Were the conditions in which he was detained acceptable?	20
7.5	Were the methods employed to interrogate TZ justified?	21
8.	Conclusion: Was Thami Zulu a spy?	21
9.	APPENDIX: True copy of TZ's introspection document.	

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1. Brief background of Thami Zulu case

Mzwakhe Ngwenya or Thami Zulu was one of the heroic generation of South Africans who gave up their studies in mid-1970s and joined the ANC to fight for the liberation of their country. He was commonly known as TZ. Once a commander of Umkhonto we Sizwe, noted for his proud bearing and authoritative manner, later appointed head of what was called the Natal Machinery, TZ died an emaciated and said figure in the University Training Hospital, Lusaka, in November 1989, less than a week after having been released from confinement by the ANC security. Reviled by many who worked with him from 1983-88 as a traitor, and honoured by many who received military training under him, as a hero, controversy followed TZ even after his death. A commemoration service was organised for him but was later abruptly cancelled. Rumours abounded that:

- TZ had been a victim of torture;
- TZ had been starved to death by ANC security;
- TZ had been poisoned by the enemy to seal his lips;
- TZ had died of AIDS;
- TZ had got what had been coming to him.

It was in this charged atmosphere that the National Working Committee of the NEC decided to establish a Commission of Inquiry to investigate the case of Thami Zulu.

2. The terms of reference were as follows:-

To enquire into the circumstances of the death of Thami Zulu and further, to investigate all aspects of the detention of Thami Zulu, and to examine and give findings on:

- (a) whether there was sufficient evidence to justify his detention;
- (b) whether there was sufficient evidence on which Thami could be detained and arraigned on suspicion that he was an enemy agent;
- (c) whether the length of detention was reasonable;
- (d) /the conditions in which he was detained acceptable;
- (e) whether the methods employed to interrogate Thami Zulu were justified.

3. THE CODE OF CONDUCT

The legal framework within which we conducted our investigation was provided by the ANC Code of Conduct. In the words of the introduction to the Code: "if we fight for justice in our land, we must ensure at all times that justice exists inside our organisation - our members, the people of South Africa and the world must know and feel that for us justice is not merely an ideal but the fundamental principle that governs all our actions.

"Accordingly, we must at all times act justly in our own ranks, train our people in the procedures of justice and establish the embryo of the new justice system we envisage for a liberated South Africa."

The introduction goes on to point out that the ANC is a political organisation and not a state or a government. We do not have the vast apparatus of a state, nor is it correct that we should try to act like a mini-state.

"At the same time, the nature of our struggle calls upon us to exercise in appropriate forms some of the functions of an embryonic state. We have our army, we have our security, and the time is ripe for us to have proper instruments to guarantee justice in our ranks."

The preambular part of the Code of Conduct states in conclusion that "we do not take our standards from the enemy; we do not simply turn the glove inside out, but rather we create our own standards within our traditions of struggle and in the light of our goals for the future."

The bulk of the Code of Conduct deals with the definition of different kinds of offences and with the procedures for investigating and submitting cases to judgement. The portions relevant for our enquiry read as follows:

Grave Crimes Against the Struggle -

" 1. Any offence aimed at the integrity of the organisation and at destroying its personnel, its material or its fighting capacity shall be considered a grave crime.

2. A grave crime shall be committed by any person who, inter alia, ...

b) Infiltrates the organisation acting on behalf of or in collaboration with:

i) the racist regime;

ii) the intelligence services or other organisations or groups of other countries; in other words, infiltration into organisation even on behalf of a friendly country would be a grave offence.

c) Being already a member of the organisation, establishes or maintains contact with any of the above bodies."

As will be dealt with more fully later, the basic investigation of Thami Zulu fell under this heading. Simply put, the issue was whether or not TZ was an enemy agent.

The methods of investigation contemplated by the Code of Conduct appear in Section C:

" 1. Investigation of grave crimes shall primarily be the responsibility of Security.

2. It is the duty of all members to assist security in every way, both by giving relevant information when enquiries are being made and by respecting all the general rules of security.

3. All normal and reasonable methods of investigation may be used in the course of investigation.

4. Intensive methods of interrogation shall be permissible only in extraordinary circumstances and under proper authorisation and strict supervision by the highest political authority in the area.

5. Torture or any form of cruel, inhuman or degrading treatment of a detainee or a person on trial is forbidden."

In the present case there was no question of intensive methods of interrogation being permissible or authorised.

Paragraph 4 refers to battle situations or other conditions of extreme emergency, and even here, it should be noted, torture or any form of cruel, inhuman or degrading treatment is forbidden.

Thus, the ANC Code of Conduct does not sanction any form of cruelty, whether physical or psychological, in the treatment of detainees. It makes no difference whether the detainees are being held for theft or violence or acting for the enemy. Nor from this point of view is it relevant whether they are merely suspects or proved agents of South African security. The degree of incrimination might have a bearing on steps taken to prevent escape, but would not affect the detainee's rights to at least minimum conditions of health and personal dignity. At no stage does the ANC Code permit torture or any form of illtreatment of any detainee.

It should be remembered that the Code was adopted at the Kabwe National Consultative Conference of the ANC in 1985 precisely to deal with the question of human rights within the organisation. The delegates at the Conference firmly rejected any notion that any means whatsoever, however cruel, could be used in defending the physical integrity of the organisation, or that members surrendered their basic human rights once they joined the ANC. Similarly, delegate after delegate stressed that the viciousness of apartheid in no way justified viciousness on our part. On the contrary, they declared, we are fighting for justice and respect for life, and justice and respect for life must exist inside our ranks.

The question we have to ask in the case of TZ, then, is whether, in terms of paragraph 3, the methods used to interrogate TZ were 'normal and reasonable'. The fact that, if guilty of collaboration with the enemy, TZ would have been responsible for setting up comrades for murder by the hit squads in South Africa could have had some bearing on the need for relatively extensive investigations, and could have been relevant to steps taken to guarantee that he would not run away. Yet it would not, in terms of the Code, have permitted using abnormal or unreasonable methods of interrogation, and certainly not torture or any form of abuse.

There are further provisions in the Code which have a bearing on the context in which we made the enquiry. Section B of the Code provides for the establishment of a National Review Committee to act as a sort of court of appeal from decisions of the Tribunal which hears serious cases. Although this body has only recently begun to function, and although it does not have direct powers to supervise the conditions under which detainees can be held, we feel that it might in the present rapidly

evolving situation have an important role to play in supervising the process of dealing with what should be done in relation to detainees.

We also take account of the creation of an Officer of Justice (Section B of the Code). It is the responsibility of the Officer of Justice, acting in collaboration with the President's Office and under the overall supervision of the NEC to:

- (a) maintain the principles of legality within the organisation;
- (b) supervise investigations when they reach the stage that charges are being contemplated against members;
- (i) ensure that no person in the custody of or under investigation of officers of the organisation is treated in a cruel, inhuman or degrading way;
- (j) make regular inspections of the way persons deprived of their liberty are treated, with a view to ensuring that the purposes of re-education rather than vengeance are fulfilled;
- (k) see to it that no undue delay takes place between completion of investigations and the date of trial;
- (m) take all necessary steps to minimise the period of waiting;

This last point is reinforced by a later paragraph in Part 4 Section E of the Code which declares that the Officer of Justice shall pay special attention to ensuring the prompt handling of matters, and shall recommend rules to the NEC covering the maximum periods which should normally be permitted for investigation, preparing the matter for hearing, and for the hearing itself (Section E 2.b.).

There is no other direct reference to the conditions under which detained persons should be kept, save for certain provisions in the section dealing with an order for deprivation of liberty as referred to in the schedule of penalties. Here it is stated that the "rights and privileges of confined persons shall be as defined in the regulations and based on the humanist traditions of the ANC."

As far as we are aware, no regulations have been adopted either in relation to periods of investigation or with regard to general conditions of detainees. It emerged clearly from the evidence, however, that since the Code of Conduct was adopted and especially in the past two years there has been a process of major reorganisation of the security department, with notable improvements in the conditions of detainees.

In particular, whatever might have been the practice in the past, clear instructions have been given that no force is to be used against persons in confinement. As the head of national intelligence put it to us, the ANC department of security firmly rejected the policy of two T's, that is, of relying for information on torture and tips. While tips were always welcomed, torture was expressly forbidden, he added. We understand too that a member of security who used violence against a detainee was recently sentenced to a term of 5 years deprivation of liberty by an ANC tribunal in Lusaka.

It is in the interests of the Department of Security as much as those of the organisation as a whole to have independent checking up on its activities. Many of the rumours that emanated from the death of TZ could have been avoided if the Officer of Justice had at all relevant times been inspecting the detention centre as a matter of course and speaking to the detainees. Whether or not TZ's death could have been avoided is a question we will deal with at a later stage.

It is clear, therefore, that while considerable progress has been made, the Code has not been fully implemented and the situation of legality inside the ANC falls short of what the Conference called for. We understand that where the evidence was regarded as insufficient, a number of persons have been acquitted and set at liberty. There are still many persons who have been held in detention for lengthy periods without being put on trial, and the review procedures for those already tried have been slow.

All this is relevant to the question of the pace of the investigations against TZ. There are no clear regulations governing time periods, nor is there a machinery of adjudication which ticks over systematically and requires speedy handling of cases.

The task before security was thus open-ended. There were no clear rules establishing any time frame, nor were there precise rules governing the conditions of his stay. We regard this as most unsatisfactory. Witnesses from security themselves asked for a clear set of norms governing detention, since they feel torn between the conflicting objectives of not giving up their investigations until irrefutable proofs or disproofs existed and not prolonging their enquiries in an undue manner.

4. THE GENERAL CONTEXT IN WHICH THE INVESTIGATION TOOK PLACE

Working sessions: Due to unforeseen circumstances the Commission only started working at the beginning of February 1990, and there were a number of short breaks in between. We would like to thank all the witnesses who testified before us, some of whom came for several days and spent

many hours answering our questions. The list of statements of witnesses appears on Document No. 3; most of them were directly involved in the detention of TZ either as interrogators or medical personnel. We also studied a number of documents from the security department and a large batch of medical reports (Document No. 4). We inspected two houses where TZ had been kept, and visited the detention centre where he had been kept for about 6 weeks.

In effect, our Commission operated as an inquiry into the circumstances leading up to the death of TZ. We were at all times aware that TZ was not there to answer to any allegations made against him. Nor, in the circumstances, was it possible to have counsel representing his family, the Health Department, or the Security or military structures, as would have been ideal. We felt it our task as commissioners to enquire as fully and objectively into the matter as possible, starting off without any pre-conceptions, but with the single objective of discovering the truth.

The ANC has limited material means and has been operating in countries that are themselves poor. It does not have the resources of a state, and has to be sensitive to the sovereignty of host nations. Communications are unreliable, transport always a problem. For these reasons our own enquiry threatened to be as long-drawn out as the very investigation we were set up to enquire into. After hearing a large number of witnesses and studying many documents, we felt that we were in a position to respond in a substantive way to the mandate given to us, even if it was impossible to pursue each avenue to a final conclusion.

We took account of a number of contextual factors which we regarded as pertinent to the specific questions we were asked to attend to.

In the first place, the enquiry into the conduct of TZ was part of a much wider investigation of the whole of the Natal Machinery, that is, of the comrades responsible for the 'irrigation' of armed combatants into Natal and for their activity inside that area. His case was not investigated on its own.

From 1983 until 1988 TZ was commander of the Natal Machinery. The losses during that period were extremely high. The Nkomati Agreement in 1984 and the activities of sections of the Swazi police acting in liaison with Pretoria, created serious problems for the Machinery, but the evidence suggested that the Machinery had been infiltrated by the enemy as well.

Matters came to a head in June 1988 when 9 comrades were shot dead in two separate incidents a few days apart just inside the South African border near Swaziland. It was clear that the enemy had been waiting for them; it has since been revealed that in the one case, assassination of our comrades was undertaken by the hit squad. Virtually

the whole Natal Machinery was withdrawn to Lusaka and a thorough investigation begun. During the course of the investigation, two leading members of the Machinery admitted to having worked for the enemy. The question facing the investigators was whether TZ was a third person also working for South African security.

Their enquiries required checking through a large amount of statements and documents prepared during the five years under review; interviewing all the members of the Natal Machinery; interviewing other persons who had direct knowledge of the events in question; checking with sources in South Africa and interviewing TZ himself. All this was relevant to the question of the time taken for the enquiries.

5. THE QUESTION OF TZ' PERSONALITY AND STYLE OF WORK

The question of TZ's personality cropped up again and again in our enquiry. We learnt that TZ had come from a well-educated and relatively comfortable home in Soweto, and received most of his education at boarding school in Swaziland. This meant that his life experience had been different from that of most of the persons under his command. He was said to be a connoisseur of good whisky, who played squash and went to steam baths when he should have been deep underground. Reference was made to his womanising, to his imperiousness and to his failure to accept criticism or seriously analyse setbacks suffered by his Machinery.

One witness said that TZ was always used to being in command and never to being commanded. He led the batch of South Africans who went from Swaziland to Dar-es-Salaam in 1975 in order to join Umkhonto we Sizwe; he led the first group of the Soweto generation to receive military training abroad; he became chief-of-staff at a camp in Angola, and then Regional Commander; and finally he was appointed commander of the Natal Machinery. At the same time, this witness pointed out, although TZ had the build and bearing of an older person, he was in reality young and inexperienced, and tried to make up for his immaturity by giving himself the airs of a Napoleon. The result was that he became unpopular with the great majority of people who worked closely with him.

Another factor that gave rise to friction was that he was not from Natal and had little personal knowledge of the areas for which he was responsible. When the losses became heavy and he failed to make follow-up enquiries, he was accused of reckless unconcern for the lives and safety of those under him.

We also received a considerable body of evidence to the effect that his standards of caution and respect for correct procedures dropped drastically over the years. He allowed important documents to be photocopied by someone he had been warned against as possibly being in touch with South African or British intelligence (the British secret services would collaborate with their South African counterparts in respect of Umkhonto we Sizwe activities). He used the telephone recklessly, employing elementary codes which a child could break, such as 'we want more music' or 'we are sending six pineapples'. On three occasions important documents in his control were captured by Swazi police. On each occasion he manifested unconcern at the damage that could be caused as a result.

The final example of his alleged recklessness was his decision to push 9 comrades through even though he had been advised by those on the spot that the enemy were waiting and no safe routes existed. To some extent TZ could claim that he was under heavy pressure from Military HQ to get more people through. Nevertheless, we were told, any prudent commander would have explained the situation to HQ rather than send combatants into the lion's jaws. Finally, after the terrible news had come through that the 9 had been riddled with bullets, at least four of them shot in cold blood, TZ's main concern had not been to find out what had gone wrong, but to pressurise HQ into getting him a passport so that he could accompany his wife on a holiday to the USA.

The question was: assuming the evidence to be correct, was TZ simply guilty of reckless unconcern for his combatants, or was his lack of feeling attributable to the fact that he was acting in collusion with the enemy?

Although the basic picture was one of a person becoming increasingly overbearing as his real prestige declined, we also received evidence of his positive qualities. Without doubt he had been highly respected as a commander in Angola. He was chosen by Military HQ for the important position of commander of the Natal Machinery precisely because he was bold and intelligent. He clearly continued to enjoy the confidence of Military Headquarters, who, despite receiving written complaints, kept him in his post and defended him and his memory to the end.

As far as they were concerned, TZ was never an enemy agent and the proceedings against him, if justified at all, took far too long. In the words of one witness: we wanted our commander back. They later wished that a commemoration service be held for him, and organised an escort to accompany his coffin to the airport (TZ was buried in Swaziland). To this day, Military HQ appear to feel that a great injustice has been done in the case of TZ.

6. THE CAUSE OF DEATH

Although we were not directly asked to make findings on the cause of TZ's death, we found that determining why he died became one of the central issues in our enquiry. It was clearly important to discover if he had died as a result of torture, starvation or medical neglect. The evidence was that TZ had entered confinement as a large, well-built slightly overweight person, and come out gaunt, frail and almost unrecognisable.

Dr. Ralph Ngijima, head of the ANC Health Department, and a long-time personal friend of TZ, described in vivid terms how TZ was brought to his house by security late one afternoon in November 1989. He said he was shocked and upset by TZ's appearance and general weakness. TZ told him that his condition had deteriorated drastically while he had been kept in an isolation cell lying all day on a mattress on the floor. TZ was angry at the way he had been treated, but never alleged that any violence had been used against him.

Comrade Ralph said that he would personally have taken care of the treatment of TZ at this stage, but unfortunately he himself was struck down by illness the next day and taken off to hospital for an emergency operation. It was while he was still in hospital that he heard of TZ's death.

Comrade Ralph accepted that TZ could have died of tuberculosis as the post-mortem report indicated, and said

that it was quite possible that X-rays could be taken and that T.B. lesions not be immediately detectable. He did not see what the relevance was of whether or not TZ had suffered from AIDS, and was worried that reference to AIDS would detract from enquiring into the way TZ had been treated during his detention. He agreed, however, that the presence of AIDS would have gravely complicated any recovery from T.B. and also accepted that any former sexual partners of TZ had a right to know if in fact he had been carrying the HIV virus.

Comrade Ralph went on to point out that even if TZ had suffered from AIDS he could have benefitted from the programme of the ANC's Health Department of help AIDS victims. He told us that the policy of the Health Dept. was to make life as active, comfortable and dignified as possible for persons suffering from AIDS. They would benefit from counselling and special medical care and receive all the love and support that the ANC community could offer them. Those sufferers who wished to continue with their tasks in the freedom struggle would be encouraged to do so for as long as their strength permitted. At all times, anonymity would be protected to the extent of their desire.

We wish to place on record our appreciation of this humane approach which in cherishing and respecting every member, in our view corresponds to the best traditions of the ANC. Any finding we might make as to whether TZ had AIDS in no way bears upon his character, nor does it affect the reasonableness or otherwise of his detention, treatment and interrogation. It is only relevant as part of the total medical picture, in the context of which it is a factor that cannot be ignored.

We would also like to commend Comrade Ralph for unhesitatingly taking TZ in even though he had been detained as a suspect enemy agent for over a year. If people are released from detention, they are released. They should not be placed on a blacklist or whitelist for the rest of their lives as suspects or as persons who have not been cleared. No-one in the ANC requires a certificate of clearance from security to be part of the ANC community. Either there is a case against someone, in which event he or she should be put on trial, or else there is not. We do not regard 'not cleared' as a legitimate category.

It might well be that for sensitive work a clearance from security would be required, and in this respect it would be quite appropriate to refer to someone as a suspect or to say that he or she has not been cleared. Otherwise we regard it as intolerable that people should go around for

the rest of their lives marginalised from the community simply because security has at one time or another taken them into custody.

We feel that it is in the interests of security as much as of anyone else for this point to be underlined. It is no reflection whatever on them that they detain people and thereafter release them because there is insufficient evidence for a trial. On the contrary, respect for security grows if it becomes known that people are only held in detention on very strong grounds and always with a view to a trial by an independent body. Furthermore, it relieves security of the burden of feeling that they can damage someone's life forever simply by taking them into custody.

The second stage of our enquiry into causes of death involved questioning medical personnel who attended to TZ from the time he began to manifest symptoms of ill-health until his death. We received evidence from Comrade Bethuell, a medical orderly in the Health Department who regularly visits the place of detention to attend to any medical complaints that the detainees might have, Dr. Pren Naicker, the main person in charge of his case during the relevant period, Dr. Peter Mfelang who attended to him shortly before his release, and Dr. Zakes Mokoena who looked after him after his release.

Taking the evidence together the following picture emerges:

a progressive loss of weight over the months becomes rapid and dramatic after TZ's transfer to the place of detention; he develops diarrhoea, mouth sores (thrush) and a spiking fever, that is, a fever that rises and falls sharply. He is taken to the University Training Hospital for X-rays in relation to suspected T.B. from which disease he had suffered in previous years. Nothing is detected on the X-rays. He is given tablets to reduce the fever and to combat the mouth sores. A sample of his blood is taken, because the existence of thrush together with the other symptoms raises the possibility of AIDS.

He is moved to more comfortable accommodation in a house where he has someone to talk to and a specially prepared diet and sleeps in a bed. Results of the blood test done at the UTH indicate that it is HIV positive. Security passes this information on to the Presidential Committee, and TZ's release on health grounds is ordered.

When he arrives at Ralph's house, TZ's condition is shocking but not suggestive of imminent death. Persons placed by Military HQ to assist TZ report that he has suffered from acute diarrhoea and been so weak that they have had to hold him up over the toilet. On the morning of the fifth day after his release his breathing becomes extremely laboured and he is clearly very ill. After some argument among the 3 medical doctors as to whether he should be flown to Harare, the majority opinion is that he should be rushed to the UTH. There is a delay of some twenty minutes at the UTH before he is attended to by a senior doctor and his diagnosis is AIDS Related Complex and possibly Pulmonary T.B. Not long afterwards he dies.

Four days later a post-mortem is performed at the Hospital. The report indicates that the cause of death was cardio-respiratory arrest (heart and lung failure), brought about by pneumonia which in turn was brought about by causes to be determined by further analysis. Samples of various internal organs are sent for histopathological analysis, that is, for testing for diseased tissue, while samples of the blood and of the stomach contents are sent for biochemical analysis.

The histopathological analysis shows advanced T.B. in various organs, including the sac around the heart. The biochemical analysis reveals that the blood contains 84 milligrammes per cent alcohol, that is, the equivalent of about three pints of beer. The report also states that diazinon, an organic phosphorous pesticide, was detected in both specimens.

The problem with all this information is that there are too many causes of death. The heart and lung failure brought about by pneumonia was really what we would call

the final mechanism of death rather than its cause. First there was T.B. then there was AIDS. Then there was poison.

We decided to request further specimens of remains of blood and stomach contents which were still kept at UTH, to be taken to London by one of the members of the Commission for analysis by specialist in forensic medicine at a well-known teaching hospital. A further test for HIV was also done at the Immunology Laboratory of another hospital in that city.

As far as the test for HIV is concerned, the one scientist said that it was always dangerous to say with certainty that HIV was present in blood taken post-mortem, that is, after death, but that allowing for that caution, he would declare that HIV was present in the sample he tested. The report from the other laboratory was even more emphatic: an unqualified statement that the blood contained HIV.

On the basis of these findings, taken together with the previous finding that TZ's blood was HIV positive, and bearing in mind the clinical symptoms, in particular the existence of thrush in the mouth, we conclude that TZ was in fact a victim of AIDS.

As far as the presence of poison in the blood and stomach contents is concerned, the forensic scientist reported as follows:

he tested directly for diazinon or any other pesticide, and the finding was negative. He then tested for traces that would be left behind when diazinon decomposed, and the results were also negative. He explained that this did not mean that diazinon was not present in the blood and stomach at the time of death. In the three months that had passed, the poison could easily have decomposed and would not necessarily have left any trace.

He explained that diazinon had a strong and unpleasant taste, and that at least five teaspoonfuls would have to have been imbibed by someone of TZ's bodyweight before it could have become fatal, and possibly half that amount for someone already serious ill. Diazinon did not dissolve in water or tea, but would be soluble in alcohol. Three pints of beer taken within a twenty-four hour period and each containing a teaspoonful of diazinon could have been fatal. Diazinon was not however one of those poisons that accumulated in the body; rather, it was excreted out. Thus if it had been given to TZ it would necessarily have been given within a day or at most two days prior to his death.

Questioned as to the cause of death, the scientist said that looking at the post-mortem report alone, there was sufficient explanation of death without the hypothesis of poison. He would say that TZ died of a long-standing, progressive lung infection, possibly hastened by HIV. He pointed out that the presence of HIV alone did not mean

that AIDS had already appeared, although the history of oral thrush supported the possibility of AIDS. HIV was not toxic on its own. What it did was to negate the body's immune system so as to render it defenceless against infection. T.B. is easily treatable today, but not in anyone whose immune system has been eliminated. A person with T.B. and HIV has a nil chance of survival.

Looking at the biochemical report on top of the post-mortem, diazinon could have come as an acute thing superimposed on chronic illness. As such it could have hastened death. Everything depended on how much reliance could be placed on the biochemical report. The exact dosage would be important. He said he would be happy to analyse the data on which the UTH based its statement. Diazinon in the stomach, he added, indicated that it had been taken quite recently. Finally, he pointed out that alcohol could be produced spontaneously in the blood after death, depending on how carefully the blood is preserved, but he doubted very much whether it could reach the level of 0.84 as found in the present case.

We have no reason to suspect that the blood or stomach contents were tampered with at any stage, or that the samples one of the members of our Commission took to London were not those of TZ. Although we cannot express any certainty as to whether TZ was poisoned or not, we feel that the likelihood is that he indeed was.

Dr. Pren asked that the post-mortem include a test for poison because of the sudden onset of symptoms. The biochemical report indicated the presence of poison as well as of sufficient alcohol to have carried and masked the poison. We are aware that there have been other cases of poison having been introduced by agents of South African security. The revelations by former members of the hit squads corroborates the use of poison as a means of assassination.

If TZ was poisoned, then we cannot see that anyone other than South African security could have been responsible. They could have had one of two motives. Either TZ was an agent and they felt he had to be silenced before he gave the game away, or else they wished to bring about his sudden death so as to provoke tension between ANC security and ANC military, as well as to create a scandal that would discredit the ANC in the eyes of the world.

In any event, the poignancy of TZ's death came through to us very strongly. If he was in fact a spy for Pretoria - an issue that we will discuss later - then he died a bitter death at the hands of those for whom he had worked. If he was not an enemy agent, then on top of the agony of unjust suspicion, he had the agony of T.B., the agony of AIDS and also the agony of poison, a terrible fate for any person.

In conclusion, we are satisfied beyond doubt that TZ died of illness and possibly as a result of poison, and not through ill-treatment. Although he complained sharply about his detention both to Dr. Ralph and to Dr. Pren, he never suggested that any violence had been used against him, while the post-mortem report stated that there were no signs of violence on his body. We are also satisfied that his dramatic loss of weight was due to disease rather than any policy of starvation.

When we inspected the detention centre we found many features which we disliked, but the seven prisoners whom we chose at random all seemed to be reasonably well nourished, and none of them listed lack of food amongst their complaints. One of them informed us that the food situation had once been very bad, but that it had in fact improved considerably, well before the time when TZ would have arrived at the centre.

We do not find that there was any negligence on the part of the doctors who treated him. We felt that it was quite inappropriate to leave medical care of detainees basically in the hands of a medical orderly, and that it was wrong to place the onus of seeking medical help on the detainees themselves. Instead, it was our view that there should be regular inspection of all detainees by a doctor, who would act as an independent check on conditions in the centre and serve as a bulwark against abuse.

Although we felt that in respect of some peripheral details Dr. Pren was not always fully candid with us, we wish to pay tribute to the independent spirit which he manifested in carrying out his duties as an ANC doctor. He spoke to us with feeling about what he considered to be the deficiencies of the detention centre, and also mentioned the occasion some months earlier when he had had the necessity to raise with the head of security the appearance of bruises on the arms and wrists of certain of the detainees.

Comrade Nhlanhla, the head of security, could be difficult at times, he told us, but he gets things done; there had been no further indications of violence, and the general conditions for detainees, poor as they were, had improved immeasurably compared with their truly parlous situation before Comrade Nhlanhla had taken over. We should add that one of the detainees paid an unsolicited tribute to the way Dr. Pren worked.

We now pass to considering the specific questions in relation to which we were asked to make findings.

7. THE COMMISSION'S FINDINGS ON:

7.1 Was there sufficient evidence to justify TZ's detention?

A large part of our enquiry was devoted to hearing and testing evidence in relation to the circumstance which led to TZ's detention. For most of the time, that is,

from August 1988 until August 1989, TZ was held in various houses and a flat under a form of house arrest referred to as confinement. Were security justified in confining him at that stage?

It appears that some members of security felt that he should be allowed to proceed with his holiday, and that if he then fled, that would be proof of his collaboration with the enemy, and the ANC would be rid of one of its worst eggs. The majority feeling, however, is that the issue was too serious to permit TZ to remove himself from the scene.

There clearly were grave problems in relation to the Natal Machinery, some of which related to style of work, some of which, such as interference with DLB's (dead letter boxes or arms caches) pointed straight to the existence of enemy moles. In the light of the heavy casualties suffered by the Machinery, of the fact that the whole Machinery was being investigated, and of the specific question marks in relation to TZ's behaviour, especially in relation to the death of the nine, we feel that there were reasonable grounds for his initial detention.

7.2 Was there sufficient evidence on which TZ could be detained and arraigned on suspicion that he was an enemy agent?

The first part of this question has already been answered, but not the second. Arraignment on the grounds of being an enemy agent requires some hard evidence of the kind that could convince a tribunal that he is guilty. It does not have to be conclusive or irrefutable proof - what the Americans call 'the smoking gun' - but it must be something tangible that directly implicates the person concerned.

The fact is that TZ was never arraigned, nor were steps taken to prepare for his arraignment as an enemy agent. We questioned at length and with some rigour the four persons who had at different times been responsible for his interrogation. We examined various documents that they had received as well as a substantial interim report which they prepared. None of us is an expert on security and methods of interrogation. Nevertheless, we are satisfied that the investigation panels worked in a systematic and objective manner, probing all the pro's and con's of every question. They were not clumsy cops, but skilled interrogators who prepared carefully, basing themselves on logic, probabilities and attention to detail.

What impressed us particularly was their willingness to take into account factors which could prove favourable to TZ's position.

The strongest example of this was the way that the panel dealt with the evidence of a long-standing member of the South African Police security branch, who claimed to have acted as a courier between TZ and the security police. If his evidence had been taken at face value, there would have been more than enough evidence to arraign TZ. The panel in fact carefully cross-checked the story, discovering that some of it tallied with known facts and some did not. After receiving a fairly accurate description of TZ from the man, the panel arranged an identification parade, placing in front of him someone whose general appearance was similar to that of TZ. "That's him", the man said. Acting in consultation with their superiors, the panel decided that it would be dangerous to rely on the allegations of this person.

What became clear was that although there was strong evidence of reckless disregard by TZ of the security norms of the organisation, and although there was considerable circumstantial evidence consistent with his having been an agent, there was no direct, clear or tangible proof that he had in fact collaborated with the enemy.

Two months after TZ was placed in confinement, the panel reported that it found no connection between TZ and the enemy. It added the rider that there were some matters in relation to which he had not been able to give convincing answers, and that these could only be finally cleared up by getting information from the archives of the Swaziland police special Branch. It recommended that the movement should punish TZ for criminal neglect in the case of the death of the nine in June 1988. "We are not aware of such disciplinary action being existent," the report concluded "but feel that it should be instituted so that responsibility in duty be given the importance it deserves".

With hindsight, it appears that it was unfortunate that this recommendation was not followed. The legal basis for such a charge did in fact exist. The General Regulations of Umkhonto we Sizwe's Military Code make the following offences:

"Conduct that weakens the people's trust, confidence and faith in the ANC and Umkhonto (3a)." The parents of the nine who were killed raised directly with the ANC leadership their deep concern at the way their children appeared to have been set up for massacre and a prima facie case existed that TZ had been grossly negligent in sending them through. The problem was that only Military HQ could bring such proceedings, and it was precisely they who believed in TZ and who exerted pressure on him to push combatants through.

"The wilful or negligent disclosure of classified information to unauthorised persons, and the unauthorised acquisition and/or retention of secrets and classified documents shall be an offence (1)".

This could have been the foundation of a charge in relation to the photocopying by someone other than himself to the DLB sketches, some of which appear to have fallen into the hands of the enemy.

Finally, there are provisions dealing with personal misconduct showing a lack of morality or responsibility such as to bring shame on the movement (3f; 6c).

(3f) "Shameful conduct likely to disgrace the ANC, army or the offender, or bring them into disrepute or provoke indignation and contempt against the movement, such as violating the rights and the dignity of the opposite sex, whether in operational or base areas."

(6c) "Drunkenness on duty/or in public."

The fact is that the team responsible for supervising the case did not think that proceedings for criminal negligence could be brought, nor did they think it was feasible to try to penetrate Swazi police archives, so they decided to continue with the collection of evidence in relation to TZ to clear the matter up one way or the other.

Although, as we have said, it seems unfortunate that the recommendation of the panel was not followed, we cannot say that the arguments for TZ's continuing detention were unreasonable. There was no real prospect of Military HQ taking action against TZ; on the contrary, there was a feeling amongst some in the security that MHQ had to share some of the responsibility for lack of accountability and monitoring.

We are not called upon to pronounce on this question, and certainly do not wish to do so, especially in the absence of hearing fully from MHQ their account of what happened and of the problems they might have had with security. It does seem, evident, however, that the prospects of an agreed position between MHQ and security on the case of TZ were extremely limited, and we find this most regrettable.

We find, then, that although there was the basis for charges against TZ on the grounds of gross negligence in the performance of his duties, and, possibly, for personal misbehaviour, there was not sufficient evidence for his arraignment as an enemy agent.

7.3 Was the length of his detention reasonable?

In some ways this is the most difficult question for us to answer, largely because no regulations existed establishing time periods, nor is there certainty as to what the criteria for release should be. In principle, we find it unacceptable that the only test for release should be positive clearance by security, or else considerations of health.

The problem with open-ended detention is that the longer the person is detained, the stronger the desire on the part of security to prove that it has not made a mistake. This should never be a consideration. Security must do its duty to the best of its ability. The real difficulty in this case is that it was security itself which had to decide on whether it was proceeding correctly. We believe that this is the heart of the problem. There not only should have been rules prescribing the permissible periods for detention and the criteria for detention and release, there should have been an independent body making the necessary decisions.

The reality is that neither the time periods nor the criteria nor the independent body existed, so we are called upon to express our opinion.

We regard fourteen months as a very long time for keeping someone in detention as a suspect. On the face of it, this is far too long, even bearing in mind all the objective contextual factors referred to earlier in this report. We note, however, that twelve of these months were spent in relatively comfortable conditions of house confinement rather than detention. Our main problem is with the eight weeks he spent in what was in effect solitary confinement. There were also periods when little progress was being made in the investigation because of re-organisation of the panel or because of focus on other members of the Natal Machinery. We regard it as unacceptable that the basic rights of detainees should be subjected to the organisational needs of security.

We cannot help thinking that one of the causes for the delay both in the investigation and in the resolution of the case was the lack of cooperation between Military HQ and security. The case was a grave one. The investigation was carried out in a serious and professional manner and it had wide ramifications.

Some of us felt that the time taken was too long and that the length of the detention was influenced by a certain unwillingness to let go and a determination to prove that security was right. Others felt that in all the circumstances if it had not been for the tragic outcome because of the factor of disease, no-one would have said that the length of the detention was unreasonable. We leave it at

that. The crucial question is to have objective criteria, not after-the-event judgements such as we are being called upon to make.

7.4 Were the conditions in which he was detained acceptable?

We are satisfied that the conditions of his confinement for twelve of the fourteen months were acceptable. The houses he stayed in were security personnel residences of medium comfort in local terms. He had some complaints about lack of fresh fruit and vegetables, and these were attended to. He was able to meet with his parents and his wife when they came to see him. The wife was however refused permission to see him on two subsequent visits. We do not wish to minimise the boredom and distress caused by prolonged segregation from society. Nevertheless, we do not find it necessary to criticise the conditions when he was in the houses, where he had the use of the yard and grounds, or in the flat, where he had access to TV.

Our main concern is with the period he spent locked up in a cell in the detention centre.

We referred to the centre as the White House, and shall continue to do so in this report.

We visited the White House. The occasion was arranged with security who presumably tidied it up as much as possible. Our main concern was to see the physical layout, and in particular the cells and the cell in which TZ was kept, and to speak to the detainees. TZ's cell was apart from and larger than the other single cells, which were very small. We are sure ANC members would like to know our impressions of the building as a whole.

It is not a hell-hole. It is far from satisfactory. It is clean and well-lit, and music plays most of the day. The food seems to be reasonable. Although the exercise area is relatively spacious in relation to the size of the building as a whole, it is completely covered over, so that the sun does not come through. There are facilities for table tennis and darts. Clothing is decent and there are showers that function and facilities for washing clothes.

The main insufficiencies are lack of toilets in the cells, bareness of furnishing so that the cells are little more than concrete cubes with a mattress and a slop-out bucket, the lack of reading matter and the lack of proper exercise time. We spoke quite freely to seven prisoners whom we selected at random. They were clearly astonished to see us there, and after a little encouragement on our part, spoke out quite freely about their complaints. They live in a limbo. There is no sense that they have rights, or that there is regular inspection. At the same time, they were quite animated, apparently in good physical shape and had no complaints of violence being used against

them. It was a small non-racial community, although not what we think the Freedom Charter had in mind.

We recommend strongly that the United Nations Standard Minimum Rules be applied to this and all other ANC custodial centres. The biggest concern of the detainees seemed to be the length of their stay rather than the conditions. Yet it was painful for us to see a poster of Comrade Nelson Mandela, who has spent so much time in South African prisons, on the walls of this ANC jail.

We were given different reasons by different members of security for why TZ was moved to this place. One version was that he had become morose and aggressive and there was fear that he might try to commit suicide if left alone in one of the houses. Another is that the evidence against him was being carefully accumulated, and that the moment of confrontation was approaching when he might be tempted to flee. We are not convinced by these explanations and feel that the real object was to create a more rigorous environment in which TZ could be encouraged to introspect, and, if he was an agent, to admit to what he had done. It was at this time that he in fact wrote a seven point document of introspection in which he acknowledged that he had shown a lack of vigilance and follow -up on a number of occasions. (see Introspection document attached).

We also feel that, given our limited resources, a place like the White House could legitimately be used as a lock-up for short periods, but do not accept that it is appropriate for long stay detention.

7.5 Were the methods employed to interrogate TZ justified?

We have already indicated our view that the investigation was carried out in a professional and systematic manner. When TZ spoke to his friend Ralph just after being released, he was understandably angry about the time he had spent in the White House and indignant about the process as a whole, but made no mention of physical abuse, sleep deprivation or any other form of torture. We have no reason to believe that he was subjected to torture or to cruel, inhuman or degrading treatment. In our view, the methods of investigation were normal and reasonable as contemplated by the Code.

Our only concern in this respect was that the use of prolonged solitary confinement at the white House might have been considered as a means for weakening him so as to facilitate interrogation. We do not regard this as permissible.

8. CONCLUSION: WAS THAMI ZULU A SPY?

We write this report at a time when our struggle for freedom in South Africa is on the verge of a major

breakthrough and when hopefully much of what we refer to will soon be out of date. Yet the principles of justice never change, even if the way they are applied does.

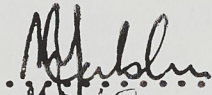



How do we evaluate the role of Thami Zulu? We heard that a check done on him in South Africa revealed no contacts with the police, either through family or arrests. His family was relatively well-off, so he had no pressing financial reasons for becoming an informer. He was by all accounts an outstanding military trainee and a forceful and highly respected camp commander. Military HQ had great confidence in him.

At the same time, there was overwhelming evidence of an increasingly bad style of work on his part, one which led to tragic results. There was no direct evidence that he was an agent. There were a number of unexplained matters. Perhaps one day information will come to light which will show that he was the Third Man acting on behalf of the enemy. Yet we must go on the evidence we have, not the evidence which might one day appear. On the evidence placed before us by security, he was a suspect and no more. The question of negligence, even if of a high degree, has to be separated from the issue of being an agent.

It is not the honour of security that was at stake, but the honour of TZ. In our view, no-one dies 'a suspect'. Security had every right, and, indeed a duty, to investigate the conduct of TZ and to treat him as a suspect. He was never charged with being an enemy agent, nor was such a charge pending. Even if he was released on medical grounds, the fact is that once he was set free his status was the same as that of any other member of the ANC. There is nothing in the Code of Conduct that permits persons to be labelled 'not-cleared'. Security has the power to investigate, not to issue banning orders. In the absence of proceedings for his expulsion, TZ retained all the ordinary rights and duties of a member. One of the rights was to be remembered when he died.

Appendix: True copy of TZ's introspection document.

Signed on this 16th day of March, 1990 by:-

- 1. Z.N. JOBODWANA 
- 2. I. MAKOPO 
- 3. T.K. MASEKO 
- 4. A. SACHS 

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CONCLUSION: WAS THAMI ZULU A SPY?

We write this report at a time when our struggle for freedom in South Africa is on the verge of a major breakthrough and when hopefully much of what we refer to will soon be out of date. Yet the principles of justice never change, even if the way they are applied does.

This case reminds us of the terrible price paid by a generation of brave young South Africans to achieve the advances we are making now. The agony of the life and death of TZ symbolises this harsh phase of struggle. Through examining the evidence we were drawn into a world of spies and counter-spies, of assassination squads, double agents and poison, of persons with names like Flying Eagle and Rabbit, of raids by police acting for other police forces even against their own government. We learnt of persons whom we had known well and thought of as friends who had long been spies against us. The enemy planted disinformation to sow discord and suspicion. We had our own agents in the ranks of the enemy forcesThis was not a story by Robert Ludlum, this was our organisation and our people, engaged in a hard struggle in which scores accepted the risk of death and fell in the fight for freedom.

We would like before concluding this report to pay tribute to the many comrades of Umkhonto we Sizwe who feature at the centre of this story. The strain on all those involved in Umkhonto's work was enormous. The price paid was a high one. Many families grieved for their sons and daughters who fell in the fight for freedom. The task of determining exactly who played what role, who manifested weaknesses of character under the strain and who were in fact agents for the other side is not an easy one.

How do we evaluate the role of Thami Zulu? We heard that a check done on him in South Africa revealed no contacts with the police, either through family or arrests. His family was relatively well-off, so he had no pressing financial reasons for becoming an informer. He was by all accounts an outstanding military trainee and a

Investigate the conduct of TZ and to determine if he was a suspect. He was never charged with being an enemy agent, nor was such a charge pending. Even if he was released on medical grounds, the fact is that once he was set free his status was the same as that of any other member of the ANC. There is nothing in the Code of Conduct that permits persons to be labelled 'not-cleared'. Security has the power to investigate, not to issue banning orders. In the absence of proceedings for his expulsion, TZ retained all the ordinary rights and duties of a member. One of the rights was to be remembered when he died.

Our hope is that his child grows up in a South Africa free of the scourge of apartheid which was responsible for so much hatred, deception and death. We wish all young South Africans the happiness of coming of age in a world which the generation of their parents helped to liberate. We recommend that a memorial meeting be held as soon as possible to honour the memories of all the MK combatants who died during the course of the struggle, and that TZ's name be included in the roll call. We hope that such a meeting will help to bring us all closer together so that we may carry on with the tasks they were engaged in when they fell.

Dear S.G. -

The above two paragraphs were in the original draft report. They were taken out of the ²⁴ report and communicated in a covering note to the NEC. It would seem appropriate to follow them up now. Consideration should also be given (in consultation with the family) to transferring TZ's body (and others - a symbolic selection?) to South Africa.

- Allie

