

COURT RESEARCHER'S MONTHLY REPORT - NOVEMBER 1988.
Albany Black Sash.

November was an extraordinary month for those of us involved in anti-death penalty work. A reprieve for the Sharpeville Six and the four policemen; a last minute-stay of execution for Colesburg Youth Organisation member Paul Tefo Setlaba; five people, including two from Port Elizabeth, hanged the day after the reprieves and two young men from the Eastern Cape set free from death row after their death sentences and convictions were set aside on appeal.

1. DEATH ROW RESEARCH.

a. State vs Safatsa - the principle remains.

The news that the Sharpeville Six had been reprieved was met with great joy and relief. A sobering thought however is that the judgement handed down in the Sharpeville Six case - State vs Safatsa - remains a precedent. The principles laid down by the Appeal Court in that judgement were not set aside when President FW Botha reprieved the Six. The Safatsa case has already been quoted extensively in some Eastern Cape murder cases in which convictions have been based on common purpose. And no doubt it will continue to provide the basis for future convictions. Already there are a number of people on death row who were convicted on a similar basis as the Sharpeville Six - and it is this that needs to be highlighted. The State MUST be made uncomfortable about hanging others in the wake of the reprieves - let us hope that the reprieves will mean that the campaign to save all death row prisoners will intensify and not die down.

b. Paul Tefo Setlaba:

Paul Setlaba was convicted by Mr Justice Kannemeyer in the Graaff Reinet Supreme Court on December 10, 1986, for his role in the burning to death of a woman who broke the Colesburg consumer boycott in September 1985. He was served with a notice that he was due to be executed on June 10 this year. However, a last-minute application for a stay of execution on the grounds that his lawyer had not petitioned PW Botha for clemency saved him from the gallows. Five months later, Paul was told that his execution date had been set for November 24. Once again, lawyers went to the courts - only this time, an application for a stay of execution was refused. The basis for the application before the court was that a 16-year-old state witness, on whose evidence Paul had been convicted, had lied to the trial court. Just six hours before Paul was due to hang, at 12.30 am, the Minister of Justice, Mr Kobie Coetzee, granted a stay of execution. The stay has been granted indefinitely so that Mr PW Botha can study a new petition for clemency. The question one cannot help asking is: Will Paul be granted a reprieve? Or will he, because there are no other policemen on death row, be served with an execution notice for the third time?

c. Kholisile Dyakala and Zwelindumile Mjekula:

The day after the reprieves, five men went to the gallows virtually unnoticed at 6.30 in the morning. Kholisile Dyakala and Zwelindumile Mjekula, from Port Elizabeth, were amongst those who hanged. They had been included in the list of "political" prisoners on death row. The two were sentenced to death by Judge Solomon in the Port Elizabeth Supreme Court on December 14, 1987. They were found guilty of the murder of a security guard who was shot dead on June 9, 1986, when a group of residents went on an expedition to acquire firearms. Dyakala was 31 years old and was married with three children. Mjekula, who was 36, had one child. Mr Thole Majodina, the lawyer for the two, said the first he knew of their impending executions was when their relatives told him they had been sent rail tickets for a final visit to the prison in Pretoria. Mr Majodina said at that stage, he had not received notice from the State President that their petition for clemency had been turned down. "Lawyers are sick and tired of this nonsense of being kept in the dark," he was quoted as saying.

d. Thembisile Baneti:

Thembisile Baneti walked off death row a free man after the Appeal Court in the Ciskei set aside his conviction and death sentence this month. He had spent 13 months on death row in Ciskei's Middledrift Prison. A resident of Alice, Thembisile and 17 others were charged with the necklace murder of an alleged vigilante, Kwezi Nyengane, who was killed on July 19, 1986. Four others on trial with Thembisile were sentenced to prison terms ranging from 12 to 20 years. On appeal, the convictions and sentences of all five men were set aside. The appeal court judge, Mr Justice Diemont, found that the evidence of four state witnesses - on whom the convictions had been based - was unreliable and should have been rejected by the trial court.

e. Miki Yelani:

Mike Yelani, from Uitenhage, was the second Eastern Cape person to be set free this month from death row. If there exists a reasonable possibility of another court coming to a different conclusion on appeal, one wonders how a trial court is able to pass the death sentence which is so horrifyingly final. The acquittals demonstrate that mistakes can be made by the courts and if for no other reason, the death penalty - which is irrevocable once carried out - should be abolished. Miki Yelani was sentenced to death by Mr Justice Kannemeyer in the Grahamstown Supreme Court on September 29, 1987. Judge Kannemeyer found that he had presided over a people's court hearing which had sentenced Thami Ntshenge to death in April, 1985. While there was no evidence that Miki had been at the scene of the killing three days later, the Judge sentenced him to death using the common purpose principle. The Appeal Court in Bloemfontein found that a statement made by Miki, in which he said no decision had been made at the hearing to kill Thami and that he would have saved Thami if he had known he was to be killed, was reasonably possibly true.

f. The Society for the Abolition of the Death Penalty:

I attended a meeting held to reconstitute the Society in Johannesburg at the beginning of the month.

In a powerful address, Mr Justice Ramon Leon, a retired Judge of the Natal Supreme Court, pointed out that between 1983 and 1987, 627 people were executed in South Africa. "It took Britain half a century to hang about the same number of people," he said. Further interesting statistics were that in 1987, South Africa executed 164 people - which was four more than Iran with a population of 47-million and 32 more than China, which has a population of 1,2-billion. In 1987 there were 25 executions in the whole of the USA, while Western Europe has had no executions since 1985.

Mr Leon said he was a convinced abolitionist for the following reasons:

- * There was no proof that capital punishment was a deterrent.
- * It was a sentence imposed on men who were fallible with consequences which were irreversible.
- * There was a distinct element of chance involved as to whether a particular accused received the death sentence or not.
- * The death sentence was a relic of a barbarous age.

He said in 20 years on the Bench, he had imposed "not less than 12 and possibly as many as 20" death sentences. "I had sleepless nights before and after the verdict and sentence. It would sometimes take me weeks to recover. I never got used to it..."

Mention was made at the meeting of chapters of the Society being established in various centres around the country. There has been some interest expressed in this in Grahamstown and we are organising an information meeting to be addressed by Ms B Runciman, national secretary of the organisation, on December 14. After that, we hope to arrange a formal launch of the Society in Grahamstown.

g. Death Row Profiles:

I have completed the remaining profiles of the Eastern Cape people on death row for political offences and will shortly be sending the package out to organisations, individuals, embassies and the press. With the hangings, reprieves and acquittals of this month, the number of people on death row from the Eastern Cape now stands at 33.

2. ONGOING COURT MONITORING:

While there was plenty happening on the death penalty front, the courts were surprisingly quiet this month. Most of the actions for damages were removed from the roll after being settled out of court. However, I monitored two criminal cases:

a. The Bedford Case:

Only one person out of 14 Bedford people charged with a necklace murder was found guilty of the offence. Five of the 14 were discharged at the end of the State case and the remaining eight (one of whom had been in custody since March this year) were acquitted at the end of the trial. The trial ran for just longer than one month in the Grahamstown Supreme Court. Acting Judge, Mr Justice Cooper, sentenced Enock Mahleza to 10 years imprisonment for his role in the murder of Mbulelo Kakana who was burnt to death on March 9, 1986. Mahleza was convicted on the basis of a confession he had made to a magistrate. The Judge said the State had not called any witnesses who were able to tell the Court who had killed the man or how he had been killed. Extenuating circumstances were found for Mahleza on the basis that he had been only 16 years old at the time. As the trial came to a close, the Judge admonished those who had been acquitted: "This is no cause for jubilation. The accused must not think that the court has found them innocent of the charge. The court merely found them not guilty," he said.

b. The Stutterheim Case:

Two women and two men from Toise township in Stutterheim were each sentenced to 10 years imprisonment after they had been found guilty of the necklace murder of a man they suspected had killed their relative. The four appeared with five others and were represented by pro deo Counsel. The trial lasted only eight days. Evidence was that Nophumzile Maho, the sister of one of the accused and mother of two others, had died in November 1985 in circumstances that had given rise to suspicions that she had been raped and murdered. There had been further suspicions that a Mr Linda Nyakama had been responsible for her death and that the authorities had not investigated it properly. Mr Nyakama was apprehended on December 26, 1985 and burnt to death by a crowd of people. Two of the State witnesses who gave evidence were relatives of the accused. And those who were convicted and sentenced to 10 years by Mr Justice Jennett were all relatives of the murdered woman. They were Nontishomyeka Mancam, Noriyana Maho, Khayaletu Maho and Zama Poni.

Barbara Orpen.
November 30, 1988.