

Art, the TRC and the 'Truth': Unstitching the 'Blue Dress'

by Douglas Ainslie (legal researcher to Justice Nkabinde)¹

This is both a research piece and a personal, introspective note on the artwork by Judith Mason "*The man who sang and the woman who kept silent*" (colloquially known as "The Blue Dress"). The Blue Dress has hung in the Court for many years and has, in some ways, become the centrepiece of the Court's art collection.² It is certainly the most well-known art piece in the collection. The story behind it as well as the artwork itself has generated a tremendous amount of writing and it earned a place on the cover of Justice Albie Sachs' memoirs.³

This note seeks to set out my experience of the artwork and my subsequent research into part of its originating story – that of Phila Portia Ndwandwe. To start, I must point out that the artwork is obviously about two individuals, as it may have been a woman who "kept silent" but it was a man who sang. The man is, most often and unfortunately, forgotten in the telling. The man was Harold Sefola and, in the strangely respectful words of his murderer, he was "a strong man [who] believed deeply in that in which he was involved in and of its correctness".⁴ While my story is about Phila, I would not be doing justice to the past if I did not, at least in introduction, pay homage to Harold Sefola, who defiantly sang Nkosi Sikelel' iAfrica before being brutally murdered by Security Branch officers.⁵ In a warped form of admiration, the officer who finally killed Sefola stated "I have tremendous respect for Harold Sefola because of the way in which he behaved during the

¹ I would like to express my sincere thanks to Justice Cameron, Stacey Vorster, Shirley Glyn and all my clerks at the Court for their support and assistance in this endeavour. Of course the views expressed, and any errors, remain my own. To Judith Mason, whom I had the absolute pleasure of meeting subsequent to, and because of, writing this piece, my thanks, admiration and respect. Your artwork was, is and remains a moving and beautiful contribution to the Court.

² On the Constitutional Court Art Collection's website it is noted that it "is perhaps the signature piece of the collection." (Website accessed <https://ccac.org.za/judith-mason-the-man-who-sang-and-the-woman-who-kept-silent-1998-0003/> on 2 March 2016)

³ Sachs *The Strange Alchemy of Life and Law* (Oxford University Press, Oxford 2011).

⁴ Truth and Reconciliation Commission Amnesty Hearing Transcripts: Johannesburg – 1 (21 - 23 Oct & 28 Oct - 1 Nov 1996) page 235. All TRC related documents were accessed from <http://www.justice.gov.za/trc/>.

⁵ Id page 235-6.

process of us killing him".⁶ His story, as much as that of Phila's, is worthy of our remembrance.⁷

At this point, two caveats are necessary. First, my principal aim is the interrogation of an artwork. I am in no way trying to impoverish the story of Phila Portia Ndwandwe or undermine the facts that withstand even a close reading of the transcripts. Phila was a person worth remembering and honouring. She was young, committed and placed in a prominent position in a typically male hierarchical military-style system. She faced her killers with reserve and, despite the efforts of hardened Security Branch officers, she did not turn informer. In the words of her captors, she was clearly a brave young woman who, like Harold Sefola, believed deeply in the correctness of her actions. Phila must have known that had she accepted the offer by the Security Branch to become an informer it would have saved her life. Despite this, she remained "defiant to the bitter end."⁸

Second, while the statements in this note are, so far as possible, backed up by documentary research, it is, as it must be when relating to an artwork, a personal reflection not only on a piece of art, but on myself, on a piece of the history of our country and on the "Truth". For that I ask an indulgence for the times when I engage in less research and more speculation. When that occurs I try to make it as clear as possible. In the end, it is an effort to piece together fragments of a story from a transcript of evidence that, in cold black and white text, only gives further fragments of insight into those fragments. All these pieces-of-pieces try and tell the story of the life (and death) of a person who, for her courage, was robbed of

⁶ Id page 237.

⁷ As an indication of how Harold Sefola's story gets lost in the powerful retelling of Phila's story, here is a quote directly from the Constitutional Court's own website from Emile Maurice's overview of the Court's art collection:

"Listening to a radio report on the commission, Mason was moved by a story about an African woman whose body had been discovered after the security police had executed her. Speaking about the body, found naked in a shallow grave except for a piece of plastic covering her private parts, a security policeman confessed something like this: "I turned to my colleague before putting the gun to her head and shooting her, and said, 'God she is brave', *because she asked if she could kneel and sing Nkosi Sikelele before she was killed.*" (Emphasis added.)

Harold Sefola's story is blurred into that of Phila Ndwandwe's. Harold Sefola is "the man who sang" – or, as it seems the histories are slowly achieving, the man who is forgotten. (Website accessed from <http://www.constitutionalcourt.org.za/site/artcollection/overview.htm> on 15 February 2016).

⁸ Truth and Reconciliation Commission Amnesty Hearing Transcripts: Durban - 7 (9-19 November 1998) (Durban Transcripts) page 620 from the testimony of Wasserman. See also specifically page 531 and the testimony of Steyn where he says he realised Phila would not turn informer because "[s]he stated that she would continue with her activities should she be released. And that she was not prepared to cooperate with us." See also specifically page 476 where Botha responds "that was the impression I got" in answer to the Chairperson who asked if "you considered... that she was a strongminded young woman, who believed in what she was working for and was not going to be bribed or persuaded to change?"

the chance to tell her story for herself. The story is told, as many stories in the Truth and Reconciliation Commission (TRC) had to be, by the very perpetrators who denied the person who is the focus of the inquiry the chance to tell her version. Speculation is, at some points, inevitable.

In the end I come to no firm conclusions other than these two. The Blue Dress is, on the version so often repeated both in the media and everyday in tours of the Court, at the very least problematic from a factual perspective. It may also be problematic for mythologizing a particular view of Phila which, given what we know of her, is further problematic from a gender perspective.⁹ Nevertheless, I conclude secondly that its value, as an artwork and as a forceful engagement with my own ignorance of the past, is merited, even on the version I believe to have a more justified factual basis.

The Tour Guide Story

I begin where I began - when first I came to the Court as legal research clerk. I had been on a tour before and so knew the story of the Blue Dress but had, for one reason or another, not found it as moving as perhaps I should have. When the Court's art curator, Stacey Vorster, took us new clerks on a tour, the impact of the manner in which she told the story was orders of magnitude more forceful. I was deeply moved and promised myself that I would read Phila's story. It needed to be read and it needed to be read by me, for my own conscience. So I did. I pored over the transcripts of the hearings of Phila's killers and any related news reports. I read everything I could on her.

But, before I get there, perhaps it is best to start with the story as told by the Court clerks on the tours they guide, and more generally, and it is told thus:¹⁰

"A triptych, this piece was inspired by two stories Mason heard on the radio at the time of the Truth and Reconciliation hearings. They told of the execution of two liberation movement cadres by the security police – Phila Ndwandwe and Harold Sefola, whose deaths

⁹ While I discuss this further below, this view is far more fully analysed in Russell "The Woman Who Kept Silent: Remembering and Reconciliation in South Africa" in Scarparo and MacDonald (eds) *Violent Depictions: Representing Violence Across Cultures* (Cambridge Scholars Publishing, Newcastle 2006). Russell's piece is the only piece of writing I have found that interrogates the discrepancy between the factual and artistic representations of Phila. However, on a different point, but in a progression of what is seen above n 7, we see that Harold Sefola does not even feature in Russell's piece. Mason's work is now simply *The Woman Who Kept Silent*. In an odd irony, given how Russell's piece is, in part, about how the "myth" of Phila's story masks other truths, the man who sang has slipped entirely from her view.

¹⁰ As reproduced from the Court's Visitors Guide Tour Book (2011) made available to the clerks for purposes of giving tours.

during the Struggle were described at the Truth and Reconciliation Commission by their killers.

Phila Ndwandwe was shot by the security police after being kept naked for weeks in an attempt to make her inform on her comrades. She preserved her dignity by making panties out of a blue plastic bag. This garment was found wrapped around her pelvis when she was exhumed by the TRC. One of the men involved in her killing said: "She simply would not talk...God she was brave."

...

When Judith Mason hear[d] Phila's story, she collected discarded blue plastic bags and sewed them into a dress."

In addition to the above, the various facts that I have heard interspersed in the presentation were that Phila was abducted while crossing the border into South Africa (or attempting to smuggle information out of South Africa) and that she was accompanied by fellow uMkhonto we Sizwe (MK) comrades.

I have heard the symbolism of the artwork explained in this way: the hyena is the sniggering man who killed Phila;¹¹ the fence is the border fence between the countries; the burning braziers are representative of the people with Phila – the warmth and safety of fellow comrades;¹² the blue dress, the panties crafted while incarcerated and tortured.

This is, in various combinations, the standard tour guide representation of both the artwork's symbolism and the underlying factual narrative upon which it is based.

The Origins of the Story

According to Judith Mason's website, she heard the story of Phila Ndwandwe on the radio.¹³ Assuming this to be correct, I do not know who the reporter was, but I would guess that it was most likely Antjie Krog who, at that time, was heavily involved in reporting the TRC hearings via radio broadcast for the SABC. This is

¹¹ Lawrence "Lawrie" Wasserman was her immediate killer – see Durban Transcripts above n 8 page 592.

¹² This inaccuracy can swiftly be dealt with – the braziers are more likely to be symbolic of Sefola and the two comrades he was captured, and ultimately died, with. Sefola's friends were Andrew Mokupe and Jackson Maake. After all, the "comrades" who were with Phila were, as will be discussed later, in fact her betrayers.

¹³ Accessed from http://www.judithmason.com/assemblage/5_text.html on 15 February 2016 - much of the Court's Visitors Guide Tour Book information appears to be sourced from this website which, as noted below, seems to be sourced from Antjie Krog.

more than a haphazard guess. Krog writes about Phila in her book *Country of My Skull* where she recounts the story of an exhumation told to her by a "Commissioner". She does not mention either Phila or the Commissioner by name. However, that it is Phila to whom she is referring is clear, as can be seen from Krog's own words:

"The Commissioner spreads the photos on the table. A slope of *tamboekie* grass, a wind-blue sky, some fresh soil. 'He shows us the place...we dig...we find red topsoil mixed with black subsoil... we know... and then the spade hits something...'
'She was brave this one, hell she was brave', says the grave indicator, the perpetrator, and whistles softly through his teeth. 'She simply would not talk.' Next photo: the earth holding a bundle of bones. Delicately they are chiselled loose. Cigarette butts, an empty bottle. 'It's hard work, digging,' says the grave indicator.
...
Around the pelvis is a blue plastic bag. 'Oh yes,' the grave indicator remembers. 'We kept her naked and after ten days she made herself these panties.' He sniggers: 'God...she was brave.'¹⁴

Uncovering the identity of the mystery Commissioner requires one to look through the *Truth and Reconciliation Commission of South Africa Report* (TRC Final Report). Commissioner Richard Lyster is quoted thus:

"She was held in a small concrete chamber on the edge of the small forest in which she was buried. According to information from those that killed her, she was held naked and interrogated in this chamber, for some time before her death. When we exhumed her, she was on her back in a foetal position, because the grave had not been dug long enough, and had a single bullet wound to the top of her head, indicating that she had been kneeling or squatting when she was killed. Her pelvis was clothed in a plastic packet, fashioned into a pair of panties indicating an attempt to protect her modesty."¹⁵

¹⁴ Krog *Country of My Skull* 2ed (Random House Struik, Cape Town 2014) page 128.

¹⁵ TRC Final Report: Vol 2 page 5.

Later in the TRC Final Report it is stated, without attribution to any particular Commissioner, that:

“She was kept in custody and tortured. Eventually she was killed and secretly buried on a farm in the Elandskop area, near Pietermaritzburg. When she was exhumed, her pelvic bones were covered with a plastic supermarket packet with which she had tried to protect the dignity of her naked body.”¹⁶

What is relevant is that, unlike Krog’s account of the re-telling by the Commissioner, it is never indicated that the “grave indicator” made any statements at the exhumation about the detention or killing of Phila. Lyster does however note that “[a]ccording to information from those that killed her”, the details of the detention and torture are revealed. However, this information never seems to surface – not even at the amnesty hearing for Phila’s killers. Nevertheless, it seems clear that Richard Lyster is Krog’s nameless Commissioner.

It seems arguable that the sources of the story around the Blue Dress can be traced back to these moments. A Commissioner present at the exhumation; a recounting to Krog; a radio broadcast with information remarkably similar to Krog’s account of the Commissioner’s version of the exhumation; Mason, compelled into artistic action. However, what becomes clear from the transcripts themselves is that the story finds little support in the actual evidence presented at the TRC.¹⁷

The TRC testimony and the Amnesty Ruling

On 12 March 1997 Phila Ndwandwe’s grave was pointed out by one of her killers (Lawrence Wasserman)¹⁸ and her body was exhumed. During 1996 and 1997, seven officers applied for amnesty for the murder of Phila:¹⁹ Hendrik Johannes

¹⁶ TRC Final Report: Vol 5 pages 365-6.

¹⁷ In this respect, and with respect, Justice Cameron and Justice Sachs are incorrect when they say in their piece “20 Years Later – The role of art and justice in South Africa’s democracy” that Phila’s “act of defiance and humanity burned itself into the memory of one of her captors, who told the story of Ndwandwe’s detention and death at the Truth and Reconciliation Commission.” While the story of her detention and death is told, the implication that the story included this poignant act of defiance is incorrect. The story told at the hearing never mentions it. The article was accessed from <http://forums.ssrc.org/african-futures/2015/01/12/20-years-later-the-role-of-art-and-justice-in-south-africas-democracy/> on 2 March 2016.

¹⁸ Durban Transcripts above n 8 page 593.

¹⁹ The case number assigned was KZN/NNN/018/DN.

Petrus Botha, Salmon Johannes Gerhardus Du Preez,²⁰ Johannes Albertus Steyn, Andy Taylor, Roelof Brand Visagie, Jacobus Adriaan Vorster and Lawrence Gerald Wasserman.²¹ Five testified at the amnesty hearing²² which was held from 9 to 19 November 1998.²³

In 2001, the Amnesty Committee (per Judge Wilson (as Chairperson), Adv Sigodi and Mr Malan) granted all the applicants amnesty for the murder of Phila Ndwandwe.²⁴ The Committee found the evidence of all five witnesses to be materially corroboratory and ruled that the applicants had made a “full disclosure” as required by the Act.²⁵

For the artwork, the story is slightly but materially different to the one which forms the very basis of the symbolism of the Blue Dress.

In short, the testimony was this:²⁶

Having learned of Phila, the Security Branch hatched a plan to recruit her as an informer. The plan was to kidnap Phila from her base in Swaziland, transport her over the border and interrogate her for information and, primarily, for purposes of testing her susceptibility to being recruited as an informer. If successfully turned, she was to be re-inserted into Swaziland. There was some equivocation as to what the plan may have been had she proved (as she did) to be impervious to persuasion and as to when the actual decision to murder Phila was made.

²⁰ Du Preez was the only other perpetrator with Wasserman at the scene of the murder.

²¹ The amnesty application numbers were, respectively: AM4117/96, AM4130/96, AM4513/96, AM4077/96, AM5169/97, AM4390/96, AM4508/96.

²² Taylor died before the hearing and Visagie had emigrated to the USA. Visagie was granted amnesty without having to appear as his involvement was limited to being the mechanic who serviced the vehicles used in the operation in knowledge of the abduction plan.

²³ This was the seventh hearing held in Durban and began with the incident of the death of Siphso Bhila. The leading of evidence in Phila Ndwandwe’s matter only started on 11 November 1998 and seems to have been concluded by 17 November 1998.

²⁴ “Incident 2” in ruling AC/2001/112 (Amnesty Ruling). The only copy of the ruling accessible at time of writing is undated other than for the year, however, it appears that in terms of item (h) of Proclamation R42 GG Vol. 444 No. 23328 of 14 June 2002, the officers involved in Phila’s abduction and murder were granted amnesty on 18 May 2001.

²⁵ The Promotion of National Unity and Reconciliation Act 34 of 1995.

²⁶ For the exact details from the time of her abduction to shortly before her death see the testimony of Botha in Durban Transcripts above n 8 pages 397-417 and for the period from Botha’s departure to the execution of Phila, see the testimony of Wasserman pages 590-3. See too the summation of evidence in the Amnesty Ruling above n 24.

To achieve their goal the officers recruited two current informers to make contact with Phila and arrange a meeting at the George Hotel in Manzini.²⁷ The officers entered Swaziland via the Onverwacht Border Post on false documents. The informers made contact with Phila and she got into their vehicle. The officers blocked the vehicle off and transferred Phila to their vehicle. Almost immediately Botha began his interrogation.

The officers re-entered South Africa and stayed the night at the police station at the Onverwacht border post, where the interrogation continued. The next morning Phila was transferred to the farm Elandskop which was used by the Security Branch as a safe-house. By this stage Botha was convinced that Phila, while having divulged some useful information, would not turn informer and he left. That night, Wasserman and Du Preez blindfolded Phila and escorted her out of the building on the pretext of transferring her to another location. Some 80m from the house a shallow grave had been prepared. Near the grave Wasserman struck Phila with a police baton, rendering her unconscious. Wasserman then shot her in the top of the head, killing her instantly.

At that point, and to help prevent identification if the body was ever found, Wasserman and Du Preez stripped Phila and disposed of her clothes.²⁸ They placed Phila in the grave and covered her with lime. They then covered Phila with plastic bags and refuse and covered that with soil. The plan being that should someone investigate the site they “would presume it was a little bit of a dump” and so “hopefully stop digging”.²⁹ All the applicants expressly denied ever torturing Phila (or assaulting her in any way for that matter).

The Amnesty Committee accepts this testimony thus:

“The 5th Applicant (Wasserman) hit her on the head with a baton which rendered her unconscious. He then shot her in the head. *She was derobed* and placed in the grave. Lime was sprinkled over the body *which was then covered with plastic bags* and the grave filled with soil.

²⁷ The identity of the two informers is never revealed despite attempts by Mr Ngubane to argue that this information was relevant for purposes of “full disclosure”. See Durban Transcripts above n 8 page 466ff. The Amnesty Committee ruled against Mr Ngubane on this point.

²⁸ This appears to have been fairly standard practice for Security Branch eliminations, at least by these particular officers. See Durban Transcripts id pages 584 and 599.

²⁹ Id page 593.

...

She was treated nicely,³⁰ *was never assaulted* and later began to respond, confirming information known to them *and providing some information that was new to them.*"³¹ (Emphasis and footnote added.)

Analysis

What immediately becomes apparent, and problematic, is that on the version accepted by the Amnesty Committee, Phila was not assaulted, let alone tortured, nor was she kept stripped naked, nor was she (as the title of Mason's piece portrays) "the woman who kept silent".³² As for the dress, if Phila was never stripped naked, what use would it have been to fashion panties from a discarded plastic packet? In addition, the explanation given by the amnesty applicants seems to account quite simply for the presence of any plastic bags in the grave. The symbolism of the artwork is clearly placed in a problematic position by this version.

What is also problematic is the timeline of events. If we accept that at the time of the exhumation Wasserman made, what I will refer to as, the "extra-curial statements" attributed to him by Krog (who heard them second-hand from, presumably, Lyster)³³ then these were made in March 1997. Wasserman had already made his application for amnesty in 1996 and the extra-curial statements would have been in conflict with his application, imperilling it. Further, the hearing was held in November 1998 - over a year after the exhumation. In addition, the TRC Final Report had been published about a month before the hearing (in October 1998) and so this information would have been available to

³⁰ This is, perhaps, the most unfortunate turn of phrase I have encountered but appears to have been lifted from the testimony of Botha. See Durban Transcripts id page 405.

³¹ Amnesty Ruling above n 24.

³² Botha specifically states that Phila provided information to them that not only confirmed what they already knew, but also that was new to them. See Durban Transcripts above n 8 page 408.

³³ And in this respect it is important to note that Lyster never mentions the quoted statements. The source of the actual phrases recreated on Mason's website, and in the Court's Visitors Guide Tour Book, appears to be Krog's *Country of My Skull* above n 14.

the TRC's evidence leader, Advocate Patrick 'Paddy' Prior, but Mr Prior makes almost no use of this information at the hearing.³⁴

On this point, it seems possible that Mr Prior had some knowledge of the existence of the plastic packets that went beyond simply that they were thrown into the grave to mask it. In the hearing the following exchange between Mr Prior and Botha occurs:

"ADV PRIOR: Because it would seem from the *objective facts* that when she was buried at that grave, or in that grave, she was naked, except for a plastic, it seems like a refuge (sic) bag that was placed around her pelvic area.

MR BOTHA: Yes, I was not present when they exhumed the body."³⁵
(Emphasis added.)

Three things are surprising. First, Botha, on his own version and that of all the other applicants, was not at the scene of either the murder or the exhumation. As such, he simply could provide no information about the plastic bags to the Amnesty Committee. Secondly, this is the last time Mr Prior mentions this specific plastic bag.³⁶ Mr Prior never raises the issue again. Neither Wasserman nor Du Preez were asked about it, both of whom were present at the murder and at least one of whom was at the exhumation. Finally, Mr Prior never discusses what the "objective facts" are.

This final point is particularly troubling. As evidence leader Mr Prior's role was to uncover the truth for the purposes of the Committee. He owed no allegiance to anyone else. If there were objective facts that supported the story of the panties as told by Krog and reiterated in the TRC Final Report, then they would surely have been relevant. It would indicate that the alleged statements made by Wasserman at the exhumation – that they had kept Phila naked – were probably true. This would throw into serious doubt the applicants' claims that they had not mistreated her. It was a line of questioning well worth pursuing – but it never was.

³⁴ In addition, one of the Commissioners on the panel was a "Mr W Malan". This is almost certainly Commissioner Wynand Malan who wrote a lengthy dissenting opinion in the TRC Final Report and so would have been privy to the contents of the report long before it was made public. He too never raises any issues related to these "objective facts" or the "information from those that killed [Phila]".

³⁵ Durban Transcripts above n 8 page 505.

³⁶ Later mention is made of another plastic bag, being the bag that contained the lime poured over Phila's body, but that is clearly a different inquiry. See, for example, Durban Transcripts id page 628.

This is even more surprising as the debate on what “full disclosure” meant was a live and controversial issue before the TRC at that time. In the PEBCO 3 hearing this point was argued extensively by counsel and the final ruling provided:³⁷

“We do, however, think that in the circumstances *if the deceased were assaulted and tortured*, as it is now being claimed by some of the applicants, *that is a very important information for applicants to disclose*. An applicant who fails to do so *cannot be said to have made a full disclosure*.” (Emphasis added.)

While that ruling was given only after the hearing in Phila’s matter, the legal argument in the PEBCO 3 matter on this very important legal point occurred on 18 May 1998 - five months before Phila’s hearing. It was thus clearly a live topic at the time which would have been in the forefront of the minds of the evidence leaders, the perpetrators and the Commissioners (who, as the transcripts in the PEBCO 3 hearing show, had clearly indicated that they were leaning towards the broad definition of “full disclosure” which they finally settled on in the ruling).³⁸ It should have therefore been apparent that had there been objective facts on the treatment of Phila before her death that differed from the version of the applicants this was pertinent to the application and “full disclosure” and, ultimately, the granting of amnesty.

Along with the unusual omission by Mr Prior is the fact that the same omission is made by the attorney who was acting on behalf of the Ndwandwe family and nominally on behalf of the victims. Mr Ngubane,³⁹ as the transcripts show, made attempts to extract any possible indication that the applicants were lying about not assaulting or torturing Phila.⁴⁰ When questioning Botha, Mr Ngubane raises the issue of Phila’s nakedness when buried⁴¹ but again, this is the wrong perpetrator to ask. Further, Mr Ngubane never raises with Botha the plastic panties specifically nor any other statements allegedly made by Wasserman at the exhumation. Nor does Mr Ngubane raise these issues with Wasserman despite

³⁷ Amnesty ruling AC/99/0223.

³⁸ Truth and Reconciliation Commission Amnesty Hearing Transcripts: Port Elizabeth – 10 (18 May 1998) – PEBCO 3 Closing Arguments.

³⁹ Who came on record for, amongst others, the Ndwandwe family, and nominally for the victims themselves, on 9 November 1998, see Durban Transcripts above n 8 page 3.

⁴⁰ Id page 476.

⁴¹ Id.

the objective facts mentioned by Mr Prior. The omission is, assuming the objective facts included the extra-curial statements attributed to Wasserman, fairly inexplicable.

To conclude this aspect, the story as accepted as true by the Amnesty Committee is at direct odds with the symbolism underlying the artwork. Furthermore, the reading of the transcribed evidence, as well as the approach of the lawyers at the hearing, seems to support the position that the story relied on by Mason is, to an important degree, inaccurate. Finally, when viewed in the greater context considering the timeline of events, the nature of the hearing and the uncanny similarity between Mason's version heard on the radio and Krog's version told in her book,⁴² there is good reason to believe that the panties, like the artwork, were the product more of storytelling than truth telling.⁴³

Three oddities that point the other way

However, that being said, the picture is, of course, not as clear as all that. There are also some indicators that point the other way. I do not propose to resolve these problems, merely to present them as I see them arising. And the most disturbing that arises is that of the death of Ntombikayise Priscilla Khubeka.⁴⁴

Briefly, Khubeka was also an MK operative.⁴⁵ She was captured by almost exactly the same Security Branch officers as Phila.⁴⁶ However, there the similarity ends. She was transported to a shooting range on the outskirts of Durban where she was interrogated by Botha. During the interrogation Botha beat her with a sjambok.⁴⁷ At some point, according to the testimony, she had a seizure and died. Her body

⁴² And here it is worth noting that *Country of My Skull* was first published in 1998 – the same year that the Blue Dress was created. It therefore seems fair to infer that the version by Krog pre-dates the creation of the Blue Dress and that therefore the quotes Mason recounts are most probably from Krog's recounting of Lyster's recounting of the exhumation, and not directly from Wasserman.

⁴³ Or, to use the nomenclature of the TRC itself, of "personal or narrative truth" as opposed to "factual or forensic truth". In this respect see below n 65.

⁴⁴ Russell above n 9 page 198 draws this comparison briefly, but intensely.

⁴⁵ Her activities involved "stashing weapons, accommodating external operatives and gathering intelligence on possible targets". See TRC Final Report: Vol 3 page 203.

⁴⁶ Her captors included Lawrie Wasserman, Andy Taylor, Hendrik Botha and Salmon Du Preez, who made applications for amnesty simultaneously and under the same application numbers as for Phila.

⁴⁷ Botha denied this and said Taylor had administered the beating, but the other applicants asserted clearly that it was Botha. There was also disagreement between the applicants about the extent of the beating. For a more detailed discussion see TRC Final Report: Vol 6 pages 229-31 and 551-4.

was dumped on the side of the road leading to her home as the applicants believed that since she died of natural causes, her body would not arouse suspicion. She was not identified and was given a pauper's burial.

However, when her grave was discovered and she was exhumed, it was clear that she had been shot once in the head.⁴⁸ All the applicants denied that they had shot her and maintained that the body could not be Khubeka's. The remains were examined three times and each time verified as those of Khubeka. First, the SAPS Medico-Legal Laboratory identified the remains as Khubeka's. Second, an expert from the University of Glasgow confirmed the finding. Finally, upon objection by the amnesty applicants the remains were re-examined by the SAPS Forensic Science Laboratory Pretoria, at the applicants' request, and the results were again confirmed. The applicants maintained their version despite these findings.

The Amnesty Committee, on the basis of "'compelling" forensic evidence, concluded that applicants Botha, Du Preez, Wasserman and Van der Westhuizen had not offered full disclosure as required by the Act and thus were refused amnesty for the death of Khubeka.

If we accept the version as found to be true by the Amnesty Committee for Phila, we must accept the version for Khubeka as well to remain consistent. The issue this creates is that this shows that the applicants were not above lying outright in order to secure amnesty if they thought they could get away with it. However, in contrast to this, it also shows that the applicants were not above involving themselves in the violent physical assault (arguably torture) of a woman and admitting that, so the denial that they physically assaulted Phila consequently carries slightly more weight.

The second issue presents itself from a more lawyerly perspective. It is a single incidence of Mr Visser's questioning of his own client (Wasserman) that I find most unusual.⁴⁹ The questioning proceeded as follows:

"MR VISSER: Before you placed that over the body, did you also place some plastic bags or agricultural bags over the body?

MR WASSERMAN: Mr Chairman, that was done slightly at a later stage.

⁴⁸ The 7.65mm bullet was still lodged in her skull.

⁴⁹ Louis Visser, instructed by Wagener and Muller Attorneys. Durban Transcripts above n 8 page 2. The unusual line of questioning comes from page 593. Mr Visser follows a similar line of (much less leading) questions when later examining Du Preez - see page 684.

MR VISSER: All right, please continue. You then started filling in, is that what you are saying?

MR WASSERMAN: Yes, there was first the lime and then filled up and then some rubbish bags were placed in on top.

MR VISSER: Refuse bags?

MR WASSERMAN: Refuse bags, yes.

MR VISSER: All right. Anything else?

MR WASSERMAN: The bags were there should anybody have a look or see anything indentations in that area, one would presume it was a little bit of a dump there Mr Chairman."

Three things are striking to me about this exchange. First, Mr Visser's first question is a classic leading question and almost amounts to Mr Visser providing evidence in question form. Secondly, Mr Visser's question "Anything else?" is vague, but in context is clearly asking if Wasserman had placed any other items in the grave, rather than "do you have anything else to add". Wasserman's answer, however, is unusual in that it is not about what he put in the grave, but why he put it there. It is not an answer to the question asked and that highlights the unusual precision of the answer – like it was rehearsed, but just given at the wrong time. This highlights the final and perhaps most interesting point about the exchange – there seemed to be absolutely no reason to ask these questions. Mr Prior had asked about the plastic bags only once as noted above. It never arose again. It clearly was not an issue for him or the Commissioners. It was seemingly irrelevant. So why did Mr Visser raise it suddenly, leadingly and potentially disastrously for his client?

That last point bears some spelling out. In the context of the whole story, assuming that the story of the panties is true and that Wasserman had made the extra-curial statements already noted, then this question is very dangerous. If Mr Prior (or Mr Ngubane or any one of the three Commissioners), who did not seem to see the plastic bags as relevant, asked himself why Mr Visser was raising the issue they may have realised that the plastic panties, and thus the extra-curial statements, were at odds with the story being told in evidence. The plastic panties would have been the piece of evidence, the objective fact, which would have unravelled Wasserman's story.

It is clear that Mr Visser thought the point important, the question is why. With some speculation, there are two possibilities as far as I can see for Mr Visser raising this point, and in the manner in which he did. First, if the version of the story

which Mason relied on is true then Mr Visser would have wanted to try and mitigate the extra-curial statements as much as possible. He would want Wasserman's version clear and on record, particularly given the paucity of evidence led by Mr Prior on this point. Mr Visser may have thought that it was too late for Mr Prior to recover the point. Alternatively, if the story relied on by Mason is not true, then Mr Visser may simply have been making sure his client covered all the evidence in his application for purposes of full-disclosure. The fact that the amnesty hearings were not strict court proceedings meant leading questions were acceptable and thus not unusual.

All of that aside, perhaps the biggest difficulty with the whole matter for me is this. We know Krog is a story teller. We know she has, honestly and openly so, struggled with what the "truth" is during her time reporting on the TRC.⁵⁰ But, why would Lyster make anything up? There does not seem to be a sensible answer as there is simply no reason for Lyster to lie, and I certainly do not believe that he has. It remains the one, unanswerable point for me and I can only speculate with wildly guessed at quasi-psychological explanations – distress, emotional fatigue, seeing things that are there but seeing them for what they are not.⁵¹ The difficulty with this is Lyster is absolutely clear in his quote that the information about her being kept naked and tortured was "[a]ccording to information from those that killed her." Other than to note that this throws my points above about Mr Prior's "objective facts" into even starker relief, to this problem I have no reasoned answer. Only guesses.

The artwork's value: Lost...

Why, if at all, is this important for our understanding of the piece? Does the piece, as an artwork, necessarily need to rest on the truth of the underlying story? A detailed discussion of the complexities of aesthetic hermeneutics being perhaps a bridge too far to cross in this piece, my straightforward impression is 'yes'. My final answer is a more qualified 'yes'. A piece such as this is not like, say, the Mona Lisa or Edvard Munch's *Der Skrei der Natur* (more commonly known as 'The Scream'). The Mona Lisa, whoever the model may have been, seeks to portray nothing about the truth of the model's life. It is simply a display of incredible

⁵⁰ See for example Krog above n 14 where she is angered by a factual misrepresentation in one news story about victims' compensation (page 167) compared to her argument about "my truth" which is "constructed from all the other information I picked up over the months" – including the fictitious affair created in her book (pages 170-71) and contrast both of these moments with her struggle with "truth" in relation to the death of Irene Mutase (pages 88-9 and n 65 below).

⁵¹ It is undisputed that Phila was naked when buried and that there were plastic bags in the grave. Without having seen what Lyster saw, it is impossible to guess what it might have looked like to him at that time.

artistic ability. The artwork stands alone. The artistic impact of *The Scream* is, likewise, not dependent on anything particular, but rather captures an unsettling universal truth about the human condition.⁵² Here, with the *Blue Dress*, there is a marked difference. The very intention of the artwork, and the artist herself, is to capture the poignancy of the *action itself*, and not necessarily any particular universal truth about art, beauty or existence. Whether a universal truth can be gathered from the particularization of Phila's gesture is, unlike *The Scream*, dependent on the contingent fact that the gesture occurred. Why? Because we want to believe in the strength, dignity and courage of Phila *because of her action*. Mason herself portrays it thus:

"I've always had a great regard for heroic art that commemorates grand gestures. In these two stories I came upon, the two gestures were so grand. Two people are allowed - just because of other people's bad behaviour - to exhibit superhumanly beautiful, courageous behaviour, and that's what attracted me there."⁵³

For Mason, as for viewers of her piece, it is the fact of the gesture that makes the story, and thus the piece, so moving. When that fact is removed, the piece loses, for that particular purpose, its impact.

In addition, there may be good reason to criticise, as Barbara Russell does, the implicit patriarchy that underlies the "mythologization" of Phila's story.⁵⁴ Richard Lyster says the plastic panties were there to protect Phila's "modesty".⁵⁵ Mason herself creates a beautiful, feminine dress for Phila. In her poem that accompanies the installation she describes Phila's gesture as "such a frugal, common-sensical, *house-wifey* thing to do".⁵⁶ Even at the hearings themselves, one of the points

⁵² Munch described his inspiration for the piece in a poem written onto the frame of one of the four versions he painted, much like Mason did when she wrote her poem onto the dress itself. Munch states

"I was walking along the road with two friends – the sun was setting – suddenly the sky turned blood red – I paused, feeling exhausted, and leaned on the fence – there was blood and tongues of fire above the blue-black fjord and the city – my friends walked on, and I stood there trembling with anxiety – and I sensed an infinite scream passing through nature."

This "anxiety" is the core of the piece and is not contingent on the truth of anything other than our conscious existence. Similarly, we think Sartre's *Nausea* no less powerful simply because Antoine Roquentin is merely a literary fiction.

⁵³ Accessed from Mason's website, above n 13.

⁵⁴ This section draws heavily on Russell's piece above n 9. The idea of "mythologization" is hers (page 181).

⁵⁵ Russell page 184 notes the use of "modesty" and its transposition with "dignity" later in the TRC Final Report, and makes the point that "modesty" is, in this context, "an essentially female characteristic".

⁵⁶ Mason's website, above n 13. Emphasis added.

which Mr Ngubane pushes in cross-examination is that the amnesty applicants must have known that Phila was a breast-feeding mother at the time they had captured and killed her.⁵⁷ All of these images, words, thoughts and actions by these various role-players reflect that Phila was viewed as an archetypal woman. Feminine, beautiful, house-wifey, motherly and loving.⁵⁸

As the documentary evidence makes clear, while Phila may have been these things, she was also hard, determined, a trained fighter⁵⁹ and a woman who ordered acts of violence.⁶⁰ Russell argues that the true Phila was and should be remembered as such – a soldier, a freedom fighter. The fact that she was a woman was merely incidental – a happenstance of life.⁶¹ As to why Phila’s story has become “mythologized” and that of Khubeka’s has faded into obscurity, Russell notes somewhat caustically that Phila’s story fits more easily into an idealised view of “woman” whereas

“[i]n Khubeka we are asked to remember not a young breastfeeding mother forced to leave her infant, suffering stoically and dying with dignity, but instead a middle-aged woman beaten mercilessly, who died screaming and frightened and was dumped unceremoniously by the side of the road.”⁶²

... or Discovered?

So where does this leave me? Where does this leave the artwork? At first, I was dismayed. I believed that the artwork was lost, that its value was destroyed. I have, on reflection, revised my position. There can be no doubt that the artwork cannot have value to me in the same way, but that is not the same as saying that it cannot have value to the same extent. Mason attempted, with all honest intention, to capture a story she was deeply touched by. She sought, through her

⁵⁷ See Durban Transcripts above n 8 pages 474 and 705. Russell above n 9 page 187.

⁵⁸ Russell above n 9 pages 187-9.

⁵⁹ Having undergone, according to the Security Branch officers, military training in the ANC’s infamous Pango Camp in Angola. See Durban Transcripts above n 8 page 387.

⁶⁰ In the words of Steyn when describing why he believed Phila had to be killed if she could not be turned: “A lot of acts of terrorism had been committed by her unit, by her people who were controlled by her” – see Durban Transcripts id page 553. Her extensive activities - including her suspected involvement in the killing of Durban Security Branch policeman, Warrant Officer Sokhela, in August 1986 - are also highlighted in the TRC Final Report: Vol 3 pages 203-4.

⁶¹ Russell above n 9 page 183.

⁶² Id at 198.

passion and talent, to bring to the fore of the public's consciousness, a moving and traumatic story from our troubled recent past. Nothing said here can or should detract from that honest and humane attempt to honour the dignity of Phila Ndwandwe.⁶³ While the truth of the Blue Dress is, in some sense, shaken, it has achieved another goal for which it aimed that is, like Munch's piece, independent of the actual story underlying the artwork.

Ironically, it is Antjie Krog who captures my sentiment best when she discusses the "Truth" in *Country of My Skull*.⁶⁴ In amongst the competing versions, the narrator's own creations, the truth for the sake of the victims or the survivors she tries to find *a truth* (the truth?) and, in some way, seems to accept that no single truth is possible.⁶⁵ However, what is clear is that the process of trying to find truth (whether *a truth* or *the truth*) has the effect of placing one in a position where one can no longer exist in what she calls our own "separate dynasties of denial". I may not know what really happened to Phila Ndwandwe, or quite how the artwork came to be or whether its metaphors are based on "Truth" or on Antjie Krog's or Judith Mason's "truth". But whatever I may be unable to do, what I can no longer do is remain ignorant of the past.⁶⁶ As Dyzenhaus captures it (paraphrasing the General Council of the Bar's submission at the TRC Legal Hearings),⁶⁷ the work of the whole process is "the struggle against forgetting". It is a struggle that I can no longer refuse to engage in. Ignorance of the horrors of apartheid now, after my intimate encounter with the Blue Dress, would be (even more so than is already the case) self-imposed, irresponsible and cowardly. Judith Mason has given me at least that much. I must try "to treat the trauma of the past, and the problems in

⁶³ Here I extend thanks to my colleague, Merrow Golden, for delicately allowing me to see this simple truth.

⁶⁴ Krog above n 14 pages 88-9.

⁶⁵ In that context she was discussing the murder of the Mutase family, particularly Irene Mutase which the applicants each tried to pin on the other. It is worth noting that the Truth and Reconciliation Commission itself acknowledged this difficulty with the concept of "truth" and identified four types of truth: factual or forensic truth; personal and narrative truth; social truth; and healing and restorative truth. For my purposes, the relevant "truth" here is factual or forensic, in so far as the matter relates to specific individual perpetrators who underwent quasi-judicial proceedings in which their allegations were tested for veracity. See the TRC Final Report: Vol 1 pages 110-14 for these versions of "truth". See also Sanders *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (Wits University Press, Johannesburg 2007) pages 150-68 for a discussion of these concepts as well as Krog's treatment of "truth" in *Country of My Skull*.

⁶⁶ In this respect see the discussion of this part of Krog's book in Van Zanten Gallagher "Reconciliation and Hope: Confessional Narratives in South Africa" in Eaton and Griesinger (eds) *The Gift of Story: Narrating Hope in a Postmodern World* (Baylor University Press, Waco 2006) particularly pages 219-21.

⁶⁷ Dyzenhaus *Judging the Judges, Judging Ourselves: Truth, Reconciliation and the Apartheid Legal Order* (Hart Publishing, Oxford 1998) page 182.

retelling it, as a promise"⁶⁸ - not a burden. The value of the Blue Dress is in that promise.

⁶⁸ Id page 179, with credit by Dyzenhaus to Scott Veitch for the phrase.