

**STATEMENT BY PRESIDENT THABO MBEKI TO THE NATIONAL HOUSES OF PARLIAMENT
AND THE NATION, ON THE OCCASION OF THE TABLING OF THE REPORT OF THE TRUTH
AND RECONCILIATION COMMISSION: CAPE TOWN, APRIL 15, 2003.**

Madame Speaker and Deputy Speaker;
Chairperson and Deputy Chairperson of the Council of Provinces;
Deputy President;
Chief Justice and Members of the Judiciary;
Former Members of the Truth and Reconciliation Commission;
Ministers and Deputy Ministers;
Distinguished Premiers;
Honoured Traditional Leaders;
Leaders of the Chapter Nine Institutions;
Honourable Leaders of our Political Parties;
Your Excellencies, Ambassadors and High Commissioners;
Honourable Members;
Distinguished Guests;
Fellow South Africans:

We have convened today as the elected representatives of the people of South Africa to reflect on the work of the Truth and Reconciliation Commission, to examine its Recommendations and to find answers, in practical terms, to the question - where to from here!

We wish to acknowledge the presence of Commissioners of the erstwhile TRC, who took time off their busy schedules to join us in commending the Report to our national parliament.

I am confident that I speak on behalf of all Honourable Members when I say to these Commissioners, and through them, to Archbishop Desmond Tutu and the other Commissioners not present here today, that South Africa sincerely appreciates the work that they have done. Our thanks also go to the staff of the Commission and all who contributed to the success of the work of the TRC, which we are justified to celebrate today.

They did everything humanly possible to realise the objectives of a process novel in its conception, harrowing in its execution and, in many respects, thankless in balancing expectation and reality. Our assessment of the TRC's success cannot therefore be based on whether it has brought contrition and forgiveness, or whether at the end of its work, it handed us a united and reconciled society. For this was not its mandate. What the TRC set out to do, and has undoubtedly achieved, is to offer us the signposts in the Long March to these ideals.

What it was required to do and has accomplished, was to flag the dangers that can beset a state not premised on popular legitimacy and the confidence of its citizens, and the ills that would befall any society founded on prejudice and a belief in a "master race".

The extent to which the TRC could identify and pursue priority cases; its ability to bring to its hearings all relevant actors; the attention that it could pay to civil society's role in buttressing an illegitimate and illegal state; and the TRC's investigative capacity to pursue difficult issues with regard to which the actors had decided to spurn its call for co-operation – all these weaknesses were those of society and not the TRC as such.

And, we make bold to say that all these complexities make the product of the work of the TRC that much more outstanding and impressive.

The pain and the agony that characterised the conflict among South Africans over the decades, so vividly relived in many hearings of the Commission, planted the seed of hope – of a future bright in its humanity and its sense of caring.

It is a future whose realisation gave life to the passion for the liberation of our people, of Oliver Tambo and Chris Hani, the tenth anniversary of whose passing away we mark this month. This includes others such as Robert Mangaliso Sobukwe and Steve Bantu Biko, who passed away 25 years ago this year and last year respectively. They joined and have since been joined by many other patriots to whom freedom meant life itself.

We are indebted to all of them; and we shall work to ensure that their memory lives on in the minds of generations to come, inspired by our common determination that never again should one South African oppress another!

At a critical moment in our history, as a people, we came to the conclusion that we must, together, end the killing. We took a deliberate decision that a violent conflict was neither in the interest of our country nor would it solve our problems.

Together, we decided that in the search for a solution to our problems, nobody should be demonised or excluded. We agreed that everybody should become part of the solution, whatever they might have done and represented in the past. This related both to negotiating the future of our country and working to build the new South Africa we had all negotiated.

We agreed that we would not have any war crimes tribunals or take to the road of revenge and retribution.

When Chris Hani, a great hero of our people was murdered, even as our country was still governed by a white minority regime, we who represented the oppressed majority, said let those who remained in positions of authority in our country carry out their responsibility to bring those who had murdered him to book. We called on our people neither to take the law into their hands nor to mete out blind vengeance against those they knew as the beneficiaries of apartheid oppression.

We imposed a heavy burden particularly on the millions who had been the victims of this oppression to let bygones be bygones. We said to them – do not covet the material wealth of those who benefited from your oppression and exploitation, even as you remain poor.

We walked among their ranks saying that none among them should predicate a better future for themselves on the basis of the impoverishment of those who had prospered at their expense. We said to them that on the day of liberation, there would be no looting. There would be celebrations and no chaos.

We said that as the majority, we had a responsibility to make our day of liberation an unforgettable moment of joy, with none condemned to remember it forever as a day of bitter tears.

We said to our people that they should honour the traditions they had built and entrenched over centuries, never to hate people because of their colour or race, always to value all human beings, and never to turn their backs on the deeply-entrenched sentiment informed by the spirit of ubuntu, to forgive, understanding that the harm done yesterday cannot be undone today by a resolve to harm another.

We reminded the masses of our people of the values their movement for national liberation had upheld throughout a turbulent century, of everything they had done to defend both this movement and its values, of their obligation never to betray this noble heritage. Our people heeded all these calls.

By reason of the generosity and the big hearts of the masses of our people, all of us have been able to sleep in peace, knowing that there will be no riots in our streets. Because these conscious masses know what they are about, the Truth and Reconciliation Commission was able to do its work enjoying the cooperation of those who for ages had upheld the vision of a united humanity, in which each would be one's brother and sister. These are an heroic people whose greatest reward is the liberation of their country.

Of them, the TRC says: "Others did not wish to be portrayed as a 'victim'. Indeed, many said expressly that they regarded themselves instead as soldiers who had voluntarily paid the price of their struggle...Many have expressed reservations about the very notion of a 'victim', a term which is felt to denote a certain passivity and helplessness...Military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims', as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures...The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists."

Some of these, who had to go through the torture chambers of the apartheid regime to bring us our liberty, are with us in this chamber today. There are others who sit on the balcony as visitors, who lost their loved ones whom they pride as liberators, and others who also suffered from repression.

Surely, all of us must feel a sense of humility in the face of such selfless heroism and attachment to principle and morality, the assertion of the nobility of the human spirit that would be demeaned, denied and degraded by any suggestion that these heroes and heroines are but mere 'victims', who must receive a cash reward for being simply and deeply human.

I know there are some in this House who do not understand the meaning of what I have just said. They think I have said what I have said to avoid the payment of reparations to those whom the TRC has identified as 'victims', within the meaning of the law.

Indeed, the TRC itself makes the gratuitous comment (para 16, p 163, Vol 6) that: "Today, when the government is spending so substantial a portion of its budget on submarines and other military equipment, it is unconvincing to argue that it is too financially strapped to meet this minimal (reparations) commitment."

Apart from anything else, the government has never presented such an argument. It is difficult to understand why the Commission decided to make such a statement.

Elsewhere in Vol 6, the Rev Frank Chikane, Director General in the Presidency and former General Secretary of the South African Council of Churches, is falsely reported as having made a presentation to the Amnesty Committee, which he never did.

He is then said to have told this Committee that he had participated in killing people. We do not understand how this grave and insulting falsification found its way into the Report of the TRC. We are pleased to report that Archbishop Tutu has written to Rev Chikane to apologise for this inexplicable account.

The poet, Mongane Wally Serote teaches us: 'to every birth its blood'. And so, today we acknowledge the pain that attended the struggle to give birth to the new life that South Africa has started to enjoy. In this era of increased geopolitical tension, we dare celebrate as South Africans that we found home-grown solutions that set us on a course of reconstruction and development, nation-building, reconciliation and peace among ourselves.

At this time, when great uncertainty about the future of our common world envelops the globe, we dare stand on mountain-tops to proclaim our humble contribution to the efforts of humanity to build a stable, humane and safer South Africa, and by extension, a more stable, more humane and safer world.

Honourable Members;

If we should find correct answers to the question, where to from here, we will need to remind ourselves of the objectives of the TRC from its very inception, so aptly captured in the preamble to the Promotion of National Unity and Reconciliation Act:

"...the Constitution of the Republic of South Africa, 1993 provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and Injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race , class, belief or sex;

"...the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society; "...it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

"...the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation".

I am certain that we are all at one that the pursuit of national unity, the well-being of all South African citizens and peace, require reconciliation among the people of South Africa and the reconstruction of our society.

These are the larger and fundamental objectives that should inform all of us as we work to give birth to the new South Africa. The occasion of the receipt of the Report of the TRC should give us an opportunity to reflect on these matters.

Both singly and collectively, we should answer the question how far we have progressed in the last nine years towards the achievement of the goals of national unity, national reconciliation and national reconstruction. Both singly and collectively, we have to answer the question, what have we contributed to the realisation of these goals.

These larger questions, which stand at the heart of what our country will be, did not fall within the mandate of the Truth and Reconciliation Commission. The TRC was therefore but an important contributor to the achievement of the larger whole, occupying an important sector within the larger process of the building of a new South Africa.

As stated in the Act, the TRC had to help us to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights occurred, and to make the findings known in order to prevent a repetition of such acts in future.

It had to help us to promote understanding and avoid vengeance, to extend reparation to those who had been harmed and discourage retaliation, to rely on the spirit of ubuntu as a deterrent against victimisation.

The TRC has done its work as was required. As stipulated in the TRC Act, we are here to make various recommendations to our national parliament, arising out of the work of the TRC.

As the Honourable Members are aware, there is a specific requirement in the law that parliament should consider and take decisions on matters relating particularly to reparations. It would then be the task of the Executive to implement these decisions.

The law also provides that the national legislature may also make recommendations to the Executive on other matters arising out of the TRC process, as it may deem fit.

Let us now turn to some of the major specific details that the TRC enjoins us to address.

The first of these is the matter of reparations.

First of all, an integrated and comprehensive response to the TRC Report should be about the continuing challenge of reconstruction and development: deepening democracy and the culture of human rights, ensuring good governance and transparency, intensifying economic growth and social programmes, improving citizens' safety and security and contributing to the building of a humane and just world order.

The TRC also argues for systematic programmes to project the symbolism of struggle and the ideal of freedom. This relates to such matters as academic and informal records of history, remaking of cultural and art forms, erecting symbols and monuments that exalt the freedom struggle, including new geographic and place names. The government accepts these recommendations.

Special emphasis will continue to be paid to rehabilitation of communities that were subjected to intense acts of violence and destruction. Experience gained with the projects in Katorus in Gauteng and Mpumalanga in KwaZulu/Natal demonstrates that great progress can be made in partnership between communities and government.

Further, with regard to specific cases of individual victims identified by the TRC Act, government has put in place and will intensify programmes pertaining to medical benefits, educational assistance and provision of housing and so on. From time to time, Ministers have elaborated and will continue to expatiate on the implementation of these and other related programmes.

The TRC has reported that about 22 000 individuals or surviving families appeared before the Commission. Of these, about 19 000 required urgent reparations, and virtually all of them, where the necessary information was available, were attended to as proposed by the TRC with regard to interim reparations.

With regard to final reparations, government will provide a once-off grant of R30 000 to those individuals or survivors designated by the TRC. This is over and above other material commitments that we have already mentioned.

We intend to process these payments as a matter of urgency, during the current financial year. Combined with community reparations, and assistance through opportunities and services we have referred to earlier, we hope that these disbursements will help acknowledge the suffering that these individuals experienced, and offer some relief.

We do so with some apprehension, for as the TRC itself has underlined, no one can attach monetary value to life and suffering. Nor can an argument be sustained that the efforts of millions of South Africans to liberate themselves, were for monetary gain. We are convinced that, to the millions who spared neither life nor limb in struggle, there is no bigger prize than freedom itself, and a continuing struggle to build a better life for all.

The second of the specific details in the TRC recommendations pertains to the issue of amnesty. A critical trade-off contained in the TRC process was between "normal" judicial processes on the one hand, and establishment of the truth, reparations and amnesty on the other.

Besides the imperatives of managing the transition, an important consideration that had to be addressed when the TRC was set up, was the extent to which the new democratic state could pursue legal cases against perpetrators of human rights violations, given the resources that would have to be allocated to this, the complexities of establishing the facts beyond reasonable doubt, the time it would take to deal with all the cases, as well as the bitterness and instability that such a process would wreak on society.

The balance that the TRC Act struck among these competing demands was reflected in the national consensus around provision of amnesty – in instances where perpetrators had provided the true facts about particular incidents – and restorative justice which would be effected in the form of reparations. Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter?

Let us start off by reiterating that there shall be no general amnesty. Any such approach, whether applied to specific categories of people or regions of the country, would fly in the face of the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past,

but also in the creation of a new ethos within our society.

Yet we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process. Among these are individuals who were misled by their leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel. Yet other operatives expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases; and this was not to be.

This reality cannot be avoided.

Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations.

We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing.

However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our Intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation.

This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts.

It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today; for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity.

This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts.

Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action.

Relevant Departments are examining the practical modalities of dealing with this matter; and they will also establish whether specific legislation is required in this regard.

We shall also endeavour to explain South Africa's approach on these matters to sister-governments across the world. Our response to any judicial matters from these countries will be handled in this spirit and through the legal system. In this regard, we wish to reiterate our call to governments that continue to do so, that the maltreatment of former anti-apartheid fighters, based on the legal definitions of an illegal regime characterised by the United Nations as a crime against humanity, should cease.

In the recent past, the issue of litigation and civil suits against corporations that benefited from the apartheid system has sharply arisen. In this regard, we wish to reiterate that the South African Government is not and will not be party to such litigation.

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In addition, we consider it completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country and the observance of the perspective contained in our constitution of the promotion of national reconciliation.

While Government recognises the right of citizens to institute legal action, its own approach is informed by the desire to involve all South Africans, including corporate citizens, in a co-operative and voluntary partnership to reconstruct and develop South African society. Accordingly, we do not believe that it would be correct for us to impose the once-off wealth tax on corporations proposed by the TRC.

Consultations are continuing with the business community to examine additional ways in which they can contribute to the task of the reconstruction and development of our society, proceeding from the premise that this is in their own self-interest. In addition to intensifying work with regard to such tasks as poverty eradication, and programmes such as Black Economic Empowerment, encouraging better individual corporate social responsibility projects, implementation of equity legislation and the Skills Training Levy, we intend to improve the work of the Business Trust.

In this context, we must emphasise that our response to the TRC has to be integrated within the totality of the enormous effort in which we are engaged, to ensure the fundamental social transformation of our country. This requires that at all times, we attain the necessary balance among the various goals we have to pursue.

The TRC also recommends that what it describes as the beneficiaries of apartheid should also make contributions to a reparation fund. The government believes that all South Africans should make such contributions. In the pursuit of the goal of a non-racial society, in which all South Africans would be inspired by a common patriotism, we believe that we should begin to learn to work together, uniting to address the common national challenges, such as responding to the consequences of the gross violations of human rights of which the TRC was seized.

In this regard, I am certain that members of our government will be among the first to make their contributions to the reparation fund, despite the fact that they stood on one side of the barricades as we engaged in struggle to end the apartheid system.

Many in our country have called for a National Day of Prayer and Traditional Sacrifice to pay tribute to those who sacrificed their lives and suffered during the difficult period of oppression and repression whose legacy remains with us. The government accepts this suggestion and will consult as widely as possible to determine the date and form of such prayer and traditional sacrifice. This is consistent with and would be an appropriate response to the proposals made by the TRC for conferences to heal the memory and honour those who were executed.

We shall also continue to work in partnership with countries of the sub-continent, jointly to take part in the massive reconstruction and development effort that SADC has identified as critical to building a better life for all. The peoples of Southern Africa, including the majority in South Africa endured untold privations and were subjected to destabilisation and destruction of property and infrastructure. They all deserve the speeding up of programmes of integration, reconstruction and development that governments of the region have agreed upon.

Madame Speaker;

The Truth and Reconciliation Commission has made many detailed observations and recommendations on structures and systems, which will be dealt with by relevant Ministers and Departments.

For the purpose of reparations, the government has already established the President's Fund, which is now operational, and has, as we earlier indicated, successfully dealt with the matter of urgent reparations. Like the TRC, we do hope that citizens from all sectors will find it within themselves to

make a contribution to this Fund. Most of the resources that have been allocated for individual and community reparations that we referred to above will be sourced from this Fund, over and above the normal work of the relevant Departments.

We concur with the TRC that intensive work should be undertaken on the matter of monuments as well as geographic and place names. A Trust with the requisite infrastructure, headed by Mongane Wally Serote has been set up to implement the main project in this regard, which is the construction of the Freedom Park whose constituent parts are the Memorial, the Garden of Remembrance and the Museum. This should start by the tenth anniversary of freedom in 2004.

The National Directorate of Public Prosecutions and relevant Departments will be requested to deal with matters relating to people who were unaccounted for, post mortem records and policy with regard to burials of unidentified persons. We would like to encourage all persons who might have any knowledge of people still unaccounted for to approach the National Directorate of Public Prosecutions, the South African Police Service and other relevant departments.

The Department of Justice and Constitutional Development will monitor the implementation of all these programmes, and it will report to Cabinet on an on-going basis.

What we have identified today, arising out of the report of the TRC, forms part of the panoply of programmes that define the first steps in a journey that has truly begun. South African society is changing for the better. The tide has turned and the people's contract for a better tomorrow is taking shape.

The goals we defined for ourselves a decade ago, as we adopted the interim Constitution, to pursue national unity, to secure peace and the well-being of all South African citizens, to achieve national reconciliation and the reconstruction of our society, have not fully been realised, despite the progress we have made.

The situation we face demands that none of us should succumb to the false comfort that now we live in a normal society that has overcome the legacy of the past, and which permits us to consider our social tasks as mere business as usual.

Rather, it demands that we continue to be inspired by the determination and vision that enabled us to achieve the transition from apartheid rule to a democratic order in the manner that we did. It demands that we act together as one people to address what are truly national tasks.

We have to ask ourselves and honestly answer simple questions.

Have we succeeded to create a non-racial society? The answer to this question is no!

Have we succeeded to build a non-sexist society? The answer to that question is no!

Have we succeeded to eradicate poverty? Once more the answer to that question is no!

Have we succeeded fully to address the needs of the most vulnerable in our society, the children, the youth, people with disabilities and the elderly? Once again the answer to this question is no!

Without all this, it is impossible for us to claim that we have met our goals of national reconciliation and reconstruction and development. It is not possible for us to make the assertion that we have secured the well-being of all South African citizens.

The road we have travelled and the advances we have made convey the firm message that we are moving towards the accomplishment of the objectives we set ourselves. They tell us that, in the end, however long the road we still have to travel, we will win.

In the larger sense, we were all victims of the system of apartheid, both black and white. Some among us suffered because of oppression, exploitation, repression and exclusion. Others among us suffered because we were imprisoned behind prison walls of fear, paralysed by inhuman beliefs in our racial superiority, and called upon to despise and abuse other human beings. Those who do such things cannot but diminish their own humanity.

To be true to ourselves as human beings demands that we act together to overcome the legacy of this common and terrible past. It demands that we do indeed enter into a people's contract for a better tomorrow.

Together we must confront the challenge of steering through a complex transition that demands that we manage the historical fault-lines, without papering over the cracks, moved by a new and common patriotism.

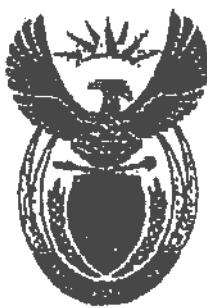
It says to all of us that we must honour those who shed their blood so that we can sit together in this Chamber by doing all the things that will make it possible for us to say, this South Africa that we have rebuilt together, truly belongs to all who live in it.

I am honoured to commend the Report of the Truth and Reconciliation Commission to our National Houses of Parliament and the nation.

Thank you.

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MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

Private Bag X278 Private 0001 Tel: (012) 315 1761/2/3 Fax: (012) 315 1748
Private Bag X268 Cape Town 2000 Tel: (021) 487 1700 Fax: (021) 487 1730

Adv Vusi Pikoli
National Director of Public Prosecutions
Private Bag X752
PRETORIA
0001

8 February 2007

Dear Adv Pikoli

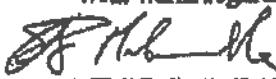
RE: TRC MATTERS

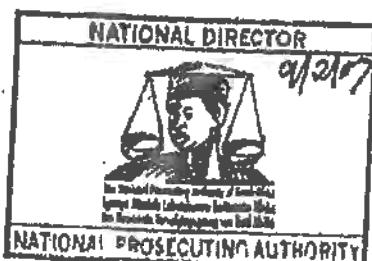
Our discussion in the above matter on Tuesday 6 February 2007 refers.

I must advise you at the outset that the media articles alleging that the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise. In our discussions you briefly mentioned to me that the NPA will not be going ahead with the prosecutions. As you had undertaken to advise me in writing, I will appreciate it if you could advise me urgently on the matter so that there can be certainty.

I trust that you find the above in order.

With warm regards


MRS B S MABANDLA
MINISTER



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Cops up for apartheid crimes

<http://www.news24.com/SouthAfrica/News/Cops-up-for-apartheid...>

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Breaking News. First.

Cops up for apartheid crimes

2007-02-07 07:15

Jan-Jan Joubert and Willem Jordaan

Cape Town - The national prosecuting authority (NPA) has informed three security policemen that they are to be prosecuted for apartheid crimes.

These will be the first prosecutions since the Truth and Reconciliation Commission (TRC).

The case is related to attempts to poison the Rev Frank Chikane, who is now the director-general of the presidency.

Beeld has the names of the three security police officers and has established that they have been informed by their legal representative that the NPA intends to go ahead with prosecutions.

The move paves the way for prosecution of former minister of law and order Adriaan Vlok and former chief of police General Johan van der Merwe, who are both fully aware of, and prepared for, what will follow, according to sources.

Address to the nation

The NPA did not want to confirm or deny that the prosecutions were to begin.

In political circles, speculation is rife that the planned prosecutions could open a hornet's nest in the wake of President Thabo Mbeki's address to the nation.

The question of prosecuting apartheid-era crimes is politically loaded, as some believe that they're necessary to conclude the TRC process, while others feel they could destroy reconciliation.

It appears that members of the latter group could use high-level political pressure to try to prevent prosecutions.

In terms of policy and the constitution, the decision to prosecute lies with the national director of prosecutions, advocate Vusi Pikoli, and not with the government.

Questions already have been asked in high circles about the equanimity of the NPA, and if well-known African National Congress figures who did not get amnesty, would be prosecuted.

One of the ANC members whose amnesty application was turned down was Thabo Mbeki, who applied with a number of other ANC members.

Vlok was in the news recently when he washed Chikane's feet to atone for the attempt to poison him while he was general secretary of the South African Council of Churches.

The three security policemen were connected to the same plot to kill Chikane.

Vlok's step was lauded last year by Mbeki, who added that South Africans should learn to listen more closely to each other across the boundaries of apartheid.

Vlok did not want to respond to rumours that he could be prosecuted. Van der Merwe also remained silent.

John Wagner, legal representative of the three security policemen, said the NPA informed him of their decision at the end of last month.

He did not want to comment on any particulars.

The latest events follow the tabling in parliament last January of a new prosecution policy on apartheid crimes, among other things.

The victim has a say

It includes a clause that gives the NPA discretion on whether or not to prosecute, if it is not in "the national interest".

One of the factors that must be taken into account is whether the apartheid victim wants the prosecution to go ahead.

In Chikene's case, he has indicated that he is not interested in prosecution, but that he wants full disclosure on the attempt on his life.

He has also indicated that the government is not interested in time-consuming prosecutions.

The NPA has indicated, nevertheless, that prosecution will go ahead.

Beeld

Dossiere oor leiers se vergrype lê al jare in kluis ANC-leers 'verdwyn'

Sonja Carstens Pretoria

Die polisie het nog niks gedoen om meer bewyse en getuienis te kry vir die moontlike vervolging van 37 destydse leiers van die ANC aan wie amnestie vir apartheidsmisdade geweier is nie.

Rapport het die afgelope week uit onberispelike bronne verneem die polisiedossiere wat twee afgetrede polisielede vroeër saamgestel het, is al jare toegesluit by die hoofkantoor van die polisie se speurdienste. Die bronne se name word op versoek verswyg weens die sensitiewe poste wat hulle bekleed.

Volgens die bronne is geen verdere ondersoekwerk na die inligting in die dossiere gedoen nie.

Die dossiere is vroeër verwyder uit 'n kluis in die kantore van die direkteur van openbare vervolgings (DOV) in Pretoria waar adv. Paul Fick, SC, hoof van die vervolgingspan wat die vermeende Boeremaglede aankla, die hoof was van 'n span wat verder ondersoek ingestel het met die oog op moontlike vervolging.

Die nasionale vervolgingsgesag (NV) het die ondersoeke jare gelede weggeneem van Fick. Hy wou die afgelope week glad nie op vrae reageer nie.

Rapport verneem sedert dit uit Fick se kantoor verwyder is, is dit toevertrou aan 'n span by die NV wat dit verder moes ondersoek, maar wat weinig aan die ondersoeke gedoen het.

Hierna is adv. Anton Ackermann, SC, in Junie 2003 aangestel as hoof van 'n eenheid wat onder meer misdade teen die staat moes ondersoek. Ackermann was die aanklaer in die Vlok-Van der Merwe-verhoor.

Genl. Johan van der Merwe, voormalige polisiehoof, het Vrydag gesê "oorgenoeg getuenis" bestaan teen die ANC-leierskorps oor hul betrokkenheid by die landmynontploffing in 1995 waarin verskeie lede van die Van Eck- en De Necker-gesin gesterf het.

In Junie 2004 het mnr. Sipho Ngwema, destydse woordvoerder van die NV, gesê nie een van die 37 leiers, onder wie pres. Thabo Mbeki, mnr. Jacob Zuma, komm. Jackie Selebi, polisiehoof, mnr. Linda Mti, vorige kommissaris van korrektiewe dienste, en min. Essop Pahad kan vervolg word nie omdat "daar eenvoudig nie genoeg getuenis is om 'n klagstaat op te stel nie".

Ngwema het destyds gesê die NV weet nie wé het wát gedoen of wie die opdragte gegee het nie. "Indien die NV dit met die getuenis tot sy besikking sou doen, is dit net so goed die vervolger besluit oudpres. PW Botha of oudpres. FW de Klerk moet teregstaan weens voorvalle in die apartheidjare waarvoor niemand anders verantwoordelikheid aanvaar het nie," was Ngwema se woorde.

Mnr. Dirk van Eck het reeds aangedui hy is gereed om 'n klag in te dien teen ANC-leiers wat nie amnestie ontvang het nie vir die aanval wat meer as die helfte van sy gesin uitgewis het.

Die politieke omstredenheid oor vervolgings vir misdade uit die verlede sal uitbrei as die NV 'n vervolging instel teen genl. Basie Smit, 'n voormalige hoof van die polisie se speur- en velligheidstak. Een van die klosules in Vlok en Van der Merwe se pleitooreenkoms dwing hulle om in 'n moontlike verhoor teen Smit te getuig.

Rapport verneem Ackermann het vroeër skriftelik opdrag gegee dat die polisie nog getuenis in die ondersoeke na die ANC-leiers moet versamel met die oog op moontlike vervolging. Maar die afgelope week het die polisie geweier om te sê of die opdrag nagekom is en wat die vordering daarmee is.

Dir. Sally de Beer, Selebi se woordvoerder, het navrae na dir. Phuti Setati, woordvoerder van nasionale speurdienst, verwys.

"Die polisie wil sy kommentaar oor die saak voorbehou," het Setati gesê.

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scarstenss@rapport.co.za

) Vlok en Van der Merwe vra Mbeki en De Klerk om in te gryp – bl. 14

Google translate:

Dossiers on leaders' abuses lay for years in safe ANC files' disappear '
Sonja CarstensPretoria

The police have done nothing to get more evidence and testimony for the possible prosecution of 37 former leaders of the ANC who amnesty for apartheid crimes were refused.

Report this week from impeccable sources learned that the police dockets that two retired police officers have made earlier, for years locked up at the headquarters of the police's detective services. The sources' names are withheld at the request because of the sensitive positions that they hold. According to the sources, no further investigation into the information taken in the case files. The dossiers were earlier removed from a safe in the office of the Director of Public Prosecutions (DPP) in Pretoria Advocate. Paul Fick, SC, head of the prosecution team who accuse the alleged Boer force members, the head of a team that further investigation instituted with a view to possible prosecution.

The National Prosecuting Authority (NPA) has taken the examinations years ago Fick. He wanted the past week did not respond at all to questions.

Butchery since it was removed from Fick's office, it was entrusted to a team at the NA that it had investigated further, but that did little to investigations.

After this, Adv. Anton Ackermann, SC, was appointed in June 2003 as head of a unit that had investigated include crimes against the state. Ackermann was the prosecutor in the Vlok Van der Merwe trial.

Gen. Johan van der Merwe, a former police chief, said Friday "ample evidence" exists against the ANC leadership over their involvement in the landmine explosion in 1995 in which several members of the Van Eck- and the Necker family died.

In June 2004, Mr. Sipho Ngwema former spokesperson of the NPA, said none of the 37 leaders, including President. Thabo Mbeki, Mr. Jacob Zuma, Comm. Jackie Selebi, the police chief, Mr. Linda Mti, former commissioner of correctional services, and more. Essop Pahad can be prosecuted because "there is simply not enough evidence for an indictment to prepare,".

Ngwema said then that the NPA do not know who has what or who did not give the orders.

"If the SA would do this with the evidence at its disposal, it is as well the prosecutor decides former president. PW Botha or former president. FW de Klerk arraigned because of incidents in the apartheid years for which no one has accepted responsibility, "was Ngwema's words.

Mr. Dirk van Eck has indicated he is ready to file a complaint against ANC leaders not yet received amnesty for the attack that wiped out more than half of his family.

The political controversy over prosecutions for crimes of the past will expand as the NPA a prosecution against Gen. Institute. Basie Smit, a former head of the police detective and security branch. One of the clauses of Vlok and Van der Merwe's plea agreement forcing them into a possible trial to testify against Smith.

Butchery Ackermann had earlier instructed in writing that the police have evidence in the investigation of the ANC leaders have gathered with a view to possible prosecution. But last week, the police refused to say whether the assignment is carried out and the progress it.

Dir. Sally de Beer, Selebi's spokesperson, referred questions to Dir. Phuti RAF spokesman national detective refers.

"The police want his comments on the case reserved," the RAF said.

scarstenss@rapport.co.za

) Vlok and Van der Merwe asked Mbeki and De Klerk to intervene - p. 14

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<http://www.gov.za/national-prosecuting-authority-rapport-article-ackermann>

National Prosecuting Authority on Rapport article on A Ackermann

21 Aug 2007

Response to article in rapport

21 August 2007

With reference to the statements attributed to Anton Ackermann SC in the rapport of 19 August 2007, the National Prosecuting Authority (NPA) wishes to place on record the following:

- * In May 2004, Bulelani Ngcuka, the then National Director of Public Prosecutions, declined to prosecute the African National Congress (ANC) leadership in connection with the conflicts of the past. A press statement confirming this was released on 15 May 2004.
- * Since that press release the National Prosecuting Authority and in particular Ackermann has not directed any further investigation into this matter.
- * Subsequent to the media report by the Rapport on 19 August 2007, and on request by the National Prosecuting Authority, the South African Police Service (SAPS) provided a copy of letter purporting to be written by Ackermann on 26 June 2006, to the National Prosecuting Authority. The NPA regards this letter as a forgery and has authorised an immediate investigation into the matter.

Contact person:

Tlali Tlali

Cell: 082 333 3880

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28-AUG-2007 16:40 FROM DEPT OF JUSTICE

TO 0128049329

VPP6 P.01/2

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MINISTRY
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA
Private Bag X 271, Pretoria, 0001, Tel (012) 318 1532, Fax (012) 318 1748
Private Bag X 285, Cape Town, 8000, Tel (021) 407 1700, Fax (021) 407 1700

Our ref: 2/346
Enq: Adv. M. Simelela

Adv V P Pikoli
National Director of Public Prosecutions
Office of the National Director of Public Prosecutions
Private Bag X 752
PRETORIA
0001

Dear Adv Pikoli

**MEETING OF THE SUB COMMITTEE OF THE JCPS CABINET COMMITTEE ON
POST TRC MATTERS**

1. I refer to the discussions in the above meeting of 23 August 2007.
2. You will recall that both you and the National Commissioner, Mr. J. Sebele, provided the sub-committee with different facts on the Rapport article regarding an alleged forgery of certain NPA documents.
3. You further confirmed that you have instituted a thorough investigation into the alleged forgery. I was however not advised of this decision and the basis thereof.
4. In the course of the discussion, it became clear that Mr. J. Sebele was of the view that there is no truth in the Rapport article, and he produced documents to support his argument that indeed there is an investigation by the NPA on certain political office bearers.
5. It was suggested at the meeting then that it would be useful if you could respond to the allegation that there is an investigation as mentioned above.

Your urgent response would be highly appreciated. Any information that could shed light to the issues will also be welcome.

I trust that you find the above in order.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. S. Mabandla'.

MS B S MABANDLA, MP
Minister for Justice and Constitutional Development
Date: 28.08.07



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VPP7

Ref: NDPP/kp

Minister B. Mabandla
Minister of Justice and Constitutional Development
Momentum Building
cnr Prinsloo and Pretorius Streets
PRETORIA

29 August 2007

Dear Minister

**MEETING OF THE SUB-COMMITTEE OF THE JCPS CABINET
COMMITTEE ON POST TRC MATTERS**

1. I refer to your fax of 28 August 2007
2. I refer to the meeting of the sub-committee of 23 August 2007, which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the sub-committee members.
3. I confirm that I stand by what I said about the National Commissioner of Police and the South African Police Service (SAPS).
4. I confirm and repeat the following:
 - 4.1 That I have instructed that an investigation be carried out in respect of the forgery of the memo by Adv. Ackermann SC.
 - 4.2 As borne by the attached annexure and the numerous communications to the Minister, there is no investigation by the NPA or any of its officials against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police. I give the

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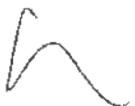
Minister the assurance that no investigations or decisions to prosecute in these matters are done without my express authorization as per the prosecution guidelines as they pertain to the post TRC matters.

5. While I am not certain as to what the meaning of paragraph 4 of your letter is, it is, however, clear that my account of the position as it relates to the NPA's handling of the post TRC matters has been completely ignored.
6. Arising from allegations made by two police officers, as well as a threat by a lawyer representing former Security Branch members who were facing prosecution, my predecessor had the material relating to the ANC leadership perused and satisfied himself that there was no basis for the leadership to be investigated. He also briefed your predecessor, as well as members of the Office of the Presidency to this effect. In my presence and in my capacity as the then Director General of the Department of Justice & Constitutional Development, all the police dockets stored at the Office of the Director of Prosecutions: Pretoria were handed over to the police. These events all took place in early and mid-2004. I confirm as well that the Minister was made aware of all these facts as far back as December 2004 and I am surprised that this issue is now resurfacing.
7. In view of all that is transpiring now, I request an urgent meeting with the Minister, my Deputies and myself. Further, I request an opportunity to appear before the National Security Council to give a true account of this issue.

Kind regards

Adv. VP Pikoli
National Director of Public Prosecutions
Date:

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"TAN 8"
"ICT" 217

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

Applicant

And

**NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

First Respondent

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE**

Second Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

TP (initials)

WJ (initials)

WILLEM SCHOON

Ninth Respondent

AFFIDAVIT

I, the undersigned

ANTON ROSSOUW ACKERMANN

state under oath as follows:

INTRODUCTION

1. I am a senior counsel, a former Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions (the first respondent in this matter, hereinafter referred to as the "first respondent" or the "NDPP"). I am currently retired.

2. In terms of section 13(1)(c) of the National Prosecuting Act No. 32 of 1998 ("the Act") I was appointed by President T M Mbeki, under a Presidential Proclamation dated 24 March 2003, to head the Priority Crimes Litigation Unit ("PCLU"). A copy of this proclamation is annexed to the founding affidavit marked "TN28". I served as head of the PCLU between 2003 and 31 March 2013. I retired from the National Prosecuting Authority on 31 March 2013.

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3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct. As I have not studied all the relevant official documentation I stand to be corrected on certain details, such as dates.
4. I depose to this affidavit at the request of the applicant's legal representatives and in order to ensure that all the relevant facts are placed before this Court.

EXPERIENCE

5. I have worked as a prosecutor for more than 40 years. I have prosecuted several high profile cases in South Africa. I set out hereunder an outline of my professional career:
 - 5.1. Joined the Department of Justice in 1970.
 - 5.2. Graduated from the University of Potchefstroom with the degrees of B Juris and LLB in 1975.
 - 5.3. Admitted as an advocate in 1976.
 - 5.4. Served with the office of the Attorney-General in Pietermaritzburg between 1977 and 1989.
 - 5.5. Appointed Deputy Attorney General: Transvaal in 1989 and served in this post until 2003.

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- 5.6. Senior Counsel status was conferred on me in 1993.
- 5.7. Appointed head of the Priority Crimes Litigation Unit (PCLU) in March 2003.
- 5.8. I retired in 2013.

CONFIRMATION

6. I confirm the contents of the founding affidavit of Thembisile Phumelele Nkademeng ("the applicant") and the supporting affidavit of Vusumzi Patrick Pikoli insofar as they relate to me.
7. Although I was not specifically aware of an official policy or decision to stop, obstruct or hold back the investigation and possible prosecution of the cases recommended for prosecution by the Truth and Reconciliation Commission ("TRC"), including the kidnapping, assault and murder of Nokuthula Aurelia Simelelane, ("Nokuthula") in the case: Priority Investigation: JV Plein: 1469/02/1996, I can confirm that I was effectively stopped from pursuing the investigation and prosecution of the so-called political cases arising from South Africa's past ("the TRC cases").
8. In this affidavit I set out my experiences in trying to pursue the prosecution of the TRC cases and how I was effectively stopped from carrying out this work.

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BACKGROUND

9. If my memory serves me correctly, in 1998 the investigation dockets held by the Unit headed up by Transvaal Attorney General Dr. Jan D'Oliveira Unit were transferred to the National Prosecuting Authority ("NPA"). In terms of a directive issued in 1999 by the then National Director of Public Prosecutions ("NDPP"), the TRC related cases were transferred from the then Directorate of Special Operations ("DSO"), and from the various offices of the Directors of Public Prosecutions ("DPP") and the South African Police Service ("SAPS") to the office of the NDPP.
10. In 1999, a working group called the Human Rights Investigative Unit ("HRIU") was established within the NPA by the then National Director of Public Prosecutions ("NDPP"), Bulelani Ngcuka, on the initiative of the then Minister of Justice, Dullah Omar. The head of the Unit was Vincent Saldanha. It was mandated to review, investigate and prosecute cases in which perpetrators had been denied amnesty or in which perpetrators had not applied for amnesty. The HRIU continued operations until 2000, however it instituted no prosecutions.
11. In 2000, the dockets held by the HRIU were transferred to the Directorate of

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Special Operations ("DSO"), more widely known as the Scorpions. An entity was established within the DSO to handle the TRC cases known as the Special National Projects Unit ("SNPU"), which was headed by Advocate Chris Macadam. The SNPU operated until 2003, but it too instituted no prosecutions.

12. On 24 March 2003 I was appointed to head up the newly established PCLU. The mandate of the PCLU is to manage and direct investigations and prosecutions in relation to various priority crimes, including serious national and international crimes, such as terrorism, sabotage, high treason, sedition, foreign military crimes and other priority crimes as determined by the NDPP.
13. On 15 April 2003, the TRC Report was tabled before Parliament by President Thabo Mbeki who directed that the NDPP must institute prosecutions where appropriate.
14. In May 2003 the then NDPP, Advocate Bulelani Ngcuka, made a determination that all TRC-related cases, in which amnesty had been denied or not applied for, were '*priority crimes*' in terms of the proclamation. This resulted in more than 400 investigation dockets being transferred to my office. Advocate Chris Macadam, attached to my office, and I conducted the initial audit and identified 21 cases as worthy of further investigation.
15. During 2004 and 2005 the PCLU identified 16 cases for further investigation and

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possible prosecution. The Simelane case was one of the cases earmarked for further investigation.

16. In relation to post-TRC prosecutions conducted by the PCLU, only the following cases have been instituted: S v Terre'blanche, S v Blani and S v Nieuwoudt & 2 Others.

16.1. In 2003, the late Eugene Terre' Blanche, former leader of the Afrikaner Weerstandsbeweging, (Afrikaner Resistance Movement), who had been charged with various acts of terrorism during the 1990s, entered into a 'plea agreement' with the PCLU in terms of 105A of the Criminal Procedure Act. Terre' Blanche pleaded guilty to five counts of terrorism in contravention of the Internal Security Act and was sentenced to six years of imprisonment, which was wholly suspended. He had not applied for amnesty. This was the first TRC related case taken up by the PCLU.

16.2. During 2004 I came across the docket of Buyile Roni Blani, an ANC member, who was implicated in the mob killing of two people in 1985. Blani was charged with the killings in 1985 but managed to flee to Angola where he remained in exile until his return in 1992. He did not apply for amnesty. Since the evidence was clear and compelling and the case was already fully investigated I instructed that it should proceed. Blani was arrested and granted bail. On 25 April 2005, following a plea and sentence agreement, he was convicted on all charges and sentenced to five years imprisonment,

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four of which were suspended for five years.

16.3. In 2004, Gideon Nieuwoudt (who died in 2005), Johannes Martin van Zyl, and Johannes Koole were each charged with abduction, assault and murder of the 3 anti-apartheid activists, known as the PEBCO 3.

16.3.1. This was the first case that the PCLU brought in respect of perpetrators who had been denied amnesty. Their applications for amnesty had been denied in 1999.

16.3.2. Shortly after their bail hearings in 2004, Nieuwoudt and van Zyl applied to court to review the decisions to refuse them amnesty. The review was delayed by some 5 years because of the failure of the Department of Justice to file its answering papers. Eventually in 2009 the High Court ruled that an Amnesty Committee be convened to rehear the application of van Zyl.

16.3.3. The case against the three former security policemen was provisionally withdrawn in 2009. The NPA submitted to the High Court that the prosecution could not proceed while there was an amnesty proceeding pending. The Department of Justice filed an affidavit recommending the provisional withdrawal of the criminal charges against the surviving Johannes Koole, and Martin Van Zyl,

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who was seriously ill. The Amnesty Committee was never reconvened and the case against Van Zyl and Koole was never reinstated.

17. On the morning of 11 November 2004 the police was on the verge of effecting the arrests of three former officers of the Security Police on charges which related to the attempted murder of the Rev. Frank Chikane, the former head of the South African Council of Churches in 1989 by poisoning. The three former policemen were former Major-General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden. None had applied for amnesty for this crime.

17.1. On the same morning I received a phone call from Jan Wagenaar, the attorney for the abovenamed suspects. He told me that I would receive a phone call from the Ministry of Justice and I would be advised that the case against his clients must be placed on hold.

17.2. Shortly thereafter I received a phone call from an official in the then Ministry of Justice. I was informed by the said official that a decision had been taken that the Chikane matter should be put on hold pending the development of guidelines to deal with the TRC cases. I told him that that only the NDPP could give me such an instruction.

17.3. A few minutes later the NDPP contacted me and instructed me not to

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proceed with the arrests. I believe that it can be safely assumed that the NDPP was instructed at a political level to suspend these cases.

18. All TRC related investigations and prosecutions were accordingly placed on hold pending the formulation of guidelines in relation to the so-called political cases of the past. These were to be incorporated as amendments to the Prosecution Policy (hereinafter referred to as "the amendments" or "the guidelines"). I was instructed by the NDPP to stop working on all the TRC cases.
19. At least two legal opinions were prepared by my office regarding the constitutionality of the proposed amendments to the Prosecution Policy and submitted to the NDPP. The opinions pointed out that the amendments amounted to a rerun of the TRC's amnesty process and would not survive constitutional scrutiny. At a number of meetings I voiced my opposition to the proposed amendments. I recall that I had numerous consultations with Gerard Nel, the legal adviser to the NDPP, who was playing a leading role in formulating the proposed amendments.
20. This suspension of prosecutions amounted to an effective moratorium on the pursuit of TRC related cases.
21. During 2005 I met with representatives of the Simelane family. They raised a number of requests, including that the PCLU should:

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- 21.1. Investigate with a view to prosecuting Detective Inspector Msebenzi Timothy Radebe, who played a role in the abduction and the torture of Simelane both at Norwood and Northham and who did not apply for amnesty.
- 21.2. Investigate with a view to bringing defeating the ends of justice charges against Coetzee and Pretorius for intimidating the late Sergeant Lengene into making a false statement and for attempting to coach Norman Mkhonza into making a false statement.
- 21.3. Follow up on the results of the examination of the micro cassette tape containing the conversation between Scotch, Pretorius and Coetzee; and follow up on the request for lists of unidentified bodies received by police mortuaries between 1980 and 1996.
- 21.4. Investigate the circumstances of the deaths of two key witnesses, Sergeant Mathibe and Sergeant Lengene.

22. I was not able to assist with these requests as at that stage my hands were tied with the effective moratorium in place pending the issuing of the new Prosecution Policy.
23. In December 2005 the amendments to the Prosecution Policy were issued. These

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amendments permitted the granting of effective indemnities to perpetrators in TRC related cases who did not make use of the erstwhile amnesty process.

- 23.1. The NDPP was authorised to apply the same amnesty criteria used by the TRC but could also decline to prosecute on other open-ended criteria such as the perpetrator's demonstration of remorse, level of indoctrination sustained, attitude towards reconciliation and/ or his willingness to abide by the Constitution.
- 23.2. These criteria would entitle the NDPP to decline to prosecute, even where there was adequate evidence to justify a prosecution in a serious case such as kidnapping or murder.
- 23.3. The PCLU was expected to act under the advisement of a multi-departmental committee which included the National Intelligence Agency and the South African Police Service. The entire process would be carried out behind closed doors.

24. As mentioned above, I was opposed to the amendments to the Prosecution Policy as I felt they violated the constitutional rights of the complainants and constituted unwarranted interference in the prosecutorial independence of the NPA. I again expressed my dissatisfaction with various officials, including the NDPP. In my view the amendments or guidelines were aimed solely at accommodating

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perpetrators and providing them with another avenue to escape justice.

25. Once the guidelines were issued in December 2005 I wanted to proceed with the 5 cases I had identified with good prosecution prospects and the 11 cases which required further investigation. These were identified as "*major priorities*" for the PCLU for the 2006 – 07 period. Moreover a press statement issued by the NDPP during 2006 led to additional requests from victims for further investigations in their cases. However, with the exception of the Chikane matter, during the course of 2006 and 2007, the PCLU was unable to pursue any of the TRC cases for various reasons. These included a lack of investigative capacity as well as difficulties encountered in convening the multi-departmental committee that was meant to advise the PCLU on what cases to pursue.
26. In March 2006 I again met with the representatives of the Simelane family. I had to advise them that I was unable to take the investigation forward as there were no investigators attached to the PCLU. Requests I had made to the SAPS and the DSO for competent and experienced investigators, in this matter and the other TRC cases, had fallen on deaf ears. The said representatives also supplied me with a legal opinion which recommended that those involved in the torture of Ms. Simelane be charged with torture, as a crime against humanity or war crime, in terms of customary international law, since such crimes never prescribe. ,
27. As a result of this meeting the said representatives wrote to the then NDPP, Adv.

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Pikoli, requesting him to reach out to the SAPS and the DSO in order to secure competent investigators for the PCLU as a matter of urgency. These efforts were not successful. In subsequent interactions I advised the said representatives to pursue an inquest rather than a prosecution. I did so because I realized that there was no prospect of a serious investigation or prosecution taking place in the political context that prevailed at the time.

28. During 2006 the then NDPP, Adv Pikoli, appointed a team to review the representations made by the suspects in the Chikane matter who were seeking an indemnity under the amendments to the Prosecution Policy. The team was chaired by Dr. T. Pretorius. I refused to participate in this review as I regarded the said amendments as unconstitutional. After several months the review team concluded that no indemnities should be granted as the full truth had not been disclosed.
29. During 2007 the PCLU eventually returned to the Chikane attempted murder case and in June 2007 the three suspects, together with Adriaan Vlok, former Minister of Police, and Johan van der Merwe, former Commissioner of Police were charged with one count of attempted murder, alternatively conspiracy to murder Chikane. A plea and sentence agreement was agreed upon which the Court confirmed during August 2007. In terms of the plea and sentence agreement the accused all pleaded guilty to the charge of attempted murder. Vlok and van der Merwe were sentenced to ten years imprisonment, wholly suspended for five

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years on the condition that they are not convicted of a similar crime. Otto, Smith and van Staden were sentenced to five years imprisonment, wholly suspended for five years on the condition that they are not convicted of a similar crime.

30. This case ought to have opened the door to the prosecution of General Basie Smit, who succeeded Van der Merwe as Commander of the Security Branch in October 1988, as well as other senior officers of the both the SAPS and the former South African Defence Force (SADF). However no further cases were pursued which can be attributed to political interference in the work of the NPA.
31. In 2008 the High Court in Pretoria (*Nkadimeng & Others v The National Director of Public Prosecutions & Others*, TPD case no 32709/07) struck down the amendments to the Prosecution Policy as unconstitutional. The Court found that the amendments were a "copy-cat" of the TRC amnesty process; that many of the criteria were not relevant in deciding whether or not to prosecute; and that they were moreover "a recipe for conflict and absurdity".

POLITICAL INTERFERENCE

32. The first act of political interference which effectively stopped the work of the PCLU into the TRC cases was the suspension of such cases during 2004 pending the issuing of the new prosecution guidelines. This introduced the effective moratorium I referred to above.

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33. Once the guidelines had been issued, and the multi-departmental working committee (subsequently referred to as the Task Team) was established in 2006, it became clear that the SAPS and NIA representatives believed they were part of the prosecutorial decision making process.

33.1. On 6 December 2006, the PCLU received a letter from the head of the SAPS Legal Support section, Major General P C Jacobs, representing the view of the National Commissioner, which indicated that before any prosecutorial decision was made in respect of the TRC cases, the Task Team must submit a final recommendation to a Committee of Directors General in respect of each case, which in turn must advise the NDPP in respect of who to prosecute or not.

33.2. In respect of the interactions between the NDPP and other government departments and officials, I refer to the affidavit of Adv. Pikoli, which is filed evenly herewith.

34. The NDPP objected to this approach on the basis that it would constitute an unwarranted interference in the work of the NPA. The NDPP would be obliged to wait for the process to be completed and to receive a recommendation before he could make a decision, even where there were reasonable prospects of a successful prosecution.

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35. During 2007 an office note, purportedly written by me in 2006, was circulated in certain government circles in which it was reflected that I was investigating criminal charges against 37 ANC leaders, including the then President, Thabo Mbeki. This office note was a fabrication. I had written this office note in 2003 but the date of the note had been adjusted to give the false impression that it had been compiled in 2006. I believe it was aimed at discrediting me and ultimately stopping the investigations into the TRC cases. I am firmly of the view that the then National Commissioner, the late Mr. J Selebi, played a conspicuous role in claiming that I was pursuing the said leaders.

36. During this time I was informed by Adv. Pikoli that the then Director-General of the Department of Justice, Menze Simelane, had approached him and raised concerns about my handling of the prosecution of the TRC cases. He asked the NDPP to relieve me of my duties in this regard, which the NDPP declined to do. The NDPP advised me that senior people in the government wanted to fire me because I was still pursuing the TRC cases.

37. Adv. Vusi Pikoli was suspended from his duties as NDPP in September 2007. Shortly after his suspension I was summoned to the office of Adv. Mokotedi Mpshe, then acting NDPP. Adv. Mpshe advised me that I was relieved of my duties in relation to the TRC cases with immediate effect. I have no doubt that Adv. Mpshe received a political instruction to remove me from these cases. I

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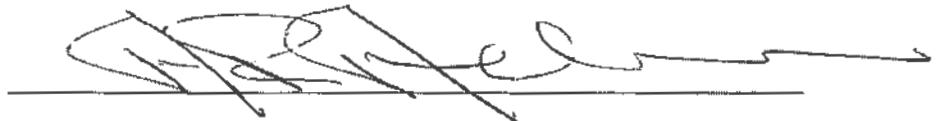
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advised Adv. Mpshe that removing me from the TRC cases would not make the cases go away.

38. At the time, I believed that if I was being removed from the TRC cases, then nobody else would be permitted to pursue the cases boldly and fearlessly. It is no coincidence that there has not been a single further prosecution since I was relieved of my duties in this regard.

CONCLUSION

39. There is little doubt in my mind that the investigation and prosecution of the TRC cases have been effectively stopped by machinations that took place at a level above that of the NPA. Such interference serves to explain why the Simelane matter, as well the bulk of the TRC cases, have not been seriously investigated or prosecuted.
40. In so doing the rule of law has been undermined and a deep injustice has been committed against the family of the late Nokuthula Simelane, as well as the families of other victims of apartheid era crimes.



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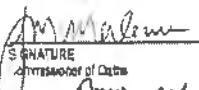
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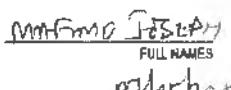
A R ACKERMANN

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at PRETORIA on this the 07th day of MAY 2015 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of his affidavit, that he/she does not have an objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me and that the administering oath complied with the regulations contained in Government Gazette No. R 1258 of 21 July 1972, as amended


SIGNATURE
Commissioner of Oaths
Signature of A R Ackermann
Date: 07/05/2015


FULL NAMES
M F M G TISSAY
Business Address: WOODMILL POST OFFICE
Date: 07/05/2015



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MEDIA REPORTS RELATING TO AHMED ESSOP TIMOL 1997 - 2015

Date	Publication	Title
1997-02-07	The Star	Timol death still hunts his family and friends
1997-02-07	The Star	The invisible hand at his throat
1997-05	Southern Globe	Ahmed Timol's mother passes on...a year after appearing before the TRC
1997-09-23	The Star	Voster bust removed from police station at start of major revamp
1998-09	Lenasia Times	Memory of Ahmed Timol lives on!
1999-03-30	The Star	School renamed after ANC cadre Timol
1999-03-30	Beeld	Bejaarde ma se droom word waar: Skool genouw na vryheidsvegter
1999-03-30	Pretoria Star News	Timol will not die
1999-03-30	Sowetan	Ahmed Timol honoured
1999-04-01	Sowetan	School remained after Timol
1999-04	Lenasia Times	The memory of Ahmed Timol will live on forever as Mandela names Azaadville school
2000-10-12	Sunday Times	Never, never and never again
2001-01	The Lenasia Indicator	Book to memorialize Ahmed Timol's death
2001-02-25	Sunday Times Extra	Information sought for Timol book
2003-10-26	City Press	Ahmed Timol remembered
2003-10-27	The Star	New insights' emerge into how Timol died while in police detention
2003-11-06	The Lenasia Indicator	32 years since Timol's death in detention
2005-01-23	Sunday World	Remember
2005-02-06	Sunday Independent	Revisiting the case of Ahmed Timol, an unresolved death in detention
2005-02-22	Cape Argus	Family's quest for justice after activist's murdered

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2005-03	Muslim Views	Slain activist's life honoured in Cape Town
2006-05-28	Sunday Times	Where death stalked the 10th floor
2006-10-22	Sunday Independent	Timol family appeals for justice
2006-10-27	The Star	Timol – 35 years later
2007-11-03	Pretoria News	As ons net kan weet
2009-12-12	Saturday Star	Ordinary people honoured for extraordinary deeds
2012-10-25	The Star	Teacher who died in detention to get award from Zuma
2012-11-05	The Star	Nephew's bid to solve puzzle of 1971 death
2014-10-11	Saturday Star	Teacher-turned-activist paid ultimate price for a free SA
2014-10-30	Cape Argus	Timol mystery haunt SA
2015-10-27	ENCA	Ahmed Timol's death comes under the spotlight

MEDIA REPORTS RELATING TO AHMED ESSOP TIMOL 2016 – 2018

DATE	PUBLICATION	TITLE
2016-10-28	Daily Maverick	Ahmed Timol and the return of The Light
2017-06-27	The Citizen	The significance of the Ahmed Timol inquest
2017-09-22	Daily Maverick	History, suppressed: What didn't get revealed at the Timol inquest
2017-10-12	Mail & Guardian	Timol inquest: The high stakes judgement that could change history
2017-10-12	IOL	Timol inquest verdict will set a precedent, says his family
2017-07-24	Daily Maverick	Unstitching the culture of criminal impunity
2017-10-24	The journalist / The Conversation	Ahmed Timol inquest: why uncovering apartheid crimes remains so important
2018-05-18	Daily Maverick	The Truth and Reconciliation Commission has still not resulted in restorative justice
2018-10-11	IOL	Justice in the Timol case is just the beginning
2018-10-22	Daily Maverick	Victim or killer? Apartheid-era cop asks State to dismiss murder charges against him




2018-10-23	Citizen	Rodrigues' murder trial not just about Timol, but scores of others – nephew
2018-10-27	Eyewitness New	Calls for Joao Rodrigues to be Prosecuted for Ahmed Timol's Murder

DOCUMENTARIES

DATE	TITLE
2015-02-01	<i>Indians Can't Fly</i>
2018-10-14	<i>Someone to Blame – The Ahmed Timol Inquest</i>

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

In the matter between:



Case Number:

Applicant

And

NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

First Respondent

THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE

Second Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

Applicant

And

NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

First Respondent

THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE

Second Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

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FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

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IN CAMERA SUPPORTING AFFIDAVIT

I, the undersigned

VUSUMZI PATRICK PIKOLI

state under oath as follows:

INTRODUCTION

1. I am an advocate of the High Court of South Africa and a former National Director of Public Prosecutions. I have provided a supporting affidavit in these proceedings.
2. I refer to the memorandum mentioned in paragraph 51 of my supporting affidavit titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' and was dated 15 February 2007. This memorandum is annexed hereto marked "VPP1". It was annexed to my affidavit before the Ginwala Commission marked as "TRC1".
3. As I had marked this memorandum as an "*internal secret memorandum*" I have not attached it to my open supporting affidavit. I have attached it this *in camera* affidavit which will be filed separately and which will not be made available to the public, unless this honorable Court authorizes such release.

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- 3.1. The issues and complaints raised in the memorandum have already been discussed in my affidavit filed before the Ginwala Commission, which has been part of the public record since 2008.
- 3.2. In my view, there is nothing in the memorandum that implicates or impairs national security.
- 3.3. It ought to be released as it points to unlawful and unconstitutional conduct.

4. In this memorandum I pointed out that:

- 4.1. The problems are "*hindering and obstructing the NPA in fulfilling its constitutional mandate, namely, to institute criminal proceedings without fear, favour or prejudice*".
- 4.2. The SAPS and NIA had not made dedicated members available to the NPA to gather sufficient and admissible evidence in the TRC cases. This was one of the tasks that the "Task Team" was required to address.
- 4.3. There were differences in interpretation in relation to the role of the other state departments in relation to the prosecutorial decision-making process.

5. I concluded by stating that:

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I have now reached a point where I honestly believe that there is "improper interference with my work and that I am hindered and/ or obstructed from carrying out my functions on this particular matter.

It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took, does not allow that.

Based on the above, I cannot proceed further with these TRC matters in accordance with the "normal legal processes" and "prosecuting mandate" of the NPA as originally envisaged by Government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the State, I am awaiting Government's direction on this matter.


VUSUMZI PATRICK PIKOLI

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at Cape Town on this the 6th day of May 2001

 day of the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Andrew Lebogo Botsky Mabokolo
 Commissioner of Oaths
 Practising Attorney
 2nd Floor, Leadership House, 40 Shortmarket Str
 Greenmarket Square Cape Town 8001

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**The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika**

SECRET INTERNAL MEMORANDUM

TO	MS BS MABANDLA, MP MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT
FROM	ADV VP PIKOLI NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
SUBJECT	PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES
REF NO.	3/2P (PCLU)
DATE	15 FEBRUARY 2007

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to—

- (a) inform the Minister about the National Prosecuting Authority's (NPA) understanding and interpretation of the policy and guidelines relating to the prosecution of offences emanating from conflicts of the past which were committed on or before 11 May 1994;
- (b) inform the Minister about the problems the NPA is experiencing in the implementation of this policy and guidelines; and

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(b) propose a way forward.

2. BACKGROUND INFORMATION

2.1 Background relating to initial proposals

2.1.1 On 23 February 2004, a Director-General's Forum, under the chairpersonship of the former Director-General: Justice and Constitutional Development (Adv Vusi Pikoli) appointed a Task Team to consider and report on, "*the nature of the arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation that the NPA and intelligence agencies may come up with in assisting persons who divulge information relating to offences committed during the conflicts of the past.*"

2.1.2 In its deliberations, the Task Team took cognisance of the fact that in terms of section 179(1) and (2) of the Constitution, the NPA is an independent constitutional institution and the National Director has full discretion on whether a particular prosecution should or should not be instituted. The Task Team's recommendations should therefore be consistent with this constitutional requirement.

2.1.3 In its Report, the Task Team recommended the establishment of a Departmental Task Team comprising members of the following Departments or institutions:

- The Department of Justice and Constitutional Development
- The Intelligence Agencies (NIA)
- The South African National Defence Force
- The South African Police Service (SAPS)
- Correctional Services
- The National Prosecuting Authority
- Office of the President

2.1.4 It was proposed that the functions of the proposed Task Team should, among others, be the following:

- "(a) *Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard.*
- (b) *To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—*
 - (i) *the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;*
 - (ii) *the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision.*". (Emphasis added)

2.2 Background relating to Amended Prosecution Policy

2.2.1 As the Minister is aware, the abovementioned recommendations were not implemented, since many held the view that the proposed functions of the Task Team could be unconstitutional in view of the provisions of section 179 of the Constitution. Subsequently, Government decided that it was important to deal with these matters on a uniform basis in terms of a specifically defined prosecutorial policy and directives.

2.2.2 Therefore, it was proposed that the National Director, with the concurrence of the Minister, should issue amended Prosecutorial Policy and Directives in terms of section 179(5)(a) of the Constitution, read with section 21 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (NPA Act), and that such

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Policy and Directives should be submitted to Parliament in terms of section 21(2) of the NPA Act.

2.2.3 Following discussions with all the relevant stakeholders and a submission to Cabinet, the Prosecution Policy and Directives relating to the prosecution of offences emanating from conflicts of the past which were committed on or before 11 May 1994 (hereinafter referred to as the "Amended Prosecution Policy"), were approved and came into operation on 1 December 2005. The Amended Prosecution Policy was also duly tabled in Parliament and is binding on the prosecuting authority.

3. IMPORTANT FEATURES OF AMENDED PROSECUTION POLICY

3.1 For purposes of this memorandum, it is important to refer the Minister to the under-mentioned features of the Amended Prosecution Policy:¹

- (a) The Amended Prosecution Policy emanates from and is based on the statement of President Thabo Mbeki to the National Houses of Parliament and the Nation, on 15 April 2003, when he gave Government's response to the final report of the Truth and Reconciliation Commission (TRC).
- (b) The President, among others, stated that the question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.²
- (c) The President further stated that as part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearth the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.³
- (d) It is important to note that the President made it clear that—

¹ Attached hereto as Annexure "A".

² See paragraph A.1(b) of Appendix A to Amended Prosecution Policy.

³ See paragraph A.1(c) and (d) of Appendix A.

- (i) the decision to be taken by the NPA (whether to prosecute or not) should be in accordance with the normal legal process;
- (ii) in order to reach a well-considered decision, the NPA should work together with the Intelligence Agencies, which include the NIA and the SAPS;
- (iii) the agreements entered into between the NPA and those persons who are prepared to unearth the truth of the conflicts of the past, should be in accordance with standard and normal execution of justice;
- (iv) such agreements should be in accordance with the NPA's prosecution mandate; and
- (v) such agreements should be in accordance with existing legislation.

3.2 Furthermore, it is important to note that the Amended Prosecution Policy expressly states that the prosecuting policy, directives and guidelines are required to reflect and attach due weight to, among others, the following:

- (a) The *dicta* of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid. (See *The State v Wouter Basson CCT 30/03*).⁴
- (b) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).
- (c) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.
- (d) The existing prosecuting policy and general directives or guidelines issued by the National Director to assist prosecutors in arriving at a decision to prosecute or not.

⁴ See paragraph A.2 (h) to (k) of Appendix A.

3.3 In respect of procedural arrangements, which must be adhered to in the prosecution process, the Amended Prosecution Policy provides, among others, in particular that—

- (a) the Priority Crimes Litigation Unit (PCLU) in the Office of the National Director shall be responsible for overseeing investigations and instituting prosecutions in all such matters;
- (b) the PCLU "shall be assisted in the execution of its duties" by a senior designated official from the following State departments or other components of the NPA:
 - (i) The National Intelligence Agency.
 - (ii) The Detective Division of the South African Police Service.
 - (iii) The Department of Justice & Constitutional Development.
 - (iv) The Directorate of Special Operations.

3.4 From the above, it is clear that in relation to the relevant offences—

- (a) the decision whether to prosecute or not vests in the prosecuting authority and in terms of the Amended Prosecution Policy, in particular, the National Director;
- (b) such decision must be exercised in accordance with the Constitution and existing legislation;
- (c) the abovementioned State Departments only have a role to play insofar as they must assist the NPA in the investigation process and the gathering of information so as to assist the NPA in reaching a well-considered decision whether to prosecute or not.

4. PROBLEMS RELATING TO IMPLEMENTATION OF AMENDED PROSECUTION POLICY

4.1 Since the coming into operation of the Amended Prosecution Policy, the NPA has experienced various problems relating to the implementation thereof. These problems are hindering and obstructing the NPA in fulfilling its constitutional

mandate, namely, to institute criminal proceedings without fear, favour or prejudice. On the one hand, the NPA is experiencing problems investigating cases to ascertain whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution, since the SAPS and NIA had not made dedicated members available to assist the NPA in this regard. This was subsequently dealt with by the setting up of a "Task Team". On the other, the NPA is now experiencing problems relating to the interpretation of the role of the other State Departments in the process. As indicated hereunder, it seems as if the SAPS and NIA hold the view that the proposals relating to the original proposed Task Team (that were rejected by Government), must be implemented and that such Task Team should play a role in the decision-making process.

- 4.2 During the middle of 2006, a meeting was held at the Office of the Presidency to attend to the abovementioned problems. The National Commissioner, the National Director, the Directors-General of Justice and NIA, and Mr Jafta of the Presidency, attended this meeting. It was agreed that a Working Committee should be established. This recommendation was taken to the Ministers in the Cluster. At a subsequent meeting attended by the Minister for Safety and Security, the Minister of Social Development and Minister Thoko Didiza (as Acting Minister for Justice and Constitutional Development), it was agreed that such Working Committee (now referred to as a Task Team), should be established to assist the NPA.
- 4.3 Following the above agreement, the National Director called a meeting at the Office of the NPA. The Heads of Department as well as representatives of all relevant State Departments to serve on the Task Team were invited. All Departments were represented at this meeting. At this meeting—
 - (a) the terms of reference of the Task Team were explained and agreed to;
 - (b) it was agreed that Dr Silas Ramaite (Deputy National Director of Public Prosecutions) would chair the meetings of the Task Team.

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Furthermore, on an issue raised by the representative of NIA, the National Director was explicit in explaining that the mandate of the Task Team would not entail making any recommendations on a decision whether to prosecute or not to prosecute and that the National Director would not be dependent on receiving such a recommendation before he could make a decision. The Task Team should be responsible for overseeing that the NPA obtain the necessary information or to give inputs so as to assist and enable the National Director to reach a well-considered decision whether to institute criminal proceedings or not. Furthermore, the Task Team should deal with all relevant matters identified by the PCLU and the SAPS.

- 4.4.1 Subsequently, on 6 December 2006, the Office of the PCLU received the e-mail marked "B" from Dr PC Jacobs of the SAPS. Furthermore, the National Director received letters from the National Commissioner and the Director-General: NIA, dated 6 February 2007 and 8 February 2007, respectively. (Attached hereto as Annexures "C" and "D", respectively)
- 4.4.2 According to Dr Jacobs, his understanding is that the Task Team must submit a final recommendation to a Committee of Directors-General in respect of each case. He also points out that the National Commissioner is of the view that this procedure should be followed in respect of each investigation that has been finalised. However, he does not elaborate on the role of the Committee of Directors-General.
- 4.4.3 In his letter dated 6 February 2007, the National Commissioner points out that he has been briefed regarding the meeting of the "Task Team set up in terms of the Cabinet guidelines on the outstanding Truth and Reconciliation Commission (TRC) matters". According to the National Commissioner his understanding is that the officials designated on the Task Team "will provide recommendations to the Directors-General who will, as a collective, advise the National Prosecuting Authority as the decision maker of prosecutions". The Director-General: NIA

indicates that he had a discussion with his representative on the Task Team and he received a copy of the National Commissioner's letter. He concurs with the views of the National Commissioner.

4.5 In the first instance, it is important to note that as far as the NPA is concerned, this Task Team was not set up in terms of the Amended Prosecution Policy, which include the guidelines on TRC matters, but in terms of internal agreement between the relevant stakeholders. Furthermore, the NPA is not aware of any agreement or arrangement in terms of which the Task Team must submit a report to a Committee of Directors-General and which Committee must advise the NPA regarding prosecution decisions. Reading the e-mail of Dr Jacobs and the letter of the National Commissioner in context, it seems as if the above process is a proposal by the National Commissioner and not an agreement reached by the Task Team. For example, Dr Jacobs points out that—

- the National Commissioner is of the opinion that it must be established what disclosures were made...";
- "the National Commissioner is of the opinion that such process need to be followed in each case...".

In the same vein, the National Commissioner writes as follows:

- "I have insisted that the complainant be consulted ...on the basis that the Directors-General will have a opportunity to provide input before a decision on prosecution is taken."
- "In my view a comprehensive report...should be discussed by the Directors-General".

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- "Although I do not insist on a meeting of the Directors-General after each meeting of our officials, I deem it necessary that the substantive reports and recommendations of the officials should be discussed by the Directors-General before a decision is made.". (Emphasis added)

4.6 The NPA cannot agree to the above proposal. The effect thereof might be that the National Director would be obliged (as is suggested by the National Commissioner) to wait for the finalisation of the proposed process before he may make a decision whether to prosecute or not. If the Task Team or the Committee of Directors-General, in spite of a "reasonable prospect of a successful prosecution", unnecessarily delays the process, the National Director would be prevented from complying with the prosecuting authority's constitutional obligation. Therefore, such a process would be unconstitutional.

5. CONCLUSION AND WAY FORWARD

5.1 There is clearly a misunderstanding regarding the role of the Task Team and the role of the relevant State Departments referred to in the Amended Prosecution Policy. In accordance with the approved Amended Prosecution Policy⁵, the NPA is of the view that the duty of the Task Team or the relevant State Departments is to assist the NPA "in the execution of its duties". However, nothing prevents such a Task Team or Departments (whether individually or collectively) to make recommendations to the National Director, provided that the National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a Task Team or relevant Department. Such a procedure would be unconstitutional.

⁵ See paragraph B.6 of Appendix A.

5.2 I have now reached a point where I honestly believe that there is improper interference with my work and that I am hindered and/or obstructed from carrying out my functions on this particular matter. Legally I have reached a dead end.

5.3 It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took, does not allow that.

5.4 Based on the above, I cannot proceed further with these TRC matters in accordance with the "normal legal processes" and "prosecuting mandate" of the NPA, as originally envisaged by Government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the State, I am awaiting Government's direction on this matter.

V.P. 16.02.2007

Adv VP Pikoli
National Director of
Public Prosecutions

Ms BS Mabandla, MP
Minister for Justice and
Constitutional Development

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'Government interference let killers off hook'

POLITICS / 31 MAY 2015, 2:03PM / ZENZILE KHOISAN



Former National Director of Public Prosecutions Vusi Pikoli. Picture: Chris Collingridge

Cape Town - The shocking admission by former National Director of Public Prosecutions Vusi Pikoli that "powerful elements within government were determined to impose their will" on his prosecutorial decisions, effectively giving some of apartheid's most brazen killers a get-out-of-jail-free card, has led to calls for the government to explain what some have termed "a total betrayal of the people's trust."

Pikoli's affidavit was issued in support of a matter before the High Court in Gauteng involving the 1983 abduction and disappearance of 23-year-old Nokuthula Simelane, whose family is demanding the prosecution of the apartheid security policemen who did not receive amnesty for torturing her for five weeks on a North West farm and then refusing to disclose where they had disposed of her body.

The matter of Simelane is one of 300 cases which the Truth and Reconciliation Commission (TRC) asked the prosecuting authority to follow up, and the family, which has searched for her remains for more than three decades, is demanding action.

In supporting the family's action Pikoli stated: "I confirm that there was political interference that effectively barred or delayed the investigation and possible prosecution of the cases recommended for prosecution by the TRC, including the kidnapping, assault and murder of Nokuthula Aurelia Simelane in the case: Priority Investigation: JV Plein 1469/02/1996."

"In this affidavit I set out evidence that reflects such political interference, I also set out the serious impact that such interference had on the pursuit of the TRC cases by the National Prosecuting Authority."

While directing blame for failure to prosecute on senior government officials, the affidavit also opens a particularly contentious can of worms for the ruling ANC – that it feared the NPA would target senior ANC officials for crimes committed before 1994. It also states that the reason Pikoli was relieved of his duties is because he wanted to prosecute perpetrators responsible for gross violations of human rights during apartheid.

In Pikoli's explanation of why the NPA, on his watch, failed to institute prosecution of the cases recommended by the TRC, he details memos, meetings and communications with top government figures such as former Justice Minister Bridgette Mabandla, former Social Development Minister Zola Skweyiya, former Intelligence Minister Ronnie Kasrils and the late former police chief Jackie Selebi who, he claims, interfered with his mandate to act "without fear, favour or prejudice."

Pikoli cites efforts by the NPA to prosecute security police members implicated in the 1989 attempts to kill Frank Chikane as an example of the manner in which his office was undermined.

"The decision to prosecute those implicated in the attempted murder, through poisoning, of head of the South African Council of Churches Reverend Frank Chikane at the then Jan Smuts Airport, saw the unraveling of the attempts by the NPA to hold apartheid-era perpetrators accountable for their crimes."

According to Pikoli, this effectively derailed the prosecution of three security branch members.

This is supported by an affidavit by Anton Ackermann, the former head of the NPA Priority Crimes Litigation Unit, which had been assigned TRC cases for investigation and prosecution.

"On the morning of November 11, 2004 the police were on the verge of arresting three former officers of the security police on charges which related to the attempted murder of Rev Frank Chikane by poisoning. The three former officers were Major General Christoffel Smith and colonels Gert Otto and Johannes Manie van Staden. None had applied for amnesty.

"On the same morning I received a call from Jan Wagenaar, the attorney representing the suspects. He told me that I would receive a call from the ministry of justice and would be advised that the case against his clients must be placed on hold."

Ackerman states that he subsequently received calls from the Department of Justice and the National Directorate of Public Prosecutions instructing that he not proceed with the arrests. "I believe that it can safely be assumed that the NDPP was instructed at a political level to suspend these cases."

The former Priority Crimes Litigation Unit head added that he had little doubt that "the investigation and the prosecution of TRC cases have been effectively stopped by machinations at a level above that of the NPA. Such interference explains why the Simelane matter, as well as the bulk of TRC cases have not been seriously investigated or prosecuted."

“In doing so the rule of law has been undermined and a deep injustice has been committed against the family of the late Nokuthula Simelane, as well as the families of other victims of apartheid era crimes,” he concluded.

Reacting to Pikoli’s claims of political interference in the NPA’s attempts to hold apartheid killers accountable, former TRC chief investigator Dumisa Ntsebeza, who was part of many delegations which met with the NDPP, labelled Pikoli a “latter day convert to principle, who has finally summoned up enough courage to come out with the truth”.

Ntsebeza said “Pikoli should have done the honourable thing at the time, resigned his post and exposed the attempts to undermine Section 179 of the constitution which defines the work of the National Director of Public Prosecutions.”

Majorie Jobson, head of the Khulumani victims support group, said she had been very disappointed with Pikoli’s inability to act in the interests of apartheid-era rights violations victims. Succumbing to political pressure by the prosecutions body “was a massive betrayal of the people’s trust,” Jobson said.

Weekend Argus

"1C4"

"1C12"

Rapist Bob Hewitt enters prison in Port Elizabeth

Tuesday 20 September 2016 - 11:46am



Australian-born former tennis champion Bob Hewitt appears in the Johannesburg High Court in Palm Ridge on February 10 2015.

Donald Lobelo

PORT ELIZABETH - Disgraced former tennis pro Bob Hewitt handed himself over to authorities at St Albans prison in Port Elizabeth on Tuesday.

Hewitt is expected to start his six-year jail term for the rape and sexual assault of three teenage girls who were his tennis students in the 1980s and 1990s.

It is just over a week since the Constitutional Court rejected Hewitt's bid to have his rape conviction overturned.

READ: Hewitt regrets replying to love letters

The Women and Men against Child Abuse (WAMACA) advocacy group said that Hewitt had approached the state for permission to hand himself in at the St Albans Correctional Facility, which is close to his home at Addo.

This was approved by the Johannesburg High Court due to Hewitt's ailing health and his inability to travel the distance to Johannesburg.

WAMACA director Miranda Friedmann said that she and her advocacy team would fly from Johannesburg on Tuesday to be at St Albans when Hewitt handed himself in.

She told eNCA: "It's an incredible relief, it's an incredible sense of achievement, it's an incredible sense of victory today. It's been a very long

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struggle, it has taken a team ... it has really been a team effort to bring down Bob Hewitt."

Friedmann said that the odds had been stacked against his victims. "Our organisation has been with them throughout. I've seen their courage first-hand, as well as the toll the process has taken. Seeing Hewitt behind bars will be a victory for them."

One of the women who was abused by Hewitt, Theresa 'Twiggy' Tolken, said she had been waiting for justice for a very long time.

"My mother and I have been waiting for tomorrow [Tuesday] for a very long time. I just wish my dad was around to witness this day. Bob Hewitt has tried to evade justice and tried anything at his disposal to stay out of jail for the past few years! He has continually lied about his despicable actions," said Tolken.

"The truth always catches up with you and hopefully this is a lesson for other paedophiles out there: don't ever think you are above the law, you will be caught.

"To all the other victims, don't be afraid to speak up, there are people and organisations like Women and Men Against Child Abuse out there who will hold you up and support you through your ordeal."

<https://www.enca.com/south-africa/bob-hewitt-to-hand-himself-over-to-authorities-in-port-elizabeth>

AB

10

"465"
"1C13"

Former SS guard, now 94, faces trial in Germany

21 September 2018 - 15:39 BY AFP



The former SS guard stands accused of complicity in the murders of several hundred camp prisoners between 1942 and 1945.

Image: Gallo Images/ iStock

A 94-year-old former SS guard faces trial in November charged with complicity in the mass murders at the Nazi concentration camp Stutthof during World War II, a German court said Friday.

The man from the district of Borken, who was not named, was a watchman at the Nazi camp near what was then the free city of Danzig, now Gdansk in Poland.

He stands accused of complicity in the murders of several hundred camp prisoners between 1942 and 1945, said the regional court of Muenster more than seven decades after the end of World War II.

These included more than 100 Polish prisoners gassed to death on June 21 and 22, 1944, as well as "probably several hundred" Jewish prisoners murdered in the same way from August to December 1944 as part of the Nazis' so-called "Final Solution" operation.

Prosecutors believe that the man "knew about the killing methods" at the camp and that the guards were a crucial part of the camp system.

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As the former SS guard was not yet 21 at the time of the crimes, he will be tried before a juvenile court from November 6.

Germany has been racing to put on trial surviving SS personnel, after the legal basis for prosecuting former Nazis changed in 2011 with the landmark conviction of former death camp guard John Demjanjuk.

He was sentenced not for atrocities he was known to have committed, but on the basis that he served at the Sobibor camp in occupied Poland - for having been a cog in the Nazis' killing machine.

German courts subsequently convicted Oskar Groening, an accountant at Auschwitz camp, and Reinhold Hanning - a former SS guard at the same camp, when they were aged 94 for the mass murders seven decades back.

But neither served jailtime as they both died before they could be imprisoned.

Prosecutors had filed charges against another former SS guard at Stutthof, a 93-year-old from the city of Wuppertal.

But a decision on whether the case will go ahead is pending as it is yet to be determined if he is fit for trial, the court in Muenster said.

<https://www.timeslive.co.za/news/world/2018-09-21-former-ss-guard-now-94-faces-trial-in-germany/>

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"HC6"

"IC14"

Former Auschwitz guard jailed for five years over murder of 170,000 Holocaust victims

Reinhold Hanning was convicted at the end of a trial lasting four months

- **Elke Ahlsweide** Detmold
- Friday 17 June 2016 13:28



94-year-old former SS sergeant Reinhold Hanning sits in the courtroom in Detmold (AP)

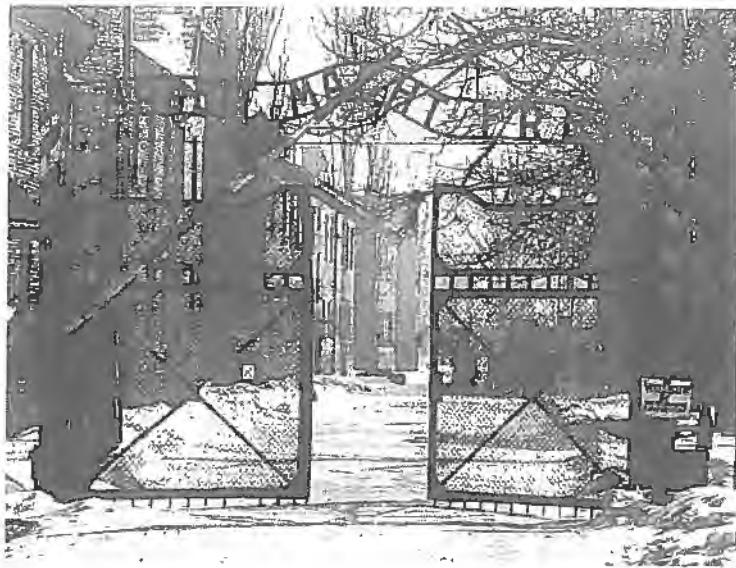
A 94-year-old former Auschwitz guard has been convicted of being an accessory to the murder of at least 170,000 people, at the end of what is likely to be one of Germany's last Holocaust trials.

Reinhold Hanning was sentenced to five years' jail for facilitating the slaughter at the death camp in Nazi-occupied Poland, having served at Auschwitz during the Second World War between January 1942 and June 1944. He had faced a maximum sentence of 15 years.

During his four-month trial, Hanning admitted serving as an Auschwitz guard. He said he was ashamed that he was aware Jews were being killed but did nothing to try to stop it.

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Read more Auschwitz guard speaks about murder of 170,000 people for first time

Hanning showed no reaction as the judge, Anke Grudda, read her justification for the verdict and sentence.

“You were in Auschwitz for two and a half years, performed an important function. ... You were part of a criminal organisation and took part in criminal activity in Auschwitz,” she said.

Last Holocaust-Related Case? 94-Year-Old Former Auschwitz Guard Stands Trial

The nearly four-month long trial in Detmold included testimony from around a dozen Holocaust survivors, many of them extremely elderly, who detailed their horrific experiences, recalling piles of bodies and the smell of burnt flesh in the death camp

“It is a just verdict, but he should say more, tell the truth for the young people,” said Leon Schwarzbaum, a 95-year-old Auschwitz survivor from Berlin who had spoken at the trial.

“He is an old man and probably won’t have to go to jail, but he should say what happened at Auschwitz. Auschwitz was like something the world has never seen,” Mr Schwarzbaum told the Associated Press

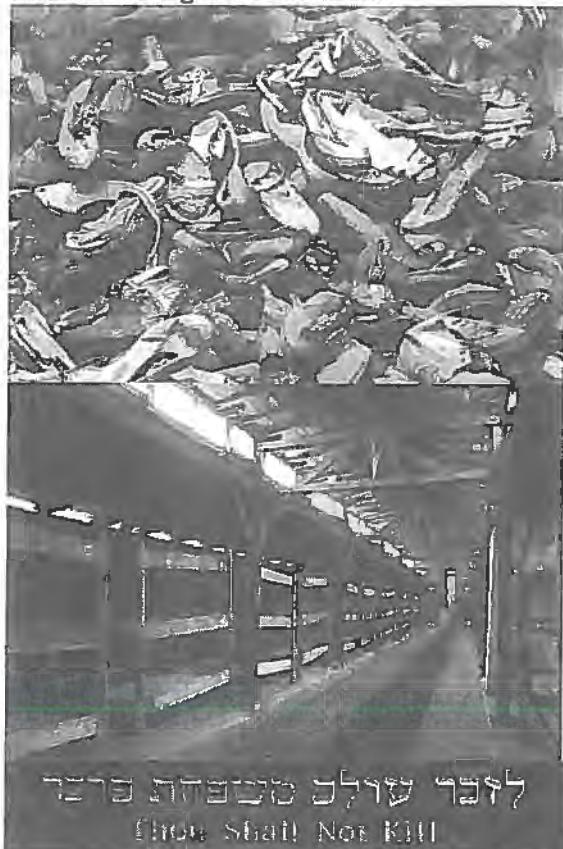
Mr Schwarzbaum added that he does not want Hanning to go to prison and is happy that he apologised, but had hoped that he would provide more details about his time in Auschwitz for the sake of educating younger generations.

Auschwitz survivor Hedy Bohm, who came from Toronto to testify at the trial and for the verdict, said she was “grateful and pleased by this justice finally after 70 years.”

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"It is my dream to be in Germany, in a German court, with German judges acknowledging the Holocaust," the 88-year-old said.

Remembering the Holocaust



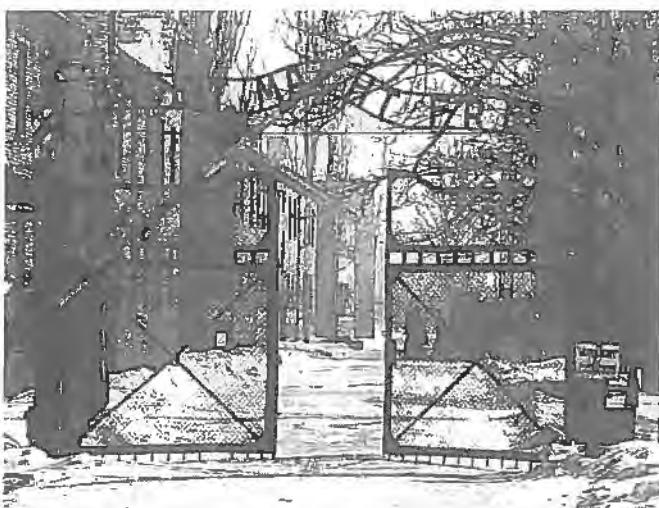
The defence had said Hanning should be acquitted as the former SS officer had personally never killed, beaten or abused anyone.

Hanning is said to have joined the Hitler Youth with his class in 1935 at age 13, then volunteered at 18 for the Waffen SS in 1940 at the urging of his stepmother. He fought in several battles in World War II before being hit by grenade splinters in his head and leg during close combat in Kiev in 1941.

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He told the court that as he was recovering from his wounds he asked to be sent back but his commander decided he was no longer fit for front-line duty, and so sent him to Auschwitz, without his knowing what it was.



Nazi Auschwitz guard Ernst Tremmel dies just before trial



Major Leonard Berney: First British officer to liberate Bergen-Belsen Nazi camp dies aged 95



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Germany finally pays tribute to first Nazi hunter Fritz Bauer

Speaking at the trial at end of April, Hanning apologised to the victims, saying that he regretted being part of a “criminal organisation” that had killed so many and caused so much suffering.

“I’m ashamed that I knowingly let injustice happen and did nothing to oppose it,” he read from a prepared speech.

Hanning was not charged with direct involvement in any killings. But prosecutors and dozens of joint plaintiffs from Germany, Hungary, Israel, Canada, Britain and the United States said he had helped Auschwitz function. The indictment against him is focused on a period between January 1943 and June 1944 for legal reasons, but the court has said it would consider the full time he served there.

A precedent was set in a similar case in 2011, when camp guard Ivan Demjanjuk was convicted. Last year, Oskar Groening, known as the “bookkeeper of Auschwitz”, was sentenced to four years in prison after he was convicted of being an accessory to the murder of 300,000 people.

None of the convictions are definitive. Demjanjuk had appealed but died before the German Federal Court of Justice ruled on the case, and the court is still considering an appeal filed by Groening.

Both sides in Hanning’s case have a week to appeal Friday’s verdict, and Hanning will remain free while any appeals are heard. The defence had asked for a six-year sentence.

Germany is holding what are likely to be its last trials linked to the Holocaust, in which the Nazis killed more than six million people, mostly Jews.

Besides Hanning, one other man and one woman in their 90s are accused of being accessories to the mass murder at Auschwitz. A third man who was a member of the Nazi SS guard team at Auschwitz died at the age of 93 in April, days before his trial was due to start.

Dr Moshe Kantor, President of the European Jewish Congress, welcomed the news. “We must once again use this opportunity to educate about the horrors of the Holocaust and show that hatred, fascism and anti-semitism must be rooted out. It should never be too late for the guilty to be held to account,” he said.

Reuters

<https://www.independent.co.uk/news/world/europe/auschwitz-guard-guilty-accessory-murder-charges-jailed-five-years-reinhold-hanning-nazi-germany-a7087341.html>





"4C7"

"1C15"

Victor Jara murder: ex-military officers sentenced in Chile for 1973 death

Eight retired officers sentenced to 15 years in prison for the murder of popular folk singer during coup

Reuters in Santiago

Tue 3 Jul 2018



Victor Jara posing for a portrait in Santiago, Chile. Photograph: Patricio Guzman/AP

Eight retired Chilean military officers have been sentenced to 15 years in prison for the murder of popular folk singer Victor Jara during the 1973 coup that installed late dictator Augusto Pinochet in power.

A judge handed down the sentences after leading a long-running inquiry into Jara's death on 16 September, 45 years ago, a statement from Chile's courts authority said.

Miguel Vázquez sentenced the eight men to 15 years and one day in prison for the murder of Jara and that of former prisons director Littré Quiroga Carvajal.

A ninth suspect was jailed for five years for his role in covering up the killings.

Jara, 40, was a celebrated singer, theater director and university professor who sympathized with the socialist government of Salvador Allende, who was ousted in the 1973 coup.

Jara's work, and the nature of his death, inspired tributes from artists including Bruce Springsteen, the Clash and U2.

He was detained along with his students, fellow academics and scores of other leftists in a Chilean soccer stadium that has since been named after him.

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According to detainees in the stadium who survived, Jara's hands were smashed with the butt of a gun and he was badly beaten during his incarceration. When his body was found three days after his disappearance near a cemetery, it was found riddled with 44 bullet holes.

Agony of Chile's dark days continues as murdered poet's wife fights for justice

Read more

His family, including British-born ballerina wife Joan and his daughter Amanda, has fought a long-running campaign for justice in his case and had his body exhumed in 2009 for a full autopsy.

In 2016, a civil court jury in Florida found another former military official, retired army lieutenant Pedro Barrientos, liable for torturing and killing Jara.

Barrientos, who lives in Florida but whose extradition to Chile is currently under US consideration, was also ordered to pay \$28m in damages to Jara's family.

The case against Barrientos was filed by the US-based Center for Justice and Accountability, a human rights advocacy group, on behalf of Jara's widow, his daughter and step-daughter.

During Pinochet's rule, which lasted until 1990, an estimated 3,200 people were killed and 28,000 tortured by the state.

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"TC 8"
"TC 1b"
"IC 1b"

Operation Condor conspiracy faces day of judgment in Argentina court

Eighteen former military officers accused of participating in a plan in the 70s and 80s to operate international death squads to eliminate leftwing exiles face verdict

Uki Goñi in Buenos Aires

Thu 26 May 2016 10.10 BST Last modified on Fri 27 May 2016 17.43 BST



Mariana Zaffaroni, front left, stands next to her grandmother at a demonstration in Montevideo. Her parents were killed as part of Operation Condor in Buenos Aires in 1976. Photograph: Matilde Campodonico/AP

It was an organised programme of state-sponsored murder in which US-backed regimes conspired to hunt down, kidnap and kill political opponents across South America and beyond.

Operation Condor – named after the world's largest carrion bird – was devised to eliminate thousands of exiled leftwing activists who had dared confront the military dictators who ruled the continent in the 1970s and 80s.

The exact number of its victims may never be known, but this week judges in Buenos Aires will deliver their verdict on the first court case to specifically focus on the conspiracy.



Former dictator Reynaldo Bignone is the most senior surviving ex-military figure on trial. Photograph: Victor R Caivano/AP

Eighteen former military officers – including Argentina's last dictator Reynaldo Bignone, 88 – will on Friday be sentenced on charges including kidnapping, torture and forced disappearance. Seven other defendants, including Jorge Videla – the general who headed Argentina's junta during its bloodiest first three years – have died since the trial began in 2013.

The court has heard evidence on the deaths of more than 100 leftwing activists allegedly killed in Argentina, including 45 Uruguayans, 22 Chileans, 15 Paraguayans and 13 Bolivians.

If the judges accept the thesis presented by the plaintiffs, many of them represented by the human rights group Cels (Centre for Legal and Social Studies) in Argentina, it will be first time the existence of the murderous, multi-nation plan is proven in court.

The verdict is also likely to cast a fresh light on allegations that the operation was backed by the CIA – and at least tacitly approved by the then secretary of state Henry Kissinger.

The plaintiffs allege that Operation Condor received support from the US, especially in the form of its communications system, which they say operated through Condortel, a US telex system based in Panama.

Gastón Chillier, the executive director of Cels, said: “What we found among the large amount of documents we presented as evidence is that the US definitely had knowledge of the existence of the operation and even provided a communications station in Panama for the intelligence services of the six nations involved to communicate with each other via telex.”



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The dictators, from left: Jorge Videla of Argentina, Augusto Pinochet of Chile, João Figueiredo of Brazil and Alfredo Stroessner of Paraguay. Composite: AP, Reuters & Rex Features

According to secret documents unearthed after democracy returned to the region, Operation Condor was originally drawn up at a secret 1975 meeting of intelligence chiefs from Argentina, Bolivia, Chile, Paraguay and Uruguay, and later expanded to include Brazil. The minutes of the meeting were signed for Chile by Colonel Manuel Contreras, the dreaded head of that country's Dina secret police.

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Its purpose was to allow cooperating countries to send death squads into each other's territory – and sometimes further afield – to monitor, kidnap or kill political exiles.

While some individual crimes committed during Operation Condor have been the subject of previous trials, Friday's verdict will focus on participation in the plan itself, said Chillier.

"What distinguishes this trial from other cases involving isolated crimes committed by Operation Condor is that the defendants now face being condemned for being members of an illegal association," he said.

Among those who will be paying close attention to Friday's verdict is Edy Binstock, whose then wife Monica Pinus de Binstock, a young Argentinian member of the Montoneros urban guerrilla group, was captured by Brazilian security forces when her plane landed in Rio de Janeiro in March 1980.

"She was from flying from Panama, and had called me by phone the day before, to arrange where we would meet in Rio. We had both escaped from Argentina because our lives were in danger there," Binstock told the Guardian. "I waited and waited and she never showed up."

It was when a batch of US documents from the period were declassified in 2002 that Binstock was able to discover his wife's fate.

"One of the documents mentioned her by name, relating a conversation between an Argentinian military officer and a US diplomat at that time, with the officer saying how an Argentinian military plane had flown specially to Galeão airport in Rio to pick her up and bring her to Buenos Aires, from where she was taken to the Campo de Mayo army facility, which at that time operated as a death camp."

Binstock has still not been able to find out what happened to his wife after she was taken to Campo de Mayo.

Another case involved a young Uruguayan couple, María Gatti and Jorge Zaffaroni, who in 1975 fled to neighbouring Argentina, at the time still under democratic rule.

After Argentina's 1976 coup the couple – and their infant daughter Mariana – were kidnapped by Uruguayan agents and taken to Automotores Orletti, a converted mechanic's garage that served as the "Operation Condor" headquarters in Buenos Aires.

The couple were murdered and their child, then just one-year-old, was given to intelligence officer Miguel Ángel Furci to raise as his own.

Mariana Zaffaroni was eventually reunited with her biological family in 1992 and Furci was sentenced for her kidnapping the following year. Furci is now also among the defendants to be sentenced on Friday, on 67 counts of "disappearances" and torture at Orletti.

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The impact of Operation Condor was not limited to Latin America: one of the most dramatic episodes took place in Washington DC.

In 1976, Orlando Letelier, Chile's former defence and foreign minister under President Salvador Allende, was killed by a car bomb that detonated in front of the Irish embassy on Sheridan Circle. US intelligence documents declassified last year show that the order to kill Letelier had come directly from the dictator, General Augusto Pinochet.



Firemen remove victims from Orlando Letelier's shattered car in Washington on 21 September 1976. Photograph: AP

Declassified State Department records show that the month before Letelier's murder, Kissinger had ordered US ambassadors posted to the six Condor countries to express Washington's "deep concern" at the possible assassination of "politicians and prominent figures" in South America and beyond.

The ambassadors, fearful to raise the topic with their hosts, demurred, suggesting that it would be safer to approach the South American ambassadors posted in Washington instead.

But Kissinger rescinded the order on 16 September, just five days before Letelier's murder, instructing that "no further action should be taken on this matter".

<https://www.theguardian.com/world/2016/may/26/operation-condor-trial-argentina-court-death-squads>

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"109"

"1011" ✓

Argentina missing: Omar Graffigna, ex-Air Force chief, goes on trial

• 3 May 2016



The former head of the Argentine Air Force, Brigadier Omar Graffigna, has gone on trial in Buenos Aires province accused of forced disappearances during military rule from 1976 to 1983.

Mr Graffigna, 90, is a suspect in the 1978 abduction of left-wing activists Patricia Roisinblit and her husband, Jose Manuel Perez Rojo.

He has denied any wrongdoing.

Human rights groups say about 30,000 people were forcibly disappeared under Argentina's military rule.

Stolen baby

Patricia Roisinblit was eight months pregnant when she was taken along with her partner and 15-month-old daughter Mariana to the Regional Intelligence Centre of Buenos Aires (Riba), which was under the control of the Argentine Air Force.

From there, she was transferred to the infamous Navy Mechanics School.

The school, known as Esma, was the largest clandestine detention and torture centre in Buenos Aires.

Argentina's military rule

1976: General Jorge Videla seizes power. Thousands of political opponents are rounded up and killed
1982: Videla's successor, General Leopoldo Galtieri, orders the invasion of British-held Falkland Islands
1983: Civilian rule returns to Argentina, investigations into rights abuses begin
2010: Videla sentenced to life imprisonment for murders during his term in office
2012: Videla sentenced to 50 years for overseeing systematic theft of the babies of political prisoners

Mariana was released shortly afterwards but her parents are believed to have been killed in detention.

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Ms Roisinblit was kept alive long enough to give birth to her son.

The son, who was given the name of Guillermo, was given to an employee of the Regional Intelligence Centre to bring up, a common practice during Argentina's "dirty war" on left-wing activists.

Guillermo was tracked down in 2000 by his sister Mariana, who suspected he may be her long-lost brother.

'Death threat'

According to Guillermo, the man who raised him, Francisco Gomez, threatened "to put a bullet in the heads" of him, his sister Mariana and their grandmothers.

Gomez is on trial along with Mr Graffigna and the former head of Riba, Luis Trillo, over the disappearance of Guillermo's parents.

Mr Gomez is already in jail for stealing Guillermo from his parents.



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Guillermo's grandmother, Rosa Roisinblit, is the vice-president of the Grandmothers of the Plaza de Mayo, a pressure group which seeks to trace the babies stolen by the military regime.

Ms Roisinblit, who is 96, attended the opening of the trial on Monday along with Guillermo.

She is expected to give evidence on Wednesday along with her granddaughter Mariana.

The Grandmothers of the Plaza de Mayo have re-united 119 stolen children with their birth families.

They believe about 500 babies were stolen during military rule.

<https://www.bbc.com/news/world-latin-america-36192107>

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"~~ICIO~~"
"IC18"

Guatemala: ex-military officers convicted of crimes against humanity

Four former high-ranking officers convicted of 1981 rape and torture of young woman and disappearance of her teenage brother

Nina Lakhani in Mexico City

Wed 23 May 2018 17.57 BST Last modified on Fri 1 Jun 2018



Emma Theissen Alvarez de Molina pointed out ex-major Hugo at Zaldaña Rojas as one of the men who took away her son, saying: 'That is him. His face is forever recorded in my memory.' Photograph: Esteban Biha/EPA

Four former high-ranking Guatemalan military officers once considered untouchable have been convicted of crimes against humanity. They were also found guilty of aggravated sexual abuse against a young activist, Emma Guadalupe Molina Theissen, one of a small number of civilians who escaped army custody during the country's 36-year civil war.

Three of the officers – the former head of the armed forces, Benedicto Lucas García, former intelligence chief Manuel Antonio Callejas y Callejas and local commander Hugo Ramiro Zaldaña Rojas – were also found guilty of the forced disappearance of Emma's 14-year-old brother Marco Antonio and sentenced to 58 years' jail by the court for high-risk crimes in Guatemala City.

The Molina Theissen family have been searching for Marco Antonio since 6 October 1981, when he was bundled into a sack by military officers and driven away. The Guatemalan state admitted responsibility for grave crimes against the Molina Theissen family in 2000, but it has taken 37 years for the perpetrators to be brought to account.

Wednesday's verdict was hailed by anti-impunity campaigners as it is the first time senior military officers have been prosecuted for serious human rights violations since the 2013 genocide verdict against the former dictator Efraín Ríos Montt was sent back to trial.

Jo-Marie Burt, associate professor at the Schar school at Virginia's George Mason University, who has been monitoring the trial, said: "The significance of this sentence

cannot be overstated. It shows that Guatemalan justice system has not bowed under pressure from powerful military and economic elites to end human rights prosecutions. The perpetrators must tell the Molina Theissen family the truth about what happened to their beloved son.”

The crimes took place as part of the military junta’s “national security doctrine”. Key to this were counterinsurgency operations used to detain, torture for information, and then kill or “disappear” people regarded as the internal enemy – suspected communists, critics of the military dictatorship and activists. At the time, senior military officers received training at the School of Americas and in Argentina.

Molina Theissen was captured in September 1981. The then 21-year-old social and political activist was then taken for interrogation to a clandestine base in Quetzaltenango, western Guatemala, known as MZ17 (military zone 17). She was deprived of food, beaten, given electric shocks and raped. When she refused to help identify other suspected subversives, the torture intensified.

But Molina Theissen managed to escape, causing embarrassment to military intelligence. Her family had been under surveillance since 1955, the year after the CIA-backed coup, and were designated “internal enemies”.

The following day, a raid was organised to recapture the escapee at home. When they could not find her, her brother was taken instead. Marco Antonio is one of an estimated 5,000 children forcibly disappeared by the military during the internal conflict, according to the Truth Commission.

“Enforced disappearance was used as a weapon of war, just like a rifle or a bullet,” according to historian Marc Drouin, an expert prosecution witness.

In court, the victims’ mother, Emma Theissen Álvarez de Molina, pointed at Zaldaña Rojas as one of the men who took away her son. “That is him. His face is forever recorded in my memory.”

The defence sought to cast doubt on Molina Theissen’s escape from military detention. In a moving testimony, she said: “The fact that I escaped is not just unusual, it is very unusual, because otherwise, there would not be 45,000 victims of enforced disappearance in this country.

“They did not kill me, but what they did profoundly destroyed my life ... The fact that by escaping I had managed to save my own life filled me with pride, but this became my worst mistake ... because it resulted in the kidnapping and the disappearance of my little brother.”

Former MZ17 commander Francisco Luis Gordillo Martínez was sentenced to 33 years for crimes against humanity. His number two, the retired colonel Edilberto Letona Linares, was absolved of all charges.

Handwritten signatures of the author and a witness, likely the Molina Theissen family members mentioned in the text.

WIKIPEDIA

"IC19"

Adolfo Scilingo

Adolfo Scilingo (born 28 July 1946 in Bahía Blanca) is a former Argentine naval officer who is serving 30 years (the legally applied limit, although he was sentenced to 640 years) in a Spanish prison after being convicted on April 19, 2005 for crimes against humanity, including extra-judicial execution.

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Charges

Scilingo was charged under Spain's universal jurisdiction laws by investigating magistrate Baltazar Garzón with genocide, 30 counts of murder, 93 of causing injury, 255 of terrorism and 286 of torture. He denied the charges but initially refused to plead, claiming to be unwell. In 2005 doctors ruled Scilingo was fit to stand trial.^[1]

The murder charges related to 30 drugged political prisoners thrown out of government jets during Leopoldo Galtieri's military junta's Dirty War against leftist insurgents between 1976 and 1983. Scilingo had earlier attracted great notoriety for publicly confessing to journalist Horacio Verbitsky in c. 1996, to participating in the so-called death flights, the first of a series of public confessions collectively called in Argentina the 'Scilingo effect' (Feitlowitz 1999). Scilingo was serving a jail term for fraud in Argentina at the time.

Judgement

The court found Scilingo guilty of crimes against humanity and torture and sentenced him to 640 years in jail.^[2] 21 years for each for the murder of 30 victims, who were thrown from planes to their deaths, and a further five years for torture and five years illegal detention.^[3] Scilingo is unlikely to serve more than 30 years in jail as that is the maximum time a person can serve for non-terrorist offences.^[3]

The Spanish case was the first use of a new Spanish law whereby people can be prosecuted for crimes committed outside Spain.^[3] Scilingo's confession prompted Argentines residing in Spain to press charges against him. It also led to Chileans living in Spain to file charges against their former dictator, Augusto Pinochet, who was later arrested in Britain at the request of Judge Baltasar Garzon.

Alicia Gil Gil wrote in 2005 that use of a genocide charge to initiate proceedings, was a breach of the legal principle *Nullum crimen, nulla poena sine praevia lege poenali* which forms part of Spain's constitution, because at the time the offence was committed the Spanish provision on crimes against humanity was not yet in force.^[4]

On 4 July 2007, the Supreme Court of Spain increased Scilingo's prison sentence to 1084 years (but effective for only 25 years) and altered the conviction to the specific penalties provided in the current criminal code for the crimes of murder and unlawful detention, but held that these crimes "constitute crimes against humanity according to international law".^[5]

See also

- Alberto Ángel Zanchetta, a military chaplain who reported to Scilingo

References

1. Staff Spain tries Argentine ex-officer (<http://news.bbc.co.uk/1/hi/world/americas/4173215.stm>), BBC, 14 January 2005
2. Scilingo's sentence breaks new ground in the fight against torture (<http://www.irct.org/Default.aspx?ID=3558&M=News&NewsID=212>) Archived (<https://web.archive.org/web/20090829073641/http://www.irct.org/Default.aspx?ID=3558&M=News&NewsID=212>) August 29, 2009, at the Wayback Machine., IRCT (<http://www.irct.org/What-is-the-IRCT-3.aspx>) Archived (<https://web.archive.org/web/20090310042921/http://www.irct.org/What-is-the-IRCT-3.aspx>) March 10, 2009, at the Wayback Machine., 20 April 2005
3. Staff 'Dirty war' officer found guilty (<http://news.bbc.co.uk/1/hi/world/europe/4460871.stm>), BBC, 19 April 2005.
4. Alicia Gil Gil The Flaws of the Scilingo Judgment (<http://jicj.oxfordjournals.org/cgi/content/abstract/3/5/1082>) Journal of International Criminal Justice Advance Access originally published online on October 11, 2005 Journal of International Criminal Justice 2005 3(5):1082-1091; doi:10.1093/jicj/mqi077 (<https://doi.org/10.1093/jicj/mqi077>)
5. staff. Adolfo Scilingo (http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/adolfo_scilingo_258.html) Archived (https://web.archive.org/web/20080925073420/http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/adolfo_scilingo_258.html) 2008-09-25 at the Wayback Machine., Trial Watch (<http://www.trial-ch.org/en/about-us.html>) Archived (<https://web.archive.org/web/20090308070417/http://www.trial-ch.org/en/about-us.html>) March 8, 2009, at the Wayback Machine., 7 July 2007

Further reading

- Jonathan Mann, "Macabre new details emerge about Argentina's 'dirty war'" (<https://web.archive.org/web/20050912181831/http://www.cnn.com/WORLD/9603/argentina.war/index.html>), CNN, March 23, 1996.
- BBC News Online [1] (<http://news.bbc.co.uk/1/hi/world/americas/4173215.stm>), [2] (<http://news.bbc.co.uk/1/hi/world/europe/4460871.stm>)
- Margarite Feitlowitz, *A Lexicon of Terror: Argentina and the Legacies of Torture*, 1999.
- Horacio Verbitsky, "Confessions of an Argentine Dirty Warrior", 2005.
- Argentine Tells of Dumping 'Dirty War' Captives Into Sea (<https://www.nytimes.com/1995/03/13/world/argentine-tells-of-dumping-dirty-war-captives-into-sea.html>). *The New York Times*, March 13, 1995.

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Argentina 'Angel of Death' Alfredo Astiz convicted

27 October 2011



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Crowds cheered as the judge jailed Alfredo Astiz for life

Former Argentine naval officer Alfredo Astiz has been jailed for life for crimes against humanity during military rule in 1976-83.

Astiz - known as the "Blond Angel of Death" - was found guilty of torture, murder and forced disappearance.

Among his victims were two French nuns and the founders of the Mothers of the Plaza de Mayo human rights group.

Eleven other former military and police officers were also given life sentences for crimes against humanity.

Four others were jailed for between 18 and 25 years.

All worked at the Naval Mechanical School in Buenos Aires - known as Esma - which was the biggest secret torture and killing centre set up by the military during what became known as the "Dirty War".

Of the 5,000 or so prisoners taken to Esma, 90% did not come out alive.

Some were killed by firing squad while others were thrown from planes - drugged but still alive - into the Atlantic Ocean.

More than 70 of those who did make it out were among the witnesses in the 22-month trial.

Symbol of oppression

Astiz looked straight ahead and showed no emotion as the sentence was read out.



Among the others given life terms are Jorge Acosta, Antonio Pernias and Ricardo Cavallo.

Human rights groups had campaigned for years to bring the perpetrators to justice, and there were celebrations as the sentences were read out.

"We resisted. We never committed a crime. This is why this is just. They committed crimes. They are imprisoned," said Esma survivor Ricardo Coquet.

Astiz, 59, is one of the most notorious symbols of oppression during military rule in Argentina.

As a young naval intelligence officer he infiltrated the Mothers of the Plaza de Mayo human rights group, which was set up to find relatives abducted by the security forces.

He then arranged the kidnap and murder of its three founders - Azucena Villaflor, Esther Ballestrino and Maria Ponce.

He had already been convicted in absentia in France for the murder of the French nuns Alice Domon and Leonie Duquet, who disappeared in Argentina in 1977.

In his defence, Astiz said he had acted to save Argentina from left-wing "terrorism", and he dismissed his trial as an act of political vengeance.

Human rights groups say 30,000 people were killed or made to disappear by the armed forces in their campaign against opposition activists and left-wing guerrillas.

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Subject: FW: Inquests: Aggett/Timol

From: Moray Hathorn
Sent: 21 June 2016 09:25
To: 'Torie Pretorius (JP)'
Subject: RE: Inquests: Aggett/Timol

Dear Torie,

Re: opening of Inquests. Aggett and Timol cases

Firstly, thank you for meeting the team representing the families at the NPA on 14 June 2016.

As you requested, we address an email to you to set out why we believe the decision to reopen the Aggett (1988) and Timol (1971) inquests should be taken as a matter of urgency.

The main reason is that both cases are old and witnesses are ageing and some may die in the near future. If the decisions are delayed any further and witnesses pass away before the inquests can be reopened, aside from the devastating impact this will have on the interests of justice, it is likely that an extremely negative public perception will be generated.

In particular, the following witness are at an advanced age (in their 70s or 80s) and/ or some are in very poor health:

- George Bizos,
- Roelf Venter,
- Salim Essop,
- Charles Smith.

We note your original thinking that these matters be kept on hold pending the Simelane prosecution but we are of the view that there is no connection between these matters and the Simelane case to justify this approach.

We pointed out that once decisions to reopen are taken there will inevitably be a lead in time of several months before the actual inquests can take place. This means that there will still be ample time to carry out any outstanding investigations.

We are of the considered view that there is no reason why the decision to reopen these 2 inquests cannot be taken in the next few days, or at the very latest within the next 2 weeks.

We look forward to hearing from you at your earliest convenience.

Yours sincerely
Moray Hathorn
Partner

WEBBER WENTZEL

in alliance with > **Linklaters**

T: +27 11 530 5539 F: +27 11 530 6539 M: +27 63 003 0640

E: moray.hathorn@webberwentzel.com

www.webberwentzel.com

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"1C22"

Advocate Shaun Abrahams
National Director of Public Prosecutions

Per email: skabrahams@npa.gov.za

CC

Adv Torie Pretorius Sc

jppretorius@npa.gov.za

Adv N Jiba

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg
T +27 11 530 5000
F +27 11 530 5111
www.webberwentzel.com

Your reference	Our reference	Date
	Mr M Hathorn 3005789	8 July 2016

Dear Advocate Abrahams

INQUESTS RE: THE LATE NEIL AGGETT AND THE LATE AHMED TIMOL

Our earlier meetings and correspondence between 2015 and this year in respect of the above matters refer. We refer more specifically to our meeting on 14 June 2016 with Adv. Torie Pretorius and our email to him dated 21 June 2016, a copy of which is attached for your easy reference.

At our meeting with Adv Pretorius on 14 June 2016, he agreed that both the Aggett and Timol inquests should be reopened without delay. He further advised us that he would be recommending such advice to you. He also mentioned that he would recommend that the inquests take place in the High Court.

In our aforesaid letter to Adv Pretorius we set out why these decisions should be taken as soon as possible. Essentially, we pointed out that key witnesses are old and sickly and their passing before the reopening of the inquests would have a devastating impact on the interests of justice, as well as generating a very poor public impression of the NPA.

Although we do not believe there is much more to be done in terms of further investigations we note that there will be some lead time before the inquests can be heard in the High Court and that any outstanding investigations can take place during this period.

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We felt that the decision should have been taken within 2 weeks of our meeting with Adv. Pretorius. More than 2 weeks have elapsed since that meeting. Should a decision not be taken imminently our instructions are to take the necessary legal steps to secure such a decision.

Should you require further information or would like to meet with us again, we remain ready to assist you and to meet at any time convenient for you. We look forward to hearing from you per return.

Yours sincerely


WEBBER WENTZEL

Moray Hathorn

Partner

Direct tel: +27115305539

Direct fax: +27 11 530 6539

Email: moray.hathorn@webberwentzel.com



Advocate Torie Pretorius SC

hzwart@npa.gov.za90 Rivonia Road, Sandton
Johannesburg, 2196PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference

Our reference

Date

Mr M Hathorn
3005789

11 August 2016

Dear Adv. Pretorius,

INQUESTS RE: THE LATE NEIL AGGETT AND THE LATE AHMED TIMOL

With reference to your telephone call to me on 18 July 2016 and your email dated 25 July 2016, were you able to meet with Roelf Venter on 2 August and with the Director of Public Prosecutions (Johannesburg), Adv Chauke, in the week of 25 July?

Has the recommendation to the Minister in terms of section 17A of the Inquests Act been transmitted? If so, we would be grateful if you furnished us with a copy for our records. If not, please advise when the recommendation will be made. We would also be grateful for an explanation for the delay.

We have previously set out why we regard the reopening of these 2 inquests as urgent. Kindly confirm by close of business on Wednesday, 17 August 2016, that the recommendation to the Minister has been made. Should we not receive such advice by that time our instructions are to take appropriate action.

Yours faithfully

WEBBER WENTZEL

Moray Hathorn

Partner

Direct tel: +27115305539

Direct fax: +27 11 530 6539

Email: moray.hathorn@webberwentzel.com

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Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** RB Africa NG Alp OA Ampofo-Anti RL Appelbaum AE Bennett DRL Booyens AR Bowley PG Bradshaw EG Brandt JL Brink S Browne MS Burger T Cassim RS Coelho KL Collier KM Colman KE Coster K Couzyn CR Davidson JH Davies HE Davis PM Deya L de Bruyn JHB de Lange DW de Vilhers BEC Dickinson MA Diemont DA Dingley KZ Dlothi G Driver HJ du Preez CP du Tolt SK Edmundson AE Esterhuizen MJR Evans AA Feleke GA Fritchard JB Forman PM Gibson H Goedam CI Gouws JP Gouws PD Grealy A Harley VW Harrison JM Harvey MJ Hathorn JS Hennig KR Hillis XNC Hlatshwayo S Hockey CM Hofheldt PM Holloway HF Human AV Ismail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PW Kingston MD Kota J Lambi L Narais S McCafferty MC McIntosh M McLaren ST Meltzer SM Methula CS Meyer AJ Mills JA Milner D Millo IP Mngomezulu VM Movshovich M Mshali SP Raicker RA Nelson BP Ngesa ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phojane MA Phillips NK Potgieter S Rajah D Ramgett AIA Robb DC Rudman M Sader JW Scholtz KE Shepherd DMJ Simaan AJ Simpson J Simpson M Singh MP Spalding L Stein PS Stein LJ Swaine Z Swartepoel A Thakor A Toefy PZ Vanda SE van der Maulen M van der Walt N van der Dyk A van Niekerk JE Veeran D Venter B Versfeld MG Versfeld DA Visagie J Watson KL Williams Y Wilson RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

CC: The NDPP

skabrahams@npa.gov.za

The DPP (Johannesburg), Adv. Chauke

achauke@npa.gov.za

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41C24

Advocate Torie Pretorius SC

hzwart@npa.gov.za

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 11 530 5000
F +27 11 530 5111

www.webberwentzel.com

Your reference

Our reference

Date

Mr M Hathorn
3005789

23 August 2016

Dear Adv. Pretorius SC

Inquests re: The Late Neil Aggett and the Late Ahmed Timol

1. I refer to my discussion with you on 16 August 2016.
2. You informed me that you have spoken to Paul Erasmus and Roelof Venter and Piers Pigou. You mentioned that you are trying to contact Japie and Kobus Koch and Waal du Toit. You indicated that they might be able to confirm the notion that communists committed suicide rather than cooperate was deliberate propaganda advanced by the Security Branch to support the concocted version of suicide.
3. You said further that you are following up on 17 witnesses in the case of Neil Aggett and that you are doing your best, under heavy work pressure, to properly prepare submissions to the DPP, Johannesburg.
4. We first wish to point out that once requests are made for a hearing in the High Court there is likely to be a considerable time lapse, probably of several months, before the inquests actually happen. We point out that you do not have to finalize every last aspect of the investigations before these steps are taken.
5. We further point out that an inquest is not a criminal trial and is itself in the nature of an investigation. We have already placed on record our deep concern that witnesses are elderly and could pass away at any time.
6. We are of the firm view that there is already more than sufficient evidence to warrant the reopening of inquests in both matters. Indeed at our last meeting with you at your office

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on 14 June 2016 you agreed that both matters should proceed to inquests, without delay. We are accordingly surprised and concerned that you now advise that both matters require further investigation.

7. We respectfully place on record that such delay is prejudicial to the interests of justice in both cases.
8. We set out below our reasons why there is currently sufficient basis to seek the reopening of both inquests. We also set out suggested steps that we believe need to be carried out, which we assert can be done over the next few months, pending the hearings in the High Court.

9. The Timol matter

- 9.1 Ahmed Timol and Salim Essop were arrested after the vehicle they were travelling in was stopped and searched by police. Communist leaflets were apparently found in the boot.
- 9.2 The men were first taken to Newlands police station. After the arrival of Security Branch (SB) investigators they were separated and taken to the SB offices at John Vorster Square, where they were detained.
- 9.3 Both men were fit and injury free at the time of their arrest.
- 9.4 A few days later Timol was alleged to have jumped out of the 10th floor window and fallen to his death.
- 9.5 Numerous pre-death injuries were present on his body.
- 9.6 At about the same time as Timol's death, the District Surgeon was summoned to the 10th floor of John Vorster Square where he found an unconscious Salim. Salim was taken to hospital in the morning of 26 October 1971. Timol died in the afternoon of Wednesday, 27 October 1971.
- 9.7 Salim was secretly admitted to hospital and later to a prison hospital where he remained until his first court appearance about a year later. He appeared, together with three others, in a magistrate's court in Johannesburg on 8 March 1972, and was remanded in custody by the magistrate. He appeared, again together with the three, in the Pretoria Supreme Court on 13 June 1972, and was formally charged. His political trial ended on 31 October 1972, when the three others and him, were each sentenced to five years of imprisonment.
- 9.8 Salim was prosecuted and convicted on terrorism related charges and imprisoned for five years.

10. The first Inquest

- 10.1 Timol's family was represented by Advocates Issy Maisels and George Bizos at the Inquest.

- 10.2 They disputed the SB version that Timol had been well treated, not assaulted and had spontaneously committed suicide. They contended that he had been tortured and that this had caused his death – either directly or indirectly.
- 10.3 The SB presented a wall of silence and denied any wrongdoing. They specifically denied that they assaulted or tortured detainees and claimed that they treated detainees well and won their confidence.
- 10.4 The Magistrate rejected the evidence of pre-death injuries, assaults or torture and found the SB version credible.

11. The Cover-Up

- 11.1 The police and the State were obliged under law to present all relevant evidence to the inquest court. Salim was a material and important witness but he was deliberately hidden and not produced as a witness. Had he been produced as a witness he would have directly contradicted the SB version and their assertions of kindly treatment. Salim's account of vicious and sustained assault would have been corroborated by conclusive medical evidence.
- 11.2 Instead he was held incommunicado in secret under security laws. The fact that he was severely injured and had been removed from SB offices in an unconscious state at about the same time as Timol's death was never disclosed. Neither were Salim's medical reports disclosed.
- 11.3 The torture and assault on Salim contradict the SB version that they treated Timol with care and consideration.

12. Evidence of defeating the Ends of Justice

- 12.1 We have provided the NDPP with the account by Salim (written by him) of what happened to him and to a lesser degree Timol. Salim will testify that from the moment that he and Timol were separated at Newlands he suffered continual and severe assaults from the SB until he lost consciousness and was admitted to hospital. There is absolutely no reason to conclude that Timol was treated differently.
- 12.2 At our meeting at the NPA in January, George Bizos related to the Deputy NDPP and to yourself the details of the Timol case – giving a first-hand account of how SB policemen presented a wall of silence, the medical evidence indicating assault on Timol and the failure to present/disclose the Salim evidence. He also highlighted weaknesses and contradictions in the SB version.
- 12.3 Accordingly, the NDPP has compelling evidence that the SB defeated the ends of justice in the Timol Inquest.

13. Suggested steps

- 13.1 The following steps are set out below:
 - 13.1.1 make contact with Salim Essop and arrange for his affidavit to be obtained;

- 13.1.2 obtain the Inquest documents;
- 13.1.3 cause an affidavit to be obtained from George Bizos (who offered to be a witness at our original meeting with the NDPP staff);
- 13.1.4 review the important post mortem forensic evidence;
- 13.1.5 follow up on medical records in respect of Essop;
- 13.1.6 obtain the record and judgment of the interdict before Judge Margo to restrain further assaults and torture on Essop;
- 13.1.7 determine who of the original witnesses are still available and their contact details;
- 13.1.8 determine if there are additional witnesses who were not called during the first inquest and if there are such witnesses cause their affidavits to be recorded;
- 13.1.9 carry out an in-depth consultation with our client Imtiaz Cajee concerning the information he has.

13.2 At this stage there is no need to re-investigate the entire inquest in order to present a watertight case. It only needs to be demonstrated that the version of the SB was false and the Inquest was corrupted. As we have indicated this can be done through the evidence of Salim and George Bizos.

14. The Aggett Matter

- 14.1 Neil Aggett was one of seventeen persons detained in connection with a list of activist's names found in possession of Barbara Hogan.
- 14.2 He was detained for several weeks. The initial SB investigating officer could not find anything incriminating concerning Aggett's activities. A young SB Lieutenant, Steven Whitehead (the son of a very senior officer in SB), said he disagreed with this conclusion and asked to be put in charge of Neil Aggett's interrogation. This was acceded to.
- 14.3 A period of torture and harsh prolonged sleep deprivation interrogations occurred.
- 14.4 Aggett made complaints of assault and ill treatment to visiting magistrates and fellow detainees during this period. Detective Sergeant Blom recorded his formal affidavit of assault.
- 14.5 One of the detainees (Maurice Peter Smithers) witnessed an assault on Aggett in the office next door to where he was kept through oblique glass.
- 14.6 Aggett remarked to one of the detainees that he had been "*broken*" and appeared dejected and miserable.
- 14.7 That night Aggett apparently hanged himself in his cell using a scarf.
- 14.8 Medical and other material evidence supported the contention that Aggett had committed suicide.

14.9 As is customary in an unnatural death which involves the authorities (in this case a detainee in the custody of the police) a formal inquest was held to inquire into the cause of death.

14.10 Aggett's family was represented by George Bizos SC and Denis Kuny. They took the position that they believed that Aggett had hanged himself, but that his death was unlawfully induced by the severity of the torture he endured at the hands of the SB – particularly Whitehead.

14.11 Evidence that supported their contention included:

14.11.1 the police records showing the lengthy periods during which Aggett was booked out of the cells for "*investigation*";

14.11.2 the fact that most of the detainees on the Barbara Hogan list said that they had suffered torture at the hands of the SB;

14.11.3 Aggett's formal complaints of abuse and assault;

14.11.4 **a detainee (Maurice Smithers) who said that he had witnessed an assault on Aggett.** Maurice Smithers witnessed an assault on Aggett while another detainee Ismail Mononait said he saw a bruise or mark on Aggett's forehead;

14.11.5 **marks on Neil Aggett's body, reported in the post mortem, which were consistent with assaults.** These marks and injuries were consistent with the injuries that Aggett reported he had sustained to the magistrate and to detective sergeant Blom.

14.12 The SB maintained a wall of silence, denying the assaults and the prolonged periods of interrogations.

14.13 The Inquest Court accepted the SB versions and rejected all the contentions and evidence put forward by the family.

14.14 The full and complete record of the police investigation and inquest is kept by Wits University and is available on-line.

14.15 We have provided you with the following documents in connection with William Smith and Roelof Venter:

14.15.1 **William Smith was a Warrant Officer in the SB and was involved in the interrogations of some of the Barbara Hogan detainees (but not Aggett).**

14.15.1.1 The affidavit he made in 1982 to police investigators denying assaults or torture of the detainees he interrogated. A copy was also provided to you.

14.15.1.2 The transcript of his evidence at the Aggett inquest on 12 October 1982 denying assaults as alleged by Pramanathan Naidoo and others.

14.15.1.3 The affidavit he made in 1997 in support of an amnesty application (which did not go ahead) in which he admitted assaulting Prima Naidoo and others during the Barbra Hogan investigation.

14.15.2 **Roelof Venter was a Lieutenant in the SB and was involved in the interrogations of some of the Barbara Hogan detainees.**

14.15.2.1 The affidavit he made in 1982 to the police investigators denying assaults as alleged by the detainees.

14.15.2.2 The transcript of his evidence at the Aggett inquest in October 1982 denying assaults as alleged by Pramanathan Naidoo, Ismail Mononait and others. His evidence is reflected on page 2488 of the record and was given on 12 October 1982.

14.15.2.3 The affidavit he made in 1999 in support of an amnesty application in which he admitted assaulting Prima Naidoo and other during the Barbara Hogan investigation.

14.16 Paul Erasmus was a SB member at John Vorster Square but was not involved in the interrogations or investigation of the Barbra Hogan cases.

14.16.1 He applied for amnesty for a number of matters including the breaking and entry into Aggett's parental home in an effort to find evidence that could support the police version i.e. records that Aggett suffered from depression. In his evidence to the Amnesty Committee he testified that:

14.16.1.1 The SB had bugged George Bizos in order to discover the direction of his cross examination and the evidence he would present on behalf of the family.

14.16.1.2 Whitehead was implicated in the breaking and entry into Aggett's parental home.

14.16.1.3 Top police commanders collaborated in the cover-up of the abuses perpetrated against Aggett as well as the break-in at the home of Aggett's parents.

14.17 The NPA accordingly has *prima facie* evidence (in the form of affidavits and transcripts of evidence under oath) that the SB conspired to and did defeat the ends of justice in the Neil Aggett Inquest.

14.18 George Bizos personally related to the Deputy NDPP and to yourself at our meeting during January 2016 the details of this case. He gave a first-hand account of how SB policemen perjured themselves during the Inquest hearing and the effect this perjury had on the outcome of the inquest.

14.19 This evidence set out above demonstrates how the entire inquest process in the Aggett matter was thoroughly corrupted.

15. Suggested steps

15.1 We suggest the following steps be taken:

15.1.1 check the veracity of the documents that we have provided to you;

15.1.2 cause an affidavit to be obtained from George Bizos;

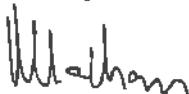
15.1.3 check the availability of all the Inquest records and documents and obtain copies;

15.1.4 determine who of the original witnesses are still available and their contact details; and

15.1.5 determine if there are additional, new, witnesses who were not called during the inquest and if there are such witnesses, cause their affidavits to be recorded.

16. In the circumstances we hereby demand that the necessary recommendations to the Minister of Justice in terms of section 17A of the Inquest Act 58 of 1959 to reopen the aforesaid inquests be made by no later than 30 September 2016. Our client's rights are reserved.

Yours faithfully



WEBBER WENTZEL

Moray Hathorn

Partner

Direct tel: +27115305539

Direct fax: +27 11 530 6539

Email: moray.hathorn@webberwentzel.com

CC: The NDPP

skabrahams@npa.gov.za

The DPP (Johannesburg), Adv. Chauke

achauke@npa.gov.za