

BEFORE THE AMNESTY COMMITTEE**APPLICATIONS FOR AMNESTY
IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND
RECONCILIATION ACT, NO 34 OF 1995****THE AMNESTY APPLICATIONS OF:**

- | | | |
|-------------------------------------|---|-----------|
| 1. SATHYANDRANATH RAGUNANAN MAHARAJ | - | AM5514/97 |
| 2. JOHANNES MODISE | - | AM5500/97 |
| 3. ANDREW MANDLA LEKOTO MASONDO | - | AM5501/97 |
| 4. STEPHEN VUKILE TSHWETE | - | AM5539/97 |
| 5. NGOAKO ABEL RAMATLHODI | - | AM5538/97 |
| 6. GODFREY NHLANHLA NGWENYA | - | AM5537/97 |
| 7. LAMBERT LEHLOHONOLO MOLOI | - | AM5512/97 |
| 8. SNUKI JOSEPH ZIKALALA | - | AM6515/97 |
| 9. PETER RAMOSHOANE MOKABA | - | AM5504/97 |
| 10. B.P. GILDER | - | AM5510/97 |
| 11. B.L. MASETHLA | - | AM5511/97 |
| 12. M.N. PHOSA | - | AM5520/97 |
| 13. Z.P. TOLO | - | AM5526/97 |
| 14. T.M. MBEKI | - | AM5506/97 |
| 15. C. NQAKULA | - | AM5507/97 |
| 16. N.N. MAPHISA | - | AM5505/97 |
| 17. S.W. SIGXASHE | - | AM5536/97 |
| 18. B.A. MANCI | - | AM5535/97 |
| 19. R.S. MOPATI | - | AM5527/97 |
| 20. S.S. MAKANA | - | AM6158/97 |
| 21. T.M.G. SEXWALE | - | AM5533/97 |
| 22. J.K. NETSHITENZHE | - | AM5532/97 |
| 23. P.R.F. MDLULI-SEDIBE | - | AM5531/97 |
| 24. J.G. ZUMA | - | AM5530/97 |

25. J.K. NKADIMENG	-	AM5529/97
26. J.S. SELEBI	-	AM5528/97
27. A. NZO	-	AM6203/97

DECISION

On the 9th of May 1997, 29 applications were submitted to the Amnesty Committee by the Truth and Reconciliation Commission desk of the African National Congress. The applications were lodged under cover of a notice dated 09 May 1997, indicating that the 29 applications were to be considered in terms of section 19 (5) (b) of the Promotion of National Unity and Reconciliation Act No 34 of 1995, which section empowers the Amnesty Committee to jointly consider individual applications. Further a declaration was submitted "in support" of the applications, and the applicants in turn referred to the declaration as the basis for their applications for amnesty. The content of this declaration is dealt with herein under.

On receiving the notice and 29 applications, individual files were opened, each registered separately in terms of the procedures of the Amnesty Committee. In the meantime further individual applications from various applicants other than those received from the ANC/TRC desk were received which also referred to the declaration, purporting to be an extension of the original joint applications of the applications of 29 applicants. These applications were administratively dealt with individually. After some time 37 applications, 21 of which included names of those mentioned above and 16 others not part of the original 29 were submitted by staff to a panel of the Amnesty Committee. The notice attached to the original 29 applications, appears not to have been placed on all the files. This resulted in 8 of the original 29 applications intended for joint consideration not being included amongst the 37.

The granting of Amnesty to the 37 and the subsequent court proceedings, are matters of history. What is however important, is that the court directed the Amnesty Committee "to consider afresh the applications for Amnesty of the third to thirty ninth respondents (the 37), including the issue of whether such applications properly comply with the relevant requirements of the Promotion of National Unity and Reconciliation Act. 34 of 1995".

The Committee decided to consider the 29 original applications received from the TRC desk of the ANC jointly and to consider the other 16 applications separately. It needs to be mentioned that a large number of further applications, similarly based and relying on the declaration, have since been lodged with the Committee. All of these will be considered separately.

The declaration on which the above applicants rely, reads as follows:-

"We, the applicants, having at various times between 1 March 1960 and 10 May 1994, as indicated below been members and leaders of the African National Congress (hereinafter referred to as the ANC), elected and /or appointed to serve in various structures including its highest organ, the National Executive Committee, do hereby make the following declaration:

1. During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid, appropriately dubbed a crime against humanity by the international community.

2. In the course of our people's struggle, with the intent to induce the apartheid government of the National Party to abandon apartheid with its concomitant violent repression, and with the intent to achieve, bring about and promote fundamental political, social and economic changes in the Republic, the ANC, inter alia, established its military wing, Umkhonto weSizwe, through which it prosecuted an armed struggle.
3. At all material times, Umkhonto weSizwe operated under political authority, direction and leadership of the ANC.
4. Due to its peculiar circumstances, and the attacks mounted upon it by its adversary, the apartheid government, the ANC established various organs at various times such as the RC, PMC and a security organ NAT which at all material times also operated under its authority, direction and leadership.
5. Due to the circumstances which prevailed in the townships, in the early 1990s as a result of third force activities, the leadership of the ANC established and, in some instances encouraged the establishment of Self Defence Units (SDUs), which played a critical role in the defence of defenceless communities.
6. In the event, and to the extent that, any of the activities of any of the above mentioned institutions and structures including the SDU's could in any manner whatsoever be regarded as the kind of acts or omissions or offences envisaged in the Promotion of National Unity and Reconciliation Act, we collectively take full responsibility therefore applying for amnesty in respect thereof".

Following the court order, the Amnesty Committee made further inquiries from the ANC - TRC desk which represents at least the original 29 applicants and gave directions in respect of the attestation of the applications and requested for further particulars.

As a result of such enquiries, a letter dated the 10 November 1998 was received by the Committee from the ANC's Secretariat. The contents thereof are as follows:-

*Amnesty Committee
Truth and Reconciliation Commission
Cape Town*

Dear Judge Khampepe

RE: ANC AMNESTY APPLICATION

As you are aware, during 1997, the ANC applied for amnesty for a group of 29 of its leaders.

The list was conveyed in a communication dated 9 May 1997 which apparently had a list of 30. However, the list contained a mistake in that the name of ZP Tolo appears twice on the list. (We attach the list for ease of reference).

The application was launched in keeping with the ANC commitment made in its submission to the Human Rights Violations Committee of the TRC that its leadership would take collective responsibility for the bona fide activities of members of the organisation.

The ANC consciously and deliberately took this position in order to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act

whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act.

More specifically, the leadership of the ANC was determined then, as it is now, not to abandon or desert the thousand[s] of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary.

The leadership also hoped that by making this application, it would lead its members by example, encouraging those affected to follow in its footsteps.

The group selected to apply for amnesty was not the complete list of the leadership of the ANC during the mandate period of the ANC.

It was representative of a group of this leadership, chosen in a manner consistent with the definition of "the leadership of the ANC" by the Human Rights Committee.

This overall leadership is reflected in Appendix One of the May 1997 "Further Submission and Responses by the African National Congress to Questions Raised by the Commission for Truth and Reconciliation". (pp 34-56).

Accordingly, the list of 29 covered the period 1960-94 and included people who had been members of various committees of the ANC, from the NEC downwards.

Further, the group was also selected on the basis that, to the knowledge of the ANC, none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty.

From the foregoing, it should be clear that "the 29" would not be able to answer any questions which sought to establish the specific acts for which they were applying for amnesty, since there are none.

It also seems clear that there are other leaders of the ANC who applied for amnesty on their own and in the same way as "the 29", who would also not be able to supply specific information, as they applied in furtherance of the collective responsibility assumed by the leadership of the ANC.

The ANC would be willing to join these to "the 29", after having established in each case that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act.

Contrary to what has been falsely argued, the ANC never sought a "blanket amnesty" for leadership of the ANC, in bona fide belief that each one of "the 29" would stand any detailed scrutiny with regard to whether they were culpable of any gross violation of human rights, within the meaning of the provisions relating to the granting of amnesty.

As the records of the Amnesty Committee will show, though some of the names are common to both, our list of "the 29" is not the same as the list of 37 which the Committee seemed to have considered.

We are therefore uncertain as to whether the selection of those among "the 37" other than "the 29" was based on the same criteria as were used when "the 29" were selected.

Accordingly, we would humbly suggest that the Amnesty Committee should consider "the 29" or any new list which might be drawn up, which would include other leaders of the ANC who have applied for amnesty, as reflected above.

We trust that this letter will help you and the Committee in its work. We are ready further to assist the Committee as it requires, according to our ability. We therefore look forward to hearing from you in due course.

Yours sincerely
 DEPUTY SECRETARY GENERAL

Subsequent to receiving this letter the Applications of Mokoape and Mafu have been withdrawn from the list, bringing the total number for joint consideration down to 27.

ISSUES

In our view there are two principal issues to be considered in these applications.

The first issue relates to the reliance by the applicants on the declaration quoted herein above. The thrust of the declaration is that the applicants collectively take full responsibility for the activities of their institutions or structures and apply for amnesty " in the event and to the extent that any of the activities of these institutions and structures could in any many whatsoever be regarded as acts/omissions or offences envisaged in the Act".

The cardinal point for consideration is whether this committee can grant amnesty to the applicants for acts committed by members of the various structures (which acts they are unaware of) on the basis of collective political and moral responsibility.

The second issue relates to whether the applications, as amplified in terms of the letter of the 10th November 1998, disclose any specific act that constitutes an offence or delict.

We therefore accordingly proceed to deal with these issues *seriatim*.

Having regard to the declaration it is quite evident that the individual applicants apply for amnesty not because they committed any acts that could constitute an offence or a delict but do so solely because they are persons who were either in the leadership of the ANC at various times between 1960 to 1994, or were members of the structures established by the ANC in order to wage a struggle against the NP led government and therefore take collective responsibility for the acts committed by their members in the various structures which acts were committed under the ANC's political authority, direction and leadership. They accordingly assume political and moral accountability for such acts.

It is appropriate at this stage to refer to the sections for the granting of amnesty as contained in the Act. Section 20 (1) stipulates as one of the requirements for amnesty that "the act, omission or offence" in respect of which amnesty is sought must be an "act associated with a political objective". Section 20 (1) c stipulates that the applicant must make a full disclosure of all the relevant facts in respect of the "act, omission or offence" for which amnesty is sought. Section 20 (2) then steps in to define an "act associated with a political objective". It states that an "act associated

with a political objective means an act or omission which constitutes an offence or a delict which according to the criteria in subsection (3), is associated with a political objective, ...". It is clear from these sections that for an applicant to qualify for amnesty he should have committed an act which constitutes a delict or an offence; he should fully disclose, *inter alia*, the nature and extent of his participation in respect of the offence or delict for which he seeks amnesty and provide other relevant facts which will be used by the Committee in its application of the prescribed criteria contained in section 20(3) in determining whether or not a particular act, omission or offence qualifies for amnesty.

The applicants' applications are founded on collective responsibility for acts committed by their members in the event and to the extent that such acts are found to be acts associated with a political objective. In as much as the applicants are to be commended for taking such a noble step of publicly taking collective responsibility in the manner they have done, it was not the intention of the legislature to extend amnesty to the applicants merely on the basis of collective responsibility as the applicants seek to do. The sections dealing with the granting of amnesty are quite clear and unambiguous. The individual applicant must, *inter alia*, fully disclose a specific offence or delict advised, planned, directed, commanded, ordered or committed by herself/himself in order to qualify for amnesty. In the case of the applicants it is quite evident that they are not aware of all the acts committed by their members and one can comprehend their conundrum in this regard.

It is further evident that from the declaration and the letter relied upon by the individual applicants the applicants sought to apply not as individuals in their personal capacities but in their capacity as " a representative group of the ANC leadership" for the period 1960 to 1994.

It is instructive to point out that the Act does not provide *locus standi* to Liberation Movements, Political Organisations or the State to apply for amnesty for acts associated with a political objective as defined in the sections quoted herein above. These juristic entities are nevertheless immune from both criminal and civil liability in terms of section 20 (7) (a), once "a person" has been granted amnesty in respect of an act, omission or offence. In the case of the ANC, once a member or supporter of that organisation has been granted amnesty for an act, offence or omission, the ANC is indemnified against any criminal and civil liability for the acts of the wrongdoer (who has been granted amnesty) which could have arisen in consequence of its vicarious liability for such an act, omission or offence. The State is equally discharged from any civil liability if its employee has been granted amnesty for any act omission or offence in circumstances where it would have been held vicariously liable.

It therefore follows that the ANC will not be held vicariously liable for the acts that the applicants might have intended to cover through their applications and for which they take collective responsibility once amnesty is granted to individual applicants who are their members and such amnesty is granted in respect of acts committed by them in their various structures set up by the ANC leadership at various times.

Having said that, it needs to be mentioned that the ANC will be so indemnified **only to the extent** that their members have been granted amnesty for specific acts. It is trite that notwithstanding the lack of *locus standi* to these juristic entities, no provision has been made in the Act to extend indemnification to such bodies as the ANC or the State in circumstances where their members have not applied and have not been granted amnesty for acts associated with a political objective.

The second and fundamental issue that we have to consider is whether the applications of the individual applicants comply with the requirements of the Act at all, in terms of Section 18 and 20 (1) of the Act.

Section 18 (1) which deals with **applications for granting of amnesty** provides that:

"Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in Section 7 (3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form".

Section 20 (1) which deals with the **granting of amnesty** provides that:

"If the Committee, after considering an application for amnesty, is satisfied that :-

(a) the application complies with the requirements of this Act;

(b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and

(c) the applicant has made a full disclosure of all relevant facts, it shall grant amnesty in respect of that act, omission or offence".

Section 20 (2) further defines an act associated with a political objective as follows:

In this Act, unless the context otherwise indicates, "act associated with a political objective" means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date
... "

Having regard to the provisions of Section 20(1) (a) (b) and Section 20 (2) it is quite clear that an application will only comply with the requirements of the Act if it discloses an act which constitutes an offence or delict (Section 20 (2)) for which an applicant has made a full disclosure in terms of Section 20 (1) (c).

None of the applicants have disclosed any such act, omission or offence. On the contrary, pursuant to the enquiries made by this Committee in terms of Section 19, the applications as amplified in the letter quoted hereinabove, categorically state that "none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty"; " ... that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act", that they do not have to apply for amnesty for "specific acts since there are none".

According to the amplification the stated reasons for the applications were that the leadership of the ANC was determined then as at present, to;

- show its determination "not to abandon or desert the thousand[s] of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary".

- "lead its members by example, encouraging those affected to follow in its footsteps" by applying for amnesty.
- " ... to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act".

The Committee notes the reasons advanced by the ANC. Unfortunately no matter how noble and commendable these reasons may be, they clearly demonstrate that these applications do not comply with the requirements of the Act as no act, omission or offence is the subject of the applications as required by Section 18(1) of the Act. The applications do not relate to any specific act, omission or offence. On their own admission none of the applicants have been involved in any act "for which they would require to apply for amnesty". In the premises, no amnesty can be granted to the applicants because in terms of what is before the Committee they have committed no offence or delict.

The intention of the applicants to support the thousands of cadres did not warrant an application of this nature. It would have been sufficient for the applicants to support their members' applications for amnesty where necessary without themselves applying for amnesty for the acts of such members. That it was never envisaged by the Act to have persons such as the applicants applying for amnesty on the basis of collective responsibility or for the aforementioned reasons is to be found in Section 20 (7) (a) which has already been discussed hereinabove.

FINDINGS

It is our finding that:

In so far as the applicants seek to apply for amnesty for acts committed by their members in the various institutions and structures on the basis of collective political and moral responsibility, their applications fall outside the ambit of the act and accordingly they do not require to apply for amnesty.
In so far as the applications read with the amplification are concerned we find that no amnesty can be granted to the applicants because

1. on their own version they have committed no offence or delict in terms of the act.
2. Their applications do not relate to any specific act, omission or offence in terms of Section 20 (1) and therefore do not fall within the ambit on the Act.

CONCLUSION

In the premises the applications do not comply with the requirements of the Act and no amnesty is granted.

Signed on the 4th Day of March 1999.

1. Judge S. Khampepe
2. Judge S. Miller

3.

Adv. N.J. Motata

4.

W. C. Malan
SK/nt/

Verw : A15
Navraag: Adv A R Ackermann
Tel : 845 6432

**SPECIAL LITIGATION UNIT /
SPESIALE LITIGASIE EENHEID**

26 Junie 2006

MEMORANDUM

AAN : Dr S Ramaite S C
VAN : A R Ackermann S C
ONDERWERP : DIE STAAT teen

- (1) MTHETHELEDI ZEPHANIA MNCUBE
- (2) MZONDELELI EUELID NONDULA
- (3) JABULANI SYDNEY MBULI

Saakdossiere :

- (1) Messina MR 67/12/85 : Moord van 2 SAP lede
- (2) Messina MR 57/11/85 : Landmynontploffing
- (3) Messina MR 58/11/85 : Landmynontploffing
- (4) Messina MR 67/11/85 : Landmynontploffing
- (5) Messina MR 65/11/85 : Landmynontploffing
- (6) Messina MR 66/11/85 : Landmynontploffing
- (7) Messina MR 34/12/85 : Landmynontploffing
- (8) Messina MR 41/12/85 : Landmynontploffing
- (9) Messina MR 21/02/86 : Landmynontploffing
- (10) Alldays MR 10/10/86 : Landmyn onskadelik gestel
- (11) Alldays MR 11/10/86 : Landmyn onskadelike gestel

- 3 -

Die ondersoek het verder op 'n gewapende aanval op 26 Desember 1986 op 'n SA' patrollie betrekking waartydens 3 ANC-lede doodgeskiet en een (MNCUBI) gearresteer is. MNCUBE het later daarin geslaag om te ontsnap deur twee SAP-lede nl ALOFF GERBER en Sers NEL dood te skiet. (Messina MR 67/12/86).

Eersgenoemde twee persone hierbo (MNCUBE en NONDULA) is later gearresteer en is weens al die gemelde misdade vervolgt, skuldig bevind en gevonnissen, terwyl die derde persoon (MBULI) nooit gearresteer was nie.

2. AMNESTIE

Amnestie is op 16 Maart 2001 aan al die bogenoemde persone verleen vir alle misdade waaraan hulle met gemelde ontploffings verband hou. Eersgenoemde (MNCULBE) het ook amnestie vir die moord van die twee SAP lede ontvang.

3. OPMERKING

Die ANC het die gebruik van landmyne in die Messina grensgebied goedgekeur en opdragte in die verband is deur die bevelstruktuur van Umkhonto we Sizwe (MK) aan lede gegee. (Amnestie uitspraak van vermeldes).

Volgens getuienis gelewer was die vermeldes onder bevel van ene MANCHECK wat opdragte gegee en aan MK gesagvoerders verslag moes doen. MANCHECK is oorlede en daar is geen getuienis oor sy skakeling met die MK opgesag nie.

Al die ander ANC-lede (voetsoldate) wat by hierdie misdade betrokke was is oorlede.

4. BESLISSING

Ten opsigte van die sogenaamde voetsoldate is geen verdere ondersoek nodig nie. Ten aansien van die ANC leierskap wat die opdragte vir die landmynveldtog gegee het en nie amnestie ontvang het nie, moet 'n besluit tegeleener tyd nog geneem word nadat al die relevante partye gespreek is.

Bovermelde is 'n moeilike besluit.

Adv A R Ackermann S C
SPESIALE DIREKTEUR

/tp

20/1/2001

A/INV/25/02/TRC

TO: M. B. T. MOCHUKA

FROM: RC MACADAM
Deputy Head of PCLU

ALLEGATIONS AGAINST THE PRESIDENT

1. I enclose herewith a copy of CIO Leask's affidavit confirming that General Van der Merwe did not furnish him with any information on the basis that this was in the possession of his attorney Wagener.
2. I have conducted the following investigations into the matter:
 - (i) SAPS are in possession of a huge number of dockets relating to criminal offences committed by the ANC/MK. I have a list of these dockets. In not one of them has the President been implicated as a suspect.
 - (ii) Several prominent MK members applied for and received amnesty. None of these implicated the President. In terms of section 20 (7) (a) of Act 34 of 1995 the organisation cannot be held vicariously liable for the acts committed by their members. Wagener represented the victims at several of these hearings and only made allegations against members of the Military Headquarters of the ANC and not the President. ✓
 - (iii) The Foundation for Equality Before the Law made a submission to the TRC accusing the ANC of several human rights abuses. These allegations are almost entirely based on Sechaba and other publications which are not admissible in law without proof of authenticity. Yet again the President was not implicated.
 - (iv) The ANC also made a submission to the TRC and admitted to various human rights abuses. The President made the submission relating to landmine incidents. (The admissions were made on behalf of the organisation and not in his individual capacity. In terms of section 29 of Act 34 of 1995 the submission is inadmissible in criminal proceedings. ✓
 - (v) It is true that the President applied for and was refused amnesty. The basis of the refusal was that he did not admit to committing criminal acts.

- (3) The various old Terrorist laws have been abolished. His guilt or innocence must be determined by the general principles of common law relating to conspiracy and common purpose. In this regard it must be proved either that he was present at a meeting where he agreed participated in the commission of the crimes. I am unable to find any evidence to prove either.

ANDREW GORDON LEASK

States under oath in English:

I am appointed as Head of the Special National Projects Unit at the Directorate of Special Operations Head Office, where I hold the rank of Chief Investigating Officer.

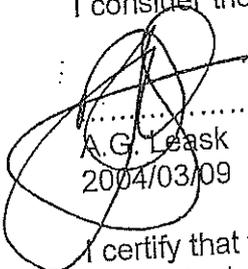
As part of my duties I perform and assist with investigation for the Priority Crimes Litigation Unit.

On 2004/03/09 I conducted an interview with the ex police Commissioner Johan van der Merwe. The purpose of this meeting was to offer him an opportunity to make available any information or evidence that could assist in establishing a case for possible criminal charges against the leadership of the ANC.

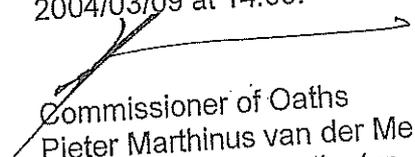
The General has clearly stated that he has conducted an investigation and has obtained documents and statements implicating members of the ANC with regard to the so-called TRC cases. Further that these documents have been handed to their attorney Wagener who is still in possession thereof.

General van der Merwe has undertaken to confirm this in a sworn statement which he will prepare himself.

I know and understand the contents of the declaration.
I have no objection to taking the oath.
I consider the oath to be binding on my conscience.


A.G. Leask
2004/03/09

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration which was sworn to before me and the deponents signature placed thereon in my presence at PRETORIA on 2004/03/09 at 14:00.


Commissioner of Oaths
Pieter Marthinus van der Merwe
Senior Special Investigator
Directorate of Special Operations
VGM Building
Weavind Park
PRETORIA
R.S.A

NPA MEDIA RELEASE

DATE: 15 MAY 2004
IMMEDIATE RELEASE

THE NPA CLOSES THE FILE ON 37 ANC LEADERS

The National Prosecuting Authority (NPA) has decided not to launch any investigation into 37 ANC leaders who were refused amnesty by the TRC.

In 1996 the ANC leadership, led by President Mbeki, jointly applied for amnesty and took collective responsibility for policy decisions that led to cadres committing acts that were regarded as criminal by the previous government.

According to the joint application, none of the leaders had committed any individual action for which they were required to seek amnesty.

In terms of the TRC Act, people had to make individual applications, give a full disclosure of each and every specific offence that the person had committed. The TRC committee found that the joint application did not disclose any act, omission or offence.

The TRC, therefore, turned down the ANC leaders' application, as it did not comply with the Promotion of National Unity and Reconciliation Act of 1995.

The joint amnesty, along many other amnesty judgments, was referred to the NPA for the organization to decide whether or not prosecutions could be instituted.

The "Foundation for Equality Before the Law" – an organization led by former National Police Commissioner, General Johan van der Merwe, which mainly comprises former members of the old security police – sought to use the TRC judgment to call for the prosecution of the ANC leaders.

The Foundation alleged that it was in possession of documents that could prove a criminal case against the ANC leaders.

The National Director of Public Prosecutions, Bulelani Ngcuka, made several requests to be furnished with this evidence, however, the Foundation failed to supply the NPA with the relevant facts.

Furthermore, the NPA perused all relevant material in possession of both the TRC and the SAPS and was unable to find any evidence on which to launch an investigation.

In the circumstances, the NPA has no reasonable basis to authorize an investigation in terms of the provisions of Sec 28 of Act 32 of 1998.

*Issued by Siphon Ngwema, Executive Manager: NPA Communications.
For more information contact him @ 082 499 8111.*

Amnesty "F"

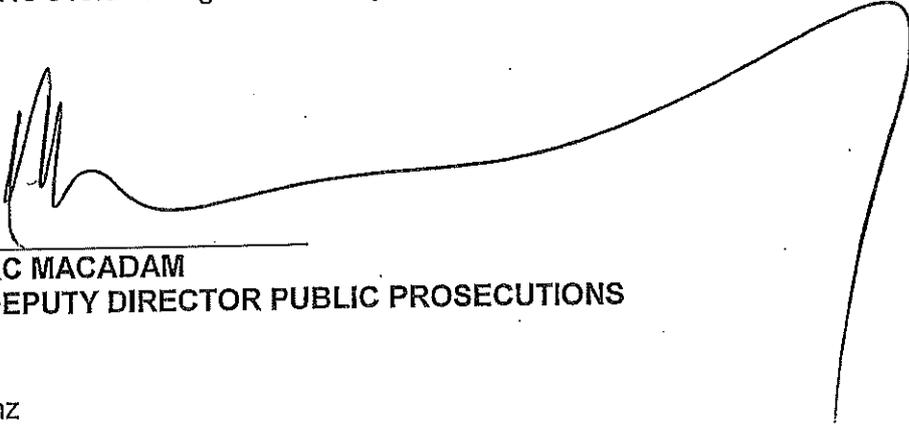
Inv 25/02 TRC

2 July 2004

Supt Brits
SAPS
Crimes Against the State
PRETORIA

**REFUSAL OF AMNESTY: PRESIDENT AND OTHER PROMINENT
ANC LEADERS**

Having considered all the relevant material in its possession, the National Prosecuting authority has decided that there is insufficient evidence upon which to launch a criminal investigation arising from the TRC's refusal to grant amnesty to the above persons.



**RC MACADAM
DEPUTY DIRECTOR PUBLIC PROSECUTIONS**

/hz

INTERNAL MEMORANDUM

INV 25/02 TRC

P. O. Box 752,
PRETORIA
0001

VGM Building
Hartley St.
Weavind Park
0001
Pretoria
South Africa

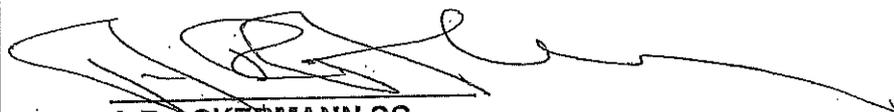
Tel: (012) 845 6431
Cell: 082 498 6033

TO: MR B T NGCUKA
FROM: R C MACADAM
SUBJECT: INVESTIGATION AGAINST THE PRESIDENT AND OTHER PROMINENT ANC LEADERS
DATE: 5 JULY 2004

1. I normally do not allow myself to be distracted by such matters, but given the manner in which Commissioner Selebi sought to attack you over the above case, the following is of interest:
2. On 5 July 2004 Senior Superintendent L Bester and Superintendent H Britz of SAPS Headquarters saw me in connection with the attached memo confirming the NPA's decision not to conduct an investigation. They were displeased with the contents of the memo and attempted to persuade me to reopen the case against the President, as there was an abundance of evidence to justify a prosecution. I have invited them to furnish me with dockets containing such evidence.
3. During these discussions Mr Ackermann joined the meeting and drew their attention to the fact that since June 2003 he had invited them to produce evidence implicating the President without any success. I am now waiting to see if any dockets will materialize and will inform you accordingly.



R C MACADAM
DEPUTY HEAD PCLU



A R ACKERMANN SC
HEAD: PCLU

I agree.

Adv. M
P. A. 01
A19

INFORMATION NOTE

To: Assistant Commissioner P J Jacobs

TRC RELATED MATTERS: INQUESTS

- 1 As far as the finalization of certain inquests are concern, the following cases were perused an the findings are as follows:
- 2 **Messina CR 57/11/85 M Z Ncube and two others.**
Inquests were held in respect of the Van Eck and De Nysshen victims. (Attached copies of the J56's - annexures A-F).
Inquests in respect of the two policemen, Nel and Gerber, were not held because the accused, Ncube and two others were charged and convicted but receive amnesty.
- 3 **Ellisras CR A28/8/88 M J Rampolo**
Inquests were held in respect of the policeman N C Claassen and the ANC member J M Kgwahla who were killed during the incident. (Attached copy of the Inquest Register at Seleka Magistrate's Court - annexure G). Unfortunately no J56's could be traced.
- 4 **King Williams Town CR 397/11/92 T T Xundu**
Inquests were held in respect of Gillian Davis, Rhoda MacDonald, David Andre Theresa Davis and Ian Wheelright MacDonald who were killed during the incident. (Attached copies of the J56's - annexures H - K).
- 5 **Diepkloof CR 228/8/89 Micheal Ndlovu, William Mafa and Ben Bani**
The circumstances surrounding Michael Ndlovu in so far as granting of amnesty is concern, is still under investigation.
- 6 **Umbumbulu CAS 35/4/87 Steven Mkulusi, Moses Mkize and Sakhile Nzama**
The Magistrate's Court at Umbumbulu was visited but neither could the Inquest register nor the Inquest file, with a possible J56 been traced.
- 7 **Jeppe CR 47/7/88 Ellispark Bomb**
Inquests were held in the respect of Clive Winston Quayle and Linus Mare who were killed during the incident. (Attaced copies of the J56's - annexures L+M)
- 8 **Fort Beaufort CR 156/3/93 N Diaho-Monehang**
An inquest was held in respect of J F Jerling who was killed during the incident. (Attached copy of J56 - annexure N)


SENIOR SUPERINTENDENT

COMMANDER; CRIMES AGAINST THE STATE
L J BESTER

MESSINA M.R. 6772/86

ANNEXURE A 1104

-76-200000 (M-S)

J 56

No. 1 1986

INQUEST: ACT 58 OF 1959
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA

MESSINA

LIANDROSTRAAT O.S.
 PRIVATE BAG X82
 1986-05-27
 MESSINA 0800

A.J. BOSCH

esquire, Magistrate for the said district
Landdros van genoemde distrik en
as assessor(s) on the 16de day
as assessor(e) op die dag

1986 into the circumstances attending the death of the person mentioned below.
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ns of section 16 of the Act:
volge artikel 16 van die Wet:
of the deceased person
t van die oorledene

CARLA DE NYSSCHEN; BLANKE; DOGTER; 8 JAAR OUD

ill name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

15 DESEMBER 1985

er likely cause of death
s of waarskynlike oorsaak van dood

SKOK EN BLOEDING NA ERNSTIGE LEDEMAAT EN HOOF BESERINGS

OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE 'N
PASSASIER WAS.

er the death was brought about by any act or omission involving or amounting to an offence on the part of any
dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak
JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

A.J. BOSCH

MEI 1986

ADD. Magistrate/Landdros 11.11.81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above
ERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings
d that fact.
ld aan te teken nie, hy dié feit moet boekstaaf.

RNEY-GENERAL,
JREUR-GENERAAL,
vaatsak X300
TORIA 0001

ms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.
olge artikel 17 (1) van die Wet op GeregteLIKE Doodsondersoekte, 1959 (Wet 58 van 1959), word die notule van

Messina P.N. 67/12/86

ANNEXURE B
A92

G.P.S. 45811-1975-76-200000 (M-S)

J 56

No. 2 19.86

INQUEST: ACT 58 OF 1959 GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

helden at..... MESSINA in the district of..... MESSINA
ehou te.....
of mnr. A.J. BOSCH

NDRE
PRIVAATSAK/PRIVATE BAG X321
1986-05-27
MAGISTRATE

esquire, Magistrate for the said district
Landdros van genoemde distrik en
as assessor(s) on the 16de day
as assessor(e) op die dag

MEI 19 86 into the circumstances attending the death of the person mentioned below.
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
in terms of section 16 of the Act
vindings ingevolge artikel 16 van die Wet:
a) Identity of the deceased person..... JOHANNES JACOBUS DE NYSSCHEN; BLANKE; SEUN; 3 JAAR OUD;
Identiteit van die oorledene

(State full name, race, sex, age and occupation/Meid volle naam, ras, geslag, ouderdom en beroep.)
Date of death..... 15 DESEMBER 1985
Datum van sterfgeval

Cause or likely cause of death..... SKOK EN BLOEDING NA ERNSTIGE NEK-, LEDEMAAT- EN 75%
Oorsaak of waarskynlike oorsaak van dood
BRANDWONDE OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE
'N PASSASIER WAS.

Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person
dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak
erson..... JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

6 MEI 1986

A.J. BOSCH
ADD. Magistrate/Landdros 11.11.81

NOTE.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above
MERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings
ord that fact.
eld aan te teken nie, hy dié feit moet boekstaaf.

RNEY-GENERAL,
JREUR-GENERAAL,
atsak X300

RIA-0001
ms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of
olge artikel 17 (1) van die Wet op Geregtelelike Doodsondersoeke 1959
rncee voorgelê.

92
94
95
96

MESSINA M.K. 6/112/86

ANNEXURE C 1776

1-1975-76-200 000 (M-S)

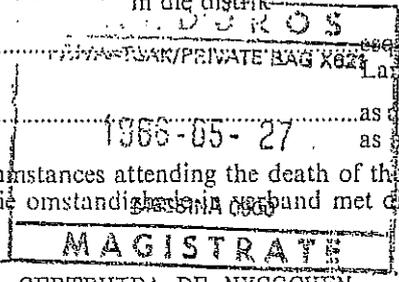
J 56

No. 3/86

INQUEST: ACT 58 OF 1959
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA

A.J. BOSCH



Magistrate, Magistrate for the said district
Landdros van genoemde distrik en
as assessor(s) on the 16de day
as assessor(e) op die dag

MEI 1986 into the circumstances attending the death of the person mentioned below,
aangaande die omstandighede van die dood van ondergenoemde persoon.

in terms of section 16 of the Act:
in volge artikel 16 van die Wet:

Identity of the deceased person: MARIA GERTRUIDA DE NYSSCHEN; BLANKEVROU; '56 JAAR OUD
Identiteit van die oorledene

Full name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

Date of death: 15 DESEMBER 1985

Place of death: SKOK EN BLOEDING NA ERNSTIGE NEK EN VERMINKTE ONDERSTE

Probable cause of death: LEDEMATE OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE

Probable cause of death: 'N PASSASIER WAS.

Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person: JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

16 MEI 1986

A.J. BOSCH

ADD. Magistrate/Landdros Tl. 11.81

NOTE.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above
OPMERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings
te vermeld aan te teken nie, hy dié feit moet boekstaaf.

ATTORNEY-GENERAL,
SOLICITOR-GENERAAL,
Private Bag X300
PORT OF SPAIN, JOHANNESBURG

In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.
In volge artikel 17 (1) van die Wet op Geregteelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van
hiermee voorgelê.

6 MAY 1986

A. J. BOSCH

MESSINA M.R. 67/12/86

ANNEXURE A112

176-200000 (M-S)

J 56

No. 4 19 86

INQUEST: ACT 58 OF 1959
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA
in die distrik

A.J. BOSCH

1986 Esquire, Magistrate for the said district
Landdroes van genoemde distrik en
as assessor(s) on the 16de day
MESSINA assessor(s) op die dag

19 86 into the circumstances attending the death of the person mentioned below.
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ms of section 16 of the Act:
volge artikel 16 van die Wet:
of the deceased person
it van die oorledene

JACOBA VAN ECK; BLANKEVROU; 34 JAAR OUD

all name, race, sex, age and occupation/Meld voile naam, ras, geslag, ouderdom en beroep.)

15 DESEMBER 1985

death
van sterfgeval

SKOK EN BLOEDING NA ERNSTIGE NEK, LEDEMAAT EN IN-

or likely cause of death
k of waarskynlike oorsaak van dood

ENDIGE BESERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP
ORLEDENE 'N PASSASIER WAS.

death was brought about by any act or omission involving or amounting to an offence on the part of any
veroorsaak is deur 'n handeling of verstui, wat 'n misdryf aan die kant van iemand insluit of uitmaak
JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

16 MEI 1986

A.J. BOSCH

ADD Magistrate/Landdros 11.11.81

E.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out at
ERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevind
d that fact.
d aan te teken nie, hy dié feit moet boekstaaf.

RNEY-GENERAL,
UREUR-GENERAAL,

satsak X300

RIA 0001
ms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.
olge artikel 17 (1) van die Wet op Geregte like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van
iermee voorgelê.

A.J. BOSCH

MESSINA 11.11. 67/12/86

ANNEXURE E
1108

S-76-200 000 (M-S)

J 56

No. 5 1986

INQUEST: ACT 58 OF 1959
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA
in die distrik

A.J. BOSCH

Magistrate for the said district
as assessor(s) on the 16de day
as assessor(e) op die dag
1986
into the circumstances attending the death of the person mentioned below.
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
MESSINA 0900

ns of section 16 of the Act:
volge artikel 16 van die Wet:
of the deceased person
t van die oorledene

IGNATIUS MICHAEL VAN ECK, BLANKE, SEUN; 2 1/2 JAAR OUD

ll name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

death 15 DESEMBER 1985

likely cause of death SKOK EN BLÔEDING NA ERNSTIGE HOOF, ROMP- EN LEDEMAAT-
of waarskynlike oorsaak van dood

ERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE
PASSASIER WAS.

the death was brought about by any act or omission involving or amounting to an offence on the part of any
ood veroorsaak is deur 'n handeling of verstuijn, wat 'n misdryf aan die kant van iemand insluit of uitmaak
JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

MEI 1986

A.J. BOSCH

ADD. Magistrate/Landdros 11*11.81

-Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above
KING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings
that fact.
aan te teken nie, hy dié feit moet boekstaaf.

NEY-GENERAL,
EUR-GENERAAL,
itsak X300

IA 0001
of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

ANNEXURE F
A100

MESSINA M.R. 67/12/86

-200 000 (M-S)

J 56

No. 6 19 86

INQUEST: ACT 58 OF 1959
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA
in die distrik

A.J. BOSCH esquire, Magistrate for the said district
Landdroos van genoemde distrik en
as assessor(s) on the 16de day
as assessor(e) op die dag

19 86 into the circumstances attending the death of the person mentioned below.
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

section 16 of the Act:
artikel 16 van die Wet:

deceased person... die oorledene
NELMAR VAN SCKE BLANKE; DOGTER; 8 JAAR-OU

name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)
15 DESEMBER 1985

cause of death... oorsake van dood.
SKOK EN BLOEDING NA ERNSTIGE HOOF, EKSTENSIEWE LEDEMAAT
NEK BESERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP
LEDENE 'N PASSASIER WAS.

death was brought about by any act or omission involving or amounting to an offence on the part of any person
veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak
A, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

1986

A.J. BOSCH

ADD. Magistrate/Landdroos 1 P. 11.81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above
Art. 16 (3) van die Wet bepaal dat indien die Landdroos nie in staat is om enige van die bevindings
te maak, hy dié feit moet boekstaaf.

GENERAL
REGISTRAR-GENERAAL,
X300
0001

Section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.
Art. 17 (1) van die Wet op Geregtelike Doodsondersoek, 1959 (Wet 58 van 1959), word die notule van

Datum naas- bestaandes kennis gegee Date next of kin notified	Datum van aanvang van geregtelike doodsondersoek Date of commencement of inquest	Bevinding en datum daarvan Finding and date thereof	Datum aan Prokureur- generaal gestuur Date sub- mitted to Attorney-General	Datum van Prokureur- generaal terug- ontvang en sy verwysings- nommer Date of return by Attorney-General and his reference number	Datum terug aan polisie Date returned to police
11/1/89	17/1/89	The death was not about by any act or omission involving or amounting to an offence on the part of any person.	N/A	N/A	?
1/1/89	6/2/89	The deceased is a terrorist who was killed during hot pursuit and as such there is no act or omission on the part of any person involving or amounting to an offence but defence.	?	?	?
1/1/89	20/2/89	The deceased is a terrorist who was killed during hot pursuit and as such there is no act or omission on the part of any person involving or amounting to an offence but defence.	20/2/89	14/3/89 13/4/89	89/3/17
1/8/89	2/8/89	The deceased was killed during process of hot pursuit.	20/2/89	14/3/89 18/1/89	89/3/17
1/8/89	2/8/89	One terrorist was killed while there are some spores of three other	20/2/89	14/3/89 18/1/89	89/3/17

MMUSO WA LEBOWA
Magistrate/Magistrata
1989-01-26
Private Bag/Privaatsak
POTGIETERSRUS
LEBOWA GOVERNMENT SERVICE
LEBOWA REGERINGSDIENST

ADD: MAGISTRATE/MAGISTRATA
PHALALA

ADD: MAGISTRATE/MAGISTRATA
PHALALA 20/2/89

1989-02-23
Private Bag/Privaatsak
POTGIETERSRUS
LEBOWA GOVERNMENT SERVICE
LEBOWA REGERINGSDIENST

MMUSO WA LEBOWA
Magistrate/Magistrata
Add: Magistrate/Magistrata
PHALALA

1989-02-23

Private Bag/Privaatsak
POTGIETERSRUS
LEBOWA GOVERNMENT SERVICE
LEBOWA REGERINGSDIENST

SEN OR AANKLAAR/PROSECUTOR
MOTER/AGTERVOLGERS
LEBOWA GOVERNMENT SERVICE
LEBOWA REGERINGSDIENST

SV199/96

J 56

G.P.-S.

No. 59/2003 19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die distrik in the district of KING WILLIAM'S TOWN
voor by N MJEKULA Landdros van genoemde distrik en Magistrate for the said district
met with as assessor(e) op die dag as assessor(s) on the day

an 18.2.2004 19 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
into the circumstances attending the death of the person mentioned below.

Indings ingevolge artikel 16 van die Wet:
Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person GILLIAN DAVIS
FEMALE 53 years
(Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death 28.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death MULTIPLE SCHRAPNEL WOUNDS AND RETROPERITONEAL HAEMORRHAGE

(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak
Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person
DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF
THEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS!UMZIWONKE NTINTILE,
TOBELA MLAMBISA

Datum 18.2.2004 (SGD) N MJEKULA Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo
NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall
vermeld aan te teken nie, hy dié feit moet boekstaaf.
record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf
When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph
in paragraaf 12 van die Kode Geregtelike Doodsondersoeke gevolg.
12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL
THE ~~ATTORNEY GENERAL~~ DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN
Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.
hiermee voorgelê.

Datum 18.2.2004 (SGD) N MJEKULA Landdros/Magistrate

Die stukke gaan hiermee terug vir lissering. My verwysingsnommer is 9/2/9-110/04
The record is returned herewith for filing. My reference number is
PUBLIC PROSECUTOR

REPUBLIC OF SOUTH AFRICA
REPUBLIC OF SOUTH AFRICA

No. 57/2003 Jaar Year

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die in the KING WILLIAM'S TOWN

*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/distrik
*division of the High Court of South Africa/regional division/district

voor by N MJEKULA *regter/streeklanddros/landdros
*judge/regional magistrate/magistrate

van genoemde *afdeling/streekafdeling distrik met
of the said *division/regional division/district with (i) as assessor(e)
(ii) as assessor(s)

op (datum) 17.2.2004 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
on (date) into the circumstances attending the death of the person mentioned below.

bevindings ingevolge artikel 16 van die Wet:
findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene
Identity of the deceased person RHODA MacDONALD

FEMALE 56 years

(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)

(b) Datum van sterfgeval
Date of death 29.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood
Cause or likely cause of death MULTIPLE WOUNDS OF BODY

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:
Whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person:

DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF
TEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILI
AND TOBELA MLAMBISA

Datum 17.2.2004
Date

(SGD) N MJEKULA
Regterlike Beampte • Judicial Officer

OPMERKINGS: 1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo vermeld aan te teken, hy dié feit moet boekstaaf.
NOTE: 1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record that fact.

*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die kode "Geregtelike Doodsondersoeke" gevolg.
*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIREKTEUR VAN OPENBARE VERVOLGINGS
DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.
In terms of section 17(1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 17.2.2004
Date

(SGD) N MJEKULA
Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is
The record is returned herewith for filing. My reference number is

9/2/9-10/04 114/04

Die Direkteur: Openbare Vervolgings het besluit *om te verwoig/om nie te verwoig nie.
The Director: Public Prosecutions has decided *to prosecute/not to prosecute.

Datum 17.2.2004

SV199/96

J 56

G.P.-S.

No. 60/2003 19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die distrik in the district of KING WILLIAM'S TOWN
voor by N. MJEKULA Landdroos van genoemde distrik en Magistrate for the said district
met with as assessor(e) op die 18 dag as assessor(s) on the 18 day

FEBRUARY 2004xx aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.



Findings ingevolge artikel 16 van die Wet: Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person DAVID ANDRE THERESA DAVIS
MALE 59 years (Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death 28.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death MULTIPLE SCHRAPNEL WOUNDS WITH LEFT HAEMOTHORAX

(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person
DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF THEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILE, TOBELA MLAMBISA

Datum 18.2.2004 (SGD) N. MJEKULA Landdroos/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdroos nie in staat is om enige van die bevindings hierbo vermeld aan te teken nie, hy dié feit moet boekstaaf. NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregte Like Doodsondersoeke gevolg. When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregte Like Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY GENERAL DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN Ingevolge artikel 17 (1) van die Wet op Geregte Like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê. In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 18.2.2004 (SGD) N. MJEKULA Landdroos/Magistrate

Die stukke gaan hiermee terug vir lissering. My verwysingsnommer is 9/2/9-115/04 The record is returned herewith for filing. My reference number is 9/2/9-115/04

PUBLIC PROSECUTIONS

No. 58/ Jaar 2003

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN In die in the KING WILLIAM'S TOWN

*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/distrik
*division of the High Court of South Africa/regional division/districtvoor by N MJEKULA *regter/streeklanddros/landdros
by *judge/regional magistrate/magistratevan genoemde *afdeling/streekafdeling distrik met as assessor(e)
of the said *division/regional division/district with (i) as assessor(s)op (datum) 17.2.2004 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
(date) into the circumstances attending the death of the person mentioned below.Vindings ingevolge artikel 16 van die Wet:
Findings in terms of section 16 of the Act:(a) Identiteit van die oorledene
Identity of the deceased person IAN WHEELWRIGHT MACDONALDMALE 61 years
(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)(b) Datum van sterfgeval
Date of death 28 NOVEMBER 1992(c) Oorsaak of waarskynlike oorsaak van dood
Cause or likely cause of death MULTIPLE WOUNDS ON BODY(d) Of die dood veroorsaak is deur 'n handeling of versuim wat *prima facie* 'n misdryf aan die kant van iemand insluit of uitmaak:
Whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person:DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF
THEMBELANI XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILE & TOBELA
MLAMBISADatum
Date 17.2.2004

(SGD) N MJEKULA

Regterlike Beampte • Judicial Officer

OPMERKINGS: 1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo
NOTE: 1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record
vermeld aan te teken, hy dié feit moet boekstaaf.
that fact.*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die
*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure
prosedure voorgeskryf in paragraaf 12 van die kode "Geregteelike Doodsondersoeke" gevolg.
prescribed in paragraph 12 of the code "Geregteelike Doodsondersoeke" should be followed.DIREKTEUR VAN OPENBARE VERVOLGINGS
DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregteelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.
In terms of section 17(1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.Datum
Date 17.2.2004

(SGD) N MJEKULA

Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir klassering. My verwysingsnommer is
The record is returned herewith for filing. My reference number is

9/2/9-110/04 113/04

Die Direkteur: Openbare Vervolgings het besluit om te vervolg/om nie te vervolg nie.
The Director: Public Prosecutions has decided to prosecute/not to prosecute.

VEILIGE HEIDSTRAK

JOHANNESBURG

No. 1919 / 19 19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at **JOHANNESBURG** in die distrik in the district of **JOHANNESBURG**

voor by **M. K. S. DE LANGE** Landdros van genoemde distrik en Magistrate for the said district

met with as assessor(e) op die as assessor(s) on the dag day

van of **1988-12-08** 19... aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet: Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person **CLIVE WINSTON D HAYLE**
CLUCAS WIMALLE; 47 YRS
(Meid volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death **2/7/88**

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death **MULTIPLE INJURIES**
Car bomb explosion



(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person

Person unknown

Datum Date **1988-12-08**

[Signature]
Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo vermeld aan te teken nie, hy dié feit moet boekstaaf.
NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregteelike Doodsondersoeke gevolg.
When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregteelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY-GENERAL **JOHANNESBURG**

Ingevolge artikel 17 (1) van die Wet op Geregteelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum Date **1988-12-08**

[Signature]
Landdros/Magistrate

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is The record is returned herewith for filing. My reference number is

11712/2682/88

WETLIK HEIDS TAK
JOHANNESBURG

No. 14461/19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te **JOHANNESBURG** in die distrik **JOHANNESBURG**
Held at in the district of

voor by **MARCELO LANGE** Landdros van genoemde distrik en Magistrate for the said district

met with **1959-12-08** as assessor(e) op die dag as assessor(s) on the day

van of 19..... aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet:
Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene
Identity of the deceased person **LIMUS MARE ; W / MALE**
(Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval
Date of death **2/7/88**

(c) Oorsaak of waarskynlike oorsaak van dood
Cause or likely cause of death **MULTIPLE INJURIES**
Carbon monoxide poisoning



Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak
Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person

Yes, person murdered

Datum **1959-12-08**
Date..... Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo vermeld aan te teken nie, hy dié feit moet boekstaaf.
NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregte Like Doodsondersoeke gevolg.
When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregte Like Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL
THE ATTORNEY-GENERAL
JOHANNESBURG

Ingevolge artikel 17 (1) van die Wet op Geregte Like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum **1959-12-08**
Date..... Landdros/Magistrate

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is
The record is returned herewith for filing. My reference number is **1192127/2/88**

Datum **22.12.88**
Date..... Hoofklerk van die Prokureur-generaal
Chief Clerk to the Attorney-General

NO. 2/2003

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

hou te held at FORT BEAUFORT in die in the FORT BEAUFORT

*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/
*division of the Supreme Court of South Africa/regional division/

distrik voor JP JAQUIRE *regter/streeklanddree/
district by *judge/regional magistrate/

landdros van genoemde *afdeling/streekafdeling distrik met GEEN as assessor(e) op die 11 dag
magistrate of the said *division/regional division/district with as assessor(s) on the day

van DESEMBER 2003 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
of 19 into the circumstances attending the death of the person mentioned below.
Bevindings ingevolge artikel 16 van die Wet:
Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene JOHANNES FREDERICK JERLING
Identity of the deceased person

18 JAAR, MANLIK
(Meld volle naam, identiteitsnommer of ouderdom en geslag - State full name, identity number or age and sex)

(b) Datum van sterfgeval 20/03/1993
Date of death

(c) Oorsaak of waarskynlike oorsaak van dood SKIETWOND IN KOP NADAT OORLEDENE IN 'N AANVAL
Cause or likely cause of death DEUR APLA OP DIE YELLOWWOODS HOTEL GESKIET IS.

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:
Whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person:
JA. NKOPANE, DIABO-MONAHENG, VUYISILE BRIAN MADASI EN LUNGISA MZIWONKE NTINTILI

Datum 11 DESEMBER 2003
Date

Regterlike Beampte - Judicial Officer

OPMERKINGS.-1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo
NOTE.-1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record
vermeld aan te teken, hy die feit moet boekstaaf.
that fact.

*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die
*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure
prosedure voorgeskryf in paragraaf 12 van die kode "Geregtelike Doodsondersoeke" gevolg.
prescribed in paragraph 12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL DIREKTEUR OPENBARE VERVOLGINGS
THE ATTORNEY-GENERAL PRIVAATSAK X1009, GRAHAMSTAD, 6140

Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.
In terms of section 17(1) of the Inquest Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 11 DESEMBER 2003
Date

Regterlike Beampte - Judicial Officer

Die stukke gaan hiermee terug vir lassing. My verwysingsnommer is SV 64/95. 9/2/9 - 980/02
The record is returned herewith for filing. My reference number is

Die Prokureur-generaal het besluit om te vervolg/om nie te vervolg nie/dat die polisie ondersoek moet voortgaan.
The Attorney-General has decided to prosecute/not to prosecute/ that police investigation is to continue.

Datum 2003-12-23
Date GRAHAMSTOWN

Hoofklerk van die Prokureur-Generaal
Chief Clerk to the Attorney-General

* Skrap indien nie van toepassing.

VERSKYNNINGS INGEVOLGE ARTIKEL 11 VAN DIE WET
APPEARANCES IN TERMS OF SECTION 11 OF THE ACT

As Staatsaanklaer MR. M. RUSI
As Public Prosecutor

en NO-ONE namens
andon behalf of

Die volgende beëdigde/bevestigende verklaring is ingevolge artikel 13 (1) van die Wet toegelaat:
The following affidavits/affirmations were admitted in terms of section 13(1) of the Act:

- A - CLYDE CONWAY SCHWARTZ
- B - HENRY SHANE FERREIRA
- C - JAN JOHANNES NEL
- D - HENDRIK JACOBUS STEPHANUS RAUTENBACH
- E - CHARL JACQUES HURN
- F - KHAYALETHU EVERTON KEPEYI
- G - LANCE PIETER DE KLERK
- H - CHARL JACQUES HURN
- J - JOHANNES PETRUS JACOBUS ERASMUS
- K - DR. BASIL WINGREEN
- L - FREDERICK JACOBUS PETRUS NEL
- L2 Kennisgewing van vrywaring deur Warheid en Versoenings Kommissie
- L3 Beslissing van vrywaringskommissie
- L4 Proklamasie interne van artikel 20(1) Wet 34/1995

Die volgende mondelinge getuienis is afgeleë:
The following oral evidence was adduced:

GEEN

/Z56 forms

Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

P. O. Box 752,
PRETORIA
0001

VGM Building
Hartley St.
Weavind Park
0001
Pretoria
South Africa

Tel: (012) 845 6431
Cell: 082 498 6033

INTERNAL MEMORANDUM

TO: ADV VP PIKOLI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

CC: MS KALYANI PILLAY
SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS

CC: DR MS RAMAITE SC
DEPUTY NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

FROM: ADV RC MACADAM
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
AND DEPUTY HEAD: PCLU

SUBJECT: TRC MATTERS

DATE: 16 AUGUST 2007

Dear Adv Pikoli

1. Anton has asked me to deal with this matter after he in turn had discussed it with Dr Ramaite SC.
2. I attach herewith the fax from AfriForum, as well as a draft reply for your consideration.
3. This is the following episode in the saga of the so-called case against the President and other senior ANC leaders which has been the source of much controversy, since the President made his speech in April 2003 to the effect that there would be no further TRC amnesty processes.
4. As in the case of all previous complaints, AfriForum refuses to

produce the "evidence" upon which it makes its allegations.

5. When the allegations of a so-called case against the President first surfaced, I went through a large number of dockets at the DPP: Pretoria's office, which had been compiled by the former Security Branch of the then SAP. I also held detailed discussions with the two SAPS members, who were in charge of such dockets. I could find no evidence implicating the President or any other senior ANC member. In all the dockets, the implicated parties had received amnesty and no further prosecution of them was therefore legally justified.
6. With the assistance of Madeleine Fullard, I went through the following TRC material:
 - 6.1 A submission by the former Security Force Generals directed against MK. None of the current parties were implicated during the course of such submission.
 - 6.2 A submission by the President in his capacity as the Head of the ANC during the course of which it was admitted that human rights abusers were committed during the course of the Liberation Struggle. This submission was not an admission of personal liability and in any event, in terms of the TRC legislation, statements of this nature are not admissible as confessions in criminal proceedings.
 - 6.3 Amnesty applications by former MK operatives with particular reference to the land mine campaign. In certain instances, these applications were opposed by the lawyers acting on behalf of the Generals (In this case, claiming to have a mandate from the victims). Again, the current parties were not implicated and in any event, the TRC granted amnesty on the basis that a full disclosure had been made.
 - 6.4 The refusal of amnesty to a group referred to collectively as the "ANC 37". The basis of the refusal was that collective political responsibility had been assumed without admission of individual criminal acts. Since the TRC was only empowered to grant amnesty for criminal offences, the applications had to be refused.
7. The security laws which applied in the 1970/1980's contained several presumptions aimed at easing the burden on the State to prove individual criminal acts. These laws have all been repealed and consequently, guilt must be determined on the basis of the general principles of common purpose. Common purpose as interpreted by the Courts requires either direct participation in the offence or a prior agreement to commit it. The relevant acts must be committed either prior to or during the commission of the offence.
8. In the light of the above, I was of the view that there was no admissible evidence upon which to investigate or prosecute the ANC leadership and I submitted a memorandum to Mr Ngcuka to this effect. Subsequently, the NPA released a media statement to the effect that no grounds existed to investigate or prosecute the ANC leadership.
9. Mr Ngcuka also requested me to brief Minister Maduna and members of the Office of the President and all parties were satisfied.
10. It is highly likely that your reply will be released to the media by Mr Kriel and I therefore deem it inappropriate to request him to make his investigation available, as this might create the

impression that there is in fact a case against the ANC leadership and we will have a repeat of the problems where senior Government officials believed that we were planning to arrest the President and other persons.

Kind regards

RC MACADAM

17 August 2007

The CEO
AfriForum
Pretoria
0001

Fax: (012) 6641281
Email: kallie@afriforum.co.za

Dear Mr Kriel

YOUR COMPLAINT RE TRC MATTERS

I acknowledge receipt of your letter dated 27 July 2007 and have to inform you that in 2004, my predecessor, Adv Bulelani Ngcuka, declined to prosecute the leadership of the ANC in respect of various matters arising from the TRC process. This decision was taken after careful consideration of all the available, admissible evidential material and in the light of the Constitutional powers and policy of the National Prosecuting Authority. His decision was publicly announced to the media. A copy of the media release is attached herewith for easy reference.

In essence, the facts upon which you based your allegations against the ANC leadership, formed part of the evidential material, which was considered by Adv Ngcuka. I note in your letter that you have declined to make your private investigation available to me. I therefore have no legal basis upon which to overturn the properly informed and carefully considered decision of my predecessor.

I wish to inform you that all prosecutions arising from the TRC process are in accordance with the prosecution policy as required by the Constitution. I therefore cannot accede to your further request to cease all prosecutions arising from the TRC cases.

Yours sincerely

ADV VP PIKOLI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

- 2.6 With the aforementioned in mind, my clients will now have to liaise with the investigating officer of this specific incident and Adv. Ackermann SC and guide them regarding the evidence and witnesses from whom further affidavits should be obtained. (Which should have been done in the first place). Thereafter, if necessary, Adv. Ackermann SC will be requested to utilise his powers in terms of Section 204 and 205 of the Criminal Procedure Act, to wrap up outstanding evidential issues and then, so we believe, a prosecution will follow.
 - 2.7 Should the unthinkable happen and the NPA at that stage still decide not to prosecute, my clients may have no alternative than to institute private prosecutions. We trust, however, that this will not happen and that you will respect the said constitutional principles.
3. I will keep you informed of progress herein.

Yours faithfully



J WAGENER
FOR: WAGENER MULLER

**MEDIA STATEMENT BY THE NATIONAL
DIRECTOR OF PUBLIC PROSECUTIONS**

S v JOHANNES VELDE VAN DER MERWE & 4 OTHERS

I confirm that on 17 August 2007 and at the Pretoria High Court, in accordance with a Plea and Sentence Agreement in terms of Section 105A of Act 51 of 1977, JOHANNES VELDE VAN DER MERWE, ADRIAAN JOHANNES VLOK, CHRISTOFFEL LODEWIKUS SMITH, GERT JACOBUS LOUIS HOSEA OTTO and HERMANUS JOHANNES VAN STADEN pleaded guilty to a charge of attempted murder, relating to an attempt to poison Reverend Frank Chikane and that the accused were sentenced as follows:

Johannes Velde Van Der Merwe & Adriaan Johannes Vlok

10 years imprisonment, wholly suspended for 5 years

Christoffel Lodewikus Smith, Gert Jacobus Louis Hosea Otto and Hermanus Johannes Van Staden

5 years imprisonment, wholly suspended for 5 years

In arriving at the decision to prosecute the accused in this matter, I have acted in accordance with both the Constitution and the law.

This case has been conducted in terms of the Prosecution Policy, as amended and is in full compliance with Section 179(5) of our Constitution, which empowers the National Director to determine prosecution policy with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecution. It is important to note that each of the TRC cases before the NPA will be dealt with on its own merits. The National Prosecuting Authority expresses its satisfaction with the co-operation it has received from the victim/complainant, the accused and the defence team in resolving this grave matter which is of national and international significance.

In dealing with all of these cases, I will at all times be guided by the Constitution and the law, in particular the preamble to the Constitution, "Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental rights".

This case is a victory for the Rule of Law for the State, the National Prosecuting Authority as well as the South African public at large and is in line with the 4 pillars from which the National Prosecuting Authority derives its strength, viz.:

- Independence
- Accountability
- Integrity and
- Transparency

ADV VP PIKOLI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS