

Dear Michael

1. I only received your letter dated 4 February 2008 on 5 February 2008 at 12h00.

2. Mthunzi is not available today and I cannot get hold of him.

3. My file with the relevant documents is with Mthunzi.

4. I am not so sure whether the consultation with Rev Chikane took place on 22 January 2007.

5. Last year, I directed Mthunzi to establish the true state of affairs, i.e. establish at the Union Buildings when we were there. I do not know what the outcome is.

6. Ad par 4

On 18 January, I made the following notes in my diary:

"Kalyani: Pikoli gave instructions – proceed with Chikane prosecution."

As far as I was concerned, the State only had a *prima facie* case against Otto Smith and Van Staden.

During the period March 2006 to January 2007, my role was minimal, if any. Advocates Pretorius and Eksteen and Kalyani were appointed to deal with the matter in terms of par B1 of the TRC Guidelines.

I specifically requested Adv Pikoli not to be part of this "*mini-TRC process*".

7. Ad par 5

After Adv Pikoli had made his decision to prosecute Otto, Van Staden and Smith in January 2007, the legal representative of the three accused, who also acted for Van der Merwe and Vlok, approached me with a view of a plea bargain.

This resulted in a protracted negotiation process between the two of us, the upshot of which was that in early July 2007, all five accused agreed to plead guilty. It must be noted that during the period of negotiation, no Task Team meetings were scheduled. However, on 8 August 2007,

Adv Macadam fully briefed the meeting about the intended prosecution against all five accused.

The minutes of this meeting reflect my absence.

8. Ad par 6

The Task Team referred to by Adv Pikoli is neither the TRC Task Team nor a PCLU task team. It was an NPA Task Team to deal specifically with the process envisaged by par B1 of the TRC Guidelines. Dr Pretorius *et al* were part of this process.

9. I have briefly dealt with the allegations in the affidavits of Adv Simelane and Commissioner Jacobs. My responses thereto are annexed hereto.

Kind regards


Anton Ackermann

ADV SIMELANE - AFFIDAVIT

Ad par 32.1

- "The purpose for which the Task Team was established by the Directors General"
1. From day one, I was of the view that the creation of the Task Team was unconstitutional. A number of memoranda to that effect were written. I was concerned that the creation of a Task Team would erode the constitutional independence of the NPA's decision-making process.
 2. I want to stress it once again that the TRC Guidelines neither make provision for the establishment of any Task Team, nor for a committee of Directors General to advise Adv Pikoli.
 3. The minutes of the TRC Task Team meeting of 12 October 2006 also do not make any mention of the role of the Directors General.
 4. I only became aware of the role of the Directors General in the decision-making process when a fax, dated 6 December 2006, emanating from Commissioner Jacobs, was brought to my attention.
 5. To date, I am still in the dark as to who created the Task Team.
 6. According to an affidavit deposed to by Adv Simelane, dated 16 January 2008, the Directors General established the Task Team.
 7. According to the Minister, the TRC Guidelines created the Task Team.
 8. Adv Pikoli informed me that he created the Task Team to assist the PCLU in the execution of its duties. He never mentioned to me the so-called role the Directors General would play in this decision-making process.
 9. Commissioner Jacobs refers to Cabinet Guidelines and that it was a common understanding that the Directors General had an important role to play.
 10. It appears from Commissioner Jacobs's affidavit that even he is not sure how the Task Team should function (par 10 of his affidavit).

1. It must be noted that Adv Simelane relied on the hearsay evidence of his representative on the Task Team meetings.
2. The hearsay is the following:
 - 2.1 That there were disagreements between the NPA officials and other members of the Task Team;
 - 2.2 That the NPA did not agree that all dockets within its possession be discussed;
 - 2.3 The NPA submitted summaries of the dockets without detailed facts;
3. I cannot recall that Ms Marilyn Raswisi expressed her dissatisfaction at any stage relating to the efficient and effective operation of the Task Team. It is certainly not reflected in the minutes of the Task Team. On the contrary, she gave the impression of being extremely satisfied with the manner in which the Task Team operated.
4. At no stage did the NPA officials refuse that dockets in their possession be discussed. In this regard, there might be a misunderstanding on the part of Ms Raswisi in that the dockets on which the NPA submitted summaries were in the possession of SAPS and not in the possession of the NPA. It of course follows that in relation to the representative of SAPS, there can be no room for any misunderstanding.
5. The representative of the SAPS also does not make any reference in his affidavit as to the refusal of discussing any dockets in possession of the NPA.

COMMISSIONER JACOBS - AFFIDAVIT

Ad par 1

Commissioner Jacobs's affidavit was compiled with reference to par 114 – 120 of Government's submission and not with reference to the Minister's affidavit. In addition hereto, it must be noted that the TRC Guidelines do not make provision for the establishment of any committee.

Ad par 2

This statement was indeed made at the meeting. Notwithstanding an invitation extended to the members to peruse the dockets, to date, not a single docket has perused.

Ad par 3

The reason why I objected to the appointment of Britz as an investigator is cogently set out in the following extracts from PCLU reports:

1. Par 2.28 of a report compiled for the Task Team on 30 October 2006:

"2.28 The reappointment of Senior Superintendent Britz

2.28.1 At its last meeting, the Committee was informed by Assistant Commissioner Jacobs that Senior Superintendent Britz would be reappointed to investigate the dockets in possession of SAPS.

2.28.2 I wish to express my concern at this. Britz was a former member of the Security Branch, who, prior to the PCLU being involved with TRC cases, assisted the DPP: Pretoria with cases involving the Liberation Movement.

2.28.3 Former Police Commissioner General van der Merwe had formed an organization entitled "The Foundation for Equality before the Law" which was intended to ensure that no further prosecutions of Security Branch members would take place.

2.28.4 When I and my staff were appointed to take over the TRC cases in the DPP Office: Pretoria, we gained the firm impression that Britz was not only very sympathetic towards this organization, but had regular contact with General van der Merwe.

2.28.5 In particular, Britz tried to persuade me and my Deputy on

numerous occasions that there was a provable case of terrorism against President Mbeki arising from the landmine campaign. This was raised in the context that were Security Branch members to be prosecuted, the President would also have to be charged. It was clear that he was against prosecutions of Security Branch members. Despite his claims, he could never produce a docket implicating the President. At one stage, he informed me that the docket was with General van der Merwe and his legal advisor. This raises a very serious question as to how an official police docket could be retained by General van der Merwe, who was not entitled to possess police material after his retirement from SAPS.

2.28.6 When the issue of prosecuting Security Branch members for the Pebco 3 incident was raised with their lawyer, he immediately indicated that he was preparing to submit a docket calling for the prosecution of the President. I can only draw the inference that sharing of information took place between Britz and Van der Merwe.

2.28.7 The issue of the prosecution of the President was raised at the highest level of Government and resulted in enquiries being conducted by Minister Maduna as well as members of the President's office. All parties were satisfied that the NPA had no intention of prosecuting the President. In fact, Mr Ngcuka had been provided with a report that no such case had been established in the TRC records.

2.28.8 This highly embarrassing incident caused Mr Ngcuka to instruct that Britz vacate the offices of the DPP and that all the relevant SAPS dockets be removed. Britz was subsequently relocated in the SAPS Crimes Against the State Unit. He requested the PCLU to provide written confirmation of the fact that the decision had been taken not to prosecute the President. When he received the letter, he tried to persuade the PCLU to reconsider its decision.

2.28.9 I therefore believe that Britz lacks the necessary objectivity to be of assistance to the Committee and that his reappointment may lead to further controversy as well as the potential leaking of information to General van der Merwe."

2. A report dated 5 July 2004 compiled by Macadam:

"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 been requesting them to furnish him with the evidence that they claimed was available but were never able to produce.

4. In the light of the National Commissioner's original attitude pertaining to this matter, I find it very strange that SAPS now wants to pursue a criminal investigation against the President.

5. I am now waiting to see if any dockets will materialize and will inform you accordingly."

Ad par 5

I will do my best to be brief. It is correct that I was furious when SAPS presented their report. The reasons are:

1. Since 2003, Commissioner Selebi furnished the President and the ANC leadership with false information.

2. In essence, the false information was that the PCLU was planning to arrest the President and other high ranking ANC officials.

3. One of the documents used by Commissioner Selebi was a personal office note which I drafted in 2003 and filed in a police docket (**Annexure "A"**).

4. In early 2004, the former Minister of Justice, Mr Maduna, informed Mr B Ngcuka that Commissioner Selebi had alleged that I was on the verge of arresting the President.

5. These allegations were investigated by Mr Ngcuka and found to be untrue.

6. A press statement was released in middle 2004 to the effect that there was no case against the President.

7. These false allegations by Commissioner Selebi persisted during the period 2004 – 2006. Adv Pikoli will be able to provide the details hereof.
8. During (I think) July 2006, Adv Pikoli apparently had a meeting with Ministers of the Government. Commissioner Selebi was also present and once again, it was raised that I was pursuing an investigation against the President.
9. Adv Pikoli apparently requested the meeting to provide him with proof of such an investigation.
10. Commissioner Selebi apparently told the meeting that he had proof of the investigation in writing and pointed to a file he had with him.
11. On 16 November 2006, Commissioner Jacobs presented a report at the Task Team meeting (**Annexure "B"**).
12. This is the meeting where I was furious. The minutes of the meeting do not reflect everything which was said at this meeting.
13. For instance, I enquired about the meaning of the date, 26 June 2006, which was in brackets on page 2 of his report. He did not provide me with an answer. At the time I was of the opinion that it was the date on which a report had been written by SAPS and that it was an excerpt from a SAPS report. I left it at that.
14. In August 2007, as a result of a report in the Rapport newspaper, I requested Commissioner de Beer to send me my office note (Annexure "A") which had been filed in the police docket.
15. The document provided by Commissioner de Beer indicated that it had been typed on 26 June 2006 and not 26 June 2003. Everything then fell into place.
16. Adv Pikoli instructed an investigation into the matter.
17. The Minister's letter to Adv Pikoli speaks for itself. It is obvious that the document Selebi referred to was this forged office note. (**Annexure "C"**).
18. On 17 September 2007, SAPS informed Adv McCarthy that the office note had in fact been created in 2003. It is now common cause between SAPS and the NPA that my office note was written on 26 June 2003 and not 26 June 2006.

19. The question however remains whether Commissioner Jacobs was *bona fide* when he presented the SAPS report.

20. It is significant that in the report which he compiled, he drafted it in the following manner:

Page 2 of the report
"Advocate Ackermann indicated on 11 August 2003, that ..."

Page 2 of the report
"On 13 August 2003, Advocate Ackermann decided that..."

Page 3 of the report
"Advocate Ackermann indicated on 4 September 2003 that ..."

Page 4 of the report
"Advocate Ackermann decided on 3 October 2003 that ..."

And yet, where the President's case is involved, a date of 26 June 2006 is inserted in brackets.

It is significant that Commissioner Jacobs failed to insert his customary "(sic)" behind an obvious error. (See par 6 of his affidavit.)

21. I also attach a copy of my report to Adv Leonard McCarthy as well as a copy of my affidavit in connection with the investigation as **Annexures "D" and "E"** respectively.

22. A copy of the forged document is attached hereto as Annexure "A". Kindly have a look at the "6".

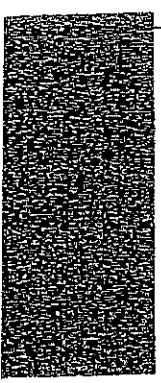
Ad par 8

At the top of page 6, ostensibly out of context, the following statement is made:

"A list of SAPS dockets relating to the TRC matters and which were in possession of the PCLU was requested. To date, this was not provided".

I do not know to which dockets the above statement refers.

4



Verw : A15
 Navreg: Adv A R Ackermann SC
 Tel : 845 6432

**SPECIAL LITIGATION UNIT /
 SPESIALE LITIGASIE EENHEID**

26 Junie 2006

MEMORANDUM

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

- (1) MTHEMBELDI ZEPHANIA MNCUBE
- (2) MZONDELELI EUELD NONDULA
- (3) JABULANI SYDNEY MBULI

Saakdossiere :

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

- 3 -

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

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

AMNESTIE

2.

Amnestie is op 16 Maart 2001 aan al die bogenoemde persone verleen vir alle misdade wat met gemelde ontplofings verband hou. Bersenoemde (MNCUBE) het ook amnestie vir die moord van die twee SAP lede ontvang.

OPMERKING

3.

Die ANC het die gebruik van landmyn 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 oppergesag nie.

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

BESLISSING

4.

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

Bovermelde is 'n moeilike besluit.

Adv A R Ackermann SC
SPESIALE DIREKTEUR

/tp

25/4/2006

**REPORT ON AUDIT DOCUMENT
OF
SOUTH AFRICAN POLICE SERVICE
TRC RELATED MATTERS**

1. At the last meeting of the Committee, a list of dockets in the possession of the South African Police Service, relating to the conflicts of the past was provided to the Committee. The key to the list was not available at that stage.
2. The key to the list is now available and the following matters need in our view to be followed up:

2.1 Messina CR 57/11/85 MZ Ncube and Two Others

The investigation relates to 8 landmine explosions which took place in the Messina area as well as two landmines planted in the Alldays area, and the death of two police officials during the escape of suspects.

In his report on this matter, Advocate Ackermann indicated that "The ANC had approved the use of landmines, and orders in this regard were given by the command structure of Umkhonto we Sizwe (MK) to members (Amnesty judgement of those involved). According to the evidence those mentioned, were under the command of one Manchack who gave orders and who had to report to MK commanders. All the other ANC-members (foot soldiers) who were involved in these crimes, are deceased. Advocate Ackermann made the following decision: In respect of the so-called foot-soldiers, no further investigation is necessary. In respect of the ANC leadership who gave orders for the land-mines campaign, and who have not

PCU
6/11/17

B

received amnesty, a decision need to be taken at an opportune time,

after consulting with all relevant parties. This is a difficult decision.”

(26 June 2006). PCLU has indicated that NPA has already decided thaton

that no prosecution of cases against ANC NEC leadership will be

instituted. A decision is required on how outstanding Inquests of deceased

in these matters should be disposed of.

2.2 Elisa's CR A28/8/88 MJ Rapholo

Jacob Rapholo received amnesty for an incident where he and six other ANC

members entered the Republic from Botswana into the district of Ellisras,

where the security forces became aware of their presence. The trackers were

ambushed by the ANC members. One member of the police was killed and

another wounded in an ensuing shoot-out. One member of the ANC was also

killed.

Advocate Ackermann indicated on 11 August 2003, that an inquest must

be held. According to our information the inquest is still outstanding. Source

2.3 King Williams Town CR 397/11/92 TT Xundu

TT Xundu and three others (APLA members) received amnesty for an armed

attack with hand grenades, AK 47, R4 and R5 automatic weapons on guests

in the bar at the dining room of the King Williams Town Golf Club. Four

persons were killed by shrapnel, from the hand grenades, and 25 were

injured.

On 13 August 2003 Advocate Ackermann decided that Inquests should

be held in respect of the following persons:

It needs to be established whether these inquests were concluded and if not to

follow it up.

2.4 Diepkloof CR 228/8/89 Michael Ndlovu, William Mafa and Ben Bani

On 19 August 1989 two municipal police officers were attacked at the Diepkloof Clinic, and robbed of their service pistols. One member was killed and the other seriously wounded. Two persons (Mafa and Ndlovu) were arrested for the crime. Ndlovu escaped on 4 June 1990 and a warrant issued for his arrest. Mafa applied for and received amnesty. A person by the name of Ndlovu applied for amnesty. A third suspect, Ben Bani (possibly a pseudonym) has been implicated. Advocate Ackermann indicated on 4 September 2003 that it must be established whether Ndlovu received

amnesty and that the warrant for the arrest of Ndlovu is outstanding.

2.5 Umbumbulu CAS 35/4/87 Steven Mkulusi, Moses Mkize and Sakhile

Nzama

Two members of the security police were attacked with an AK 47 and one police officer was killed. One of the suspects was apprehended, but was seriously ill of cancer. He died. The ANC in the TRC assumed responsibility for the incident. Advocate Ackermann on 3 October 2003, decided that the investigation against the suspects should continue. The deceased suspect

• Gillian Davis

• Rhoda MacDonald

• David Andre Theresa Davis

• Ian Wheelwright Macdonald

was, however, the main source of confessions, etc on which the evidence is based. It had been decided that, if the suspects cannot be traced, an inquest needs to be held, if it was not done already. It should be established if inquest has been held and if not to ensure that it is done.

2.6 Case Docket Jeppe CR 47/7/88

A car bomb exploded on 2 July 1988 at the Ellis Park Stadium during a rugby match. Two persons were killed and 37 injured. Huge damage to cars and property was caused. Four MK members claimed responsibility for the incident, and received amnesty. Advocate Ackermann decided on 3 October 2003 that: "The Amnesty Committee, in accordance with the ANC submission to the TRC, found that the ANC leadership had accepted responsibility for the Ellis Park bombe explosion. The ANC leadership, which was abroad at that time, did not receive amnesty. A decision on their involvement in these charges, as well as other incidents, will be taken at an opportune time once all relevant parties have been consulted. The investigation into the ANC leadership and specific individuals' criminal responsibility for political violence in the RSA, which relates to the ANC's struggle to overthrow the then National Party Government, is being thoroughly investigated and will be relevant to these charges.".

The PCLU report already indicates that the NPA has decided that no prosecution will be instituted against the leadership of the ANC. A decision on outstanding inquests in the matter need to be taken.

2.7 Mayville CR No. A188/1/89; CR Swart Plain CR A567/3/89; CR Swart Plain CR A425/4/89 Mohammed Rafiq Rohan, Riaz Saloojee, Abubaker Ismael

Placing limpet mines and demolition charges at transformer in Ridgeway, Durban, exploding limpet mines at Natal Command Snell Parade, Durban 10 March 1983. 15 persons injured damage to buildings. Explosion of limpet mines and demolition charges at CR Swart Plain Police Station, Durban, 7 April 1989. 3 persons injured. The decision of Advocate Ackermann in these matters was that: the investigation is regarded as finalized, in view of the fact that Rohan Saloojee received amnesty for the matters. Advocate Ackermann observed that a decision about the involvement of the ANC leadership in this and other cases, will be taken separately.

It is assumed that the above observation is covered by the report of the PCLU that no prosecution will be instituted against the leadership of the ANC.

3. In respect of the objections of Advocate Ackermann in respect of Mr. Britz: It was said at the meeting that we needed to contact him in order to explain the list, as he was the person who dealt with the cases. It was never said or implied that he would be appointed as investigator. He worked closely with Advocate Ackermann, who requested the SAPS from

time to time to reappoint him. He also compiled lists of the cases and drafted the key to the huge volumes of documentation.

4. In respect of the minutes of the first meeting, an apology was tendered for the National Commissioner of the South African Police Service.



MINISTRY
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Our ref: 2/3/6
Enq: Adv. M Simelane

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

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

Dear Adv Pikoll

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 Selebi, 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 Selebi 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.

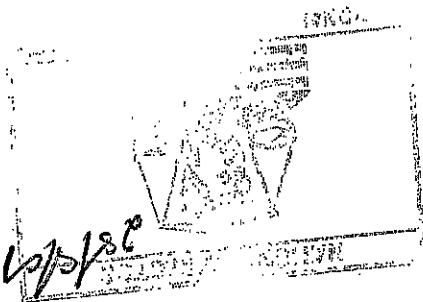
I trust that you find the above in order.

Yours sincerely

MS B S MABANDLA, MP

Minister for Justice and Constitutional Development

Date: 28.08.07



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INTERNAL MEMORANDUM**TO :** ADV LEONARD MCCARTHY

DIRECTORATE OF SPECIAL OPERATIONS

FROM : ADV AR ACKERMANN

PRIORITY CRIMES LITIGATION UNIT

DATE : 27 SEPTEMBER 2007**SUBJECT :** PROJECT GNOME

Dear Leonard

1.

I shall be brief.

2.

I am adamant and 100% sure that the figure "6" as reflect in the handwriting expert's document, FDC 0095/ (Annexure "E") is not in my handwriting.

3.

I am of the view that you do not need a handwriting expert establish that fact.

4.

Furthermore, it is important to note that the handwriting expert made no such finding and merely remarked:

"...with no alteration to the last figure '6'."

5.

Within minutes after I had received the said memorandum from Commissioner Jacobs, I phoned him and informed him that the memorandum was forged and requested him furnish me with the original. To date, I have not had sight the original.

6.

It is incomprehensible that somebody will post-date by three

PRETO

VGM Bulle

Priority Crimes Litigation

Office of the H

years the year on a document. To pre-date the year during the months of January
February is quite common.

7. I have never, on any occasion, written to Dr Ramaite in Afrikaans.

8. The crucial question is whether any person in SAPS had a motive or reason to produce a document, emanating from the NPA, to the effect that the NPA was still investigating ANC office bearers during 2006.

9. If no such motive exists, I must accept that the *gravamen* of the disputed document falls away.

10. Kindly find attached hereto a letter from the Minister to Adv Pikoli.

11. I am very interested to know which documents the National Commission "... produced to support his argument that indeed there is an investigation by the NPA on certain political office bearers."

12. If the disputed document is relied on by the National Commission to prove that there is indeed an investigation by the NPA on ANC office bearers, then this will contradict the explanation given by Commissioners de Beer and Jacobs to the effect that since 2003, SAPS were fully aware that the disputed document had been compiled in 2003 and that an incorrect date had been inserted on it.

13. I will not bore you with the numerous improbabilities which exist.

14. Adv Macadam stated in his report, addressed to you and others, that I had informed him on 25 August 2007 that the disputed report had been discussed between NDP and the National Commission. That is not correct. Macadam further stated that the NDP had informed me that the disputed report had been shown to various Ministers. That is also not correct. The NDP and I surmised that the disputed report had probably been the document shown to the Ministers in the light of the National Commission's assertion that he had written proof that I was still investigating the Afrikaner leadership. The Minister's letter sheds more light on this matter.

Regards



AR ACKERMANN

AFFIDAVIT

ANTON ROSSOUW ACKERMANN,

hereby state under oath in English:

1.

I am a Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions and by virtue of a Presidential proclamation, appointed as the Head of the Priority Crimes Litigation Unit (PCLU). A copy of the relevant proclamation is attached hereto as **Annexure "A"**. Due to other work commitments, I only assumed office in May 2003.

2.

Upon my appointment, Adv Ngcuka, the then National Director, declared prosecutions arising from the TRC processes as part of the mandate of the PCLU. The PCLU at that time did not have office space and consequently, I worked between the office of the DPP: Pretoria and the office of Adv RC Macadam, who had been appointed to my staff at the VGM Building. Adv Macadam's office telephone number was (012) 845 6432. Mrs Tia Plenaar was appointed to act as a secretary for the unit and consequently, typed all the unit's correspondence, working from Macadam's office.

3.

Adv Fick SC at the DPP: Pretoria office was in possession of a large number of police dockets, which primarily related to offences allegedly committed by the Military Wing of the ANC during the Apartheid Era. Adv Fick SC was assisted by two former Security Branch members, Brits and Nel, who had been retained on contract by SAPS and seconded to Adv Fick SC. I decided to take over these dockets from Adv Fick SC after I assumed office.

I conducted an audit of all the cases on hand at Adv Fick SC's office and established that there were 395 police dockets registered. I perused the dockets with the assistance of Nel and Brits. In the majority of cases, the suspects had been granted amnesty and could not therefore be prosecuted. In respect of each docket I perused, I consulted with Brits and Nel and thereafter, an internal office memorandum was compiled, setting out the facts of the case and indicating how the matter should be finalised. These memoranda were not addressed to any persons and were intended simply to be placed on the docket so that the status of the docket could readily be ascertained.

4.

These memoranda were typed by Mrs Pienaar in Macadam's office. I gave a reference number to each case that I perused. The reference number was "A" for Ackermann, followed by a number reflecting the chronological sequence in which the dockets were read. At the top of each memorandum, Mrs Pienaar would type the reference number, my name (so that any enquiries could be directed to me), Macadam's telephone number, the date of the memo and at the bottom, the initials "tp", indicating that she had typed the said memo. I attach herewith, as examples thereof, the memoranda "A39" to "A42" as **Annexures "B1" to "B4"**. The majority of the memoranda were compiled in 2003.

6.

When I assumed duty, Nel and Brits drew my attention to a series of dockets relating to landmine incidents. They informed me that they were of the view that the ANC leadership could be held accountable for these incidents, although there was no such evidence to this effect in the dockets. The persons responsible for these alleged incidents had all received amnesty. Brits and Nel were however adamant that there was a case against the ANC leadership. I made repeated requests for them to produce the relevant evidence, but to no avail. During the same period, I decided to prosecute former Security Branch members for the Pebco 3 incident. In discussions with the lawyer representing the accused in that matter, the issue of a case against the ANC leadership was once again raised by

him. I also requested him to furnish me with the evidence, which he declined to do. When I compiled the memorandum in respect of the landmine docket, I therefore made a note to the effect that the issue of the ANC leadership would, at an appropriate stage, have to be considered. I also briefed the National Director of this development. At the date of this affidavit, I am not in possession of a copy of the memorandum I compiled. The original was however placed in the relevant docket. At all times, Brits and Nel were the custodians of such dockets.

7.

Shortly after my appointment, I met Commissioner Ray Lalla, the Divisional Commissioner of SAPS' Intelligence Component at his office. I was accompanied by my two deputies and the purpose of the meeting was to inform Commissioner Lalla *inter alia* about my mandate and to request him to channel intelligence relating thereto to my office. I was unaware that this meeting was being recorded by audio and visual means and consequently, did not consent to any such recording.

8.

Since neither Nel nor Brits nor the lawyer representing the accused in the Pebo 3 matter produced any evidence implicating the ANC leadership, I did not take this matter any further. To my surprise, my two deputies and I were summoned to a meeting by Mr Ngcuka. Mr Ngcuka informed me that the National Commissioner had addressed a meeting of Directors General and alleged that on a Monday, I planned to have the President arrested and Macadam planned to arrest six generals in the SANDF. Mr Ngcuka further informed me that the National Commissioner alleged that he had proof thereof. Mr Ngcuka wanted my assurance that this was not the case and I gave the necessary assurance. Mr Ngcuka showed me a videotape which I recognised as a recording of my meeting with Commissioner Lalla. Mr Ngcuka further stated that it was alleged that I was in possession of police dockets, implicating the President. I gave him my assurance that I was not in possession of such dockets and that all the relevant dockets were in the possession of Brits and Nel at the DPP: Pretoria office. Minister Maduna then joined Mr Ngcuka and I again assured the Minister

that I was not in possession of any such dockets and that I was not a party of any attempt to prosecute the President and the ANC leadership. Thereafter, Mr Ngcuka then made arrangements for himself, Adv Pikoli (who was then the Director General of Justice), myself and other members of the NPA to proceed to the DPP: Pretoria office. At the office, Commissioners Pruis and Williams arrived. In the presence of all the above parties, Mr Ngcuka requested Brits (Nel's contract at that stage had not been renewed) to produce the dockets which contained the evidence against the President and the ANC leadership. Brits was unable to produce any dockets. Mr Ngcuka then instructed Commissioners Williams and Pruis to immediately have all the police dockets removed from the DPP: Pretoria office and to take them into police safekeeping. He further indicated that the dockets were police property and that the police had to take possession of the dockets and conduct their own investigations. If however decisions were required in respect of individual dockets, those dockets should be resubmitted to the PCLU for a decision. Both Williams and Pruis appeared to be surprised by this event.

9.

Thereafter, I was absent from the office. Upon my return, my deputy, Macadam informed me that Mr Ngcuka had instructed him to peruse all the evidence involving the ANC and to furnish him with a report. Macadam showed me the report he had submitted to Mr Ngcuka. The report was to the effect that there was no basis upon which to investigate the ANC leadership. Macadam further informed me that Mr Ngcuka had requested him to brief Minister Maduna and members of the Presidency of this position, which he had done. Subsequently, Mr Ngcuka released a press statement on 15 May 2004 to the effect that there was no basis upon which to investigate the ANC leadership. A copy of the press statement is attached as **Annexure "C"**.

10.

All the dockets which were stored at the DPP: Pretoria office were removed, except for certain dockets in respect of which I still had to make a decision. I established that the dockets removed from the DPP: Pretoria office were taken to the Crimes Against The State Unit, headed by Senior Superintendent Louis

Bester, which unit formed part of the Divisional Head Quarters of SAPS. I further established that Brits continued to work from Senior Superintendent Bester's office. There was limited contact between the PCLU and Brits in respect of individual dockets which required decisions.

11.

Later in 2004, Mr Ngcuka resigned and Dr Ramatse SC was appointed as the Acting National Director. In late 2004, I was informed by Dr Ramatse SC and/or Mr Hofmeyr that they had attended a meeting in Cape Town with *inter alia* the Minister of Justice & Constitutional Development and the National Commissioner. They informed me that it had been alleged by the National Commissioner that the PCLU was in possession of 400 dockets and planned to paralyse Government by arresting key Government officials who had been part of the ANC's Liberation Movement. This allegation was not true, but as a consequence, I was required to assist Dr Ramatse SC to compile a lengthy memorandum to the Minister of Justice & Constitutional Development, stating the correct position and again confirming that there was no investigation against the ANC leadership.

12.

Subsequently, Adv Pikoli was appointed as the National Director and in the beginning of 2006, guidelines for the prosecution of TRC cases were approved. In terms of the guidelines, all the TRC cases would be managed by the PCLU, which would advise the National Director, who would make decisions. The guidelines further contemplated the PCLU being assisted in the execution of its duties by NIA, DOJCD, SAPS and the DSO. As the Head of the PCLU, I would have played a key role in the matter of TRC cases.

13.

In mid-2006, I was called in by Adv Pikoli, who informed me that I was once again being accused of acting irresponsibly and not informing him of my activities. He did not elaborate, but informed me that Dr Ramatse SC would take over my role in the TRC matters. He further explained that this would alleviate any possible criticism of the NPA. I accepted his explanation.

On 20 August 2007, Adv Pikoli drew my attention to an article which had been published in the Rapport of 19 August 2007 and asked me to furnish him with a report dealing with the allegations in the newspaper. In this report it was *inter alia* stated that "Ackermann het vroeër skriftelik opdrag gegee dat die polisie nog getuies in die ondersoek na die ANC-leiers moet versamel met die oog op moonlikke vervolg". I wanted to see my memorandum which was filed in the police docket pertaining to the landmines. I contacted Commissioner Jacobs telephonically and asked him to furnish me with my memorandum. Shortly thereafter, he faxed me a document, attached hereto as **Annexures "D1" and "D2"**. The document, Annexure "D2", purported to have been written on 26 June 2006 and addressed by myself to Dr Ramatle SC. I knew that I had not written any letter to Dr Ramatle SC on 26 June 2006 relating to this matter, let alone one in Afrikaans. However, I recognised a portion of the contents of the document as corresponding to the memorandum that I had compiled for Brits on the landmine docket in 2003. I recognised my signature at the bottom of page 2 of the document, but noted that a "6" – not in my handwriting – had been added to the date which was in my handwriting and located next to my signature. I therefore immediately realised that this document was a forgery and realised that the document purported to claim that in June 2006, a decision still had to be made against the ANC leadership, which is not in fact true. The document contained a reference number, namely "A15", which would be consistent with the set of memoranda which I compiled in 2003 and also the telephone number, namely "845 6432", which was in use in 2003 when the memoranda were compiled. At the bottom of page 2, the initials "tp" appeared, which were consistent with the initials of Mrs Pienaar who had typed the 2003 memoranda. Any document compiled by myself in June 2006 and addressed to Dr Ramatle SC would have been in English and would have been typed by Mrs Zwart on her computer and in an entirely different format and font. In any event, an internal document, compiled by myself and addressed to Dr Ramatle SC would not be in the lawful possession of SAPS. During a number of meetings with the TRC Working Group after June 2006, which were attended by Commissioner Jacobs,

representing SAPS, this matter was neither brought up, nor was a copy of the letter tabled. I was concerned that a forgery of such a nature should be in the possession of SAPS. As a consequence, I immediately reported the matter to the National Director. He instructed me to request Commissioner Jacobs to forward the original of Annexure "D2" to my office. I attach herewith as **Annexure "E"**, a copy of the letter which was faxed to Commissioner Jacobs, requesting him to have the document delivered to my office by no later than 16h00 on 20 August 2007. As of the date of this affidavit, the document has neither been delivered to my office, nor have I heard anything from Commissioner Jacobs.

15.

Since 2004, the National Commissioner has made unfounded allegations that the PCLU and I intend prosecuting the President and the ANC leadership for TRC matters. As set out above, the two Ministers of Justice & Constitutional Development, as well as members of the Office of the Presidency were persuaded that the allegations were of no merit and it was clear that the National Commissioner lacked any documentary proof to support his allegations. Annexure "D2" however clearly purports to provide the necessary proof under my own authentic signature. Annexure "D2" would provide a very plausible explanation for Adv Pikoi's decision to replace me with Dr Ramatse SC in the management of TRC cases. As a Special Director and a prosecutor of longstanding, I regarded my removal from the TRC matters in an extremely serious light, as it reflected adversely on my professional integrity. Furthermore, these false allegations over a period of time have caused me much anguish and pain, particularly in the circle in which I perform my duties.

16.

Annexure "D2" implies that after the decision was taken by Mr Ngcuka in 2004 not to investigate the ANC leadership, a senior member of the NPA wishes to re-institute such investigation. As such, Annexure "D2" impacts on the integrity of the NPA in its management of TRC cases and has the effect of attempting to obstruct the NPA in the performance of its duties in respect of such matters.

17. In conclusion, it is disgusting that things like this can happen in a law enforcement agency of this country.

18. I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

DEPONENT

Date: 21 August 2007
Time: 11h30
Place: Weavind Park

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 deponent's signature was placed thereon in my presence at Weavind Park on 21 August 2007 at 11h30.

COMMISSIONER OF OATHS