

**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS
AND/OR PROSECUTIONS**

**AFFIDAVIT OF
MASHAU SILAS RAMAITE SC**

I, the undersigned,

MASHAU SILAS RAMAITE SC;

Do hereby state under oath as follows:

INTRODUCTION

- 1 I am an adult male practising advocate and Senior Counsel. I was admitted as an Advocate in 1988 and granted the status of Senior Counsel in 2001.
- 2 I formerly served as Director of Public Prosecutions (DPP), North Gauteng, Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions, Deputy National Director of Public Prosecutions (DNDPP) and Acting National Director of Public Prosecutions ("ANDPP") in the National Prosecuting Authority ("NPA"). I



took early retirement from the National Prosecuting Authority in August 2019.

- 3 Save where expressly stated otherwise or appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
- 4 I depose to this affidavit at the request of the Commission's Evidence Leaders and in order to ensure that all the relevant facts are placed before the Commission.

QUALIFICATIONS AND PROFESSIONAL EXPERIENCE

- 5 I obtained a *Baccalaureus Procurationis* (B.Proc) in 1985 from the University of Fort Hare. I subsequently also obtained a Bachelor of Laws (LLB) in 1987, a Master of Laws (LL.M) in 1989 and a Doctor of Laws (LLD) in 1996, all from the University of South Africa (UNISA). I am also a Licensed International Financial Analyst.
- 6 I have worked as an Interpreter, Clerk of the Court, Prosecutor, Magistrate, Candidate Attorney, State Advocate, Senior State Advocate and Deputy Attorney-General. I have also worked as a University Part-time Lecturer, lecturing Constitutional Law, Administrative Law and Law of Delict.
- 7 I was appointed Acting Attorney-General responsible for the then Venda High Court in 1995, after the first democratic elections. In 1996 I was



appointed as a Deputy Attorney General and transferred to Pretoria, serving under Dr Jan D' Oliveira who was Attorney-General of the then Transvaal.

- 8 When the National Prosecuting Authority Act, 32 of 1998 came into operation in August 1998 and the National Prosecuting Authority ("NPA" was established, Bulelani Ngcuka was appointed as the inaugural National Director of Public Prosecutions ("NDPP") and I was appointed Director of Public Prosecutions ("DPP") responsible for all courts falling within the area of jurisdiction of the Pretoria High Court, which at that time covered the Vaal, North Gauteng, Limpopo and Mpumalanga. I was appointed as such by President N R Mandela on the recommendation of Mr Ngcuka as National Director of Public Prosecutions and Mr Dullah Omar as Minister of Justice. I served in that capacity from 1998 until 2001.
- 9 Before my appointment as DPP, Dr Jan D'Oliveira was the Attorney-General of the Transvaal, head-quartered in Pretoria. When I was appointed as DPP Dr Jan D'Oliveira was appointed as a Deputy National Director of Public Prosecutions ("DNPP") and moved to the Head Office of the NPA.
- 10 Upon my appointment as DPP, Pretoria I inherited all the cases and dockets which were being supervised by Dr Jan D' Oliveira as Attorney-General. Among these cases and dockets were cases and dockets that featured in the Goldstone Commission of Inquiry Regarding the



Prevention of Public Violence and Intimidation. I shall refer to these cases a little bit more later in this affidavit.

- 11 In 2001 Mr Ngcuka, the then NDPP moved me to Head Office as a Special Director of Public Prosecutions in his office. I served in this capacity from 2001 to 2003. In that capacity I served as his special advisor together with Adv. Lungisa Dyosi and was part of a team that identified the need for the establishment of specialized units to deal with cases which required a more specialized and dedicated focus. It was during this time that the Priority Crimes Litigation Unit ("PCLU") was established, together with the Specialized Commercial Crimes Unit ("SCCU") and the Sexual Offences Unit. ("SOCA"). The Witness Protection Unit ("WPU"), which was at that time operating from the Department of Justice, was moved to the Head Office of the NPA.
- 12 In 2003 I was appointed as DNDPP in charge of the National Special Services Division ("NSSD"), responsible for the PCLU, SCCU, SOCA and WPU. Adv. Leornard McCarthy was also appointed as a Deputy National Director of Public Prosecutions, responsible for the Directorate of Special Operations ("DSO").
- 13 I first became aware of dockets and cases relating to cases involving conflicts of the past during my tenure as DPP for Northern Gauteng. I subsequently became involved in dealing with these cases in my capacity as SDPP in the Office of the NDPP. A significant number of these cases featured in the Truth and Reconciliation Commission ("TRC") in that



some of the implicated persons had applied for amnesty during the active period of the TRC. Some of the implicated persons were mentioned in the dockets and cases which featured in the Goldstone Commission.

TRC CASES - BACKGROUND

- 14 As already mentioned, when I was appointed DPP, North Gauteng, I inherited cases and dockets which arose from the Goldstone Commission. These were cases which were being handled and supervised by Dr Jan D'Oliveira who, in addition to his position as Attorney-General for the Transvaal, was also the Chief Evidence Leader for the Goldstone Commission.
- 15 There were two categories of cases which arose from the Goldstone Commission of Enquiry which I inherited. Each category was assigned to a Deputy Attorney-General in the Office of the Attorney-General, Transvaal. The first category consisted of cases involving the Boeremag and right wing individuals; these were assigned to Adv. Paul Fick, SC. The second category consisted of cases involving the security forces, mainly State Security, the Police and the Defence; these were assigned Adv. Anton Ackermann, SC.
- 16 For the most part of my time as DPP, North Gauteng Adv. Ackermann was busy with the Wouter Basson trial, which resulted in not much attention to the bulk of the cases arising from the Goldstone Commission. There was also only one police investigator who part of the investigating team of the



Goldstone who assigned to deal with these case. The police investigator was subsequently withdrawn by the National Commissioner of Police and ordered to return all dockets in his possession or under his control to the Office of the DPP.

- 17 Soon after the dockets were returned to the Office of the DPP, I approached the NDPP, Mr Ngquka, and raised my concern about lack of investigative capacity to deal with these cases. In 1999 the NDPP issued a directive that all TRC-related cases must be transferred to the Office of the NDPP.
- 18 Subsequent to the issuing of the directive, all TRC-related cases were transferred to the Office of the NDPP. The NDPP established the Human Rights Investigative Unit ("HRIU"), which headed by Vincent Saldhana and functioned as a working group tasked with revieweing, investigating and prosecuting cases in which implicated persons had been denied amnesty or had not applied for amnesty. No prosecutions were instituted during this period.
- 19 The HRIU operated until 2000. In 2000 cases and dockets which were with the HRIU were transferred to the Directorate of Special Operations ("DSO"). A sub-unit, known as the Special National Projects Unit ("SNPU") and headed by Adv. Chris Macadam was established and operated until 2003. No prosecutions were instituted during this period.



20 As already stated, I was appointed as SDPP in the Office of the NDPP and served as a Special Advisor to the NDPP, together with Mr Lungisa Dyosi. In one of our discussions with the NDPP about formulating and developing a strategy for addressing and combatting some of the criminal phenomena which the NPA had to deal with, it was decided to establish specialized units within the Office of the NDPP, with specific focus on priority crimes, commercial crime and sexual offences. It was a result of this that the PCLU, the SCCU and SOCA were established by proclamation. These units resorted under the National Special Services Division, which I was appointed to head as a Deputy National Director of Public Prosecutions.

21 I recommended to the NDPP that Adv. Anton Ackermann, SC be appointed as SDPP in charge of the PCLU. I did so because when I was DPP, North Gauteng Adv. Ackermann, SC was a Deputy DPP who reported to me and had dealt with cases involving conflicts of the past. He had successfully prosecuted Dr Wouter Basson and I regarded him as a fearless and formidable litigator.

22 Adv. Anton Ackermann, SC was appointed by Presidential Proclamation as an SDPP and head of the PCLU on 24 March 2003. The mandate of the PCLU, as stated in the Proclamation, was to manage and direct investigations and prosecutions in relation to various priority crimes, including serious national crimes such as terrorism, sabotage, high treason, sedition, international crimes under the Rome Statute, foreign military assistance and other priority crimes as determined by the NDPP.



23 In May 2003 the NDPP, Mr Bulelani Ngcuka, made a determination that all TRC-related cases in which amnesty has been denied or where no application for amnesty was made were 'priority crimes' in terms of the Proclamation. Some 400 or so investigation dockets were transferred to the PCLU. Adv. Ackermann, SC and Chris Macadam, who was assigned as a Deputy DPP in the PCLU, conducted an initial audit of TRC-related cases and identified some 21 cases which required further investigation.

24 Although I was not involved in the day to day operational activities of the PCLU, Adv. Ackermann, SC kept me abreast of the work of the unit by way of monthly reports. These reports were tabled and discussed at the monthly meetings of the Executive Committee ("EXCO") of the NPA, which was chaired by the NDPP and made up of all the DPP's and SDPP's.

25 In July 2004 Mr Ngcuka resigned from his position as NDPP. I was appointed as Acting NDPP and served in that capacity until 30 January 2005, after which Adv. Vusi Pikoli was appointed as NDPP.

26 During 2003, 2004 and 2005 the PCLU identified a number of TRC-related cases for further investigation and possible prosecution. It instituted prosecutions against Eugene Terre' Blanche, Buyile Roni Blani and Gideon Niewoudt, Johannes Martin van Zyl and Johannes Koole.

27 At the instance of the PCLU and in 2004, Gideon Niewoudt, Johannes Martin van Zyl and Johannes Koole were each charged with abduction,



assault and murder of three anti-apartheid activists, known as the PEBCO

3. The accused persons had been denied amnesty in 1999. They subsequently launched an application for a review of the decisions to refuse them amnesty. Niewoudt died in 2005 and, sadly, the review was delayed by some five years and was only finalised in 2009 when the High Court ruled that an Amnesty Committee be convened to hear the application of van Zyl.

28 The case against van Zyl and Koole was provisionally withdrawn in 2009 pending finalisation of the rehearing of the amnesty application. To my knowledge, the Amnesty Committee was never reconvened and the case against van Zyl and Koole was never reinstated.

29 In November 2004, the PCLU decided that three former security police officers, Major-General Christoffel Smith, Colonel Gert Otto and Johannes van Staden should be arrested and charged for the attempted murder by poisoning of Rev. Frank Chikane in 1989. I was briefed by Adv. Ackermann about the pending arrest and charges. I endorsed the decision to arrest and charge the individuals and personal took the decision and gave authorisation that criminal proceedings must be instituted and that the prosecution must proceed.

30 On or about 11 November 2004 Adv. Ackermann, SC reported to me that he had received a call from a Mr Wagenaar, an attorney representing Smith, Otto and van Staden, advising him not to proceed with the arrest and charging of his client. He informed me further that Wagenaar had told



him that he must expect a telephone call from the Ministry of Justice and that he would be advised that the case against Smith, Otto and van Staden must be placed on hold.

- 31 Adv. Ackermann also informed me that soon after he had spoken with Wagenaar he received a telephone call from an official in the Ministry of Justice and informed that a decision had been taken that the case involving Rev. Chikane should be put on hold pending the development of guidelines to deal with the TRC cases. I told Adv. Ackermann that I have no knowledge of the development of any such guidelines. As far as I was concerned, prosecution policy and guidelines already existed; the existing guidelines were developed in line with the United Nations Guidelines on the Role of Prosecutors and applied and continued to apply in all cases involving the decision whether or not to prosecute and whether or not to continue or discontinue a prosecution.
- 32 I advised Adv. Ackermann, SC that it would be better to wait and have a better understanding of what exactly was happening. Shortly after I have spoken with Adv. Ackermann, SC, I received a telephone call from the Minister of Justice, Mrs Brigette Mabandla. She told me that there is a Task Team which was appointed by the Directors-General Forum to develop a mechanism to deal with TRC cases. I expressed to the Minister my concern that any process or mechanism which involves the Executive or the Justice and Security cluster would amount to encroaching in prosecutorial decision-making and would be a violation of prosecutorial independence as enshrined in Section 179. The Minister nevertheless



insisted that the prosecution of all TRC-related cases must be put on hold until the development and adoption of guidelines.

- 33 Subsequent to my telephone call with the Minister of Justice I called Adv. Ackermann and told him that I received an instruction from the Minister that the investigation and prosecution of all TRC-related cases must be put on hold pending the development and adoption of guidelines. I told Adv. Ackermann, SC that my understanding was that an effective moratorium has been placed by Government on all TRC cases and that until it was lifted we have no choice but to wait.
- 34 After the call from the Minister of Justice and my discussion with Adv. Ackermann, all TRC cases which were being handled by the PCLU were accordingly placed on hold pending the development and formulation of guidelines. My understanding was that the guidelines were in relation to cases arising from conflicts of the past. As I understood, they were to be incorporated as amendments to the existing Prosecution Policy.
- 35 As I have already stated, I raised my concern with the Minister regarding lawfulness and constitutionality of the guidelines. Even though I was not privy to the rationale, content and context of the proposed guidelines, I held the opinion that there was nothing wrong with the existing prosecution policy and that any guidelines or policy which sought to a specific class of cases would be irrational.



36 In my view, which I openly expressed at various EXCO meetings, the existing prosecution policy and policy directives were sufficient and no further guidelines were required.

37 The existing prosecution policy and policy directives were determined by the NDPP with the concurrence of the Minister of Justice and after consulting with the DPP's, as provided in section 179(5)(a) and (b) of the Constitution and section 22(1) of the National Prosecuting Act, 32 Of 1998. They were first issued in 1999 and became effective on 01 November 1999.

38 The existing prosecution policy and policy directives already provided a rational framework for prosecutors to perform their duties with independence and impartiality and to make consistent, fair and transparent decisions on whether to institute criminal proceedings. The primary criterion is whether there is sufficient admissible evidence to provide a reasonable prospect of a successful prosecution.

39 I served as Acting NDPP for six months, from July 2004 to January 2005. On 01 February 2005 Adv. Vusi Pikoli was appointed as NDPP. I continued serving in my capacity as DNDPP, still responsible for the PCLU and reporting to the NDPP.

40 In October 2006 the NDPP, Adv. Vusi Pikoli assigned me to chair a Task Team that was set up, as I understood at that time, to review TRC-related cases and to agree on providing investigative capacity. The task team met



for the first time on 12 October 2006 and consisted of senior officers from SAPS, NIA and the Department of Justice and Constitutional Development.

- 41 At the second meeting, which was held on 25 October 2006, Adv. Ackermann, SC presented an audit report on all TRC-related cases which were being handled by the PCLU. The need for investigative capacity to attend to these cases was discussed. The SAPS representative, Mr Lekalakala, made a commitment that he will discuss the need for investigative capacity with the National Commissioner of Police, Mr Jackie Selebi, and will report back at the next meeting.
- 42 The next meeting was held on 06 November 2006. The Chikane matter was discussed for the first time at this meeting. Mr Lekalakala informed the meeting that the National Commissioner of Police believed that Rev. Chikane was not interested in a prosecution. Adv. Ackermann informed the meeting that Rev. Chikane had left the matter in the hands of the prosecution. The meeting ended without any resolution and with no commitment regarding the provision of investigative capacity. I reported the development and outcome of the meeting to Adv. Pikoli.
- 43 A further meeting was held in early December 2006 to try and resolve the impasse. At this meeting Police Deputy Commissioner Jacobs informed the meeting that the National Commissioner was not prepared to provide any investigative capacity in the Chikane matter because Rev. Chikane



had not been consulted and did not wish to become involved in any prosecution. I once again reported this to the NDPP.

- 44 Most strikingly, at the meeting which took place in early December 2006, Commissioner Jacobs informed the meeting that the National Commissioner of Police had told him to make it clear the function of the Task Team was to make a final recommendation to a "Committee of Directors-General" which would in turn make a recommendation to the NDPP on whether or not to prosecute and who to prosecute and who not to prosecute. This was, in my view, inconsistent with prosecutorial independence.
- 45 In September 2007 Adv. Pikoli was suspended as NDPP. Adv. Mokotedi Mphse, SC was appointed as Acting NDPP. Soon after the appointment of Adv. Mpshe, SC as Acting NDPP, Adv. Ackermann informed me that he has been relieved of his duties in relation to the TRC cases.
- 46 I have read the affidavits of Lukhanyo Calata, Anton Ackermann and Vusumzi Pikoli which were supplied to the Commission by Webber Wentzel Attorneys.

CONFIRMATION OF AFFIDAVITS

- 47 I confirm the contents of the founding affidavit of Lukhanyo Calata dated 17 January 2025 in the matter of *Calata and Others v Government of South Africa and Others* (Gauteng Division, Case No 2025-005245) insofar as it relates to me.



48 I confirm the contents of the affidavit of Anton Rossouw Ackermann dated 07 May 2015 in the matter of *Nkadimeng v National Director of Public Prosecutions and Others* (Gauteng Division of the High Court, Pretoria, Case No. 36554/2015) insofar as it relates to me.

49 I also confirm the contents of the affidavit of Vusumzi Patrick Pikoli dated '06 May 2015 filed in the matter of Nkadimeng v National Director of Public Prosecutions and Others (Gauteng Division of the High Court, Pretoria, Case No. 36554/205) insofar as it relates to me.

CONCLUSION

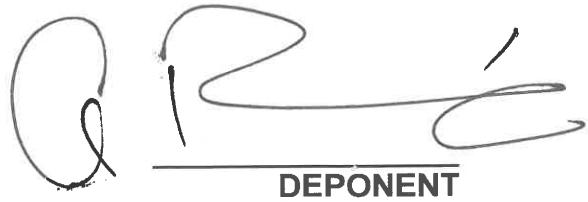
50 I regard the imposition of a moratorium by the executive or a member of the executive on the prosecution of TRC cases purely on the basis of developing and adopting guidelines to deal specifically with these cases as a form of political interference.

51 The development and formulation of prosecution guidelines by a Committee consisting of Directors-General of the security cluster is inconsistent with section 179(5)(a) and (b) of the Constitution and section 22(1) of the National Prosecuting Authority Act, 1998 and unlawful.

52 I also regard the attempt to involve a body consisting of Directors-General to make recommendations on who to prosecute and who not to prosecute as an encroachment into prosecutorial independence.



53 There is no doubt in my mind that the effective investigation and prosecution of TRC cases were severely hampered by political interference.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT PRETORIA ON THIS 26th DAY OF NOVEMBER 2025, THE DEPONENT HAVING ACKNOWLEDGED IN MY PRESENCE THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY GOVERNMENT GAZETTE R774 OF 20 APRIL 1982, CONCERNING THE TAKING OF THE OATH, HAVING BEEN COMPLIED WITH.


COMMISSIONER OF OATHS
 Full names: **KASEKLALA KAMOLELO**
 Business address: **491 Pretoria Rd Silverton**
 Designation: **Constable**
 Capacity: **POLICE OFFICER**

