

AFFIDAVIT TO THE KHAMPEPE COMMISSION OF INQUIRY INTO DELAY IN INVESTIGATION AND PROSECUTION OF TRC CASES

I, **Carl Martin Kriel**, the Chief Executive Officer of AfriForum, a non-profit civil rights organisation with approximately 300,000 members, declare under oath on behalf of myself and AfriForum. To this end, I have been duly authorised.

Introduction

1. I respectfully submit that AfriForum and I hold a substantial interest in the matters discussed *infra*, as an interested party with members who include victims and families of persons who also hold a substantial interest in these matters.
2. I confirm that I caused a submission to be submitted to the Commission on 10 October 2025.
3. Upon receipt of a letter from Advocate A M Thokoa, dated 13 October 2025, and after receiving further relevant information, I, acting on advice, decided to supplement and contextualise my submissions. Kindly note that I have not abandoned any of my submissions and use the self-same submission as the basis for this expansion of my submissions.
4. I have now been advised that I should file a substantive affidavit to enable the Chairperson to properly exercise her discretion under Rule 7 of the Commission's Rules to call me as a witness.
5. The contents herein are, unless the context indicates otherwise, within my personal knowledge and true and correct.



MY FOCUS

6. The essence of my affidavit is to implore the Commission to ensure compliance with one of the basic principles of justice, namely equality before the law. I have noted and accept that the "... *thrust of the Commission is indeed to enquire into any attempts to stop the investigation or prosecution of persons that were not granted amnesty by the TRC, or failed to apply for such amnesty...*"
7. My interest in the debate over prosecutions flowing from the recommendations of the Truth and Reconciliation Commission (TRC) dates back to September 2007, when acting on behalf of Mr. Dirk van Eck, I in my own capacity and acting on behalf of AfriForum, implored the State to either, in the interest of national unity and reconciliation, cease all prosecutions as recommended by the TRC, or to ensure equality before the law to prosecute all those individuals (specifically the so-called ANC 37, who failed to get amnesty) who committed gross human rights violations.
8. I still stand by those submissions today. To focus my evidence, I have deliberately avoided highlighting any specific aspect. Still, I will be able to do so if invited or during oral evidence before the Commission.
9. I studied the affidavit filed by Mr. Lukhanyo Bruce Matthews Calata in the matter *Calata and Others v The Government of South Africa*, Case no. 5025 - 005245, and am in general convinced that the applicants made out a case on the papers that there may have been political interference causing the failure to prosecute the cases and individuals identified by the TRC, particularly those individuals who were found to be responsible for a range of gross human rights violations.

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10. I accept that the Commission has likewise studied the papers and is au fait with the positions occupied, inter alia, by Mr Bukelani Ngcuka, advocates Vusi Pikoli, Anton Ackerman, Torie Pretorius and Chris McAdam. I further accept that the Commission has access to all the affidavits filed by these members of the National Prosecuting Authority (NPA), filed in various High Court applications.
11. I will deliberate in some detail on the terrible facts which expose how Mr Van Eck's wife and two children died as a result of the ANC's campaign to extend the targets of the armed struggle to include civilians.
12. I support an approach that will allow the closure of the book on the past, or that the Commission include and deliberately focus on the failures and reasons for the failures to prosecute any of the 37 senior ANC members who's amnesty applications were refused in line with the TRC finding that "*... ANC to be responsible for a range of gross human rights violations arising out of unplanned operations; the bombing of public buildings, restaurants, hotels and bars; the landmine campaign in the northern and north-eastern parts of South Africa*" This undoubtedly includes the murder of Mr van Eck's wife and two children using a landmine planted on a private road on De Neysen's farm.
13. In terms of my approach, I am less interested in identifying which members of the SAPS or NPA improperly colluded with anyone to prevent the investigation or prosecution of cases identified by the TRC. However, I submit that if recommendations are made regarding further investigation or prosecution of persons who may have acted unlawfully, they should equally include the senior members of the ANC who failed to obtain amnesty and were found to have committed gross human rights violations.



14. I am unaware of any court applications seeking to prosecute any ANC or uMkhonto weSizwe leaders for instructions and orders to commit, among other things, murders of innocent civilians, and we hope that the Commission's findings will avoid such applications.
15. In this regard, although I do not have the details of all the allegations, the matters discussed hereunder, particularly the Ellis Park Bomb of 1988, deserve attention and investigation.
16. It is perhaps apt to pause and emphasise that AfriForum, as a civil rights organisation, or I do not have access to police dockets and official documentation and must rely on inferences and information shared with it.
17. I have, in consultation with Adv Paul Fick SC (now 76 years old), who, as a member of the office of the then Attorney-General and later Director of Public Prosecutions, informed me that he and a team of SAPS investigators contemplated prosecuting senior ANC members for this tragedy. He was assigned the task by Dr De Oliveira and had to decide and prepare prosecutions of ANC members.
18. On 16 October 2025, Colonel Johannes "Tollie" Vreugdenburg (now retired) contacted AfriForum's Private Prosecutions Unit and provided relevant information. I will expand on this information later, but I mention that he approached AfriForum after learning of my submission of 10 October 2025 in the media. Col Vreugdenburg was the lead investigator in the matter that has become known as the "Boeremag" trial and served as the national Commander of Anti-terrorism in the DPCI at the time of his retirement.



19. I submit and understand that the ANC at the Consultative Conference held in Kabwe, Zambia, from 16 to 23 June 1985, extended the targets of the armed struggle to include civilians. Operation Cetshwayo was a landmine operation conducted by the ANC from about 1985 to 1987. During this time, there were in the region of 30 landmine explosions in which 24 innocent civilians died, and 76 people were injured.
20. Mr Van Eck, his wife, two children and others were on a game drive on the farm of Mr Koos de Nysschen when his vehicle detonated a landmine. His wife and two children, aged 2 and 8, died, and the remaining victims were all seriously injured. We acknowledge that the two individuals who planted the landmine were granted amnesty, but none of the senior members who instructed the planting of landmines was ever prosecuted. It is a known fact that the ANC accepted responsibility for this specific tragic murder.
21. Mr Siphon Ngwema, the NPA spokesperson at the time, in a 2004 News24 article by Ms Sonja Carstens, was quoted to have said: "*...the NPA doesn't know who did what or who gave orders. There is simply not enough evidence to draw up a charge sheet...*" I infer, and discuss this aspect later, that the NPA and the SAPS deliberately refrained from collating the necessary "evidence". I submit that the failure to investigate is akin to a deliberate failure to prosecute.
22. Interestingly, in 2007, I indicated that if the tendency of selective prosecutions continued, AfriForum would consider private prosecution. In 2017, we created a Unit that currently focuses on private prosecution to ensure that individuals who are sheltered from prosecution due to their political status or connections face prosecution and accountability. We currently hold no brief to privately prosecute in



any of the TRC matters. This may change if the NPA continues to prosecute these matters selectively.

23. The TRC indicated in Volume 5 of their final report that, in terms of the obligation conferred by section 29 of the Promotion of National Unity and Reconciliation Act 34 of 1995, they referred a number of cases to the Attorney General (as it was) for investigation and possible prosecution. The list included individuals implicated in gross human rights violations for which no amnesty application was received or where amnesty was refused. This list was later presented to Mr Bulelani Ngcuka, the first National Director of Public Prosecutions.
24. My focus is not on making submissions regarding the functionaries of the NPA or SAPS who played a role in the failure to prosecute TRC-related matters. Still, I infer from various statements made that the NPA did indeed have the list and specific case dockets, and that in early 2006, then Police Commissioner Jackie Selebi was concerned that Adv Anton Ackerman (NPA) intended to prosecute the ANC leadership.

Adv Vusi Pikoli stated in his affidavit filed in the matter *Nkadimeng and Others v The NDPP and others* TPD case 32709/07 at paragraph 30, that: "... In early 2006, then Commissioner of Police, Mr. J Selebi, objected to Advocate Ackerman's participation claiming that Ackerman intended to prosecute the leadership of the ANC ..."

25. Adv Pikoli indicated in this affidavit at paragraph 72, that all the dockets relating to TRC cases, which had been stored at the Office of the Director of Public Prosecutions in Pretoria, had been handed over to the SAPS in early and mid-

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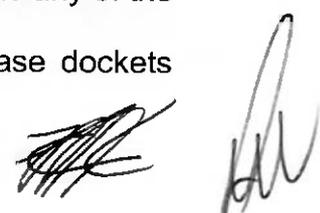
2004. He continued to explain that he was present, in his capacity as the Director-General of Justice, when representatives from SAPS collected the said dockets.

26. Also, in paragraph 72, Adv Pikoli stated that, *"... I reminded the minister that my predecessor had satisfied himself that there was no basis for the leadership of the ANC to be investigated and that he then briefed the then Minister as well as the President ..."*

We submit that Mr Ngcuka will be best placed to indicate why the "investigation" into the leadership of the ANC was stopped. Here I am not dealing with prosecutions but with an investigation that was ceased. I now know that Adv Pikoli will testify during the Commission proceedings.

27. Adv Fick indicated that he was assigned two SAPS members, Nel and Brits, to investigate all the allegations against the ANC and its members who failed to obtain amnesty. He was in possession of the dockets until Mr Ngcuka arrived at his office with a letter ordering that the documents and dockets should be returned to the SAPS. The dockets were returned with the original letter from Ngcuka indicating that the matters will not be investigated by the NPA any further. According to him, the dockets were removed to the offices of the Security Police. Because of the affidavits filed by Adv Pikoli and the information received from Vreugdenburg, I decided not to file Adv Fick's statement, given his advanced age and desire to enjoy his retirement after years of civil service. Adv Fick served the Prosecution service with distinction and was the lead prosecutor in the "Boeremag" trial, after which he retired.

28. It is thus clear that in early 2004, the NPA had decided not to prosecute any of the matters referred by the TRC. This includes any of the possible case dockets

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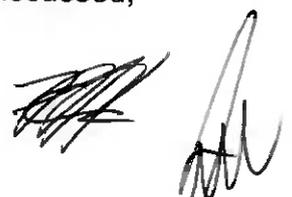
against the ANC leadership who failed to obtain amnesty. The then National Director of Public Prosecutions confirmed it in writing. This letter must still be available at either the SAPS or the NPA. It is essential for any investigation or finding of political interference in the prosecution of these cases to access the letter and ascertain whether any explanation was proffered, as well as to identify the case dockets that were removed.

29. In the confirmatory affidavit attached, Colonel Vreugdenburg confirmed that the case dockets were removed from the DPP Pretoria Office and are now filed in the Generaal Piet Joubert building at 218 Visagie Street, Pretoria. Lt Col Vinnette Coetzee served as the docket custodian until her retirement in September 2025. A complete inventory of the dockets was created, as well as a record of who accessed which case dockets over time. I was advised not to mention the specific location of the dockets, but I am able to do so and understand that Col Vreugdenburg will share the information if requested.
30. Vreugdenburg confirmed that the Ngcuka letter exists and that it was not only delivered with the dockets to the safe at 218 Visagie Street, but that Adv Pretorius and other NPA members had copies of it.
31. It is now almost 20 years later, and my stance remains precisely the same as in 2007: to ensure equality before the law in the investigation and prosecution of all who failed to obtain amnesty and have been identified as having committed gross human rights violations.
32. A delay of more than 40 years in prosecution will undoubtedly affect the likelihood of a successful prosecution. A mere process to investigate those cases where the dockets and evidence are still available will be inherently unfair, and we urge the



Commission to establish who the investigated suspects were in each docket before recommendations are made. This, I accept, will require an analysis of all TRC dockets, and if granted access, AfriForum will assist with such analysis at its own expense.

33. Adv Dumisa Ntsebeza, in his report on TRC prosecutions in 2024, eloquently expressed himself: *"... The consequences of this failure have manifested themselves in the vast number of cases that have now become irredeemable – memories have faded, witnesses have died, evidence that should have been archived has, over time got lost or destroyed ..."* He is obviously correct. We are concerned that the evidence against ANC 37 has been deliberately lost or destroyed.
34. A deliberate withdrawal of support to ensure the prosecution of implicated senior ANC members should receive the same attention as those requested for in the Calata matter. Vreugdenburg recalls Adv McAdam explicitly stating that he will not prosecute any ANC or uMkhonto weSizwe members but will instead focus on the prosecution of security force members. He believes that the NPA used the "excuse" that General Simphiwe Nyanda accepted responsibility for the crimes committed against innocent people by uMkhonto weSizwe and thus took no further action
35. Unfortunately, as a consequence of the deliberate delay in finalising the investigations, Messrs. Nel and Brits passed away and are no longer available to provide details of the investigations and the location of the dockets. It is perhaps worth establishing if the documentation that was removed and handed over to the SAPS contained minutes of meetings where senior ANC members discussed,

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ordered or authorised attacks that included civilians as targets to be eliminated. An analysis, as discussed supra, will indicate whether such documents and evidence still exist.

36. We understand the desire of families to reopen inquests that have been decided without taking into account evidence that was not available at the time of death. In this regard, without having researched all matters, we alert the Commission to the murder of Mr Van der Merwe on 1 November 1978. The TRC included this matter as one of the disappearances/killing cases where the victim was never located, and dealt with the suffering caused by the lack of closure. There was no amnesty application for this killing. Still, indeed, the ANC and uMkhonto we Sizwe command and extension of the armed struggle should be investigated as a cause of the killing.
37. Vreugdenburg confirmed that the Van der Merwe docket was one of those transferred to 218 Visagie Street and that he worked on this specific docket. Although the widow passed away, he consulted with the deceased's children in Pretoria.
38. He confirmed, and I infer, that it is widely accepted that the identity of one of the suspects in the Van Der Merwe murder is known. I will not identify the suspect in this statement, but I am willing to do so if formally requested. This person, who has not applied for amnesty, currently works for the State Security Agency.
39. The Van der Merwe information is relevant because it not only exposes the senior officials who gave orders to expand the armed conflict to include civilians, but it also reveals the identity of the suspect, who is currently employed by the state.



Conclusion

40. We submit that the Commission will be unable to fulfil its mandate without a proper evaluation and publication of the TRC list of cases, as well as an analysis of which case dockets are still available. This list is undoubtedly one of the most important documents produced by the TRC and must be available for analysis. An analysis of the dockets may indicate a bias towards the prosecution of one party to the armed conflicts to the exclusion of the other.

41. Upon the creation of the Commission, President Cyril Ramaphosa emphasised the importance of its task:

“As this government, we are determined that those individuals responsible for apartheid crimes and who were not granted amnesty by the TRC be held to account. This Commission of inquiry is an opportunity to draw a line under a painful period in our country’s history. It is an opportunity to establish the truth and take steps, to the extent possible, to put right what may have gone wrong.”

The President’s sentiments must extend to all the individuals who committed atrocities and failed to get amnesty.

42. AfriForum or I hold no direct brief on behalf of any security force members being probed, but we strongly believe in the principles of fairness and equality before the law. This includes fair investigation and prosecution of all parties that may have committed atrocities, including murder. I cannot remain silent about the transparent failure to treat the atrocities committed by everyone equally. The “excuse” that the dockets against the ANC leadership lack sufficient evidence to prosecute is a transparent attempt to mask the State’s unequal treatment of TRC

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cases. This proposition should be tested by determining what evidence was gathered in the case dockets, and more importantly, why further investigation was not conducted.

43. Without condoning the conduct of any party to the armed struggle, the perception exist that the Apartheid state, for the most part, targeted specific individuals it deemed to be a threat to the regime, while the ANC and other such parties' campaigns were later during the struggle, indiscriminate, and included the killing of innocent civilians and families, such as the case of Mr. Van Eck.
44. It seems patently unjust that the Apartheid state operatives responsible for the heinous crimes committed against political activists be prosecuted, while political activists who coordinated and ordered heinous acts to be committed against civilians, including children, escape accountability.
45. All parties had an equal opportunity to seek indemnity and avoid prosecution. Those who failed should all be investigated and prosecuted. If this has become impossible, the only alternative is to close the book of the past as far as criminal prosecutions are concerned.
46. As an inalienable principle of equality before the law, I implore the Commission to ensure that any recommendations made benefit the victims of gross human rights violations committed by the ANC and other groups that participated in the armed struggle.

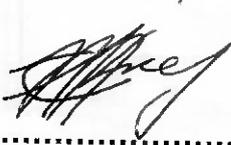


I know and understand the contents of this declaration

I have no objection to taking the oath

I consider the oath to be binding on my conscience.

SIGNED ON THIS 24 DAY ON FEBRUARY 2026 AT PRETORIA



CARL MARTIN KRIEL

1.1 Do you know and understand the contents of the declaration?

ANSWER: *Yes*

1.2 Do you have any objection to taking the prescribed oath?

ANSWER: *No*

1.3 Do you consider the prescribed oath to be binding on your conscience?

ANSWER: *Yes*

1.4 Do you want to make an affirmation?

ANSWER: *No*

2. 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.





SIGNATURE

Willem Nicolaas Swanepoel

FULL NAMES

Commissioner of Oaths

Designation (rank)

Date 24 February 2026

Place Pretoria

Business address

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PRACTISING ATTORNEY R.S.A
MATTHEW KLIEN ATTORNEYS
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