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

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CALATA GROUP VOLUME

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA	1st Applicant
ALEGRIA KUTSAKA NYOKA	2nd Applicant
BONAKELE JACOBS	3rd Applicant
FATIEMA HARON-MASOET	4th Applicant
TRYPHINA NOMANDLOVU MOKGATLE	5th Applicant
KARL ANDREW WEBER	6th Applicant
KIM TURNER	7th Applicant
LYNDENE PAGE	8th Applicant
MBUSO KHOZA	9th Applicant
NEVILLE BELING	10th Applicant
NOMBUYISELO MHLAULI	11th Applicant
SARAH BIBI LALL	12th Applicant
SIZAKELE ERNESTINA SIMELANE	13th Applicant
SINDISWA ELIZABETH MKONTO	14th Applicant

CERTIFIED A TRUE COPY OF THE ORIGINAL

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18/01/2025

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STEPHANS MBUTI MABELANE	15th Applicant
THULI KUBHEKA	16th Applicant
HLEKANI EDITH RIKHOTSO	17th Applicant
TSHIDISO MOTASI	18th Applicant
NOMALI RITA GALELA	19th Applicant
PHUMEZA MANDISA HASHE	20th Applicant
MKHONTOWESIZWE GODOLOZI	21st Applicant
MOGAPI SOLOMON TLHAPI	22nd Applicant
FOUNDATION FOR HUMAN RIGHTS	23rd Applicant

and

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	1st Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	2nd Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	3rd Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	4th Respondent
MINISTER OF POLICE	5th Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	6th Respondent

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FOUNDING AFFIDAVIT

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I, the undersigned

LUKHANYO BRUCE MATTHEWS CALATA

do hereby make oath and state as follows:

INTRODUCTION

1 I am an adult male journalist, author and filmmaker born on 18 November 1981. I am currently employed as the Political Editor at Newzroom Afrika based in Johannesburg.

2 I am the son of the late Fort Calata who, along with Matthew Goniwe, Sicelo Mhlauli and Sparrow Mkonto, became known posthumously as the Cradock Four. On 27 June 1985 they were abducted, tortured, murdered and their bodies burned by the Security Branch of the erstwhile South African Police.

3 In bringing this application I also represent the interests of Nomonde Liza Calata, my mother and the widow of the late Fort Calata, as well as Dorothy Calata-Dombo and Tumani Pauline Calata, who are my sisters and the daughters of the late Fort Calata. I deal with standing and our interests in more detail later in this affidavit.

4 All the applicants in these proceedings have family members who laid down their lives for our freedom and democracy or are themselves survivors of gross human rights violations. They were murdered, forcibly disappeared or seriously injured. We have been denied justice and closure for the heinous crimes that were committed against us and our loved ones during apartheid due to the suppression of the investigations and prosecutions through political interference (**the interference** or **the political interference**).

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5 We bring this application to address, to the extent possible, the grave injustices caused by the interference. We seek to have our constitutional rights to dignity and justice, which were deeply violated by the interference, vindicated. We also seek the truth behind how such brazen interference in the administration of justice occurred to ensure that such injustices never happen again.

6 I am authorised to bring this application on behalf of the applicants. Confirmatory and supporting affidavits are filed evenly with this affidavit in respect of each of the applicants.

7 The facts deposed to in this affidavit are within my personal knowledge, unless otherwise stated or indicated by the context, and are true and correct to the best of my knowledge. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be correct. Where necessary, confirmatory or supporting affidavits deposed to by those persons with personal knowledge accompany this affidavit.

RELIEF SOUGHT

8 The relief sought by the applicants is summarised below. An order is sought:

8.1 Declaring the conduct of the first to sixth respondents in unlawfully refraining and/or obstructing, the investigation and/or prosecution of apartheid-era cases referred by the Truth and Reconciliation Commission (**TRC**) to the National Prosecuting Authority (**the NPA**) (**the TRC cases**), or to otherwise unlawfully abandon or undermine such cases (**the interference**) to be:

8.1.1 a violation of the rights of applicants, and more generally the rights of survivors and families of victims of apartheid-era crimes (**the**

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families) to their constitutional rights of human dignity and equality and the right to life and bodily integrity of the victims in terms of sections 9, 10, 11 and 12 of the Constitution, Act 108 of 1996 (**the Constitution**);

8.1.2 inconsistent with the constitutional values set out in section 1(a) and the rule of law as enshrined in section 1(c) of the Constitution;

8.1.3 inconsistent with the principles, values and obligations arising from the Promotion of National Unity and Reconciliation Act, 34 of 1995 (**the TRC Act**) read with the postscript to the Constitution of the Republic of South Africa Act 200 of 1993 (**the Interim Constitution**);

8.1.4 in breach of the duties and obligations contained in the Constitution, the National Prosecuting Authority Act, 32 of 1998 (**the NPA Act**) and the South African Police Service Act, 68 of 1995 (**the SAPS Act**) to investigate and prosecute serious crime and not to interfere with the legal duties of prosecutors and law enforcement officers; and

8.1.5 inconsistent with South Africa's international law obligations in terms of sections 231 to 233, read with section 39(b), of the Constitution.

8.2 The awarding of constitutional damages for purposes of affirming constitutional values, vindicating the rights of the applicants and families, deterring future interference and to enable families and organisations supporting families to:

8.2.1 advance truth, justice and closure by assisting them to pursue investigations, inquests, private prosecutions and related litigation;

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8.2.2 play a monitoring role in respect of the work of the policing and justice authorities charged with investigating and prosecuting the TRC cases; and

8.2.3 pursue commemoration, memorialisation and public education activities, including the holding of public events, publishing of books and making of documentaries.

8.3 The creation of an independent trust in accordance with the provisions of the Trust Property Control Act 57 of 1998 to hold and disburse any funds awarded as constitutional damages in furtherance of the objects set out above.

9 Declaring the failure and/or refusal by the second respondent (**the President**) to establish a commission of inquiry into the suppression of the investigation and prosecution of the TRC cases (**the decision**) to be:

9.1 inconsistent with his constitutional responsibilities under section 84(2)(f) read with sections 1(c), 7(2), 83(b) and 237 of the Constitution, and

9.2 a violation of the survivors and families of victims of apartheid-era crimes' right to equality, dignity and the right to life and bodily integrity of the victims in terms of sections 9, 10, 11 and 12 of the Constitution.

10 Reviewing and setting aside the President's failure and/or refusal to appoint a commission of inquiry as described above.

11 Directing the President to:

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11.1 promulgate in the Government Gazette, within thirty (30) calendar days of this order, the establishment of a commission of inquiry in terms of section 84(2)(f) of the Constitution, which commission of inquiry shall be headed by a sitting or retired judge designated by the Chief Justice, and shall be tasked to inquire into:

11.1.1 whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the NPA and/or the South African Police Service (**SAPS**) to stop investigating and/or prosecuting the TRC cases;

11.1.2 whether any members of the NPA and/or the SAPS improperly colluded with such attempts to influence or pressure them; and

11.1.3 to make recommendations flowing from its conclusions, for actions to be taken by organs of state, including prosecutions to be instituted against persons found to have acted unlawfully in:

(a) attempting to influence or pressure members of the NPA and/or the SAPS to stop investigating and/or prosecuting the TRC cases, and/or

(b) colluding with or succumbing to such attempts;

11.2 to make the provisions of the Commissions Act 8 of 1947 applicable to the abovementioned commission of inquiry in the aforesaid proclamation in the Government Gazette.

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STRUCTURE OF AFFIDAVIT

12 The scheme of this affidavit necessitates me addressing the following topics:

12.1 First, I provide an overview of this application, and in particular I describe the fundamental betrayal committed by the post-apartheid state against families and victims connected to apartheid-era crimes.

12.2 Second, I describe the parties to the application.

12.3 Third, I set out the applicants' standing to pursue this application and the jurisdiction of this court to deal with these proceedings.

12.4 Fourth, I deal with the background to the political interference, including an overview of apartheid-era violations, the TRC process, early attempts to secure justice, post TRC developments and the dire lack of delivery in the TRC cases.

12.5 Fifth, I address the political interference in the TRC cases, starting with its genesis, the closing down of the cases, the various forms of interference employed, the moratorium imposed and direct interventions to stop the cases, as well as disclosures made in litigation.

12.6 Sixth, I turn to the question of whether the suppression of the TRC cases was the product of a political agreement, and I consider various interactions between senior government officials and former apartheid security personnel regarding an immunity and other arrangements aimed at avoiding prosecutions.

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12.7 Seventh, I deal with the post-interference developments, including the efforts to reopen inquests, and litigation the families launched to compel or prompt action on the part of the NPA and the South African Police Service (**SAPS**).

12.8 Eighth, I deal with calls for a specialised unit, such as an investigating directorate, where prosecutors and detectives could work together to tackle the TRC cases; as well as the response of the state declining this approach.

12.9 Ninth, I address the requests for an independent commission of inquiry into the suppression of the TRC cases, the plan by the former Minister of Justice to circumnavigate an independent and open inquiry, and the Ntsebeza inquiry launched by the NPA.

12.10 Tenth, I list the statutory and constitutional provisions that have been violated by the political interference that resulted in the suppression of most of the TRC cases.

12.11 Eleventh, I set out the grounds for the declaratory relief and constitutional damages sought, which includes the impact of the denial of justice on families and survivors, and the violation of the rule of law, various rights and international law obligations.

12.12 Twelfth, I explain the type and form of constitutional damages sought by the applicants and motivate the quantum claimed.

12.13 Thirteenth, I set out the grounds for the declaratory relief setting aside the President's refusal or failure to establish a commission of inquiry into the suppression of the TRC cases.

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12.14 Finally, I set out the grounds for the mandatory order sought compelling the President to establish an inquiry under the Commissions Act.

OVERVIEW

13 The state-sanctioned abduction, torture, murder of my father and the desecration of his body have had a profound effect on me and my family. The inhuman acts of brutality committed against the family members of my co-applicants, and certain of the applicants themselves, have had similarly devastating effects on them. Their stories are told in their supporting affidavits which accompany this application.

14 We had to endure the murders and disappearances of our family members during apartheid. The post-apartheid era of political interference and denial of justice stand as a deep betrayal of their ultimate sacrifices. The interference adds insult to our injuries and exacerbates our emotional and psychological trauma, as well as the pain and suffering we have endured.

15 We are at our wits' end as to why successive post-apartheid governments turned their backs, not only on us, but on our loved ones and so many others who paid the ultimate price for our freedom and democracy.

16 The evidence discloses that decisions were taken at the highest political levels to undermine, and ultimately to block the investigation and prosecution of the cases referred by the TRC to the NPA.

17 The story of the Cradock Four is well known and I will not burden these papers by repeating that story here. The full story, together with our quest for justice, is set out in the legal application I brought against the NPA in 2021 to compel a prosecutorial decision before the Gauteng Division in *Calata and Others vs National*

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Director of Public Prosecutions and Others Case Number: 35447/2021. A copy of these voluminous papers can be provided on request.

18 The brutal murders of our family members and the pain that we endure have defined us and our life choices. We have spent decades searching for the truth and struggling to do justice to the lives of our loved ones, which were so brutally cut short. We have done so in the face of the intransigence of the post-apartheid state, which has misled us and treated us with contempt.

19 For most of us, it is too late. Our life-long struggle for accountability has come to naught. Suspects and witnesses have died, bringing an end to any prospect of prosecutions in most cases. These cases can never be resurrected.

20 Family members have also passed on. On 29 August 2020, Nyameka Goniwe, wife of Matthew Goniwe, passed away. Matthew's daughter, Nobuzwe, died on 22 July 2024 at the age of 49. They died before seeing justice done in Matthew's brutal murder. The cruel indifference of the post-apartheid state robbed them of justice, peace and closure. The damage done to us, our families and communities is incalculable. We are deeply scarred and will remain so until our dying day.

The Betrayal

21 Families of apartheid-era victims have conducted themselves with resilience and remarkable patience.

22 We committed ourselves to the historic compromises that were required to move from South Africa's oppressive past to a democratic future. We participated in the TRC process (to be described below) in good faith. This involved having to accept

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that perpetrators granted amnesty would not face prosecution or civil damages claims.

23 There was a general expectation founded on the constitutional obligations of the post-apartheid state that the state would prosecute perpetrators who were not amnestied and provide victims with reparations. For this reason, we did not sue the new South African state for the transgressions of the apartheid state.

24 In this regard, according to the TRC Report (Volume 6, section 1 page 36), read with figures released by the Department of Justice (**DOJ**), of the 7112 persons who applied for amnesty (relating to more than 14 000 incidents), some 5034 were rejected on the papers (in chambers) for not meeting the basic requirements for amnesty, while the balance were referred to hearings before the Amnesty Committee. The DOJ's summary of amnesty decisions is annexed hereto marked **FA1**.

25 Some 849 of these applicants were granted amnesty while approximately 358 applications were refused. Murders comprised the biggest category of the crimes for which amnesty was refused, some 189 cases, which involved at least 353 deaths. An excel spreadsheet compiled by my legal team listing the details of each refusal, is annexed hereto marked **FA2**.

26 At that time, we felt it was fundamentally wrong to sue the democratic state in such a context. This was especially the case since state funds were meant to be used for reparations. We gave up our claims, and in so doing, we spared the post-apartheid state from having to pay a vast sum of money.

27 However, the state reneged on both of its constitutional obligations in relation to the post-TRC process. It failed to prosecute and has provided wholly inadequate reparations. Its cruel and misguided "closed list policy" excluded many thousands of victims from the benefits of reparations. R2 billion in the President's Fund remains unspent. Successive post-apartheid governments have destroyed the social compact struck with us.

28 Had we known at the time the TRC was concluding its operations that the post-apartheid government had no intention of prosecuting those who had not received amnesty, most of us would have pursued civil claims against those perpetrators and the state, in cases where harm was committed by agents of the apartheid state.

29 The bulk of these claims would have been for loss of support since most cases in which amnesty was refused involved murders and enforced disappearances. Many of those killed by state agents were breadwinners. It would be difficult to quantify, but the potential amounts of such claims would have been substantial, probably running into hundreds of millions of rands. Such amounts would be even higher, if one includes the many cases involving perpetrators who committed murders in the course and scope of their employment with the apartheid state, but who did not apply for amnesty.

30 We approach this Honourable Court for constitutional damages, not to compensate us for what we have endured, but for purposes of vindicating the violation of our rights to human dignity and justice visited upon us by the political interference, and to deter future such violations. Such damages will enable us to pursue truth and justice in the cases where this is still possible; help us to monitor and hold to account the authorities going forward; and to commemorate the lives of our loved ones.

31 For several years we have been asking for an independent and open commission of inquiry into the suppression of the TRC cases. President Ramaphosa and the former Minister of Justice, Ronald Lamola, have ignored our requests. The former Minister instead spoke of holding an internal enquiry, which is likely to be carefully stage managed and held largely behind closed doors to spare government the close scrutiny of an open inquiry.

32 We will accept nothing less than a fully transparent commission of inquiry armed with the normal powers of compulsion under the Commissions Act. For this reason, we seek an order compelling the President to establish an independent commission to expose the truth behind how such a monumental miscarriage of justice occurred; and to explore ways of ensuring this never happens again in South Africa.

THE PARTIES

The applicants

33 I am the first applicant. I am the son of the late Fort Calata, one of the Cradock Four. On 27 June 1985, the Cradock Four were abducted, assaulted, murdered and their bodies burned by the Security Branch (**SB**) of the erstwhile South African Police (**SAP**).

34 The second applicant is **ALEGRIA KUTSAKA NYOKA**, the sister of the late student activist and East Rand COSAS (Congress of South African Students) leader, Caiphus Nyoka. Caiphus was killed by members of the SAP Riot Unit and the Benoni SB at his family home in Daveyton on 24 August 1987. A copy of Alegria's supporting affidavit is filed evenly herewith.

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35 The third applicant is **BONAKELE JACOBS**, the brother of the late Mxolisi 'Dicky' Jacobs who died while in detention in Upington in 1986. A copy of his supporting affidavit is filed evenly herewith.

36 The fourth applicant is **FATIMA HARON-MASOET** the daughter of the late Imam Haron who was tortured and killed while in SB detention in Cape Town during 1969. A copy of her supporting affidavit is filed evenly herewith.

37 The fifth applicant is **TRYPHINA NOMANDLOVU MOKGATLE**, the eldest sister of the late Zandisile Musi, one of the COSAS Four, who was seriously injured in a bombing orchestrated by the SB on 15 February 1982 and who has subsequently passed away. A copy of Tryphina's supporting affidavit is filed evenly herewith.

38 The sixth applicant is **KARL WEBER**, a survivor of the Highgate Hotel Massacre in East London on 1 May 1993. A copy of his supporting affidavit is filed evenly herewith.

39 The seventh applicant is **KIM TURNER**, one of the daughters of the late academic and anti-apartheid activist Dr Richard 'Rick' Turner. Rick Turner was assassinated by the security forces on 8 January 1978 at his Durban home in the presence of his daughters. A copy of Kim's supporting affidavit is filed evenly herewith.

40 The eighth applicant is **LYNDENE PAGE**, the sister of the late Deon Harris, who was killed on 1 May 1993 in the Highgate Hotel Massacre. A copy of her supporting affidavit is filed evenly herewith.

41 The ninth applicant is **MBUSO KHOZA**, the son of Musawakhe 'Sbho' Phewa. Sbho was an underground Umkhonto we Sizwe (**MK**) operative from Lamontville,

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KwaZulu Natal. Sbho was forcefully disappeared and murdered at the hands of the SB in May 1987. A copy of Mbuso's supporting affidavit is filed evenly herewith.

42 The tenth applicant is **NEVILLE BELING** who survived the 1 May 1993 Highgate Hotel Massacre. A copy of his supporting affidavit is filed evenly herewith.

43 The eleventh applicant is **NOMBUYISELO MHLAULI**, an adult female former manager at the South African Social Security Agency and widow of Sicelo Mhlauli, one of the Cradock Four. A copy of her supporting affidavit is filed evenly herewith.

44 The twelfth applicant is **SARAH BIBI LALL** the sister of the late Dr Hoosen Haffejee who was tortured and killed at the Brighton Police Station in Durban in 1977. A copy of her supporting affidavit is filed evenly herewith.

45 The thirteenth applicant is **SIZAKELE ERNESTINA SIMELANE**, the mother of the late Nokuthula Simelane who was abducted, tortured and murdered by the SB in 1983. A copy of her supporting affidavit is filed evenly herewith.

46 The fourteenth applicant is **SINDISWA ELIZABETH MKONTO**, an adult female and former teacher at Masizame Creche in Lingelihle, and widow of Sparrow Thomas Mkonto, one of the Cradock Four. A copy of her supporting affidavit is filed evenly herewith.

47 The fifteenth applicant is **STEPHANS MBUTI MABELANE**, the brother of the late Matthews 'Mojo' Mabelane, who died in detention on 15 February 1977 while under interrogation by the SB at John Vorster Square. A copy of his supporting affidavit is filed evenly herewith.

48 The sixteenth applicant is **THULI KUBHEKA**, the daughter of the late MK operative Ntombikayise Priscilla Kubheka who was abducted, tortured and murdered near Winklespruit by the SB in May 1987. A copy of her supporting affidavit is filed evenly herewith.

49 The seventeenth applicant is **HLEKANI EDITH RIKHOTSO**, the sister of Ignatius 'Iggy' Mthebule. Iggy, a former MK operative, disappeared at the hands of the SB in 1987 in Johannesburg. He was never seen again and is presumed to have been murdered. A copy of Hlekani's supporting affidavit is filed evenly herewith.

50 The eighteenth applicant **TSHIDISO MOTASI**, the son of the late Richard and Busisiwe Irene Motasi. Richard and Busisiwe were shot dead by the SB on 1 December 1987 at the family's Hammanskraal home, in Tshidiso's presence. A copy of Tshidiso's supporting affidavit is filed evenly herewith.

51 The sixteenth applicant is **NOMALI RITA GALELA**, the wife of the late Twasile Champion Galela, one of the Pebco 3. Champion was a member of the Port Elizabeth Black Civic Organisation who was kidnapped by the Port Elizabeth SB and the Vlakplaas unit on 8 May 1985 and murdered days later at Post Chalmers. A copy of Nomali's supporting affidavit is filed evenly herewith.

52 The twentieth applicant is **PHUMEZA MANDISA HASHE**, the daughter of the late Sipho Hashe, one of the Pebco 3. Sipho was kidnapped by the Port Elizabeth SB and the Vlakplaas unit on 8 May 1985 and murdered days later. A copy of Phumeza's supporting affidavit is filed evenly herewith.

53 The twenty-first applicant is **MKHONTOWESIZWE GODOLOZI**, the son of the late Qaqawuli Godolozi, one of the Pebco 3. Qaqawuli was kidnapped by the Port

Elizabeth SB and Vlakplaas unit on 8 May 1985 and murdered days later. A copy of Mkhontowesizwe's supporting affidavit is filed evenly herewith.

54 The twenty-second applicant is **MOGAPI SOLOMON TLHAPI**, the brother of Nicholas Ramatua 'Boiki' Tlhapi. Boiki was forcefully disappeared from the Stilfontein police station while in the hands of the Security Police in March 1986 and is presumed to have been murdered. A copy of Mogapi's supporting affidavit is filed evenly herewith.

55 The twenty-third applicant is the **FOUNDATION FOR HUMAN RIGHTS** (**FHR**), a non-governmental human rights organisation with its principal place of business at Metal Box Building, 7th Floor, 25 Owl Street cnr Stanley Avenue, Auckland Park, Johannesburg. The FHR was established in 1996 by then President of South Africa, Nelson Mandela, and the European Union to address the historical legacy of apartheid and build a culture of human rights. One of its major programmes is the Unfinished Business of the Truth and Reconciliation Commission which supports victims of apartheid-era to pursue justice and closure. A copy of the supporting affidavit of Dr Zaheed Kimmie, Executive Director of the FHR, is filed evenly herewith. A copy of the FHR's Memorandum of Incorporation is attached marked **FA3** and an extract from the minutes of a board meeting authorising the FHR's participation in these proceedings is attached marked **FA4**.

The respondents

56 The first respondent is the **GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA** with its offices located at the Union Buildings, Government Avenue, Pretoria.

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57 The second respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** cited in his official capacity. The President's office is located at the Union Buildings, Government Avenue, Pretoria.

58 The third respondent is the **MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT** cited in her official capacity, with her office located at the Momentum Centre, 329 Pretorius Street, Pretoria. The Minister of Justice is also cited in terms of section 179(6) of the Constitution, as the cabinet minister responsible for the NPA.

59 The fourth respondent is the **NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS** cited in her official capacity, with her office located at the VGM Building, Corner of Westlake and Hartley, 123 Westlake Avenue, Weavind Park, Silverton, Pretoria. The NDPP is cited in terms of section 179(1)(a) of the Constitution as the head of the NPA.

60 The fifth respondent is the **MINISTER OF POLICE** cited in his official capacity, with his office located at the Wachthuis Building, 231 Pretorius Street, Pretoria. The Minister of Police is cited in terms of section 206(1) of the Constitution as the cabinet minister responsible for the SAPS.

61 The sixth respondent is the **NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE** cited in his official capacity, with his office located on the corner of Park Street and Hamilton Street, Arcadia, Pretoria. The National Commissioner of the SAPS is cited as he is, in terms of section 207 of the Constitution, responsible for the control and management of the SAPS

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STANDING

62 The individual applicants being the first to twenty second applicants comprise survivors and families of the victims of the TRC cases.

63 The organisational applicant, being the Foundation for Human Rights, acts in the public interest.

64 This application is brought:

64.1 by me and the second to twenty second applicants acting:

64.1.1 in our own interest as survivors of apartheid-era crimes and family members of victims of apartheid-era crimes as contemplated in section 38(a) of the Constitution. We are directly impacted by such crimes and the subsequent interference that resulted in the blocking of post TRC investigations and prosecutions. Consequently, we have a direct interest in vindicating our rights which were violated by the interference;

64.1.2 in the interests of all survivors of apartheid-era crimes and the families belonging to the group or class of persons whose loved ones perished or were forcibly disappeared in apartheid-era crimes and whose cases were suppressed by the interference, in terms of section 38(c) of the Constitution; and

64.1.3 in the public interest in terms of section 38(d) of the Constitution.

64.2 by the FHR acting:

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64.2.1 in terms of s 38(a) of the Constitution since its interests, goals and activities are undermined and adversely affected by the interference;

64.2.2 in the interests of all survivors of apartheid-era crimes and the families belonging to the group or class of persons whose loved ones perished or were forcibly disappeared in apartheid-era crimes and whose cases were suppressed by the interference, in terms of section 38(c) of the Constitution; and

64.2.3 in the public interest in terms of s 38(d) of the Constitution.

65 In bringing this application, all applicants act in the public interest on the basis that the interference is objectively unconstitutional on the grounds set out in this application and, in particular, on the basis that it violated several rights enshrined in the Bill of Rights as well as the principles of the rule of law and the separation of powers.

66 In this regard it is asserted that:

66.1 The general public has an interest in the relief sought in this application, which arises from the principle of the rule of law which is the very fabric of our society.

66.2 Where fundamental rights are infringed, and the rule of law and separation of powers threatened, the interests of the general public are by definition implicated.

66.3 The most effective manner in which to challenge the offending conduct is for the applicants, in particular the institutional applicant, the FHR, which has a

particular duty to advance these constitutional principles, to litigate in the public interest.

66.4 Many of the people affected by the challenged conduct are vulnerable people who have experienced the might of the state at its most brutal and some may not be in a position to bring a challenge of this nature.

66.5 Although it is not known with precision as to how many people are affected by the interference, it is likely that many would be directly or indirectly affected, since the TRC referred a few hundred cases to the NPA, and virtually all remain unresolved.

67 Rule 16A of the Rules of this Honourable Court will also be complied with in order to ensure that all affected persons will have an opportunity to present evidence and/ or argument to the Court.

JURISDICTION

68 This Honourable Court has jurisdiction to determine this application as the respondents are located within the jurisdiction of this Honourable Court.

BACKGROUND TO THE POLITICAL INTERFERENCE

69 The context to the political interference in the TRC cases is set out below.

Apartheid violations

70 The Constitutional Court has held that the practice of apartheid constituted a crime against humanity. There is ample evidence in the public domain substantiating the conclusion that South Africa's pre-1994 order amounted to "*an institutionalised*

regime of systematic oppression and domination by the white racial group over the black racial group" (which is the definition of the crime of apartheid in the Rome Statute). The TRC found that very serious crimes were committed during the apartheid-era. In particular, the TRC Report (Vol 5 Ch. 6, Findings and Conclusions, p 222) found that the security forces of the apartheid state committed a host of gross violations of human rights, including:

70.1 extra-judicial killings in the form of state-planned and executed assassinations, killings following abduction and interrogation, ambushes and entrapment killings;

70.2 the desecration and mutilation of body parts;

70.3 kidnappings and disappearances;

70.4 torture, severe ill treatment, abuse and harassment;

70.5 destruction of homes or offices through arson, bombings or sabotage;

70.6 manipulation of social divisions to turn one group against another, resulting, at times, in violent clashes; and

70.7 establishment and provision of support to offensive paramilitary units or hit squads for deployment internally against opponents of the government.

71 Tens of thousands of anti-apartheid activists were detained without charge or trial. Thousands of political activists were tried, convicted and imprisoned. According to South African History Online some 1,301 political prisoners served time on Robben Island. The total number of political prisoners held at all prisons runs into several thousands.

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72 The TRC concluded that under apartheid, the security forces were a law unto themselves. The vast majority of murders and crimes carried out by them were covered up.

73 We did not expect the apartheid police to investigate themselves or other security services. They acted entirely without restraint and without the slightest fear of having to face justice. Compliant investigating officers, prosecutors and magistrates ensured that apartheid security forces enjoyed near total impunity.

74 We did expect the post-apartheid state to pursue justice. However, a near blanket impunity for apartheid era crimes has been extended into the post-apartheid era, mainly through political interference, as is described below.

The TRC process

75 South Africa's ground-breaking transition required a limitation of the fundamental rights of the victims of gross human rights violations during that period. This was justified by the pressing need to promote national unity and reconciliation and to cross the historic bridge between the past of a deeply divided society to a future founded on democracy, equality and peaceful co-existence.

76 The principles set out in the postscript to the Interim Constitution were reflected in the design of the TRC Act. Perpetrators of politically motivated crimes who made full disclosure were eligible for amnesty for those crimes, which included immunity from criminal prosecution and civil law actions. Conversely, those perpetrators who were refused amnesty, or who chose not to apply for amnesty, were meant to face the consequences, namely criminal prosecution.

77 In requiring victims and the wider community to forgo their rights to justice under the rule of law, the state made an effective compact with victims. This compact required the state to take all reasonable steps to prosecute deserving cases in respect of offenders who were not amnestied.

78 I am advised that there is nothing in the constitutional and statutory design of the TRC process which contemplated or authorised the extension of the rights of perpetrators to further leniency or indemnity from prosecution beyond the winding up of that commission.

79 The TRC's Final Report, released on 21 March 2003, stressed that amnesty should not be seen as promoting impunity. The TRC highlighted the imperative need for "*a bold prosecution policy*" in those cases not amnestied to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law (Vol 6, Ch1, p 593, para 24).

80 Most victims accepted the necessary and harsh compromises that had to be made to cross the historic bridge from apartheid to democracy. We did so on the basis that there would be a genuine follow-up of those offenders who spurned the process of truth and reconciliation and those who were refused amnesty. This part of South Africa's historic pledge with victims has not been kept. Contrary to this obligation, in the aftermath of the TRC, the state chose to abandon its obligations by blocking the TRC cases.

81 The political pressure described in this affidavit served to shape the approach or policy of the NPA and the SAPS in relation to the TRC cases, post the winding up of the TRC. This approach is evidenced by various steps aimed at ensuring political control over prosecutorial decisions dealing with these cases.

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Early attempts to secure justice

82 Early attempts to secure justice are disclosed in a memorandum dated 24 October 2006, authored by the first head of the NPA's Priority Crimes Litigation Unit, Adv Anton Ackermann SC (**Ackermann**). It was addressed to the then Deputy NDPP, Dr Silas Ramaite. The memorandum is attached as annex RCM12 (at p849) to an affidavit (at pp 796 – 879) filed by Adv Raymond Christopher Macadam (**Macadam**) in the Joao Rodrigues stay of prosecution case in *Rodrigues v NDPP & Others* Case No. 76755/18, Gauteng Division. A copy of the aforesaid Macadam affidavit is annexed hereto marked **FA5**. These early attempts to pursue justice are set out below:

82.1 After the closure of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation (**the Goldstone Commission**) in 1994 the evidence unearthed by that inquiry was referred to the Transvaal Attorney General, Dr J D'Oliveira. A team of detectives from the SAPS was seconded to his office to conduct the investigations (**the D'Oliveira unit**).

82.2 The D'Oliveira unit was divided into two groups. One focussed on offences committed by apartheid security force members led by Dr D'Oliveira and the other on offences committed by liberation movements and right-wing groups led by Deputy Attorney General Fick, who was supported by police officers Director Nel and Senior Superintendent Britz.

82.3 On 7 November 1996, Dr J D'Oliveira requested the National Commissioner of Police to instruct all his Provincial Commissioners to submit all unsolved criminal dockets dealing with the conflicts of the past to his office.

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83 In parallel with the work of the TRC there were attempts to address some apartheid-era crimes. In 1996 the D'Oliveira unit prosecuted former SB commander of Vlakplaas, Eugene de Kock (**De Kock**), on 121 charges including murder and multiple other offences.

83.1 In August 1996 De Kock was found guilty on 89 of the 121 charges against him, including six of murder. In October 1996 he was sentenced to two life sentences plus 212 years' imprisonment.

83.2 The conviction of De Kock should have opened the door to prosecutions of the entire hierarchy in the erstwhile SB of the SAP. This never materialised. To this day De Kock is widely seen as the 'fall guy' for what the trial judge referred to as the "*rotten system*" that permitted such crimes.

84 In a case connected to the De Kock prosecution, SB officers Peter McIntyre, Andries Venter, Jaques Else and Philip de Beer were charged in 1996 with the murder of Sweet Sambo, who died in police custody in 1991. Since the accused had previously been acquitted on other charges in connection with Sambo's death in 1994, they were acquitted.

85 In 1996 the D'Oliveira unit charged Jack Cronjé and Jaques Hechter of the Northern Transvaal SB with 27 counts of murder committed between 1986 and 1987. Both applied for amnesty, which were subsequently granted (Amnesty Decisions AC/99/0031 and AC/99/0030), bringing an end to that case.

86 In 1997, former Vlakplaas commander Dirk Coetzee and four other Vlakplaas operatives were charged with the 1981 murder of lawyer and political activist Griffiths Mxenge in Durban. Coetzee and two others were found guilty in May 1997

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but shortly thereafter received amnesty by the TRC (Amnesty Decision no AC/97/0041).

87 In 1998, Ferdi Barnard, an operative of the Civil Cooperation Bureau (**CCB**), a covert unit of the South African Defence Force (**SADF**) was convicted of the 1989 murder of anti-apartheid academic, David Webster, and the attempted murder of Dullah Omar. He was sentenced to life imprisonment and released on parole in 2019.

88 Between 1995 and 1997, the Investigation Task Unit (**ITU**), which had been established by the Police Ministry in 1994 to investigate hit squad activity in the KwaZulu Natal region was involved in the following matters:

88.1 The murder trial of former Defence Minister Magnus Malan, and most of the top hierarchy of the SADF, for the 1987 KwaMakutha massacre in which 13 women and children were shot dead under a secret military operation styled as 'Operation Marion'.

88.1.1 Notwithstanding an abundance of documentary and witness evidence, all the accused were acquitted in what was widely seen as a bungled prosecution by the then KwaZulu Natal Attorney General Timothy McNally (**McNally**).

88.1.2 In May 2024 the NPA in KwaZulu Natal was asked to consider preferring charges against a former senior military officer who was central to the planning and oversight of Operation Marion, but who had not applied for amnesty and was not previously charged. Substantial information and evidence were provided to the NPA, but nothing further has been heard.

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88.2 On 2 June 1996, the ITU submitted a docket to McNally seeking the prosecution of eight senior Inkatha Freedom Party (**IFP**), KwaZulu Police and Government officials, including a homeland cabinet minister on multiple murder charges. The docket was titled "*The case against persons involved in the establishment and perpetration of hit squad activity in Esikhaweni and surrounding areas*." McNally declined to prosecute, and these cases were never taken forward, even after McNally's resignation. In March 2023 the docket was resubmitted to the NPA in KwaZulu Natal, but nothing further has been heard.

88.3 McNally declined to prosecute former IFP operative Philip Powel for possession of illegal firearms and refused to prosecute former KwaZulu Police Commissioner Roy During for obstructing the course of justice in relation to a large arms cache that had been hidden in the KwaZulu Legislative Assembly building.

88.4 The ITU secured seven murder convictions against ANC hit squad members, connected to the Self Defence Units in the Midlands region, particularly in the town of Richmond. On the closure of the ITU these cases were handed over to the National Investigation Task Unit. Later in the 1990s the Murder and Robbery Unit and the Investigation Directorate Organised Crime secured an additional 23 murder convictions against ANC members.

88.5 The ITU also investigated hit squads connected to the IFP's Self Protection Units but realizing that McNally would not act against the IFP, it abandoned this case, and the ITU closed in mid-1997.

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89 During the 1990s, post 1994, at least 30 ANC, UDF and UDM aligned persons were convicted of murder and other serious crimes, just in the KwaZulu Natal province.

89.1 This is gleaned from the list of convicted persons recommended for pardon under former President Thabo Mbeki's Special Dispensation for Political Pardons (to be dealt with below) which dealt mainly with convictions secured in the 1990s and thereafter for alleged political crimes.

89.2 The list, a copy of which can be made available on request, disclosed that 81 convicted persons were associated with the ANC, PAC and civic organisations. Eleven were Afrikaner Weerstandsbeweging (**AWB**) and Freedom Front Plus members and 21 were IFP members. Only five were connected to the former National Party or the SAP, (all five convicted of the attempted murder of the Rev. Frank Chikane, to be discussed below).

89.3 These numbers belie claims made by organisations such as AfriForum, and the ironically styled Foundation for Equality before the Law, that only former Apartheid regime personnel have been targeted in the post-apartheid era.

90 In 1997 Colonel Wouter Basson faced 67 charges, including 16 of murder and 24 of fraud, relating to his activities as head of the apartheid government's chemical and biological warfare programme from 1982 to 1992. In April 2002, Basson was acquitted by the Pretoria High Court following a failed attempt by the prosecution to have the presiding Judge recused on grounds of bias. In 2005, the Constitutional Court partly reversed this decision to acquit Basson, holding that crimes committed outside South Africa could be prosecuted within the domestic courts. However, these charges were not pursued.

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91 In 2002, two Ciskei Defence Force soldiers, Vakele Archiebald Mkosana and Mzamile Thomas Gonya were acquitted of murder and attempted murder charges for their role in the 1992 Bisho Massacre, with the court accepting their plea of self-defence. Also in 2002, Worcester riot unit member, Michael Luff, was acquitted of the 1985 murder of protestor William Dyasi.

92 The cases described above cannot be referred to as 'TRC cases' as they were pursued independently of the TRC around the same time of the TRC's operations. Notably, these cases took place before the imposition of the political interference.

93 Until the end of President Nelson Mandela's term there did not appear to be political opposition to justice for apartheid crimes. On the occasion of the tabling of the TRC Report in Parliament in February 1999, President Mandela stated that "*accountability does need to be established and where evidence exists of a serious crime, prosecution should be instituted within a fixed time frame.*"

94 The two specialised units, the ITU and the D'Oliveira unit, helped to pioneer the approach of prosecution led investigations in South Africa, with prosecutors and investigators working together as teams under one roof, with proven success. As will be seen below, such a specialised approach is desperately needed in relation to the TRC cases, but the government has ignored all pleas in recent years to adopt this model, resulting in the stagnation of most of the cases. A request to the Ministry of Justice to establish a dedicated court to focus on the TRC cases has also fallen on deaf ears.

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Post TRC developments

95 According to former TRC commissioners Adv Dumisa Ntsebeza SC (**Ntsebeza**) and Yasmin Sooka (**Sooka**), in October 1998, the TRC prepared a letter addressed to then National Director of Public Prosecutions, Bulelani Ngcuka (**Ngcuka**), which was accompanied by a list of cases which the Commission asked the NPA to investigate further with a view to prosecution. It is likely that the letter and list were transmitted to the NDPP on 27 or 28 October 1998, which was the date of the last full meeting of the Commission before it ceased its official activities. Unfortunately, a copy of the aforesaid letter and list cannot be located, but the NPA may have this correspondence on record. The confirmatory affidavits of Ntsebeza SC and Sooka are annexed hereto marked **FA6** and **FA7** respectively.

96 According to Ackermann, in 1998 the investigation dockets held by the D'Oliveira unit were transferred to the NPA.

96.1 In terms of a directive issued in 1999 by the then NDPP, the TRC related cases were transferred from the then Directorate of Special Operations (**DSO**), and from the various offices of the Directors of Public Prosecutions (**DPPs**) and the SAPS to the office of the NDPP.

96.2 A copy of Ackermann's affidavit dated 7 May 2015 (filed in support of Thembi Nkadimeng's application to compel a prosecutorial decision in the case of the murder of her sister, Nokuthula Simelane), is annexed hereto marked **FA8**. This application was brought in *Nkadimeng v NDPP and Others,* Gauteng Division under case no 35554/2015 (**Nkadimeng 2**). There was an earlier

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application in which Thembi Nkadimeng was the lead applicant, which will be dealt with below.

97 In early 1999, a working group called the Human Rights Investigative Unit (**HRIU**) was established within the NPA by the then NDPP, Bulelani Ngcuka, on the initiative of the then Minister of Justice, Dullah Omar. The part-time head of the Unit was Adv Vincent Saldanha, and his deputy was former prosecutor, Adv Brink Ferreira. It was mandated to review, investigate and prosecute TRC cases in which perpetrators had been denied amnesty or in which perpetrators had not applied for amnesty.

98 During February 1999 a meeting took place between the TRC, represented by Commissioners Sooka and Ntsebeza, and the NPA. At this meeting, NDPP Bulelani Ngcuka introduced Adv Saldanha who had been appointed to lead the HRIU. The meeting discussed the process for identifying potential cases for prosecution.

99 On 8 or 9 March 1999, Sooka met with Adv Saldanha to discuss the report prepared by the TRC dated 7 March 1999 titled "Report for the Office of the National Director of Public Prosecutions," a copy of which is annexed hereto marked **FA9**.

99.1 This report indicated that the Commission had "*begun a process of establishing mechanisms for identifying potential cases.*" It added that the TRC had "*identified a range of categories and/ or issues around which we believe prosecutions can be considered*" and that there should be "*discussion around these categories to determine viability as well as prioritisation.*"

99.2 The report proposed categories and the types of gross human rights violations that should be investigated, including:

99.2.1 Torture;

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99.2.2 Post-Caprivi hit squads;

99.2.3 Security force cover-ups;

99.2.4 Unlawful destruction of documents;

99.2.5 Gun-running;

99.2.6 Target identification and assassinations;

99.2.7 Cross-border raids;

99.2.8 Recipients of section 30 notices and persons who were the subject of section 29 investigative enquiries; and

99.2.9 Amnesty applicants who were denied amnesty.

99.3 The report also referred to cases identified by regional offices and attached preliminary work-in-progress lists from the KwaZulu Natal, Eastern Cape and Western Cape regions, copies of which are annexed here to marked **FA10**, **FA11** and **FA12** respectively.

100 On 11 March 1999, Sooka sent a letter to Adv Saldanha seeking feedback on the report "*regarding potential prosecutions*" and undertaking to take steps to procure the information he requested. A copy of this letter is annexed hereto marked **FA13**. The TRC commenced referring cases for potential prosecution to the NPA and also alerted them to sources of possible evidence in relation to the crimes.

101 The HRIU continued operations until 2000, however it instituted no prosecutions. In 2000, the dockets held by the HRIU were transferred to the DSO, more widely known as the Scorpions. A working group was established within the DSO to handle

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the TRC cases known as the Special National Projects Unit (**SNPU**), which was headed by Macadam.

102 The NPA, per Adv CB Ferreira, addressed a letter dated 31 August 2000 (but date stamped 11 September 2000) to the TRC in relation to the cases that had been referred for further investigation. We are not in possession of this letter. However, the TRC's legal adviser and evidence leader, Adv PC Prior responded by way of an undated letter (presumably in September 2000) titled "*Human Rights Files and other Relevant Records*". In this letter Adv Prior acknowledged receipt of the NPA's letter and indicated that the TRC would respond in due course. Attached to Adv Prior's letter was a list of 226 TRC cases in table format. This list appears to have been compiled from the TRC Amnesty database. A copy of the letter and table are annexed hereto marked **FA14**.

103 Notwithstanding the above evidence confirming that various lists were handed over to the NPA by the TRC, on 17 September 2024, Adv Rodney de Kock, the Deputy NDPP, stated before a 'TRC matters update meeting' of the Justice and Constitutional Development Portfolio Committee that the NPA had gone through all available TRC information but stressed that no list of cases of perpetrators were referred to the NPA. A copy of the Parliamentary Monitoring Group summary of this meeting is annexed hereto marked **FA15**.

104 It appeared that the NPA devoted few resources to the SNPU. According to the author, Ole Bubenzer (**Bubenzer**) in his 2009 book, *Post-TRC Prosecutions in South Africa*, this was because the NPA was concerned that some cases would have to be withdrawn if amnesties were granted, since at that time the Amnesty Committee was still concluding its work. A copy of Bubenzer's confirmatory affidavit

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is annexed hereto marked **FA16**. A copy of Bubenzer's book can be supplied on request.

105 However, according to Bubenzer, there were many cases in which amnesty had already been denied or not applied for, such as the case against former SAP General Izak Johannes "Krappies" Engelbrecht, in which an indictment had apparently been prepared by the D'Oliveira Unit. In 2016, the SAPS responded to an access to information request for a copy of the Engelbrecht docket stating that "*it could not be found*". A copy of the request is annexed hereto marked **FA17**. By 1999 the D'Oliveira Unit had reportedly already prepared about 20 charge sheets. None of these charge sheets would see the light of day in a court.

106 The SNPU operated until 2003, but like the HRIU, it too instituted no prosecutions. On 24 March 2003, the Priority Crimes Litigation Unit (**PCLU**) was created within the NPA by Presidential Proclamation. Under the same proclamation, Ackermann was appointed to head the unit. Macadam was transferred from the DSO to become the Deputy Director at the PLCU. Part of the PCLU's mandate was to deal with the TRC cases.

107 In May 2003, NDPP Ngcuka decided that all TRC-related cases in which amnesty had not been granted were '*priority crimes*' in terms of the PCLU proclamation. According to Ackermann, this resulted in more than 400 investigation dockets being transferred to the PCLU. Official duties commenced during July 2003.

108 'According to the NPA's Annual report 2002/2003, the PCLU instituted an audit of all available cases and registered some 459 cases that were handed over from the TRC, the D'Oliveira Unit and DPP offices. About 160 cases were excluded from

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further consideration. Sixteen cases were prioritised for prosecution, of which three were prepared almost immediately for indictment.

109 Macadam, in his affidavit filed in the Rodrigues stay of prosecution case, recorded the steps he and Ackermann took to identify which of the TRC cases required attention:

109.1 All the DPPs were visited and invited to hand over TRC cases which they were not in a position to finalise themselves.

109.2 A meeting was held with the Divisional Head of the Detective Services of the SAPS who issued an instruction to his Provincial Heads to refer all outstanding TRC dockets to the PCLU.

109.3 Two former TRC researchers were appointed to trawl the TRC archives in order to identify cases warranting attention.

109.4 Interviews were conducted with former members of the TRC and the D'Oliveira unit.

109.5 Ackermann and Macadam also entertained requests for investigations from victims and other members of civil society. This resulted in other cases being brought to their attention, including the Ahmed Timol matter.

110 The NDPP reported in a document titled "*About PCLU*" released on 23 March 2003 that the NPA is attending to the cases of some 500 persons who had been reported missing by the TRC. A copy of this document is annexed hereto marked **FA18**. A small Task Team evaluated the TRC Report to identify cases for investigation.

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According to the NDPP's report approximately 150 cases were identified for immediate investigation.

111 However, before the PCLU could get going, the political interference intervened which prevented the unit from carrying out its mandate in respect of the TRC cases. The few cases the staff managed to get off the ground were the ones that had been previously investigated with largely complete dockets. As will be set out below it became difficult, if not impossible, for the unit to build new cases.

Lack of delivery

112 The NPA has been in possession of various lists of TRC cases from 1998. In 2003, the TRC cases were declared priority crimes by the then NDPP. Accordingly, it may be asked what the NPA and SAPS have delivered in the last 20 to 25 years. The record is a pitiful one.

113 In order not to unduly burden these papers the correspondence and underlying documentation referred to in this section have not been annexed but can be supplied on request.

114 Bubenzer noted that while "*the D'Oliveira Unit of the 1990s constituted a well-equipped team of experienced prosecutors and investigators with strong political support, support for TRC-related prosecutions after 1998 declined drastically.*" Indeed, as will be seen below not only was political support withdrawn and the PCLU denied investigators, but withering political interference was to obstruct the cases from proceeding.

115 We are only aware of the following post-TRC developments in respect of matters that have been launched or concluded in court:

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115.1 *S v Khwezi Ngoma and Others*, which involved four APLA cadres who attacked the Willowvale police station in 1994 resulting in the death of a policeman. The accused did not apply for amnesty. They made representation through their attorneys requesting a withdrawal of the charges, but it was rejected, and they entered into plea agreements and received suspended sentences.

115.2 In 2003, the late Eugene Terre' Blanche, former leader of the Afrikaner Weerstandsbeweging, (Afrikaner Resistance Movement), who had been charged with various acts of terrorism under the Internal Security Act entered into a plea agreement and was given a wholly suspended sentence.

115.3 In 2004, former SB officers Gideon Nieuwoudt, Johannes Martin van Zyl, and Johannes Koole were charged with the 1985 kidnapping and murder of three leading anti-apartheid activists, known as the PEBCO 3. This was the first and only case that the PCLU brought in respect of perpetrators who had been denied amnesty.

115.3.1 Nieuwoudt and van Zyl applied to court to review the decisions to refuse them amnesty. The review was delayed by some five years because of the failure or refusal of the DOJ to file answering papers. Nieuwoudt died in August 2005.

115.3.2 In 2009 the High Court ruled that an Amnesty Committee be convened to rehear the application of Van Zyl. Charges were then provisionally withdrawn against Van Zyl and Koole. Inexplicably, the DOJ never convened an Amnesty Committee and the NPA

never reinstated the cases against Van Zyl and Koole, who have both since died.

115.3.3 To date no steps have been taken against the surviving suspects, notwithstanding the urging of family members over many years. Only two remain alive, former Vlakplaas members Gerhardus Cornelius Beeslaar, who is nearly 87 years old and Joseph Tshepo Mamasela who is in his 70s.

115.4 In 2005, Buyile Roni Blani, an ANC supporter, who had been charged in 1985 for his role in the mob killing of two people, but who had fled the country, entered into a plea and sentence agreement and was sentenced to five years imprisonment, four of which were suspended.

115.5 *S v Aron Tyani & Another*, which related to the murder of Stembele Zokwe, an MK cadre, in 1988 by the Transkei Security Police. The accused were convicted and sentenced to terms of imprisonment in 2005.

115.6 During 2007, and in defiance of political instructions, the PCLU went ahead with an attempted murder case against former Police Minister, Adriaan Vlok, former Commissioner of Police, General Johann van der Merwe, Major-General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden for the 1989 poisoning of Rev. Frank Chikane. On 17 August 2007, this resulted in a plea and sentence agreement being confirmed with wholly suspended sentences. This was one of the factors that precipitated the suspension of the then NDPP, Adv Vusumzi Patrick Pikoli (**Pikoli**), on 23 September 2007, as well as the removal of Ackermann from involvement in the TRC cases.

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115.7 In 2015, following the filing of a High Court application by Thembi Nkadimeng to compel a prosecutorial decision in *Nkadimeng 2*, an indictment was issued in 2016 against four former SB members for the kidnapping and the murder of MK operative, Nokuthula Simelane. Two of the accused have since died and one, Willem Helm Johannes Coetzee, claims to be mentally unfit to stand trial. Coetzee's trialability inquiry has been ongoing for more than two years and holding up the trial, some eight years after the indictment was issued.

115.8 Between 2017 and 2023 five apartheid-era inquests were reopened, four of which were at the instance and pressing of the families. These were the inquests into the deaths in SB detention of Ahmed Timol, Neil Aggett, Hoosen Haffejee and Imam Haron. In all these cases, the families' legal representatives had to threaten the NPA and/or the Minister of Justice with legal action in order to get the inquests reopened. Correspondence in this regard can be supplied on request. The inquest courts in all four cases recommended that the NPA pursue perjury and other charges against several former SB officers. To date, with the exception of the late Jao Rodrigues, none have been charged.

115.9 Following the reopened inquest into the death of Ahmed Timol in 2017, which had been spearheaded by the Timol family and their representatives, former police officer Jao Rodrigues was charged with murder in 2018. Rodrigues died in September 2021 before he could stand trial.

115.10 In 2020 family members of the COSAS 4 filed an application with the Krugersdorp Magistrate's Court seeking an order for the disinterment and

forensic examination of the bodies. This prompted the NPA to act and in 2021 kidnapping and murder charges were preferred against two former SB and Vlakplaas members.

115.10.1 Crimes against humanity charges were subsequently added to the indictment, the very first time that such charges had been pursued in South Africa. Various challenges, as well Stalingrad type parallel civil litigation launched by the accused, have delayed the start of the trial. In 2022, at the prompting and intervention by the families, the High Court ordered the SAPS to pay the reasonable legal costs of accused no. 2, Christiaan Rorich.

115.10.2 The application by accused no. 1, Tlhomedi Ephrahim Mfalapitsa, to overturn the refusal to grant him amnesty was dismissed by Judge Stuart Wilson on 11 November 2024. Between 18 and 21 November 2024 the trial court heard the objection of the accused to the crimes against humanity charges. Judgment was reserved and the trial was postponed to 14 April 2025.

115.11 In July 2023 the inquest proceedings into the 1982 death in detention of Ernest Moabi Dipale at John Vorster Square were concluded. The court found that Dipale did not commit suicide, but that the SB was responsible for his death. The court identified SB officers Nicholas Johannes Deetlefs and Joe Mamasela as key suspects whose involvement should be further investigated. Deetlefs died in September 2023.

115.12 In August 2022 murder charges were preferred against three former police officers, Johan Marais, Leon Louis Van Den Berg and Abram Hercules

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Engelbrecht, for the 1987 murder of student activist, Caiphus Nyoka. This followed a long struggle by the Nyoka family for justice.

115.12.1 On 9 October 2020, the family's attorneys, Webber Wentzel, placed the Deputy NDPP and the Head of the SAPS' Directorate for Priority Crimes Investigation (**DPCI**) on terms, demanding that the DPCI finalise its investigations and the NPA make a prosecutorial decision, failing which the High Court would be approached for an appropriate order.

115.12.2 A fourth police officer, Pieter Egbert Stander, was indicted in 2024. One of the accused, Johan Marais, pleaded guilty on 12 November 2024. The remaining three co-accused appeared before the Gauteng High Court sitting at Benoni at the start of the trial on 18 November 2024. The trial was postponed to 2 December 2024 when one of the accused terminated his counsel's brief.

115.12.3 On 5 December 2024, Judge Mahomed Ismail ruled that evidence led at the 1988 inquest (GO 112/1988) was "provisionally admissible", holding that not allowing the state to lead that evidence would be "tantamount to suppressing crucial and vital evidence."

115.12.4 The trial was postponed to 12 May 2025.

115.13 In November 2023, former "A" team gang member Wesley Madonsela was sentenced by the Durban Regional Court to 10 years imprisonment for

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murdering 17-year-old United Democratic Front activist Siphelele Nxumalo in 1989.

115.14 In relation to the 1987 enforced disappearances of Ntombikayise Kubheka and Musawakhe "Sbho" Phewa an inquest was opened during 2022 but did not proceed; and in November 2023 the DPP KwaZulu-Natal decided to pursue a prosecution of four persons: Hendrik Johannes Petrus Botha, Salmon Johannes Gerhardus Du Preez, Martinus Dawid Ras Jnr and Jakob Albert Coetzer. On 12 November 2024, Lawrence Gerald Wasserman was also charged with murder and all five accused appeared before the Umlazi Magistrate's Court, when the matter was postponed 28 January 2025. Four days later, it was reported that Wasserman had died while traveling on a plane between Durban and Johannesburg on 16 November 2024.

115.15 In January 2024, the NPA indicted four former SB officers for the 1985 murder of Jameson Ngoloyi Mngomezulu. The officers indicted are: Gerhardus Stephanus Schoon, Paul Jacobus van Dyk, Frederick Johannes Louw and Douw Gerbrandt Willemse. No further developments have been released by the NPA, and this case also appears to have stalled.

115.16 In May 2024, then Justice Minister, Ronald Lamola, authorised the reopening of the inquests into the deaths of Chief Albert Luthuli, Griffiths Mxenge and Booi Mantyi, but there appear to be no further developments in these matters. A statement released by the ANC dated 19 October 2024

appeared to indicate that a judge had been appointed to preside over the Mxenge inquest before the KwaZulu Natal High Court.

115.17 In 2023, the NPA indicated to the legal representatives for the families and survivors of the 1993 Highgate Massacre that an inquest will be held. The inquest is set down for hearing from 27 January to 7 February 2025 at the High Court in East London.

115.18 On 1 March 2024, the NPA advised the lawyers for the Turner family that they had requested the Minister of Justice to reopen the inquest into the 1978 murder of Dr Rick Turner in Durban. However, since then all efforts to secure dates for the inquest and a progress report on the investigation have proved fruitless.

115.19 On 7 November 2024, the NPA confirmed in writing that the Minister of Justice had approved the reopening of the inquest into the death of Ramatua Nicholas "Boiki" Tlhapi. In March 1986, Tlhapi, an activist from Ikageng near Potchefstroom, disappeared from the Jouberton police station, while in a seriously injured state and was never seen again. On 13 December 2024, the Minister of Justice requested the Judge President of the North-West Division to designate a judge to preside over the re-opened inquest.

116 The record of delivery is dismal. It amounts to five concluded reopened inquests (between 2017 and 2023), four plea and sentence agreements (all occurred between 16 and 21 years ago) and two concluded criminal trials, one some 18 years ago of Transkei police officials, and the other in 2023 resulting in the conviction and imprisonment of a gang member. There are only five criminal cases before the

courts and all have been the subject of delays, in one matter, for some eight years. In the Nyoka matter, one of the accused has entered a guilty plea. The NPA has released different figures in relation to pending court cases and closed cases, but to date it has not disclosed the names of these cases.

117 According to a presentation made by the NPA to the Portfolio Committee on Justice and Constitutional Development on 17 September 2024, 30 matters had been finalised, but the NPA only disclosed the finalised Aggett, Dipale, Haffejee and Haron inquests. It also made reference to the finalised inquest of Zama Sokhulu, without providing any details.

117.1 In relation to 'matters on the criminal roll' the presentation referred to the COSAS 4, Nokuthula Simelane and Nyoka cases, as well as *S v Botha and Others* (connected to the Khubeka case) and *S v Schoon and Others* (connected to the Mngomezulu case) which were both remanded to November 2024 and described cryptically as "state attorney - legal representation". Under the heading of "Indictments" the NPA refers to three unnamed "*indictments to be served pending verification of addresses of perpetrators*".

117.2 Under the heading 'Notable Inquests' 15 matters are mentioned, but most appear to be stalled. In six cases, judges have apparently not been appointed, five are described as "*shortage of capacity*". One (Cradock 4) was described as a "*challenge with representation*". Only the Mthunsi Njakazi inquest had commenced, while the Oupa Madondo and Highgate Hotel cases were scheduled for November 2024 and January 2025 respectively. The presentation also claimed that memoranda for 10

unnamed inquests were underway. Slides 27 to 32 of this presentation are annexed hereto marked **FA19**.

118 In comparison, other similarly placed countries where truth commissions recommended prosecutions have achieved considerably more, such as the case of Chile:

118.1 Since 1998, Chile's courts have resolved hundreds of cases of dictatorship-era killings, disappearances, and torture, and sent dozens of perpetrators to jail.

118.2 As of July 2023, Chile's Supreme Court had handed down verdicts in more than 530 cases for dictatorship-era crimes against humanity. Another 2,000 cases were still under investigation or awaiting resolution before lower courts.

118.3 Some 234 former regime agents have been imprisoned for their crimes, with dozens more – 57 in 2023 alone – escaping justice only through the '*biological impunity*' provided by death.

118.4 Between October 2022 and October 2023, 67 Supreme Court criminal verdicts were handed down, including the conviction and sentencing to jail of 59 former secret police agents. A copy of the article: Cath Collins, *Chile's 'Pinochet Cases' at 25: an ongoing sea change*, Justiceinfo.net, 16 October 2023 is annexed hereto marked **FA20**.

119 In Argentina, as at the end of 2021, the Office of the Prosecutor for Crimes Against Humanity had investigated 3,525 people for crimes against humanity, of whom 1,044 were convicted (as part of 264 sentences handed down). In Peru, following

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the winding up of the truth commission, as at the end of 2019, prosecutors had secured 44 convictions for conflict related crimes. Source materials for these examples can be supplied on request.

120 The main reason for South Africa's woeful performance has been the political interference that effectively suppressed the pursuit of apartheid-era crimes within a few years of the closure of the TRC. The history of the political interference is set out below.

THE POLITICAL INTERFERENCE

121 In May 2021 during an interview in an *Al Jazeera* documentary titled "*My Father Died For This*", ANC legal adviser Krish Naidoo claimed that the Cradock Four case, as with the other TRC cases, "*simply fell through the cracks*." His statement was deeply insulting to our intelligence. A copy of this documentary can be made available on request.

122 In fact, the TRC cases were deliberately suppressed following a plan or arrangement hatched at the highest levels of government and across multiple departments. This is the real explanation for the delay. The interference stands as a deep betrayal of those who laid down their lives for freedom in South Africa, including my father and other fallen comrades.

123 In this section of the affidavit, unless otherwise stated, all factual references are drawn from the affidavits of Advocates Christopher Macadam (**FA5**), Anton Ackermann (**FA8**) and Vusumzi (Vusi) Pikoli (**FA22**).

Opening the door to political interference

124 On 12 March 2003, the TRC Report's final volume (vol 6) was released. On 15 April 2003, President Mbeki made a statement to the National Houses of Parliament and the Nation on the *Occasion of the Tabling of the Report of the TRC* a copy of which is annexed hereto marked **FA21**. In relation to criminal accountability and the TRC's follow-up process President Mbeki stated:

> "Besides the imperatives of managing the transition, an important consideration that had to be addressed when the TRC was set up, was the extent to which the new democratic state could pursue legal cases against perpetrators of human rights violations, given the resources that would have to be allocated to this, the complexities of establishing the facts beyond reasonable doubt, the time it would take to deal with all the cases, as well as the bitterness and instability that such a process would wreak on society.
>
> The balance that the TRC Act struck among these competing demands was reflected in the national consensus around provision of amnesty – in instances where perpetrators had provided the true facts about particular incidents – and restorative justice which would be effected in the form of reparations. Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter?
>
> Let us start off by reiterating that there shall be no general amnesty. Any such approach, whether applied to specific categories of people or regions of the country, would fly in the face of the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past, but also in the creation of a new ethos within our society.
>
> Yet we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process. Among these are individuals who were misled by their leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel. Yet other operatives expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases: and this was not to be. This reality cannot be avoided.
>
> Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations.

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> We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing.
>
> However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation.
>
> This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts. …
>
> This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts.
>
> Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action.
>
> Relevant Departments are examining the practical modalities of dealing with this matter; and they will also establish whether specific legislation is required in this regard."

125 According to Adv Pikoli, who was the NDPP between February 2005 and September 2007, what followed Mbeki's speech in relation to the TRC cases "*was anything but the 'normal legal processes*." A copy of Pikoli's affidavit that was filed in *Nkadimeng 2* (TN7 at pp 170 – 216) is annexed hereto marked **FA22**.

126 It appears that the seeds of the political interference were laid in the deliberations that led to the strategies that are reflected in Mbeki's speech.

126.1 While Mbeki appeared to disavow another amnesty because of its constitutional implications, he nonetheless made it clear that certain arrangements would have to be made to accommodate the many perpetrators who did not take part in the TRC process.

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126.2 He indicated that while the NPA would be permitted to continue with its normal work, it would nonetheless be required to work with "*our intelligence agencies*" to enable those who still wish to speak the truth "*to enter into arrangements that are standard in the normal execution of justice*".

126.3 Mbeki stressed that individuals who still wished to seek justice or take up any human rights violation grievance could approach the courts. He noted the relevant departments were examining the modalities as well as whether any fresh legislation was needed.

127 Mbeki signalled that in relation to the TRC cases it was not going to be business as usual. Unlike other cases involving serious crimes such as murder, the TRC cases were going to be treated differently. Perpetrators in these cases would be offered some form of leniency or alternatives to criminal prosecution. Family members could play a role in these "*legal arrangements*" and if still aggrieved could approach the courts, presumably to pursue private prosecutions or some form of civil litigation against the perpetrators.

128 Mbeki was articulating government policy that effectively said that the pursuit of justice in the TRC cases was not to be prioritised and that special arrangements were going to be put into place. His reference to the involvement of the "*intelligence agencies*" was a portend of what was to follow, in which such agencies came to impose their will on prosecutorial decisions.

Closing down of the TRC Cases

129 Following Mbeki's speech, those wielding power and influence wasted little time in closing down the TRC Cases. Within a few weeks of the speech, attempts by PCLU

prosecutors to commence investigations were blocked when they were refused investigative support by both the DSO and SAPS.

130 As mentioned above, the PCLU was engaged in identifying key TRC cases for further investigation, and they were entertaining requests from family members. One of the requests made to Macadam was from Imtiaz Cajee, nephew of Ahmed Timol who died in security detention in 1971. On 5 May 2003, Macadam sent a letter to Andrew Leask, the Chief Investigating Officer at the DSO (**Leask**) asking him to investigate the Timol case. A copy of this letter is attached to Macadam's aforesaid affidavit (**FA5**) as annex RCM1 (at p807).

131 On 15 May 2003, Macadam submitted a report to the NDPP, the Head of the DSO and the head of DSO operations setting out the TRC cases which had been identified for investigation, which included the Timol case. A copy of this report is attached to Macadam's affidavit (**FA5**) as annex RCM2 (at p809).

131.1 According to Macadam the following cases were being prepared for prosecution:

131.1.1 The murder of four policemen in the Motherwell Bombing. The targets in this investigation were members of the Port Elizabeth SB and the Vlakplaas Unit, including Major General Nick van Rensburg.

131.1.2 The prosecution of Major General Nick van Rensburg for ordering the killing of askari Brian Ngqulunga.

131.1.3 The prosecution of the SB members responsible for kidnapping the PEBCO 3 from the Port Elizabeth Airport in 1985.

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131.1.4 The prosecution of AZAPO leader George Wauchope for murder and other charges.

131.1.5 The prosecution of Phillip Powell for possessing hand grenades and other illegal weapons in April 1994.

131.1.6 The prosecution of JM Ngcobo and others for the concealment and possession of an arms cache at the Nqutu Bunker in May 1999.

131.1.7 The prosecution of the CCB members responsible for the bombing of the Early Learning Centre in Athlone.

131.2 The next category of cases was titled "POTENTIAL FURTHER PROSECUTIONS ARISING FROM THE ABOVE" and included:

131.2.1 The murder of the PEBCO 3. It was noted that a kidnapping prosecution could encourage one or more suspects to speak about the murders for a "lesser sentence".

131.2.2 The murder of the Cradock Four. It was noted that the same suspects behind these murders were also involved in the Motherwell and PEBCO 3 killings, and that prosecutions in those killings could encourage suspects to come forward in the Cradock Four case in order to secure a "lesser sentence".

131.3 The next category of cases was titled "NEW CASES BEING EVALUATED FOR PROSECUTION PURPOSES" and included:

131.3.1 The murder of the COSAS 4.

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131.3.2 The murder of askari Adriano 'Strongman' Bambo, who was allegedly murdered by the SB to prevent him disclosing details about the murder of Nokuthula Simelane and others.

131.3.3 The murder of a detainee on the East Rand by Willem Helm Johannes 'Timol' Coetzee.

131.3.4 The murder of askari Dan Mabolo.

131.3.5 Allegations by an IFP sentenced prisoner to have knowledge of murders in the East Rand from 1988.

131.3.6 447 dockets relating to APLA handed over by SAPS Crimes Against the State Unit.

131.3.7 Six to eight dockets linking the AWB to pre-election bombings previously dealt with by Adv Fick.

131.4 The next category of cases was titled "HIGH INTEREST CASES WHICH REQUIRE ATTENTION IRRESPECTIVE OF THE NATURE OF AVAILABLE EVIDENCE" and included:

131.4.1 The murder of Victoria Mxenge.

131.4.2 The kidnapping, torture and murder of Ntombikayise Khubeka.

131.4.3 The kidnapping, torture and murder of Nokuthula Simelane

131.4.4 The decision by the DPP (Pretoria) not to prosecute SAP General Krappies Engelbrecht.

131.4.5 The un-investigated allegations against SAP General Bassie Smit.

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131.4.6 The Ciskei coup d'etat.

131.4.7 The Transkei coup d'etat.

131.4.8 The pre-election train violence in Gauteng.

131.4.9 The murder of Reggie Hadebe.

131.4.10 The murder of Dulcie September.

131.4.11 The refusal of amnesty to 37 high ranking ANC officials.

131.4.12 The decision by the DPP KwaZulu Natal not to prosecute IFP hit squads.

131.5 Other categories were titled "*CASES IN THE PROCESS OF BEING CLOSED*", "ASSISTANCE TO OTHER AGENCIES" and "*REPARATIONS RELATED ACTIVITIES*". Another category dealt with cases that had been put on hold pending the appeal in the Basson case in relation to jurisdiction for conspiracy to commit crimes outside South Africa. These cases included:

131.5.1 The murder of Anton Lubowski.

131.5.2 The Lesotho Raid (also known as the Maseru Raid).

131.5.3 The Botswana Raid (also known as the Gaborone Raid).

131.5.4 The Swaziland Raid.

131.6 Macadam concluded his letter with certain "Policy Considerations":

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131.6.1 Prosecutions not to be conducted on a piece meal basis except where special circumstances demand (e.g. witness on point of death, accused about to leave South Africa or engaged in current criminal activities).

131.6.2 Once all the cases earmarked for prosecution have been investigated, a presentation will be given to the NDPP in order for him to confirm the prosecution strategy.

131.6.3 Thereafter prosecutions will be instituted. After convictions have been obtained attention will be given to cases which currently have evidence since convictions may act as incentive for perpetrators to come forward.

132 If only a fraction of the cases listed in Macadam's report had been resolved in the early 2000s it would have brought significant closure for the concerned families and given considerable impetus for the finalisation of the balance of cases.

133 The minutes of the Justice Portfolio Committee meeting on 10 June 2003 in respect of the NPA reflected:

> "Some cases emerging from the Truth and Reconciliation Commission are ready to proceed. In others the NPA awaits rulings from the Supreme Court of Appeal and from the reconvened TRC Amnesty Committee. **The Chair interjected to ask if any legislative change was needed to deal with TRC cases where immunity from prosecution was to be offered**. Mr Ngcuka replied that he could see no need for a change in legislation." (emphasis added)

134 At the DSO, it was Special Director Adv MG 'Geoph' Ledwaba (**Ledwaba**) who made decisions on the opening of new investigations. Accordingly, Ackermann and Macadam met with Ledwaba to ask the DSO to conduct investigations referred to in

the aforesaid report. Ledwaba was firm in his refusal to take on the TRC cases. In his affidavit, Macadam noted the following about that meeting:

> "The meeting was unpleasant as Ledwaba **made it clear in no uncertain terms that the DSO would not investigate any TRC matters** and that these should all be referred to SAPS." (emphasis added)

135 A copy of a letter addressed by Ledwaba to Leask dated 15 July 2003 reflecting this decision is annexed to Macadam's affidavit (**FA5**) as annex RCM3 (at p814). In this letter he instructed Leask as follows:

> "TRC cases
> I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used. Notwithstanding the above decision Adv Tongwane must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators, and you are accordingly authorized to conduct the necessary handovers."

136 This refusal of the DSO to investigate the TRC cases was a remarkable decision, given that the DSO had previously been seized with the TRC cases and just weeks earlier the NDPP had declared the TRC cases to be "*priority crimes*".

The President must decide

137 It is reflected in Macadam's affidavit that he and Ackermann then met with Commissioner Johannes De Beer, the Divisional Head of the Detective Service of the SAPS (**De Beer**) and requested the SAPS to take over the investigations.

137.1 On 26 September 2003, De Beer replied to Ackermann informing him that the request had been discussed with the National Commissioner of the

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SAPS, Jacob "Jackie" Sello Selebi (**Selebi**). In his letter De Beer advised that the SAPS would not provide investigators for the TRC cases.

137.2 He indicated that the investigation of the TRC matters was a DSO responsibility and the NDPP would need to approach the President for a decision as to which agency should conduct the investigations. A copy of this letter is attached to Macadam's affidavit (**FA5**) as annex RCM4 (at p816).

137.3 According to Macadam, NDPP Bulelani Ngcuka never approached the President.

138 De Beer explained as follows in his letter:

> "I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner, It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. **Our understanding was that this referral was politically inspired**. As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations (DSO).
>
> From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: "In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard. You are aware of the fact that the capacity created for the D 'Oliveira Committee is presently with the DSO.
>
> In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seem to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

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> **If the President indicates that the South African Police Service should be involved in the investigations, the Instruction should be obtained in writing.** Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues.
>
> You are therefor requested to approach the President on the matter, where after we can take the matter further, if necessary." (emphasis added)

139 It is notable that the SAPS regarded the TRC cases as a political issue. It is also noteworthy that the only state entities authorised to conduct official criminal investigations in South Africa both refused to touch the TRC cases. It is highly unlikely that their decisions were spontaneous or mere coincidences. It is apparent that by May 2003 both the SAPS and the NPA were reluctant to take on the TRC cases, and in all probability had been told not to do so from a political level.

140 The fact that the NPA was told to contact the President reflected that the question of investigating the TRC cases was now a purely political one, and a sensitive one at that. It appeared that only the head of state could make that decision, regardless of what the law and Constitution said about investigative authority.

141 It is remarkable that NDPP Ngcuka did not contact the President for a decision on this question. The failure to do so probably suggests that approaching the President was seen as a futile exercise.

No investigations

142 Thereafter Ackermann and Macadam made a last-ditch attempt to persuade Special Director Ledwaba at the DSO to reconsider his decision not to investigate the TRC cases. Ackermann sent Ledwaba a letter (styled as an "Internal Memorandum") dated 11 November 2003 appealing him to appoint investigating officers. It was

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pointed out in the letter that "*if the DSO did not provide investigators the PCLU would not be able to deliver on its mandate*." Both the NDPP and Head of the DSO were copied on the letter, a copy of which is attached to Macadam's affidavit (**FA5**) as annex RCM5 (at p818). This letter is reproduced below:

"1. In the light of current developments, I am constrained to document the history of the above saga.

i) In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In addition, Advocate Sonn gave the President a full briefing on the matter.

ii) In 2002 the SNPU was established in order to investigate the cases.

iii) In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP.

iv) In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC, cases identified for prosecution.

My prosecution strategy was endorsed and Advocate McCarthy indicated that there would be no problem in having the cases declared in terms of Section 28 of the NPA Act. The NDPP briefed the Minister and Justice Portfolio Committee accordingly.

v) Shortly thereafter and in the same month you were presented with applications in terms of Section 28 relating to the cases.

vi) In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you. (Copy attached)

vii) In response thereto I requested Commissioner De Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of De Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate

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experience to the DSO in order to capacitate it to conduct these investigations.

viii) After receipt of De Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.

ix) On 3 November 2003 you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigations.

x) On 6 November 2003 Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.

xi) On 10 November 2003, Adv Macadam presented you with Section 28(i)(b) declarations.

You informed him:

a) That you are not prepared to sign any declarations

b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigation and familiar with all the witnesses and the facts of the cases.

c) That during the course of 10 November 2003 another Investigator will be appointed.

d) The President should not be approached to involve SAPS.

2. As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted.

There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the *bona fides* of the National Prosecuting Authority into serious dispute and do irreplaceable damage.

Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in terms of Section 28(1)(b). This chapter in our country's history must be closed without further delay."

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143 Ackermann's heartfelt plea fell on deaf ears. Ledwaba was not moved to act, even though he was advised that the NPA was under local and international pressure, and cases were prescribing. Ackermann's warning that the failure to proceed with the TRC cases would bring the NPA into disrepute, and do irreparable harm to its image, was precisely what happened.

144 The DSO persisted in its refusal to appoint investigators, as did the SAPS. According to Macadam this effectively brought an end to the TRC cases as it meant that no new investigations of the TRC matters could be opened.

145 The TRC cases were effectively closed down before the end of 2003, before the PCLU could commence real case work. The few cases taken forward subsequently were those in which investigation dockets had already been completed.

146 On 25 February 2004 Macadam wrote to Imtiaz Cajee, nephew of Timol, advising him of "*negative results*" of the investigation that had purportedly been launched, a copy of which is annexed here to marked **FA23** (also annexed to Macadam's affidavit as RCM9 at p834).

146.1 Macadam did not disclose to Cajee that the investigations into the Timol case and the other TRC cases were blocked before they could even start. The only 'investigation' carried out was the canvassing of an aspect with the late Ivor Powell, a Cape Town based journalist. This singular activity did not constitute an investigation.

146.2 Even if only the most basic investigation had been carried out, key suspects who were still alive could have been held to account. The lead SB

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interrogators who tortured and murdered Timol, Captains JZ Van Niekerk and JH Gloy died on 31 October 2006 and 30 July 2012 respectively; while Maj Gen CA Buys, (Head of the SAP CID) who led the cover-up, died on 25 February 2007.

146.3 The NPA had some nine years to act before the last key suspect died. Not only did it not take any action but on 29 November 2006, the NPA in an internal report, titled: "*Report of the Progress made by the Task Team on TRC Cases*", attached to Macadam's (**FA5**) affidavit as annex RCM10 (at p835), confirmed that it had closed the Timol case:

> "The nephew of the deceased requested that an allegation that one of the police officers who had interrogated the deceased had confessed to a journalist be investigated.
>
> The DSO traced and interviewed the journalist who denied the allegation. There was no other evidence to prove that the deceased had definitely been murdered and all other crimes had prescribed.
>
> The matter was therefore closed."

146.4 The above entry was misleading as it did not disclose that no investigation officer was ever appointed, and no other steps were taken apart from contacting the journalist. It was also misleading to suggest that "*no other evidence*" was available since there had been no investigation. In 2017, some 11 years later, the family's legal team was able to assemble sufficient evidence to persuade an Inquest Court that the SB had murdered Timol. However, by then all key perpetrators had died.

147 The refusal by both the SAPS and the DSO to investigate some of the most serious crimes committed in South Africa deeply violated their legal and constitutional obligations.

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The Amnesty Task Team

148 A Director-General's Forum chaired by Adv Pikoli, the then Director General of the DOJ, met on 23 February 2004 to consider how to give effect to the President's objectives set out in his speech the year before. Essentially this involved how to deal with the TRC cases, which Pikoli described in his affidavit, as being "*politically sensitive*" (TN7 at pp 170 – 216 in *Nkadimeng 2*). The Forum appointed a Task Team to report on a mechanism to give effect to the President's objectives. This task team was known as the "Amnesty Task Team" (**ATT**).

149 The ATT was required to:

149.1 explore options for the NPA and the intelligence agencies to accommodate persons who still wish to disclose the truth about past conflicts.

149.2 consider a further process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past.

149.3 advise whether legislative enactments were required.

150 The original terms of reference for the ATT (as attached to Macadam's affidavit (**FA5**) as annex RCM14 (at p863) were to consider and report on:

150.1 The criteria the NPA applies in deciding on current and impending prosecution of cases flowing from the conflict of the past.

150.2 The formulation of guidelines that will inform current, impending and future prosecution of cases flowing from the conflicts of the past.

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150.3 Bearing in mind the abovementioned guidelines, whether legislative enactments were required.

150.4 Whether any of the two Bills that have already been formulated can be taken forward, while taking into account the views of the intelligence agencies.

151 The names of the two bills were not disclosed but presumably one of them was the Indemnity Bill (first 2 pages at RCM13 at p861). The views of the Intelligence Agencies were also not disclosed.

152 The ATT comprised the following members:

152.1 Deon Rudman (Chairperson): DOJ

152.2 Yvonne Mabule: National Intelligence Agency (**NIA**)

152.3 Vincent Mogotloane: NIA

152.4 Gerhard Nel: NPA

152.5 Lungisa Dyosi: NPA

152.6 Ray Lalla: SAPS

152.7 Joy Rathebe: Department of Defence (**DOD**)

153 The ATT was requested to submit its report to the Director General's Forum by close of business on 1 March 2004. The ATT met on 26 February 2004 and again on 1 March 2004.

154 The undated 2004 secret report, titled "*Report: Amnesty Task Team*", which was disclosed during the proceedings in the matter of *Nkadimeng & Others v The*

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National Director of Public Prosecutions & Others (TPD case no 32709/07 [2008] ZAGPHC 422) (**Nkadimeng 1**) as annex TN42 at p431. It is annexed hereto marked **FA24**. The report set out the ATT's mandate, background, proposals and concerns.

155 The ATT Report noted that a further amnesty would face challenges because of constitutional issues but nonetheless the team still had to find ways to accommodate those perpetrators who did not take part in the TRC process. In relation to its first task, the ATT recommended the creation of a Departmental Task Team comprising representatives from:

155.1 Department of Justice and Constitutional Development,

155.2 The Intelligence Agencies,

155.3 South African National Defence Force,

155.4 South African Police Service,

155.5 Correctional Services,

155.6 National Prosecuting Authority,

155.7 Office of the President.

156 The functions of the proposed Departmental Task Team would, *inter alia*, be the following:

156.1 Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, it must consider the advisability of the institution of such criminal proceedings and make recommendations to the NDPP.

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156.2 To consider applications received from convicted persons alleging that they had been convicted of political offences with a view to making recommendations for their parole or pardon, and in making such recommendations to consider various criteria. Aside from the TRC's amnesty criteria, other considerations included, *inter alia*:

156.2.1 Whether a prosecution "politically" reflects the aims of the TRC Act and is not in conflict with the requirements of objectivity.

156.2.2 Various humanitarian concerns.

156.2.3 Whether a prosecution could lead to conflict and traumatisation of victims.

156.2.4 The perpetrator's sensitivity to the need for restitution.

156.2.5 The degree of remorse shown by the offender and his attitude towards reconciliation.

156.2.6 The degree of indoctrination to which the offender was subjected.

156.2.7 The extent to which to which the perpetrator carried out instructions.

156.2.8 Renunciation of violence and willingness to abide by the Constitution.

156.3 The Task Team noted that their proposals have various shortcomings, including:

156.3.1 A possible negation of the constitutional rights of victims, the public at large and alleged offenders.

156.3.2 The possibility of the institution of private prosecutions.

156.3.3 The absence of any guarantee that alleged offenders will not be prosecuted, meaning that they might be reluctant to make full disclosure.

156.3.4 Public perception regarding the participation in a further amnesty process by the security services as the public may regard them as perpetrators in past conflicts.

157 According to Pikoli in his affidavit in *Nkadimeng 2,* the recommendation of the Interdepartmental Task Team for 'a two-stage process', which would have required its recommendation before the NDPP could prosecute was rejected. This was because it would have been a violation of the NDPP's prosecutorial independence enshrined in section 179 of the Constitution. Although the Task Team's role was meant to be advisory in nature it soon became apparent that the non-NPA members of the team saw their role as supervisory rather than advisory. Indeed, as will be seen below, the 'two-stage process' was reintroduced causing a crisis of conscience for Pikoli.

158 With regard to the ATT's second task, namely, to consider a further amnesty process, the team was of the view that the only way to address the concerns was to provide a further amnesty similar to that of the TRC process.

158.1 Some members argued against another amnesty, pointing out it would undermine the TRC process, while others supported a new amnesty to encourage more disclosures.

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158.2 The ATT decided not to make a recommendation on the question of another amnesty but to leave it in the hands of government.

158.3 It attached a draft Indemnity Bill to the report (as annex B) in case government decided to proceed with a further amnesty. The annex was not attached to the report in the version disclosed in *Nkadimeng 2.* However, the first 2 pages of the draft bill were attached to Macadam's affidavit (**FA5**) as RCM13 at p861. It would have provided for a rerun of the TRC's amnesty process.

159 With regard to the ATT's third task, namely, to advise on any legislative steps needed, it noted that its recommendations in relation to the first task do not require any legislation. However, it noted:

> "Should Government, however, decide on a further amnesty process ..., legislation will be required since the mechanisms and procedures of the TRC Act have run their course and can no longer be applied. If it is decided to follow the latter route, an amendment of the Constitution is also proposed in order to enable such legislation being adopted and to pass muster in the Constitutional Court."

160 Much of the ATT's report was accepted by government and implemented, as is evident by the 2005 amendments to the Prosecution Policy and the introduction by President Mbeki of a Special Dispensation for Political Pardons in 2007, to be discussed below.

The Secret Further Report of the Amnesty Task Team

161 The secret Further Report of the ATT was disclosed by Macadam in his affidavit (**FA5**) as annex RCM15 at p864. Perhaps more than any other document, the Further Report reveals the real intent of those behind the political interference. The

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report is undated, but it would have been generated in 2004 in the weeks or months following the submission of the ATT's first report to the Heads of Department Forum on 4 March 2004.

162 The report reveals that the Heads of Department Forum discussed the first ATT Report with members of the Task Team, "*whereafter they deliberated the Task Team's proposals and recommendations in camera*". Following these deliberations, the Heads of Department Forum indicated that they preferred the Task Team's recommendations relating to the establishment of a Departmental Task Team (referred to as Option I). However, they requested the Task Team to further consider the following aspects:

162.1 In performing its functions, the proposed Inter-departmental Task Team (**ITT**) must make use of existing structures rather than parallel structures.

162.2 Consider whether there is a way in which private prosecution and civil litigation can be eliminated if the NDPP decides not to prosecute; and investigate the possibility and desirability of legislation, if required.

162.3 The proposed Task Team should work under the direct supervision of an Inter-Ministerial Committee.

162.4 It is important that the proposed Task Team, the Inter-Ministerial Committee and the NDPP, in performing their functions and reaching decisions, should take the national interest into account.

162.5 Advise the Forum on whether a person who is aggrieved by a decision of the National Director may approach the International Criminal Court (**ICC**).

162.6 Advise the Forum on a timeline for the completion of the work of the proposed Task Team. Twelve months was mentioned as a possibility.

163 Perhaps most revealing was the Forum's instruction to the ATT to explore ways in which private prosecution and civil litigation could be eliminated where the NDPP decides not to prosecute, including the possibility of fresh legislation to achieve this end. This exposes the intent to come up with a means to guarantee maximum impunity for apartheid-era perpetrators.

164 The fear that victims and families could turn to the ICC, in the event that avenues for accountability in South Africa were completely closed, presented a real fear to the Forum.

165 Equally chilling was the desire of the Forum for the ITT to "*work under the direct supervision of an Inter-Ministerial Committee*".

165.1 If there was any doubt that the prosecution process in relation to the TRC cases was to be under the thumb of political overlords, it was dispelled by this requirement. This is in fact what transpired.

165.2 As will be discussed below, towards the end of 2006, the ITT was instructed that it must submit a final recommendation to a "*Committee of Directors General*" in respect of each TRC case, which in turn must advise the NDPP in respect of who to prosecute or not.

165.3 In addition, it emerged that at least by 2007, if not earlier, there was a "*Cabinet Committee on Post TRC matters*", which was a subcommittee of the Justice, Crime Prevention and Security Cluster.

166 The proposal that all players in the process, including the NDPP, should "*take the national interest into account*" when making decisions in relation to the TRC cases was 'shorthand' for the expectation that all involved, particularly the NPA, would be expected to 'do the right thing.'

166.1 Needless to say, no attempt was made to define what the national interest meant in this context, although I am advised that the 'national interest' is not necessarily the same as the 'public interest'.

166.2 The national interest constitutes the interests of the state, usually as defined by its government. Typically, politicians invoke the 'national interest' in seeking support for a particular course of action.

166.3 The public interest on the other hand typically refers to the collective interests of a community or society, in particular when steps are taken on behalf of disadvantaged, marginalised and vulnerable people; as well as the pursuit of objectives that benefit society as a whole, such as the protection of civil liberties.

166.4 I am advised that while the national and public interest may coincide, in this instance it does not. The shielding of perpetrators of serious crimes from scrutiny and justice may have served the narrow or expedient interests of the state at that time, but it hardly served the public interests of victim communities or society more generally.

166.5 It goes without saying that the national interests, as espoused by the ATT, were also diametrically opposed to the 'interests of justice'.

Response of the ATT

167 The ATT then met to work out how to take the Heads of Department Forum's directives forward. They consulted legal experts who advised that setting up the Departmental or ITT Team did not require legislation.

167.1 Only a Memorandum of Understanding would be needed, although all existing structures, such as the NPA, would have to "*commit themselves and give their full support and cooperation*" to the process.

167.2 It was apparent that for this to work, everybody would have to 'play the game'. As it turned out, they could count on almost everybody in all departments to 'play the game,' or at least 'look the other way'.

167.3 However, two key persons in the NPA, Pikoli and Ackermann, were not willing to bow to political instruction. The charade could not work without them playing along. As will be seen below, the former would be shown the door while the latter was sidelined.

168 According to the Further Report, the question of "*eliminating private prosecution[s] and civil litigation in cases of a no prosecution* [ ] *elicited much debate*" within the ATT.

168.1 The ATT spoke to two State Law Advisers and obtained a legal opinion from Adv JH Bruwer, which was attached to the report, although it was not attached to the copy annexed to Macadam's affidavit. There appeared to be agreement that "*legislation eliminating private prosecution and civil litigation will at least affect a person's right to equality and the right of access to courts*".

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168.2 They also doubted that "*the motivation for such legislation would meet the requirements of section 36 (the limitations clause) of the Constitution*", which would be "*seen as a further amnesty process.*"

168.3 The ATT drew the Heads of Department Forum's attention to an article in the *Rapport* of 7 March 2004 where Archbishop Desmond Tutu was quoted as saying that those who did not receive amnesty should face prosecution and any new initiative to stop prosecutions "*would be seen as negating the amnesty process of the TRC.*"

168.4 The ATT advised that the only way to eliminate private prosecutions and civil litigation would be by way of legislation and a Constitutional amendment which "*would not be desirable.*"

168.5 It is interesting to note that in *Nkadimeng 1,* the Minister of Justice and the NPA argued that the Prosecution Policy amendments did not promote impunity because families and victims could still bring their own private prosecutions, even though they lacked investigative powers and the resources of the State. Judge Legodi, recognising the absurdity of this claim, noted in his judgment in *Nkadimeng 1* that "*crimes are not investigated by victims. It is the responsibility of the police and prosecution authority to ensure that cases are properly investigated and prosecuted.*"

168.6 It is not known if the State Law Advisors and Adv Bruwer were asked to provide an opinion on the constitutionality of the proposed amendments to the Prosecution Policy, which provided for an effective back door amnesty. Archbishop Desmond Tutu filed a supporting affidavit in the legal challenge to the new policy (in *Nkadimeng 1*), where he stated that the efforts of the

State "*represented a betrayal of all those who participated in good faith in the TRC process. It completely undermined the very basis of the South African TRC.*" An unsigned copy of the Archbishop's affidavit is annexed hereto marked **FA25**.

169 In relation to the proposed establishment of an Inter-Ministerial Committee it is recorded in the Further Report that "*the Task Team supports this proposal.*" The members of the ATT demonstrated their subservience in agreeing with the Heads of Department Forum. However, they were constrained to provide the views of the State Law Advisers who indicated that a further structure could prove cumbersome and "*might be seen as an attempt by the Government to put undue pressure on the National Director of Public Prosecutions in reaching an independent decision.*"

170 The ATT cast further ignominy on itself when in response to the proposal that the "*national interest should be the paramount objective,*" it responded in servile fashion: "*the Task Team wholeheartedly agrees with this viewpoint of the Forum.*" The ATT was more than happy to open the door to the imposition of the dominant political views onto prosecutorial decisions.

171 In relation to the involvement of the ICC, the ATT relied on the advice of Adv Bruwer who concluded that it was "*not inconceivable that a complainant who is prohibited […] from instituting a private prosecution in the national court may approach the International Criminal Court for relief.*"

172 In relation to the question of setting a timeline for the Departmental Task Team to complete its work, the ATT declined to propose a timeline but proposed that "*the President should rather indicate that it is expected that the Task Team will finalise its work within a specified period and that such period will be determined taking into*

account the extent to which its objectives are achieved." Perhaps the ATT realised it should leave this decision in the hands of the office holder who was really calling the shots. In doing so, the ATT confirmed loudly and clearly that the question of the TRC cases was now firmly in the hands of those in political control.

Moratorium on investigating and prosecuting the TRC cases

173 It eventually emerged that between 2003 and 2004 an effective moratorium was placed on the investigation and prosecution of the TRC cases. When complainants such as Thembi Nkadimeng, sister of the late Nokuthula Simelane (who had been abducted, tortured and murdered by the SB) approached the PCLU they were told by prosecutors that their hands were tied as they were waiting for a new policy to deal with the so-called political cases. Until this new 'policy' was issued, an effective moratorium on pursuing the TRC cases was in place. (In this regard see the founding affidavit of Thembi Nkadimeng filed in *Nkadimeng 2*. This affidavit is voluminous, but a copy can be supplied on request).

174 It is not known who authorised the halting of investigations, but since it involved suspending work on a large number of serious crimes, mostly involving murder, it is highly likely that the authority must have come from the very top. In addition, the heads of the NPA, DSO and SAPS must all have acquiesced in this decision, together with the cabinet ministers overseeing those departments.

175 The moratorium was confirmed in a letter from Acting NDPP, Dr MS Ramaite SC (**Ramaite**), dated 31 January 2013 to Nkadimeng, a copy of which is annexed hereto marked **FA26** in which he stated:

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> "It is correct that the TRC cases were temporarily put on hold pending the formulation of guidelines. This was because it was deemed important that special considerations applied to these cases."

176 Before the imposition of the moratorium the views of the victims and families were not sought. Those most impacted by this massive suspension of the rule of law were not notified in advance or given an opportunity to make representations. They were kept in the dark, and only learned of it after the fact, when they pressed the PCLU for answers.

177 No time limit was placed on the moratorium. No announcement was made of it in any press statement, nor was it mentioned in any annual report in advance of its imposition, or indeed at the time it was imposed. As far as we are aware, no prior written authorisation was ever issued to authorise the suspension of the cases. It was apparently meant to last until the so-called guidelines were finalised, for which no date had been set. In effect, hundreds of murder cases were placed on ice indefinitely on the strength of unwritten arrangements.

178 I am advised that imposing this moratorium on the pursuit of the TRC cases was a deeply unlawful move by the authorities. There was no legal basis to single out these cases for different treatment to other serious crimes. Indeed, the abandoning of these matters pending future guidelines was particularly egregious since several of the crimes prescribed in this period (such as assault GBH) and, as pointed out by Ackermann, witnesses and suspects were dying.

179 It turned out the guidelines were amendments to the NPA's Prosecution Policy, which were only issued in December 2005. This meant that the moratorium was in place for between two and three years. As will be seen below, the issuing of the

guidelines did not result in the reopening of investigations into the TRC cases. Indeed, the clampdown only tightened.

Direct intervention to stop prosecutions

180 NDPP Ngcuka resigned in July 2004 and Ramaite was appointed as the Acting National Director of Public Prosecutions.

181 Ackermann, in defiance of the moratorium, pursued certain cases during 2004 in which investigations had already been finalised. These were the Blani and PEBCO 3 matters referred to above.

182 Ackermann also decided to prosecute three former SB members for their role in the 1989 poisoning of Reverend Frank Chikane, the former head of the South African Council of Churches. This was because all the evidence implicating them had already been led in the prosecution of Wouter Basson and no further investigations were necessary.

182.1 Basson was formerly the head of South Africa's secret chemical and biological warfare project. The three former policemen were former Major-General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden. None had applied for amnesty for this crime.

182.2 According to Ackermann in his affidavit in *Nkadimeng 2* (TN8 at pp 218 – 235 at para 17) (**FA8**), on the morning of 11 November 2004, the police were on the verge of effecting the arrests of three suspects. On the same morning Ackermann received a phone call from the late Jan Wagener (**Wagener**), the attorney for the suspects. Wagener told Ackermann that he would receive a phone call from a senior official in the Ministry of Justice,

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and that he would be told that the case against his clients must be placed on hold.

182.3 Shortly thereafter Ackermann received a phone call from an official in the then Ministry of Justice. He was informed by the said official that a decision had been taken that the Chikane matter should be placed on hold pending the development of guidelines to deal with the TRC cases. Ackermann refused to follow this order and told the official that only the NDPP could give him such an instruction. The official told him that he would shortly receive a phone call from Adv Ramaite, the Acting NDPP.

182.4 A few minutes later Ramaite called Ackermann and instructed him not to proceed with the arrests. Ramaite also ordered Ackermann to immediately halt work on all TRC cases. Ackermann indicated in his affidavit that it could be safely assumed that the Acting NDPP was instructed at a political level to suspend these cases.

183 According to an interview conducted by the author Ole Bubenzer with Wagener in Pretoria on 8 May 2006 (reflected at page 130 of Bubenzer's book), when Wagener was advised that the arrests were going to be effected, he immediately intervened politically and put great pressure on the government to stop the proceedings. Wagener claimed that authorisation to suspend the arrests came from President Mbeki "*in an extraordinarily swift move*".

184 Macadam in his affidavit (**FA5**) confirmed that Ackermann advised him that a moratorium on the investigation and prosecution of the TRC cases had been put in place.

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185 All TRC related investigations and prosecutions were halted and no TRC case proceeded between November 2004 and August 2007. Another two and a half years were wasted.

Amendments to the Prosecution Policy

186 On 1 February 2005, Pikoli was appointed NDPP by the President. His appointment was for a 10-year term as contemplated in section 12(1) of the NPA Act.

187 In line with the recommendations of the ATT, guidelines were drawn up with the aim of incorporating them as amendments to the Prosecution Policy. Ackermann consulted with Gerhard Nel, senior prosecutor in the DSO, who played a leading role in formulating the proposed amendments.

188 According to Ackermann, the PCLU drew up two legal opinions assessing the constitutionality of the proposed amendments to the Prosecution Policy and submitted these to the NDPP. The opinions pointed out that the amendments amounted to a rerun of the TRC's amnesty process and would not survive constitutional scrutiny. At a number of meetings, Ackermann voiced his opposition to the proposed amendments.

189 Macadam shared the view that the proposed amendments were unconstitutional in that they permitted the NPA not to prosecute perpetrators if they met the criteria for granting amnesty as had been applied by the TRC.

190 During 2005, Ackermann again met with representatives of the family of Nokuthula Simelane who requested him to proceed with various charges against certain suspects and to pursue certain lines of inquiry. The FHR, on behalf of the Simelane family, presented the PCLU with a memorandum dated 18 August 2005 setting out

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the basis for the proposed charges. Ackermann again advised them that his hands were tied pending the new guidelines.

191 No victim, family or organisation representing their interests was consulted during the drawing up of the amendments to the Prosecution Policy. However, during an interview with the author Ole Bubenzer on 8 May 2006, Wagener, who acted for several of the perpetrators, said that representatives of the former security police were consulted informally on a very occasional basis (reflected at page 132 of Bubenzer's book).

192 Following the approval by the Minister of Justice, and after consultation with the Directors of Public Prosecutions as required by section 179(5) of the Constitution and section 21 of the NPA Act, amendments to the Prosecution Policy were tabled in Parliament and became effective on 1 December 2005. The amendments were largely based on the recommendations crafted by the ATT. According to the minutes of the Justice Portfolio Committee on 17 January 2006, it was Gerhard Nel who addressed the meeting on behalf of the NPA introducing the amendments to the NPA's prosecution policy.

193 The amendments were contained in Appendix A to the Prosecution Policy and were titled: "PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994" (**the Amendments** or **the Guidelines** or the **amended Prosecuting Policy**), a copy of which is annexed hereto marked **FA27**.

194 The amendments were introduced as having been formulated "*in view of*" the "*essential features*" of the response of the President on behalf of government to the

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TRC's final report to the joint sitting of Parliament on 15 April 2003. Ironically, the policy claimed that it was giving due weight to, *inter alia*:

194.1 The human rights culture which underscores the Constitution, and the status accorded to victims in terms of the TRC.

194.2 The constitutional right to life and the non-prescriptivity of the crime of murder.

194.3 The fact that the TRC's amnesty did not absolutely deprive victims of the right to prosecution in cases where amnesty had been refused.

194.4 The recommendation by the TRC that the NPA should consider prosecutions for persons who failed to apply for amnesty or who were refused amnesty.

194.5 The NPA represents the community and is under an international obligation to prosecute crimes of apartheid.

194.6 The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice.

194.7 The equality provisions of the Constitution.

194.8 Government did not intend to mandate the NDPP to perpetuate the TRC amnesty process.

195 While the amendments to the policy professed to be pursuing various noble objects, including not perpetuating the TRC amnesty – the maintenance of impunity was what was intended, and is what transpired in practice.

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196 Part B of the policy set out the "*procedural arrangements*" for those wanting to make representations to the NDPP in respect of their crimes arising from conflicts of the past and which were committed before 11 May 1994. These included *inter alia*:

196.1 Representations to the NDPP must include full disclosure in relation to the crime for which the applicant seeks a decision not to prosecute.

196.2 Regional DPPs had to immediately transfer all their cases to the Office of the NDPP.

196.3 The PCLU would be assisted in the execution of its duties by a senior designated official from the following State departments:

196.3.1 The National Intelligence Agency.

196.3.2 The Detective Division of the South African Police Service.

196.3.3 The DOJ.

196.3.4 The DSO.

196.4 The NDPP must approve all decisions to investigate or prosecute or not.

196.5 The NDPP may obtain the views of any private or public person or institution, or intelligence agencies and the Commissioner of the SAPS, and must obtain the views of any victims, as far as is reasonably possible, before arriving at a decision.

196.6 The NDPP must inform the Minister of Justice in advance of all decisions he intends taking in respect of matters relating to conflicts of the past.

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196.7 The NDPP must speak with the Minister of Justice before making public statements on any matter arising from the conflicts of the past.

196.8 All state agencies are requested not to use any information disclosed by perpetrators in these procedures in any subsequent criminal trial against such persons.

197 Part B was aimed at ensuring a tight grip on the TRC cases. The NPA's work and decisions on these matters would be under the close scrutiny of groups such as the NIA, DOJ and SAPS. The NDPP had to speak with the Minister of Justice before taking any decisions in relation to the cases or making any public statements in connection with them.

198 Part C of the policy set out the criteria that had to be applied when making decisions to prosecute cases from conflicts of the past. A decision not to prosecute could be made on the back of several factors which included:

198.1 Whether the applicant has made full disclosure relating to his crime.

198.2 Whether the crime was "*associated with a political objective committed in the course of conflicts of the past*" and was "*proportional*" to the political objective in question, which were a replica of the TRC's amnesty criteria.

198.3 The degree of the applicant's co-operation and the personal circumstances of the applicant, including:

198.3.1 whether the ill-health of or other humanitarian considerations justified non-prosecution of the case;

198.3.2 the offender's sensitivity to the need for restitution;

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198.3.3 the degree of remorse shown and his attitude towards reconciliation;

198.3.4 renunciation of violence and willingness to abide by the Constitution; and

198.3.5 degree of indoctrination to which the offender was subjected.

198.4 The extent to which prosecution or non-prosecution facilitate or undermine "*nation-building through transformation, reconciliation, development and reconstruction within and of our society*".

198.5 Whether the prosecution may lead to conflict or further traumatisation of victims.

198.6 Any further criteria, which might be deemed necessary.

199 The Part C criteria not only provided for a rerun of the TRC's amnesty criteria behind closed doors but also opened the door to practically any excuse not to prosecute. These included whether a prosecution might undermine reconciliation and whether a perpetrator was subjected to indoctrination, which was imposed on all who grew up in Apartheid South Africa. The amendments pretty much guaranteed the perpetuation of impunity, especially if the NDPP in place was willing to play along.

200 Once the amendments came into force, Ackermann again expressed his opposition to them as he felt that they violated the constitutional rights of the complainants and constituted unwarranted interference in the prosecutorial independence of the NPA. He complained to various officials in the NPA, including the NDPP, that the

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guidelines were aimed solely at accommodating perpetrators and providing them with avenues to escape justice.

Developments post the amendments to the Prosecution Policy

201 Once the new guidelines had been issued in terms of the Prosecution Policy amendments, this should have brought an end to the so-called moratorium imposed on the TRC cases. This was not to be. The clampdown continued, with renewed vigour.

202 In the NPA Annual Report of 2005/06, Pikoli indicated that he was "*sad to report*" that "*not much has been achieved*" with regard to the TRC cases, despite all their attempts to take them forward:

> "Following Government's response to the final Report of the TRC, and because it is important for the prosecuting authority to deal with these matters on a uniform basis in terms of specifically defined criteria, the National Director, with the concurrence of the Minister for Justice and Constitutional Development and after consultation with the various Directors of Public Prosecutions issued prosecution policy and policy directives in terms of section 179(5)(a) and (b) of the Constitution regarding the handling of such cases arising from conflicts of the past. This prosecution policy and policy directives, which must be observed in the prosecution process, were tabled in Parliament towards the end of 2005 and came into operation on 1 December 2005. During January and February 2006, the NPA briefed the Portfolio Committee on Justice and Constitutional Development and the Committee on Security and Constitutional Affairs of the National Council of Provinces regarding the contents of these directives. **I am sad to report, as at the time of writing this report, that not much has been achieved in this regard despite all the attempts that have been made in taking this matter forward**." (Bold added)

203 Significantly, the annual report also confirmed that the TRC cases had been "*placed on hold*" pending the approval of the prosecution guidelines:

> **"In late 2004, the Acting National Director requested that prosecutions for TRC cases be placed on hold pending the formulation and approval**

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> **of prosecution guidelines relating to these matters. The guidelines were only finally approved in early 2006.** The PCLU, as a result of complaints by various persons, identified at least 15 cases which warrant further investigations in order to determine whether prosecutions are justified. On an ongoing basis, the PCLU receives requests from victims to look into cases where amnesty has been refused or not applied for. Where these matters can be followed up without further investigations and where no prosecutions are warranted, they are disposed of. Seven such matters have been dealt with in this manner. In 2006, the Directors of Prosecution: Mthata and Pretoria seconded two Senior State Advocates to the PCLU to assist with these matters." (Bold added)

204 Copies of the relevant pages of this annual report are annexed hereto marked **FA28**. A copy of the full report can be made available on request.

205 While the annual report confirmed on a *post facto* basis that the suspension or moratorium on the TRC cases was imposed in late 2004, in reality it was already in place during 2003, as set out above.

206 Interestingly the decision to halt the TRC cases was styled as a "*request*" by the Acting NDPP. It was not disclosed who this request was directed to.

207 With the exception of the Frank Chikane attempted murder case, which did not require further investigation, the PCLU was unable to pursue any other TRC cases.

208 According to Ackermann, the SAPS and DSO persisted in their refusal to provide investigators. It also proved difficult to even convene meetings of the ITT (referred to in Part B of the amendments) who were "*meant to advise the PCLU on what cases to pursue.*" Pikoli had hoped that the ITT, particularly the SAPS and the NIA would provide investigative and intelligence support for these cases, however, this support was "*never provided.*"

209 Once the guidelines were issued in December 2005, Ackermann wished to proceed with the five cases he had identified that had good prosecution prospects and the

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11 cases which required substantial investigation. These cases were identified as "*major priorities*" for the PCLU for the 2006 – 2007 period. In addition, during 2006 he was getting more requests from victims' families for further investigations in their cases.

210 According to Pikoli, once the Prosecution Policy amendments became effective in December 2005, he reviewed the available evidence implicating the three suspects in the Chikane attempted murder case, which, in his opinion warranted prosecution. None had applied for amnesty, so he gave the initial instruction to proceed with the prosecution in February 2006.

211 The NPA made a presentation to the Justice Portfolio Committee on 8 March 2006, a copy of which is annexed hereto marked **FA29**. In relation to its performance in respect of the TRC prosecutions it disclosed the following at slide 39:

> "PERFORMANCE AGAINST TARGETS: 2004 / 2005
>
> 1. TRC Prosecutions
>
> - Audit of 300 cases on hand in NPA structures.
> - Closure of 167 cases. No grounds for prosecution.
> - Prosecutions instituted in S v Terreblanche, S v Blani and S v Nieuwoudt & 2 Others.
> - **Further prosecutions put on hold in November 2004 pending the formulation of guidelines.**
> - Assistance provided to reconvene Motherwell amnesty hearing." (Bold added)

212 In the same presentation dealing with performance targets for the year 2005/06 the following was noted at slide 43:

> "PERFORMANCE AGAINST TARGETS: 2005 / 2006

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1. TRC Prosecutions

- Failure to finalise guidelines **results in no further prosecutions being instituted.**
- Late 2005 Constitutional Court sets aside TPD and Supreme Court of Appeal rulings in respect of jurisdiction for conspiracies for external crimes in S v Wouter Basson." (Bold added).

213 In March 2006, Ackermann again met with the representatives of the Simelane family, who in addition to the crimes of kidnapping and murder, wished the NPA to charge certain suspects with torture, as a crime against humanity in terms of customary international law, since such crimes never prescribe. Ackermann had to advise them that he was unable to take the case forward "*as there were no investigators attached to the PCLU*", and his requests to the SAPS and the DSO for competent and experienced investigators had fallen on deaf ears.

214 The Simelane family lawyers wrote to Pikoli, the NDPP at the time, requesting him to reach out to the SAPS and the DSO in order to secure competent investigators for the PCLU as a matter of urgency. These efforts were not successful. Thereafter Ackermann urged the family lawyers to seek an inquest rather than a prosecution. This is because he realised that there would be no investigations, let alone prosecutions "*taking place in the political context that prevailed at the time,*" as set out in his affidavit in *Nkadimeng 2* (TN8 at p217) (**FA8**). At that time the family was reluctant to pursue an inquest when the evidence warranted a prosecution.

215 Annex RCM10 (at p835) to Macadam's affidavit (**FA5**) reveals that on 30 October 2004, Ackermann addressed an internal memorandum to Pikoli and Ramaite in order to respond to a request made by the "TRC Committee" on 25 October 2006 to furnish details regarding all the cases closed by the PCLU, and in particular what led to the prosecution of one Blani. The "TRC Committee" was presumably either

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the Interdepartmental Task Team or the Inter-Ministerial Committee, referred to above. The memorandum disclosed that some 27 cases had been closed for various reasons. Notable cases on the list included:

215.1 Death in detention of Ahmed Timol.

215.2 Death in detention of Steve Biko.

215.3 Murders committed by IFP aligned Ermelo Black Cats gang in Ermelo.

215.4 Ciskei coup d'état, also known as Operation Katzen.

215.5 General Basie Smit, former SB commander, for various offences.

215.6 Refusal of amnesty to Mbeki and 37 high ranking ANC members.

215.7 IFP Hit Squads in Esikhaweni and elsewhere in KZN.

215.8 Bombing of the Early Learning Centre and other activities of the CCB.

216 In the same memorandum, Ackermann referred to an attempt to resurrect the investigation of the TRC cases, but he objected strenuously to the planned reappointment by the SAPS of Senior Superintendent Karel Johannes 'Suiker' Britz.

> "**The reappointment of Senior Superintendent Britz**
>
> 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.
>
> I wish to express my concern at this. Britz was a former member of the SB, who, prior to the PCLU being involved with TRC cases, assisted the OPP: Pretoria with cases involving the Liberation Movement.
>
> 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 SB members would take place.

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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.

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 SB members to be prosecuted, the President would also have to be charged. It was clear that he was against prosecutions of SB 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.

When the issue of prosecuting SB 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.

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.

This highly embarrassing incident caused Mr Ngcuka to instruct that Britz vacate the offices of the OPP 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.

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."

217 This passage disclosed the attempt of the SAPS to insert an investigator, the late 'Suiker' Britz, who had become known as an apartheid-era fixer, into the TRC cases. The memorandum alleged that Britz was "*sympathetic*" to former members of the SB and opposed their prosecutions. According to Ackermann, Britz had leaked

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information and a docket to retired General Johann van der Merwe. In addition, Britz's main preoccupation appeared to be that of agitating for a terrorism charge against Mbeki.

218 I am advised that some 12 years later when there was an attempt to pursue the TRC cases afresh by the DPCI, the late investigator, Frank Dutton (who was then the FHR's private investigator), complained that SAPS had again appointed investigators to the TRC cases who were either former SB members, or sympathetic to the former SB. Correspondence to this effect can be supplied on request.

219 Following Pikoli's decision to proceed with the Chikane attempted murder case, the three suspects made representations to him in terms of the Guidelines for a decision not to prosecute. Pikoli set up a team under Adv JP (Torie) Pretorius to review their representations which concluded after a few months that the three had declined to disclose the full truth. Ackermann refused to participate in this review as he viewed the process as unconstitutional. After considering the review report, Pikoli wrote to the lawyers of the three suspects in July 2006 informing them that their representations were unsuccessful, and he intended to pursue with the prosecution.

220 The decision to prosecute those implicated in the attempted murder of Chikane was the tipping point which saw the complete unravelling of the attempts by the NPA to hold apartheid-era perpetrators accountable for their crimes.

The politicians intervene

221 During 2006, it became increasingly clear to government that NDPP Pikoli and PCLU head Ackermann would pursue TRC cases when they were in a position to

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do so. The first complaint levelled by government functionaries against the NPA was that Ackermann was seen as a loose cannon.

222 Pikoli, in his affidavit in *Nkadimeng 2* (TN7 at p 170) (**FA22**), records that in early 2006, SAPS Commissioner Jackie Selebi objected to Ackermann's participation in the TRC cases claiming that he intended to prosecute the leadership of the ANC. This was notwithstanding Pikoli's denial that any such plans were in place. Pikoli reminded Selebi that Ackermann was appointed as PCLU head under Presidential proclamation, and it was not for the SAPS to dictate who should discharge the mandate given to the PCLU.

223 Pikoli then approached the Presidency in order to seek the collaboration of the role-players in the ITT to support the TRC cases. A meeting was arranged in mid-2006 by Reverend Frank Chikane, who was then Director General in the Presidency. Coincidentally this was the same Chikane who was the victim of poisoning by the SB in 1989. The meeting was attended by Chikane, the Directors General of Justice and the NIA, Selebi, the Secretary of the Defence Secretariat, Mr. Loyiso Jafta, Chief Director in the Presidency and Pikoli. Selebi again complained about Ackermann's involvement in the process.

224 Later in 2006, Pikoli was summoned to a meeting which was convened at the home of Minister Zola Skweyiya, then Minister of Social Development. The meeting was attended by the Minister of Police Charles Nqakula, Minister of Defence Mosiuoa Lekota, Thoko Didiza, Acting Minister of Justice (representing Minister Brigitte Mabandla who was indisposed) and Mr. Jafta. The meeting was called by Acting Minister Didiza. Pikoli was advised that the meeting was going to deal with the prosecution in the Chikane matter.

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225 At this meeting it became clear that there was a fear that cases like the Chikane matter would open the door to prosecutions of ANC members. In his affidavit in *Nkadimeng 2* (**FA22**), Pikoli quoted from his affidavit filed before the Ginwala Commission as to what transpired at this meeting:

> "The Minister of Safety and Security was concerned about the decision to proceed with the prosecution and with Advocate Ackermann's involvement in the process and the issue of whether it was Advocate Ackermann or me who was behind the decision to prosecute.
>
> The Minister of Social Development was concerned about the impact of the decision to prosecute on the ranks of ANC cadres who were worried that a decision to prosecute in the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.
>
> The Minister of Defence had concerns about where the decision to prosecute rested – did it rest with me or did it rest with Advocate Ackermann.
>
> I explained to the Ministers that the decision to proceed with the prosecution rested with me as did all other decisions in regard to post-TRC prosecutions being considered by the PCLU. I assured them that no prosecution would be undertaken without my specific direction and reiterated my concern about the delay in the process particularly in view of the requirement that I report to parliament on these matters.
>
> ...
>
> The Minister of Defence appeared satisfied with my explanation that I would exercise the decision as to whether there was a prosecution or not. The Minister of Safety and Security appeared to continue to be worried about the involvement of Advocate Ackermann. I have no recollection of a particular position adopted by the Acting Minister of Justice."

226 This meeting pointed to what was probably the overriding concern of government, namely that pursuing a TRC case, like the Chikane matter, would place pressure on the NPA to pursue cases against ANC members.

227 In 2006 Pikoli was again summoned to a further meeting which took place at the office of the Presidency. At this meeting Pikoli proposed that Dr Silas Ramaite, the

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Deputy National Director of Prosecutions, should chair the Task Team, given the adverse views of Ackermann and to get the Task Team working. The proposal was accepted.

228 Subsequent to this meeting, there was a further meeting of Ministers in the security cluster at the office of the Minister of Safety and Security. This was attended by the Minister for Safety and Security, the Minister of Social Development, Acting Minister Didiza, Selebi, various DGs and Mr. Jafta. The proposal for the establishment of a working group was put to the Ministers and it was accepted. After this meeting, in early October 2006, Pikoli again sent letters to the various Directors General, Selebi and the DSO inviting them each to nominate a senior official to serve on the ITT.

229 The ITT met for the first time on 12 October 2006. Pikoli attended the opening session of the first meeting together with his adviser, Ms. Kalyani Pillay, the Directors General of the NIA and Justice and Mr. Jafta from the Presidency. Pikoli did not participate further in the activities of the Task Team. According to Macadam, the NPA representatives on the ITT were Ackermann and Ramaite. Macadam noted in his affidavit (at p 796 at para 30, p801) affidavit (**FA5**) that on occasions when he stood in for Ackermann at meetings of the ITT, that:

> "... the task team was predominantly comprised of members of the intelligence community who were **more intent on cross-examining me as to why matters should be investigated** rather than addressing the issue of all the outstanding cases." (Bold added)

230 It is interesting to note that Mr. Loyiso Jafta, Chief Director in the Presidency, who had an intelligence and security background, was present at the meetings of the ITT. Strictly speaking he should not have been there, as Part B of the Amendments, did not provide for a member of the Presidency to be part of the group assessing

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the TRC cases. This indicated that the Presidency intended to have direct involvement in the decisions relating to the TRC cases.

231 Meanwhile Pikoli had received further representations from the suspects in the Chikane matter claiming that they had received indemnity against prosecution in terms of the Indemnity Act 35 of 1990. Pikoli sought an independent opinion from a senior counsel who advised him in November 2006 that the claimed indemnities were no bar to prosecution and that Act 35 of 1990 had been repealed in 1995.

232 Ramaite reported to Pikoli that at the ITT meeting on 25 October 2006, Ackermann had presented an audit report of all the TRC cases in the possession of the PCLU. Ramaite also reported to Pikoli that at the 6 November 2006 meeting of the ITT, Joseph Lekalakala, a senior officer in the SAPS Crime Intelligence Division, stated that National Commissioner Selebi believed that Chikane was not interested in a prosecution. However, Ackermann advised that Chikane had left the matter in the hands of the NPA.

233 In early December 2006 Pikoli was advised by Ramaite that Selebi was insisting that Chikane had not been consulted about the proposed prosecution. This claim was rejected by Pikoli since he knew that Chikane had been extensively consulted. According to Pikoli, he had personally met with Chikane during 2006 and 2007, who advised that while he may have forgiven his perpetrators, insofar as the application of the law was concerned, the matter must take its ordinary course. Pikoli asserted that Chikane said that if a decision was made to prosecute, he would accept that. Although Pikoli was aware that Ackermann had discussed the matter with Chikane as far back as 2004, he instructed Ackermann in December 2006 to once again visit Chikane to confirm his position.

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234 According to Ackermann, on 6 December 2006, the PCLU received a letter from the head of the SAPS Legal Support section, Major General PC Jacobs, representing the view of the National Commissioner, which bluntly stated that before any prosecutorial decision could be made in respect of the TRC cases, the Task Team must submit a final recommendation to a Committee of Directors General in respect of each case, which in turn must advise the NDPP who to prosecute or not.

235 Towards the end of 2006 it became clear to Pikoli that "*powerful elements within government structures were determined to impose their will on my prosecutorial decisions*." In this regard in his *Nkadimeng 2* affidavit (TN7 at p 170) (**FA22**), Pikoli quoted from his affidavit filed before the Ginwala Enquiry:

> "In December 2006 Dr Ramaite reported to me in regard to the contention raised by Mr. Selebi through Commissioner Jacobs that it was the function of the Task Team that it should make a final recommendation to a body identified as the "Committee of Directors General" which would in turn make recommendations to me. In essence the proposal made by Mr. Selebi and subsequently supported by the Directors General of Justice and NIA amounted to a reversion to a two-stage process in which my decision on any prosecution would be dependent upon a prior recommendation by an intervening committee of directors general which would be subject to the same constitutional challenge as had led to the rejection of this proposal in 2004.
>
> It became clear to me that there was a material misunderstanding in regard to the role of the Task Team and that unless this was resolved, I would not be able to carry out my functions within the contemplation of the relevant legislation and as envisaged by the Government."

236 The penny finally dropped with Pikoli towards the end of 2006. Up until this point he had operated on a good faith basis that his counterparts in the other departments in the ITT would support him to resolve the TRC cases. In fact, they never had any such intention. It is quite apparent that they saw their role as clamping down on the cases from proceeding. Since it appeared to them that Pikoli might act on an

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independent basis, the communication from Maj Gen Philip Jacobs made it abundantly clear that Pikoli was not to act without their permission.

237 It was becoming apparent that the central concern of government leadership was that the pursuit of the TRC cases could precipitate cases against ANC members, and for that reason all cases had to be stopped, even if it meant denying justice to the families of Nokuthula Simelane, the Cradock Four and others.

The axe falls on the TRC cases

238 In early 2007, as a result of the differences in approach that had developed between the NPA and the SAPS, NIA and DOJ, Pikoli advised Selebi and the Directors General that a serious misunderstanding had arisen. Pikoli resolved to approach the Minister of Justice and request her guidance. According to Pikoli, pending such response, "*the functioning of the Task Team was compromised by the uncertainty*" and it held no further meetings until 8 August 2007.

239 On 5 January 2007, Justice Minister Mabandla disclosed in a press statement the need for the development of a policy on presidential pardons for prisoners who alleged that their offences were politically motivated. A copy of this press statement is annexed hereto marked **FA30**. According to the Minister the matter was complex and, since there was no legal precedent, "*a political solution*" was required. The proposal was in line with the recommendations of the ATT. The Minister noted that:

239.1 Some applicants for pardons did not apply for amnesty from the TRC because their political parties did not support the TRC.

239.2 Some of the applicants pleaded ignorance of the TRC processes.

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239.3 Some of the crimes committed by the applicants committed took place after the cut-off date for TRC amnesty applications.

240 Towards the end of January 2007, Ackermann and Adv Mthunizi Mhaga (also of the PCLU) reported to Pikoli that they had met with Chikane on 22 January 2007 who confirmed that he was not against a prosecution and that the matter should take its course. Pikoli then wrote to the attorneys of the three suspects on 25 January 2007 and informed them that the matter would now proceed.

241 Around this time, the former Minister of Police, Adriaan Vlok, and the former Commissioner of Police, General Johann van der Merwe, both made representations to Pikoli in terms of the Guidelines. They both admitted to authorising the murder of Chikane and requested Pikoli not to prosecute them in the light of this disclosure. However, according to Pikoli they declined to make full disclosure in response to requests for information and he declined to grant them immunity from prosecution in terms of the Guidelines.

242 On 6 February 2007, Pikoli had a meeting with Minister Mabandla. During this meeting it appeared that she had gained the impression that Pikoli had previously agreed not to pursue the TRC cases.

243 On 8 February 2007, Mabandla addressed a letter to Pikoli titled "TRC MATTERS", a copy of which is annexed hereto marked **FA31** (attached to Pikoli's affidavit as VPP2 at p208), in which she stated the following:

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

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244 An example of one of the articles in the press is from the Beeld newspaper titled "*Cops up for apartheid crimes*" which was published on 7 February 2007. A copy of this article is annexed hereto marked **FA32** (VPP3 at p209).

245 According to Pikoli, he was at a loss to explain how the Minister reached such a conclusion. Her letter disclosed an assumption that the TRC matters would not be prosecuted. Pikoli in his affidavit in *Nkadimeng 2* (**FA22**) (TN7 at p 170) stated that he:

> "...found this to be a disturbing development as it appeared that at a political level there was an expectation that I would not prosecute the TRC cases. I regarded such an expectation as unwarranted interference in my constitutional duty to prosecute without fear, favour or prejudice."

246 Pikoli decided to prepare a detailed memorandum for the Minister to set out the history behind the policy to the TRC cases and to inform the Minister of the problems experienced in implementing this policy. This "*internal secret memorandum*" was titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' and was dated 15 February 2007, a copy of which is annexed hereto marked **FA33**. This memorandum (at p134) was annexed to Pikoli's affidavit before the Ginwala Commission marked as "TRC1". It was also attached to Pikoli's supplementary 'in camera' affidavit in *Nkadimeng 2* (at p130).

247 In this memorandum Pikoli bluntly concluded that there had been "*improper interference*" with the work of the NPA in relation to the TRC cases and that he had been "*obstructed from taking them forward*." He complained that such interference impinged upon his conscience and his oath of office. Moreover, he was now unable

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to deal with these cases in terms of the normal legal processes and he sought guidance on the way forward. In particular Pikoli pointed out that:

247.1 The problems are "*hindering and obstructing the NPA in fulfilling its constitutional mandate, namely, to institute criminal proceedings without fear, favour or prejudice*".

247.2 The SAPS and NIA had not made dedicated members available to the NPA to gather sufficient and admissible evidence in the TRC cases.

247.3 There were differences in interpretation in relation to the role of the other state departments in relation to the "*prosecutorial decision-making process*".

248 Pikoli concluded by stating that:

> "I have now reached a point where I honestly believe that **there is improper interference with my work and that I am hindered and/or obstructed from carrying out my functions** on this particular matter.
>
> It would appear that there is **a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along**. My conscience and oath of office that I took, does not allow that.
>
> Based on the above, I cannot proceed further with these TRC matters in accordance with the "normal legal processes" and "prosecuting mandate" of the NPA as originally envisaged by Government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the State, I am awaiting Government's direction on this matter." (Bold added).

249 Remarkably, Pikoli never received any response from Minister Mabandla to his memorandum, not even the barest denial that her department was complicit in the improper interference in the work of the NPA. Given the alarming matters he raised and given that the law criminalises obstruction of the work of the prosecuting authority, Pikoli indicated in his affidavit in *Nkadimeng 2* (**FA22**) that he was shocked

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he did not get an immediate response from the Minister. This suggested to Pikoli that the Minister preferred for the deadlock between the NPA and the DOJ, SAPS, NIA to remain in place. This meant that the ongoing suppression of the TRC cases would persist.

250 On 3 May 2007, Pikoli and Ackermann appeared before the Justice Portfolio Committee in Parliament. The minutes, a copy of which is annexed hereto marked **FA34**, reflect the following discussion in which Pikoli was remarkably frank about what was stopping the prosecutions of the TRC cases.

> "Discussion
>
> **Mr Joubert asked what was causing the delay in prosecutions of the TRC and when these might be finalised.**
>
> Adv Anton Ackermann, Special Director: NPA, replied that in October 1998 the TRC had recommended prosecutions. A Human Rights division was established in the NPA to evaluate the cases and to prosecute. When the DSO was created in January 2001 the Human Rights Division was disbanded, and its work was transferred to the DSO. Adv Ackermann, when joining the NPA, was given a mandate in March 2003 to declare priority crimes. All 400 TRC prosecutions had been immediately declared as priority crimes. In April 2003 the President had stated that there would be no further amnesty processes and ruled that prosecutions would be instituted and that a number of agencies must assist in the prosecutions. Adv Ackermann personally declined to prosecute 92 cases. Sixteen were identified for investigation and potential prosecution. On 9 November 2004 Adv Ackermann was stopped when trying to arrest three security policemen and charge them with poisoning of identified people. Dr Ramaite had instructed him not to proceed with the arrest, but rather to formulate guidelines how prosecutions should be conducted. This formulation took two years. In early 2006 the guidelines were approved. They did not make provision for a committee but stated that in the execution of the prosecution duties other agencies must assist. A Task Team was established, and a number of meetings were held. Adv Ackermann commented that it was unfortunate that to date no meaningful results had been achieved from these meetings. **The Annual Report of 2006 also noted on page 4 that not much had been achieved, despite all the attempts to take this matter forward. He maintained that the PCLU was not the cause of the delays and he suggested that perhaps the National Director of Public Prosecutions should comment further.**

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> **Adv Vusi Pikoli, National Director of Public Prosecutions, added that this was a politically sensitive issue.** The legal processes must solve the problem. **Whenever there was an attempt to charge members of the former Police Services there was political intervention, and effectively the NPA was being held to ransom by the former generals**. On the other side the families of the victims were pressing for prosecution. The guidelines were not universally accepted and some NGOs, including Legal Resources Centre, wished to challenge the constitutionality of the guidelines. There were ongoing discussions as to how best to proceed. The President, in addressing parliament, indicated clearly that the matters would be dealt with, and so this was an ongoing matter.
>
> The Chairperson stated that she was aware of some efforts from the Department of Justice. She asked that Adv Pikoli provide the Committee with a full report on the events to date in writing, so that the Committee could try to assist as this clearly went beyond just the one case cited by Adv Ackermann. It was undesirable that these problems should still be delaying matters." (Bold added).

251 The blunt statement by Pikoli that the prosecution of the TRC cases "*was a politically sensitive issue*" and "*whenever there was an attempt to charge members of the former Police Services there was political intervention, and effectively the NPA was being held to ransom by the former generals*" should have set alarm bells ringing.

251.1 Pikoli was expressing his abject frustration that former apartheid generals seemed to be able to exert extraordinary influence over the justice system; and were able to engineer political interventions when their people were being pursued.

251.2 The fact that the Justice Portfolio Committee, across the political spectrum, did not raise the alarm and call for an independent inquiry into the alleged violation of the rule of law, is nothing less than shameful. After all, this was not anybody making a wild claim, it was the NDPP, South Africa's chief prosecutor.

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251.3 Their dereliction of duty cost our country dearly. If they had cast aside their political interests and acted in the interests of equality, justice and the rule of law, much of the damage wrought by the political interference could have been avoided.

252 In July 2007, Thembi Nkadimeng, sister of the slain and disappeared Nokuthula Simelane, together with the wives of the Cradock Four filed an application in the High Court to have the amendments to the Prosecution Policy declared unconstitutional and set aside. They argued that the amendments were designed for the sole purpose of guaranteeing impunity for apartheid-era perpetrators – and ultimately to deny them truth, justice and closure. The proceedings were opposed by the Minister of Justice and the NDPP. These proceedings are referred to as *Nkadimeng 1*. A copy of these voluminous papers can be supplied on request.

253 Also in July 2007, after several months of negotiation between the PCLU and the attorneys of the accused in the Chikane attempted murder case, a plea and sentence agreement was reached. On 10 July 2007, Pikoli sent a memorandum to the Minister informing her of the fact that the case had been set down for hearing in court on 17 August 2007 and that all the accused will plead guilty to a charge of attempting to murder Chikane by means of poisoning. She was also advised that the court would be asked to confirm the plea and sentencing agreement.

254 Around 10 July 2007 Pikoli went on compassionate leave because of the illness and subsequent death of his mother. In his absence, on 17 July 2007, Ramaite and Ackermann were summoned to a meeting with the Minister and reported to her on these developments.

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255 On 17 August 2007, those implicated in the Chikane case pleaded guilty in exchange for suspended sentences in terms of section 105A of the Criminal Procedure Act. Vlok and Van der Merwe were sentenced to ten years in prison suspended for five years, while the other three received five-year prison sentences, suspended for five years. A copy of the plea and sentence agreement is annexed hereto marked **FA35**.

256 According to Ackermann, this case ought to have opened the door to the prosecution of General Basie Smit, who succeeded Van der Merwe as Commander of the SB in October 1988, as well as other senior officers of the both the SAPS and the SADF. However, this was now the end of the line. No further cases were pursued which, according to Ackermann, can be attributed wholly to the political interference in the work of the NPA.

257 According to Pikoli in his affidavit in *Nkadimeng 2*, he would have preferred a full prosecution because Adriaan Vlok and Johan van der Merwe only made limited disclosure. They confined their disclosure to facts that for the most part were already in the public domain and declined to reveal information about the compiling of the hit lists and who was behind their compilation. They did not reveal other names on the lists, nor the *modus operandi* of the other hits or the identities of the other masterminds and perpetrators.

258 While a full prosecution would have produced greater truth and accountability, Pikoli was of the view that the political headwinds were too strong. He stated that:

> "there was strong political resistance to this prosecution and the pursuit of the other political cases. It was clear to me that the government, and in particular the then Minister of Justice, did not want the NPA to prosecute those implicated in the Chikane case. This was due to their fear of opening the door to prosecutions of ANC members, including government officials.

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> Moreover, I could not rely on the police to investigate this case, and the other political cases, thoroughly. Therefore, a plea and sentence bargain was in my view the most appropriate compromise in the circumstances."

259 Pikoli's concerns proved to be prescient. Within a few weeks he was removed from office and the Chikane case was the last indictment issued in a TRC related case for some 10 years. The TRC cases would remain suppressed until the family of Nokuthula Simelane went to court in 2015 seeking an order compelling a prosecutorial decision (*Nkadimeng 2*).

The knives are out for Pikoli

260 Shortly after the Chikane plea and sentence agreement had been confirmed in court, a newspaper article appeared in the Rapport newspaper of 19 August 2007 in which it was claimed that the NPA was preparing to prosecute ANC leaders. According to Pikoli, the claim was made on the basis of a note that Ackermann had prepared more than four years previously, when he first looked at the universe of possible cases. That note was forged to suggest it was made recently and that Ackermann was targeting the ANC leadership. A copy of this newspaper article is annexed hereto marked **FA36** (VPP4 at p211). The NPA responded by way of a press statement dated 21 August 2007 in which the allegations made in the Rapport were denied. A copy of this press statement is annexed hereto marked **FA37** (VPP5 at p213).

261 At this time, the then Director-General of the Department of Justice, Menzi Simelane, had approached Pikoli and raised concerns about Ackermann's handling of the TRC cases. He asked Pikoli to relieve Ackermann from his duties in respect of those cases. Pikoli declined to do so.

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262 After the newspaper article was published, Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention and Security (JCPS) Cabinet Committee on Post TRC matters, which was held on 23 August 2007. This meeting was attended by several cabinet ministers, directors-general and Selebi. Cabinet Ministers included the Minister for National Intelligence Services Ronnie Kasrils, Minister Mabandla, and Minister Skweyiya amongst others.

263 The fact that there was a special Cabinet Committee on the post TRC cases speaks volumes. The existence of such a high-level committee devoted to a particular class of criminal cases pointed the importance of these cases to Cabinet, and that the cases had become the subject of political intervention.

264 Pikoli's account of this meeting in his *Nkadimeng 2* affidavit (**FA22**), is that the those at the meeting immediately demanded answers from him about TRC prosecutions.

264.1 According to Pikoli, Selebi said to him that the "*gloves are now off*" and that he was "*declaring war*" on him. In response Pikoli told Selebi: "*for once in your life can you tell the truth and shame the devil*".

264.2 Those present were particularly concerned that the NPA was instituting an investigation into certain members of the SAPS, in relation to the fabricated Ackermann letter.

264.3 Minister Mabandla told Pikoli to stop this investigation, to which Pikoli responded that the investigation will proceed.

264.4 Pikoli explained to the meeting that:

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264.4.1 the NPA was bound by law to continue with prosecutions of individuals who did not apply for or who were refused amnesty.

264.4.2 the NPA was actively preparing for those prosecutions and that it should not be stopped from doing its job.

264.4.3 it was his role as the NDPP to decide who would be charged.

265 On 28 August 2007, Pikoli received a faxed letter (dated 8 August 2007) from the Minister, which is annexed hereto marked **FA38** (VPP6 at p214). She referred to the meeting held on 23 August 2007 and noted that SAPS held a different view in respect of the forgery of certain NPA documents. She complained that she had not been advised of the decision to investigate and wanted to know the basis thereof.

266 Pikoli responded to the Minister's letter by way of a letter dated 29 August 2007, a copy of which is annexed hereto marked **FA39** (VPP7 at p215). In this letter Pikoli referred to the 23 August 2007 meeting:

> "which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the sub-committee members."

267 Pikoli confirmed that there was no investigation by the NPA "*against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police*". He added that it is:

> "clear that my account of the position as it relates to the NPA's handling of the post TRC matters has been completely ignored."

268 Pikoli reminded the Minister that his predecessor had satisfied himself that there was no basis for the leadership of the ANC to be investigated and he had briefed

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the then Minister of Justice, as well as the President. Pikoli also advised the Minister that all the dockets relating to the TRC cases, which had been stored at the Office of the DPP in Pretoria, had been handed over to the SAPS in 2004. Pikoli in his capacity as then Director General of Justice was actually present in the office of the DPP when representatives from the SAPS collected the dockets.

269 Pikoli concluded his letter by requesting an urgent meeting with the Minister. Pikoli also requested an opportunity to appear before the National Security Council "*to give a true account of this issue*".

270 The Minister did not respond to Pikoli's requests, and the meetings never took place. On 23 September 2007 Pikoli was suspended from office by President Mbeki. Shortly after his suspension he learned that Ackermann had been relieved of his duties in relation to the TRC cases.

271 According to Ackermann, he was summoned to the office of Adv Mokotedi Mpshe, who had been appointed acting NDPP. Mpshe advised Ackermann that he was relieved of his duties in relation to the TRC cases with immediate effect. In his affidavit (**FA8**), Ackermann asserted that he had "*no doubt that Adv. Mpshe received a political instruction to remove me from these cases.*" Ackermann advised Mpshe that removing him from the TRC cases "*would not make the cases go away.*" That statement has also proved to be prescient.

272 Writing in his 2015 affidavit in *Nkadimeng 2* (**FA22**), Pikoli observed the following:

> "I have little doubt that my approach to the TRC cases contributed significantly to the decision to suspend me. It is no coincidence that there has not been a single prosecution of any TRC matter since my suspension and the removal of the TRC cases from Advocate Ackermann.

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> The political interference or meddling that I have set out in this affidavit is deeply offensive to the rule of law and any notion of independent prosecutions under the Constitution. It explains why the TRC cases have not been pursued. It also explains why the disappearance and murder of Nokuthula Simelane was never investigated with any vigour and why the pleas of her family and her representatives were ignored."

273 Ackermann concluded similarly in his 2015 affidavit (**FA8**):

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

274 Now with Pikoli and Ackermann out of the way, government was in a position to appoint compliant officials to lead the NPA and take charge of the TRC cases. Going forward the TRC cases were now firmly frozen and no amount of lobbying and agitating by families and their representatives would move the new leadership of the NPA to act.

Ginwala Enquiry

275 The years following the suspension from office of Pikoli and the removal of Ackermann from the TRC cases were marked by an almost total absence of activity on the TRC cases.

276 On the same day that Pikoli was suspended on 23 September 2007, the President announced the creation of the Ginwala Enquiry into the fitness of Pikoli to hold the office of the NDPP in terms of section 12(6)(a) of the NPA Act. Dr Frene Ginwala was appointed on 28 September 2007 to head the inquiry.

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277 According to Dr Ramaite, then the Acting NDPP, when the President established the Ginwala Commission, "*the SAPS declined to further investigate the matters, pending the conclusion of the Commission*." This was disclosed in his 31 January 2013 letter to Thembi Nkadimeng (**FA26**). The reference to a decision to refuse to "*further investigate*" is a misnomer since the SAPS had already refused to investigate the TRC cases as far back as 2003. There was no legal or other basis for the SAPS to continue refusing to investigate the TRC cases pending the outcome of the Ginwala Enquiry.

278 In the Ginwala Enquiry, the government made a number of complaints against Pikoli, one of them being that Pikoli's handling of the post–TRC cases did not show "*sensitivity to the victims*" and "*an appreciation of the public interest issues that were mandated by the Prosecution Policy*."

279 It was alleged that the NPA concluded plea bargains with Van der Merwe and others (the Chikane case) without discussing them with the ITT or informing the Minister, *"notwithstanding the potential impact on national security"*. The nub of the matter was of course Pikoli's decision to move ahead with the prosecution of Vlok and the others in the face of opposition from the political level.

280 In the evidence tendered by the government, an add-on complaint was the "outrage" expressed by Chikane about the lack of truth revealed by the plea bargain in relation to the apartheid state's clandestine programme of killing through nefarious means, such as poisoning. It is likely that this concern was included to dress up the main complaint with some moral indignation, since the lack of truth of apartheid-era violations was hardly a concern of those behind the removal of Pikoli.

281 Dr Ginwala was moved to say in her finding that:

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> This complaint also touches very closely on the **constitutional guarantee of independence of the NPA** to prosecute or not to prosecute, and to do so without fear, favour or prejudice. (Bold added).

282 Nonetheless Dr Ginwala did not take this burning issue further as the government abandoned its complaint against Pikoli in respect of the TRC cases. The likely reason was to curtail closer examination of the role of government in relation to the cases. A copy of the Ginwala Commission Report dated 4 November 2008 can be made available on request. The extracts of her findings on the TRC cases complaint are annexed hereto marked **FA40**.

283 Dr Ginwala concluded that the government had not made out a case that Pikoli was not fit for office by reason of his handling of the TRC cases. Indeed, she concluded more generally in her final report that the balance of grounds advanced by government for his suspension had not been established.

284 Dr Ginwala reserved her harshest criticism for Adv Menzi Simelane, who at the time had been Director General of the DOJ since June 2005. She found that he had given contradictory evidence and had deliberately withheld important information from the Commission, thereby attempting to mislead it. She also impugned his conduct as Director General of the DOJ on various grounds.

Striking down of the Guidelines

285 On 12 December 2008, Judge Legodi in the Pretoria High Court issued his judgment in *Nkadimeng 1* which set aside the amendments to the Prosecution Policy as unconstitutional. The judge found that the amendments amounted to an impermissible rerun of the TRC amnesty process and that most of the Part C criteria

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should never feature in prosecutorial decisions. He ruled that the amended policy amounted to "*a recipe for conflict and absurdity*."

286 The NPA Annual Report 2008/09 made the following disturbing report that because the NPA intended to appeal the judgment a further delay in the TRC cases was "*inevitable*" :

> "The TRC Guidelines were declared unconstitutional and invalid by the North Gauteng Provincial Division of the High Court. A decision to appeal the judgment will be made early in 2009. **A further delay in the prosecution of cases emanating from the TRC process is therefore inevitable**." (Bold added)

287 Copies of the relevant pages of this annual report are annexed hereto marked **FA41**. A copy of the full report can be made available on request.

288 The NPA applied for leave to appeal on 7 January 2009, which was opposed by Nkadimeng and the wives of the Cradock Four. The application was dismissed by Legodi J. The NPA did not bother petitioning the Supreme Court of Appeal or approaching the Constitutional Court, presumably because it concluded that there were no prospects of success, or that the objectives of the prosecution policy amendments could be achieved through other ends. As it transpired, the final nail in the coffin of the ill-fated Guidelines did not result in the pursuit of the TRC cases.

Special Dispensation on Political Pardons

289 At a joint sitting of Parliament on 21 November 2007, President Thabo Mbeki announced a special process for the handling of pardon requests made by "*people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC*." According to President Mbeki the aim was to assist the nation in resolving the "*unfinished business*" of the TRC. He said:

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> "As a way forward and in the interest of nation-building, national reconciliation and the further enhancement of national cohesion, and in order to make a further break with matters which arise from the conflicts of the past, consideration has therefore been given to the use of the Presidential pardon to deal with this 'unfinished business.'"

290 Mbeki assured members of Parliament that the new process would be consistent with "*what the nation sought to achieve through the TRC*," and would support the discharge of the President's "*constitutional obligation to consider the requests for pardon from people who have already been convicted for offences they claim belong among the category of offences that were considered by the TRC Amnesty Committee*." The use of the pardon power to accommodate perpetrators who had spurned the TRC amnesty process was in line with the recommendations of the ATT that were made in 2004.

291 Mbeki asked each political party represented in Parliament to appoint a representative, not necessarily an MP, to serve on a Pardons Reference Group (**RG**) charged with considering pardon requests and submitting recommendations to the President. Mbeki pledged that his pardoning decisions would be guided by the values and principles enshrined in the Constitution, as well as the "*principles, criteria, and spirit*" of the TRC.

292 Mbeki announced a window of opportunity for new pardon requests that would open on 15 January 2008 and close on 15 April 2008. Requests would be considered from applicants convicted of offences "*of the nature considered by the TRC during the period up to 16 June 1999.*" A copy of Mbeki's address to Parliament is annexed marked **FA42**.

293 On 16 January 2008, the Presidency released a press statement announcing the beginning of the period of applications for political pardons. A copy of this press

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statement is annexed marked **FA43**. The deadline for applications was subsequently extended to the end of May. The press statement belied the real reason of the process, as it spoke of applicants being "considered for amnesty" rather than pardon.

294 The RG was formally constituted on 18 January 2008 at its first meeting with President Mbeki, during which the Terms of Reference for the RG were adopted. Dr Tertius Delport was elected Chairperson (**Delport**). On 24 January 2008, the DOJ announced that the twelve-page pardon application forms were available at all courts, prisons, DOJ regional offices and websites.

295 Shortly after the creation of the RG, various civil society organisations such as the Centre for the Study of Violence and Reconciliation (**CSVR**) sought to engage with RG. However, Delport declined to meet with the organisations and refused to disclose the RG's terms of reference (which was only published months after the launch of the process) or the list of persons who had applied for a political pardon. The 2300 strong list was only secured through a PAIA application towards the end of 2008. However, leaks to the media disclosed that the applicants included, amongst others:

295.1 Ferdi Barnard, former CCB operative who murdered Wits academic David Webster;

295.2 Letlapa Mphahlele, the Pan Africanist Congress president who ordered the St James's Church massacre;

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295.3 Former apartheid police minister Adriaan Vlok, former police chief General Johann van der Merwe and the three co-accused in the attempted murder of Chikane;

295.4 AWB members who had killed one black person and violently assaulted black people in Kuruman in 1995.

296 The RG ultimately recommended to President Motlanthe, who was Mbeki's successor, that 150 persons be granted a political pardon, including the accused in the Chikane matter and the AWB members referred to above.

297 The civil society organisations were eventually granted a meeting with Delport and some RG members in July 2008 where they complained about the opaqueness of the process and the fact that victims had been entirely excluded from the programme. In a letter dated 7 August 2008, Delport informed the civil society organisations of the RG's conclusion that neither the Terms of Reference nor any law compelled the RG to "call for inputs by the public (in particular the victims)" and the RG accordingly would not accede to requests to incorporate victim input into the process.

298 The civil society organisations made multiple attempts to persuade the RG and the President to change course and incorporate victims into the pardons process without success. The full history of these attempts is set out in the founding papers filed in the matter of *CSVR & Others vs The President*, before the Pretoria High Court in case no. 15320/09, which can be made available on request.

299 In March 2009 several civil society organisations brought an urgent application in the Pretoria High Court seeking to interdict the President from issuing any pardons

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until victims and other interested parties were able to participate in the process and make their representations on each pardon application.

300 The civil society organisations submitted in its court papers that the special dispensation on political pardons amounted to an impermissible rerun of the TRC's amnesty process; unlawfully excluded the participation of victims; violated the rule of law; and infringed the rights of victims to dignity, equal treatment and freedom of expression. On 28 April 2009, Seriti J handed down judgment in which he granted an interim interdict restraining the President from handing down any pardons under the special dispensation for political pardons.

301 On 2 June 2009, Ryan Albutt, one of the AWB members convicted for carrying out a campaign of violent terror against black people in Kuruman approached the Constitutional Court to overturn the interim interdict stopping the political pardon process from proceeding. He was joined in this endeavour by President Jacob Zuma. In February 2010, the Constitutional Court ruled that no political pardon could be issued without first affording the victims a hearing. Attempts were made thereafter by the DOJ to resurrect the Special Dispensation on Political Pardons by allowing victims and interested parties to make representations, but the process was eventually abandoned with no political pardons being granted.

TRC cases remain stuck

302 In the PCLU's presentation of its performance for the financial year of 2007 – 2008 to Parliament's Justice and Constitutional Development Portfolio Committee in March 2007, the following was noted by Ackermann in slide 8 on TRC prosecutions:

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- "Only partial success was achieved **due to intervening factors beyond the control of the unit."**
- "Sixteen cases have been identified for investigation and possible prosecution." (Bold added).

303 The cryptic reference to "*intervening factors beyond the control of the unit*" could only have been the political interference alluded to above and to be described in detail below. The sixteen cases were not identified and none of these cases were taken forward. A copy of the presentation is annexed hereto marked **FA44**.

304 With the political suppression of the TRC cases now in full swing, there was a hiatus of activity for several years, notwithstanding the agitation of families for action. The only notable development in this period was the disappearance of the investigation dockets in the Nokuthula Simelane and Cradock Four cases.

305 It can be safely assumed that little or no work was carried out by the NPA, SAPS or DSO on the TRC cases during 2008. Acting NDPP Mpshe had already relieved Ackermann of his responsibilities in respect of the TRC cases. He could hardly be expected to champion the TRC cases going forward, and indeed he did not. Although Ackermann was still the head of the PCLU he was no longer permitted to work on the TRC cases, and the files were left largely unattended. He retired from the NPA in 2013. In any event, at that stage, no investigator within state structures would touch the cases.

306 Macadam records in his affidavit filed in *Rodrigues* (**FA5**), that in early 2009, Mpshe summoned him to his office and showed him a letter written by SAPS indicating that it was withdrawing from the ITT.

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306.1 Presumably the SAPS took the view that the TRC cases were dead in the water and there was no point in serving on the task team which in practice was doing no work. In addition, following the judgment of Legodi J, the ITT no longer enjoyed a legal basis with the setting aside of the amendments to the Prosecution Policy in December 2008.

306.2 Since the SAPS had not been investigating the TRC cases their withdrawal did not mean much. However, according to Macadam it would mean that going forward, the TRC matters would again not be investigated because a decision had already been taken to disband the DSO.

306.3 Mpshe asked Macadam to negotiate with SAPS and try to get them to agree to investigate the cases. Mpshe also told Macadam to take over the TRC cases.

307 It is hardly surprising that Macadam concluded his 2018 affidavit with this blunt statement: "*[t]hese documents speak for themselves and go a long way in explaining why from 2003 the PCLU constantly struggled to have TRC cases investigated*."

308 Macadam approached Ackermann for advice, and he disclosed that he had previously closed some matters which had not required investigation and handed over a list of some ten cases. Macadam attached to his affidavit as annex RCM6 (at p821) a trail of emails between himself and various role-players in his attempts to get the remaining TRC cases investigated. He initially met with Rayman Lalla, then Divisional Head of the Detective Service of SAPS, who informed him that the National Commissioner had decided that the cases must be handled by the DPCI.

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309 On 18 May 2009, Macadam sent the following email to Deputy NDPP, Adv Willie Hofmeyr (RCM6 at p821), at a time when there was an expectation that Hofmeyr was about to be appointed the new head of the DPCI:

> "I met this morning with Commissioner Lalla concerning the appointment of SAPS investigators to investigate the TRC cases where victims have asked the NPA to look at prosecutions. **We have been taking quite a beating due to the fact that nothing has been done on these matters for a number of years and in fact, in certain cases, the victims are threatening us with *mandamus* applications**. In this regard, Commissioner Lalla asked me to provide him with the names of three/four investigators who had the necessary experience. **We are only looking at a small number of cases, plus minus nine**. Obviously, no progress at all will be made if the investigators do not have previous knowledge of the relevant Apartheid security structures and role players therein.
>
> The only persons I could think of off-hand, were CSI Marion and three/four of his KZN DSO investigators, who were previously involved with the Goldstone Commission and ITU. All these persons have indicated their willingness to transfer to SAPS. **Commissioner Lalla indicated that the TRC investigations would constitute a special tasking and the investigators would be permitted to finalise these cases before taking on other commitments**. He also indicated that he would pay the costs of the investigations from his budget. This would ensure that they could deal with these matters irrespective of whether they are located in DPCI or any other police structure. He asked me to communicate directly with you on this issue." (Bold added).

310 However, Hofmeyr was not appointed to head up the DPCI, so Macadam had to approach the SAPS Commissioner again. On 1 July 2009 he wrote an email (RCM6 (at p822) to Superintendent Colla Bezuidenhout at the SAPS headquarters seeking a meeting with the Commissioner to discuss the TRC cases. He advised in the email:

> "We are under intense pressure and have been called upon to report on progress to the Minister and the Justice Portfolio Committee. **The one matter which requires investigation prescribes on 12 September 2009 and this case must be fully investigated and the family afforded an opportunity to exercise their right to a private prosecution before the crime prescribes**." (Bold added)

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311 Macadam was told to meet with Commissioner Anwar Dramat, the newly appointed Head of the DPCI. He then made a number of unsuccessful attempts to secure a meeting with Dramat. During this period, the unidentified case that was due to prescribe on 12 September 2009, prescribed without being taken further. It can be safely assumed that a large number of other crimes associated with the TRC cases prescribed during this period.

312 I am advised that at this time the family of the late Nokuthula Simelane and their representatives were working behind the scenes to persuade the Minister of Police to appoint investigators to take on the TRC cases.

313 Ultimately Macadam met with Assistant Commissioner Godfrey Lebeya on 26 November 2009 where the issue of conducting investigations was discussed resulting in Macadam addressing a letter to Lebeya on 18 January 2010, which is attached to Macadam's affidavit (**FA5**) as annex RCM7 (at p826). The letter is reproduced below:

> "My letter dated 13 July 2009, addressed to Deputy National Commissioner Dramat and Divisional Commissioner Lalla, and our meeting of 26 November 2009 have reference.
>
> The issue related to the appointment of investigators to investigate the 11 matters identified by the NPA, which were itemised in my letter of 13 July 2009. Subsequently, the Acting National Director of Public Prosecutions declined to prosecute in the Lubowski matter and consequently, only the remaining 10 cases on the list required attention.
>
> **Senior Superintendent Bester of your office attended our meeting and informed you that he was in possession of a number of further dockets which he felt also required investigation. On 6 December 2009, I had a meeting with Senior Superintendent Bester and established that these dockets related to cases against the Liberation Movements in respect of which a decision was taken in 2004 by the then National Director not to prosecute. It should be noted that in the main, all the suspects implicated in the dockets had applied for and received amnesty. I therefore informed Senior Superintendent Bester that there was no basis upon which these cases could be reopened.**

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> Consequently, only the remaining 10 cases on the list require attention. Since you raised the sensitivity of the matters with me, the National Director of Public Prosecutions was given a full written briefing on the matters. I had a meeting with him today and he indicated that SAPS should in fact investigate all the matters which required investigation. The matters should be referred to my office once the investigations have been concluded. Should you require any guidance as to how the matters should be investigated, you are at liberty to approach me for any such assistance which you might require.
>
> Given the nature of the cases, it may be desirable that we meet to discuss the issues in person and in this regard, I would be grateful if you could indicate when you would be available to meet with me." (Bold added).

314 Senior Superintendent Louis Bester was appointed to oversee the investigations of the ten remaining TRC cases. It appeared that Bester was particularly interested in pursuing cases against members of the former liberation movements. As it transpired, he made no progress in the cases against former apartheid security officers and operatives.

315 On 1 December 2009, President Jacob Zuma appointed Adv Menzi Simelane as NDPP. This was announced in a government press release dated 30 November 2009, ironically titled "*Simelane fit to hold office*." The appointment was made notwithstanding the damning findings made against him by the Ginwala Enquiry.

316 While he was DOJ Director General, Simelane had pressed Pikoli to remove Ackermann from the TRC cases. I can only speculate, but I believe that the probabilities are high that it was also Simelane who asked Acting NDPP Mpshe to remove Ackermann from the TRC cases, following the suspension of Pikoli. The arrival of Adv Simelane at the helm of the NPA was to doom the TRC cases to further neglect.

317 According to Macadam, one of the first steps taken by Adv Simelane was to instruct him to oversee various investigations of corruption cases being conducted by the

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DPCI in the Northern Cape. He thereafter appointed Macadam to represent the NPA in two civil matters where decisions of the NPA not to prosecute international crimes (known as the Zimbabwe Torture Docket case) were challenged. Macadam was also deflected with cases in which complaints had been made against the NPA for failing to prosecute current and former heads of state for crimes against humanity. This workload effectively prevented Macadam from returning to the TRC cases, but he nonetheless opened more cases "*due to representations being received in new matters.*"

318 An example of the neglect was the failure of both the DOJ and the NPA to orchestrate the reconvening of an Amnesty Committee to rehear the amnesty applications of Martin van Zyl and Johannes Koole in the PEBCO 3 matter, as had been ordered by the High Court in 2009. The NPA and DOJ jointly arranged the withdrawal of charges against Van Zyl and Koole, pending the outcome of the reconvened Amnesty Committee, which they never established, thereby guaranteeing impunity for the two suspects who went to their graves without facing justice.

319 The NPA Annual Report 2009/10 noted that the TRC cases had to be investigated before prosecutorial decisions could be made but that "*since 2003*" it had "*struggled to secure the necessary cooperation in this regard*":

> "TRC cases: The PCLU is required to advise the NDPP in making decisions whether or not to prosecute in cases arising from the TRC process. Matters need to be fully investigated before any final prosecution decision can be made. **Since 2003, the NPA has struggled to secure the necessary cooperation in this regard.** With the establishment of the DPCI, the responsibility for such investigations was transferred to this unit. **The PCLU had to recommence its negotiations de novo**. Currently, **the DPCI has indicated that it will conduct the necessary investigations, but only after the conclusion of the 2010 FIFA World Cup**, due to the fact that it

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has a number of special responsibilities in connection with this event." (Bold added).

320 The relevant pages from this annual report are annexed hereto marked **FA45**. The full report can be provided on request. It is noted that the DPCI indicated that it would not look at the TRC cases until after the 2010 FIFA World Cup, which only concluded on 11 July 2010. However, even after the World Cup there is little evidence that the TRC cases were taken forward.

321 It is significant that this was the last mention of the TRC cases in the NPA's annual reports until 2016, which reflects the general neglect of these cases during those years. There were only references to the work of the NPA's Missing Persons Task Team (**MPTT**), which had done pioneering work locating the graves of persons killed during apartheid, exhuming and identifying the remains, and facilitating their reburial. The MPTT is not involved in the prosecution of cases.

322 Adv Menzi Simelane appeared before the Justice Portfolio Committee on 12 April 2010 where he confirmed that the NPA was not prosecuting any TRC cases. The minutes, a copy of which is annexed hereto marked **FA46** reflect the following:

> "Adv Simelane said that there were no cases that the NPA was currently prosecuting regarding post TRC matters. The reason being that the dockets were still with the police for investigation."

323 The following year, Adv Simelane appeared before the Justice Portfolio Committee on 20 March 2011 to discuss the NPA's Strategic Plan for 2011. The minutes reflect the following discussion in which Simelane claimed that the issue of the DPCI not assisting the PCLU was now solved:

> "Ms Smuts asked if the NDPP could confirm if the DPCI was not indeed assisting the PCLU in post Truth and Reconciliation (TRC) Unit matters.

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> Adv Simelane replied that the DPCI not assisting the PCLU was an old matter as there were no problems now."

324 This was the last time the TRC cases appeared in the minutes of the Justice Portfolio Committee until 2017. This was remarkable given that there was zero progress on the TRC cases in this 6-year period.

325 Following the Supreme Court of Appeal ruling on 1 December 2011 setting aside Adv Menzi's Simelane appointment as NDPP, Adv Nomgcobo Jiba was appointed Acting National Director of Public Prosecutions and held the position until 4 August 2013. It appeared that for certain times during this period, Dr Silas Ramaite also acted in this post.

326 In October 2012, the Constitutional Court confirmed that President Jacob Zuma's appointment of Adv Simelane as NDPP was invalid. In a unanimous judgment the Court held that "*dishonesty is inconsistent with the conscientiousness and integrity required for the proper execution of the responsibilities of the NDPP.*"

327 In August 2013, President Zuma appointed Mr. Mxolisi Sandile Oliver Nxasana as NDPP, and he assumed the post on 1 October 2013.

327.1 When Nxasana was appointed as the NDPP, he removed Macadam from his duties at the PCLU in order to act as a dedicated prosecutor in foreign bribery cases.

327.2 Adv Shaun Abrahams, then a Senior State Advocate, was appointed to take the TRC matters over from Macadam. It is evident that Abrahams made little or no progress in the TRC cases while he was leading the PCLU.

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327.3 After a protracted enquiry into his fitness to hold office, Nxasana stepped down as NDPP on 1 June 2015 and thereafter Abrahams was appointed NDPP.

The missing Cradock Four docket

328 Macadam filed an affidavit dated 24 May 2021 as part of the NPA's Rule 53 record in the matter of *Calata and Others v NDPP and Others*, Case No. 35447/ 2021 Gauteng Division, a copy of which is annexed hereto marked **FA47** (**Macadam's Rule 53 affidavit**). In this affidavit he indicated that during April 2013, while he was deputy director of the PCLU and Abrahams was the acting head, they received a request for information about the Cradock Four case from a Ms Lepinka who was the personal assistant to Acting NDPP, Adv Nomgcobo Jiba. Abrahams responded to the request. Shortly thereafter, Macadam was asked to hand over the investigation docket, Swartskop CR 13/07/1985, to the Office of the Acting NDPP, which he did.

329 Macadam then avers that at a "*certain stage*", without disclosing a date, that Adv TP Pretorius SC, then Acting Head of the PCLU, asked him for the Cradock Four docket, and he advised Pretorius that "*it had been uplifted from our office*" and was missing. Macadam did not disclose why Pretorius was seeking the docket. This exchange must have happened between 2016, when Macadam returned to his normal duties after working on foreign bribery cases, and April 2019 when he assumed the position of Acting Head of the PCLU.

330 What is evident from the Macadam affidavit is that, at the very least, no investigations on the Cradock Four docket occurred between 2013 and 2019, when

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he took steps to assist the investigating officer to reconstruct the docket. This was a period of some six years.

331 It is also evident that in this six-year period, the PCLU leadership took no steps to recover the docket, let alone carry out any work on the case. If no work was happening on one of the most well-known and emblematic cases from our history, it can be safely assumed little or no work was being done on most, if not all of the TRC cases. This suggests that the suppression of the TRC cases was still in place through much of the second decade of this century, alternatively its impact had denuded the will and capacity of the authorities to act.

332 Equally revealing from Macadam's Rule 53 affidavit is the claim that the missing docket only comprised of an enquiry into unfounded rumours around one General Hankel and the inquest and TRC records, which were "*easily re-obtainable*".

332.1 This confirms that prior to 2013, little or no substantive work was conducted in the decades between the Zietsman inquest and the TRC in the early to mid-90s, and the reconstruction of the docket that commenced in 2019. This means there was a suspension of substantive work on the case for more than 20 years.

332.2 The reconstruction of the docket in 2019 only occurred because me and my family instructed the FHR and my attorneys to engage with the NPA and DPCI to get this case off the ground. Indeed, the FHR's private investigator assisted with the reconstruction of the docket.

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Simelane family takes legal action

333 Thembi Nkadimeng, sister of the slain Nokuthula Simelane, in her founding affidavit in *Nkadimeng 2*, noted the following:

> "We thought that the striking down of the amendments to the Prosecution Policy meant that the path was eventually cleared for justice to take its course. Again, we were wrong. This time the prosecutors claimed that the police were refusing to provide investigators. Again, they said their hands were tied. It took a high-level intervention for an investigating officer to eventually be appointed to the case in 2010; but the docket had apparently gone 'missing'."

334 Towards the end of 2012, the family of Nokuthula Simelane realised that the authorities had no intention of pursuing justice in their case, and they now pressed for an inquest:

> "By the end of 2012, even after finding the docket, there was no progress. It was clear to me that the authorities were not going to investigate the case seriously, let alone prosecute anyone. They even refused to charge those police officers involved in the kidnapping who did not apply for amnesty. At the beginning of 2013, the 30th year of Nokuthula's disappearance, and 18 years since the opening of the police docket, I gave up on a prosecution and demanded the holding of a judicial inquest into her death."

335 Nkadimeng looked into the possibility of launching a private prosecution, but although she was supported by pro bono lawyers, she was advised that she would have to raise a considerable sum of money to lodge as security of costs for the legal costs of the accused, which she would have to pay if the accused were acquitted. These costs were unaffordable, and she accordingly wrote a letter to the Acting NDPP on 29 January 2013 requesting that her sister's case be referred to a formal inquest before the High Court (TN20 at p289). A copy of the letter is annexed hereto marked **FA48**. Nkadimeng wrote:

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> "If the authorities were going to prosecute this matter such prosecution would have taken place many years ago. This case has dragged on for way too long, and such delay has undermined the prospects for justice and played into the hands of the perpetrators. With every day that goes by without action being taken, the interests of justice are severely eroded. Moreover, and most regrettably, we have lost complete faith in the PCLU to run a successful prosecution."

336 The Simelane family reported the inaction of the South African authorities to the United Nations Special Rapporteur on Enforced Disappearances who in turn corresponded with the government. A copy of the letter received from the Chairperson of the Working Group on Enforced or Involuntary Disappearances dated 24 July 2013 is annexed hereto marked **FA49**.

337 Nkadimeng's request for the holding of an inquest was refused. Remarkably, the NPA claimed that their investigations were still not yet complete. She wrote in her affidavit:

> "My family and I do not believe that the NPA is acting in good faith. Indeed, we have lost all confidence in the prosecutors and police. They have betrayed our trust. Given their past idleness such investigations could drag on indefinitely while witnesses and suspects grow old and die. Since January 2013 my lawyers and I have engaged in extensive communications with the offices of the first and second respondents [the NDPP and the National Commissioner of the SAPS] in an effort to persuade them to finalize their apparent investigations or at least refer the case to a judicial inquest. More than 20 months later these efforts have come to naught.
>
> The historic compromise which gave birth to the new South Africa demanded that those perpetrators denied amnesty, or who did not apply for amnesty, would face follow-up. This has not happened. The state has systematically and deliberately dragged its feet or blocked justice in this case and many others. We know who abducted, tortured and murdered Nokuthula. They were meant to face justice or appear before a judicial inquest. More than 30 years have passed since Nokuthula's disappearance, but neither has happened. We cannot bury her and we can find no peace. The betrayal of my sister, and what she stood for, is almost complete."

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338 On 20 May 2015, Nkadimeng brought an application before the High Court in *Nkadimeng 2*. Since these papers are voluminous, they can be supplied on request. Nkadimeng sought an order compelling the NPA and SAPS to finalise their investigations and an order compelling the NPA to take a prosecutorial decision, or to take steps to hold an inquest in the High Court. She also sought an order declaring that her fundamental rights had been violated by the prolonged delay of the authorities to finalise the case.

339 The papers exposed the real reason for the long delay, namely the political interference that resulted in the suppression of the TRC cases. In this regard, supporting affidavits were provided by Pikoli and Ackermann, which are the same affidavits attached to this founding affidavit as **FA22** and **FA8**.

340 The response of the authorities was remarkable to say the least. No answering affidavit was filed disputing the assertions of Nkadimeng, Pikoli or Ackermann. No public statement was made denying that the TRC cases had been suppressed through political interference. Instead, Abrahams contacted Nkadimeng's counsel to commence settlement discussions, which took place. Once the NPA undertook to act, the litigation was placed in abeyance.

341 On 14 March 2016, the NPA charged former SB officers Willem Helm Johannes Coetzee, Anton Pretorius, Frederick Barnard Mong and Msebenzi Timothy Radebe with the murder of Nokuthula Simelane. More than eight years later they have still not stood trial. Mong and Radebe have died and Coetzee claims that he is mentally unfit to stand trial.

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NPA under pressure

342 Following the launch of the aforesaid application which generated attention in the media, other families began to agitate for action on their cases, such as the families of detainees who had died in apartheid security detention, including the families of Ahmed Timol and Neil Aggett. They were supported by the FHR who arranged pro bono lawyers to take their cases forward.

343 Macadam states in his affidavit that following the appointment in June 2015 of Abrahams as NDPP, he met with Abrahams and indicated his willingness to return to the TRC cases if he was relieved of his responsibilities with the foreign bribery cases. Abrahams advised that he was thinking of taking all the TRC cases away from the PCLU but did not terminate Macadam's appointment as the foreign bribery prosecutor.

344 According to Macadam the bribery cases were subsequently transferred to another business unit in the NPA, freeing him up to return to the TRC cases. It is apparent that Macadam was beginning to feel the heat. He wrote in his affidavit:

> "**The TRC cases had however become important due to complaints about delays in finalising certain matters. I therefore decided to again give attention to the matters.** One of the matters which I had decided should be investigated was the Aggett-matter which also related to a death in detention. At that stage the Timol-matter was receiving attention in the media and I recall specifically a TV interview with Adv Bizos SC (Bizos) in which he alleged that Mr Timol had been murdered. I therefore considered it appropriate to request the DPCI to re-open the matter and gave various instructions (dealt with hereunder) regarding the further investigation of the case." (Bold added).

345 However, Adv Andrea Johnson who was then the acting Head of the PCLU, instructed Macadam and a colleague to halt work on the TRC cases as they were

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going to be removed from the PCLU. Macadam was concerned about this development:

> "I was however concerned that **this would result again in the cases being neglected** resulting in me drafting a Memorandum in January 2016 requesting the NDPP to confirm whether the TRC cases would be dealt with by the PCLU or the DPPs. I did not receive a reply to this Memorandum and at this stage cannot locate my copy thereof." (Bold added).

Historic reopening of the Timol inquest

346 On 19 January 2016, the late Frank Dutton and representatives of the Timol and Aggett families, including Advocates Howard Varney and the late George Bizos SC, made a presentation to the NDPP, senior head office members and the PCLU urging the reopening of the inquests in these two cases. Dutton presented considerable evidence, including important witness testimony, that was not led before the original inquests. A copy of Dutton's presentation can be provided on request.

347 On 21 June, 8 July, 11 and 23 August 2016; Webber Wentzel, representing the Timol family, threatened legal action against the NPA if a decision was not taken timeously to reopen the inquest. In these letters the attorneys pointed out that witnesses were elderly and sickly and could pass away at any moment. On 25 October 2016, the PCLU confirmed in a letter that the NDPP had written to the Minister of Justice requesting him to approach the Judge President of the Gauteng High Court to appoint a Judge to reopen the inquest in the interest of justice. Copies of the aforesaid letters can be supplied on request.

348 Between June and August 2017, the historic reopened inquest (IQ01/2017) into the death in detention of Ahmed Timol was held in the High Courts of Johannesburg and Pretoria. Judge Mothle handed down his judgment on 12 October 2017 ([2017]

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ZAGPPHC 652). He found that prior to his death Timol was grievously injured following more than four days of unrelenting torture at the hands of the SB. The reopened inquest found that Timol did not jump or dive, as alleged by the police, but was pushed by members of the SB, and that such act amounted to murder. Prior to this finding the Timol family had to live with the fraudulent finding of the first inquest that Timol had taken his own life – a pain that they had to endure for 46 years.

349 In his judgment Judge Mothle supported the call by the Timol family for:

> "**The energetic and vigorous investigation of outstanding apartheid-era cases before it is too late, which may involve the creation of a dedicated team of carefully selected investigators and prosecutors.** All State entities should be required to supply all information at their disposal to this team.
>
> All files pertaining to political detainees of the apartheid-era must be made easily accessible to the families seeking answers." (Bold added).

350 Judge Mothle found that former police officer Joao Rodrigues "*participated in the cover up to conceal the crime of murder as an accessary after the fact and went on to commit perjury by presenting contradictory evidence before the 1972 and 2017 inquests. He should accordingly be investigated with a view to his prosecution*."

351 On 30 July 2018 the NPA charged Rodrigues with the murder of Timol as well as with obstructing the course of justice by providing false evidence to the reopened inquest in order to mislead that court. A copy of the indictment can be supplied on request.

Rodrigues permanent stay application

352 On 18 October 2018, Rodrigues filed an application in the Gauteng Division of the High Court (Case No. 76755/2018) seeking a permanent stay of his prosecution on

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the claimed grounds that the long delay in prosecuting him violated his rights to a fair trial. Since Rodrigues had not cited the Timol family as an interested party they were forced to intervene in the proceedings and were admitted as the Fourth Respondent. A full set of the papers in the permanent stay proceedings can be provided on request.

353 In the Timol family's answering papers, Imtiaz Cajee, Timol's nephew, explained the lapse of time between the murder of Timol in 1971 and the bringing of criminal charges in 2018. He explained that during apartheid the police and organs of the apartheid State colluded in covering up the crimes committed against Timol. During the TRC's amnesty process no action was taken as the authorities were probably waiting to see if perpetrators of apartheid-era crimes would seek amnesty in exchange for full disclosure. It was the inaction in the post-TRC period that needed to be explained. However, the NDPP and the Ministers of Justice and Police offered no explanation in their answering affidavits.

354 Cajee in his answering affidavit explained that the delay in the post-TRC period was attributable to the political interference in the TRC cases. He relied on the documents disclosed in *Nkadimeng 2* and attached these to his affidavit including the secret ATT report and the affidavits of Pikoli and Ackermann and their annexes.

355 Despite the severity of the averments of gross political interference, the state respondents chose to remain silent and did not file further affidavits. Then, on 16 January 2019, the NPA's spokesperson, Luvuyo Mfaku and a spokesperson for the Minister of Police, Hangwani Mulaudzi, were interviewed by Joanne Josephs on Radio 702. A copy of the transcript of this interview was attached to Cajee's

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supplementary affidavit and can be made available on request. During this interview, the NPA spokesperson indicated that:

355.1 Macadam had "*actually filed and deposed an affidavit outlining all the delays*" in prosecuting apartheid era crimes.

355.2 The NPA would "*never contest*" the allegations of political interference contained in the aforementioned affidavits of Pikoli and Ackermann and that "*[i]f they are saying that there was that interference then they have exclusive knowledge of what was happening. I would never contest that*".

356 Indeed, in the affidavit filed by Adv Pretorius SC on behalf of the NPA on 8 December 2018, he referred to annexing Macadam's affidavit, but it was not attached. The Radio 702 interview prompted Cajee to file a supplementary affidavit on 25 January 2019 pointing out that the NPA had withheld the affidavit of Macadam. Cajee called on the NPA to file Macadam's affidavit and asserted that withholding it amounted to obstructing the administration of justice.

357 On 4 February 2019, Adv Torie Pretorius SC, on behalf of the NPA, filed a supplementary answering affidavit, along with the Macadam affidavit and annexes. It turned out that Macadam had signed his affidavit on 1 November 2018, and it was available from that date. As pointed out above, the Macadam affidavit admitted that the Timol case and the other TRC cases were suppressed, and he provided details and evidence to illustrate the obstruction.

358 No attempt was made by Pretorius SC to explain why the Macadam affidavit was not filed with his answering affidavit on 8 December 2018, even though it was available from 1 November 2018. Cajee assumed that the Macadam affidavit was

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held back in order not to reveal the disclosures made therein. It is apparent that even as late 2018 the NPA was attempting to withhold information about its role in the suppression of the TRC cases. In its judgment, the Court saw fit to censure the NPA for its attempt to withhold the affidavit of Macadam, noting that:

> "The suggestion that it was deliberately withheld from this Court is difficult to refute especially given its seriousness and the detailed allegations contained therein of political interference."

The NPA admits to the political interference

359 By early 2019 it appeared that the NPA had come to the view that the game was up, and it was time to admit that the organisation had succumbed to political pressure. Adv Pretorius SC in his supplementary affidavit of 4 February 2019 admitted, on behalf of the NPA, for the first time, the political interference and its unlawfulness. A copy of this affidavit (at p752 of the Rodrigues record) is annexed hereto marked **FA50** (excluding the annexed Macadam affidavit, which is already attached to this affidavit).

360 Significantly, Pretorius SC, in his supplementary affidavit, specifically states that he does not deny the contents of the Pikoli and Ackermann affidavits. The NPA admitted to the political interference in the following extracts from the Pretorius SC affidavit:

> "I strongly deny that the first respondent [NPA] is responsible for the delays upon which the fourth respondent [Cajee] seeks to rely. **Even on the evidence upon which the fourth respondent relies, it is clear that the prosecution was delayed as a result of political interference by others**. (Bold added) (para 2.3)
>
> When regard is had to the nature of the crime, **it should not be surprising that the government of the day may have taken steps to find a political solution to the political murders which were perpetrated by agents of the pre-1994 government.** It is irrelevant as to what one calls such steps.

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The fourth respondent calls them political interference with the National Prosecuting Authority. (Bold added) (para 2.10).

The first respondent does not deny that the executive branch of the State took what one can describe as political steps to manage the conduct of criminal investigations and possible prosecution of the perpetrators of the political murders such as that of Mr. Timol. When regard is had to what advocates Pikoli, Ackermann and Macadam say in their affidavits confirming political interference with the first respondent's prosecutorial decision-making processes, it is clear that it is in fact not the first respondent who stalled the investigations and prosecution of cases such as the present. For this reason, no purpose would be served by throwing stones at the first respondent. (Bold added) (para 2.11).

When regard is had to what the fourth respondent says in paragraph 84, **the only conclusion to arrive at is that the delay in prosecuting the applicant was not as a result of the first respondent's own doing or its malice – it was as a result of the political interference and the "*severe political constraints*"** to which the first respondent was subjected. (Bold added) (para 2.12).

[Cajee] relies on certain incidents which he says constitute evidence of political interference. **None of these incidents were created by the first respondent**. On fourth respondent's own version, "*the NPA and its officials dealing with my uncle's case ... became subjected to severe political constraints ...*" There is no doubt that the National Prosecuting Authority and its officials could not have subjected themselves to the "*severe political constraints*" referred to by the fourth respondent. (Bold added) (para 2.13).

It is important that I highlight some of the contents of Pikoli's affidavit **which clearly indicate that the [NDPP] and its officials were indeed, as alleged by fourth respondent, subjected to severe political constraints** as a result of which, on [Cajee's] version, it was "*extremely difficult, if not impossible, for them to carry out their responsibilities under law.*" (Emphasis added) (para 2.21).

The contents of both Pikoli and Ackermann's affidavits give this Court an opportunity to reaffirm the constitutional independence of the National Prosecuting Authority of this country and **send a clear message that political office bearers should stop interfering with prosecutorial decisions** unless otherwise authorized to do so by law. (Bold added) (para 2.28).

What one sees in Pikoli and Ackermann's affidavits is that **the political interference and political pressure brought to bear upon the highest office of the National Prosecuting Authority was far from being authorized by law.** This being the case, there can be no rational basis to use such unlawful political interference and political pressure to justify the permanent stay of criminal prosecution which the applicant seeks in this application. (Bold added) (para 2.29).

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> I agree with what the fourth respondent says in paragraph 88 of his answering affidavit that the manipulation of the criminal justice system to protect individuals from criminal prosecution serves an ulterior and illegal purpose and that it constitutes bad faith, it is irrational, it interferes with the independence of the National Prosecuting Authority and amounts to a gross subversion of the rule of law. This, however, does not justify the granting of the permanent stay of criminal prosecution which the applicant seeks in this application. (para 2.30).
>
> When regard is had to the contents of Chris MacAdam's affidavit, **it is clear that he did all he could under the political environment which prevailed at the time which, as the fourth respondent himself has indicated in his answering affidavit, was clearly not in favour of prosecuting cases** such as the present. For this reason, the insinuation against Chris MacAdam is wholly misplaced. (Bold added) (para 2.38).

361 Pretorius SC painted the NPA as an unfortunate victim of circumstance. He stressed that the NPA was not the source of the interference; and asked the Timol family not to "*throw stones at the NPA*" when it was simply on the receiving end of the political interference. Pretorius implied that the NPA was powerless to stand up to the interference and assert its independence.

362 Pretorius SC even suggested that the NPA had little choice in the matter because the NPA "*prosecutes on behalf of the State*".

362.1 However, I am advised that he erroneously conflates the concept of the '*State*' with that of the '*government*'. The NPA does not represent the government as the State Attorney does. It should never take instructions from government in relation to prosecutorial decisions.

362.2 The State represents higher societal interests. Public prosecutors act on behalf of society and must act in the public interest. They must apply the law without fear, favour or prejudice particularly when serious breaches of the law carry a criminal sanction.

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362.3 In this case, with the exception of Pikoli and Ackermann, the NPA as a whole were happy to take instructions from government in exercising prosecutorial discretion. They acted timidly and shamefully in the face of a government seeking to impose its will on them.

363 Pretorius SC asserts that the halting of investigations and prosecutions of the TRC cases was not the result of its "*own doing or its malice*". It was the "*result of the political interference and the 'severe political constraints' to which the first respondent* [the NPA] *was subjected*". This attitude explains how the NPA was so easily 'captured' in relation to the TRC cases, and then subsequently in respect of the cases dealing with systemic political corruption.

364 Effectively, the NPA leadership states that once the politicians leaned on them, they were obliged to comply with their demands and accordingly cannot be held accountable. However, this claim flew in the face of the prevailing law, as was pointed out by the Timol family's submissions in the Rodrigues stay of prosecution case. While the pressure brought to bear on the NPA was exerted by outside forces, the institution and its officials were under a clear legal duty to reject such improper interference and obstruction. The various constitutional and statutory lapses committed by the NPA and those behind the interference will be dealt with later in this affidavit.

365 While the NPA has admitted that it succumbed to political interference, those organs of state who actually applied the pressure remain conspicuously silent. To their discredit, to date, neither the President nor any member of cabinet, past or present, have expressed any regret or remorse, or offered an apology for the deep betrayal of victims of past atrocities.

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366 In its judgment, the full court in *Rodrigues v NDPP & Ors* [2019] 3 All SA 962 (GJ) dismissed the application for a stay of prosecution and concluded that:

> "[21] What occurred in the period from about 2003 and 2017 was that all investigations into TRC cases and other crimes of the past were stopped as a result of an executive decision taken at a high level that purported to interfere with the National Prosecuting Authority's prosecutorial decision making."

367 The Court expressed its dismay at the political interference and dismissed the NPA's attempt to portray itself as a victim and directed that those complicit should be brought to the NDPP's attention for action. It also directed that the Executive and NPA provide a public assurance that such interference will never occur again and called on them to specifically indicate what measures will be put in place to prevent such recurrence. The full bench rejected the attempt of the NPA to paint itself as a victim and called for an investigation:

> "[64] Of course, it may well be asked, what was the NPA required to do in the face of high-level political interference? Rather than simply succumb to it, it was open and incumbent upon the NPA to have brought this interference into the open. Victims of those crimes where investigation and prosecution was being suppressed certainly had the right to know what was happening and why such cases were not being prosecuted. **Society as a whole had an ongoing interest in the work of the TRC and the follow-up that the government had committed itself to**. Parliament, which ultimately represents the legislative authority of the state, had a right to know when the letter and spirit of legislation that it had passed was being deliberately undermined. None of this occurred and **the NPA must accordingly accept the moral and legal consequences of this most serious omission and dereliction of duty on its part**.
>
> [65] It is also for these reasons that **the conduct of the relevant officials and others outside of the NPA at the time should be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular, to consider whether any action in terms of Section 41(1) of the NPA Act is warranted**." (Bold added)

368 Rodrigues approached the Supreme Court of Appeal, which in *Rodrigues v The National Director of Public Prosecutions and Others* [2021] 3 All SA 775 (SCA)

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dismissed his appeal stating that it was "*perplexing and inexplicable*" why the TRC cases were suppressed:

> "It was during this 14-year period [2003 – 2017] that the Executive adopted a policy position conceded by the State parties that TRC cases would not be prosecuted. It is perplexing and inexplicable why such a stance was taken both in the light of the work and report of the TRC advocating a bold prosecutions policy, the guarantee of the prosecutorial independence of the NPA, its constitutional obligation to prosecute crimes and the interests of the victims and survivors of those crimes.
>
> All these considerations, either viewed individually or collectively, should have stood in the way of any such a moratorium on the prosecution of TRC era cases. That it happened despite the constitutional, legal and other considerations suggests disdain for those important considerations and interests. The Full Court rightly recommended a proper investigation into these issues by the NDPP and a determination whether any action in terms of section 41(1) of the National Prosecuting Authority Act 32 of 1998 (NPA Act) was necessary".

369 Rodrigues filed an appeal to the Constitutional Court, but he died on 7 September 2021 bringing an end to the efforts to hold him to account.

WAS THERE A POLITICAL AGREEMENT NOT TO PROSECUTE?

370 While the evidence uncovered points to a desire on the part of the government to close down the TRC cases in order to protect ANC members from prosecution, there have also been public statements raising the possibility of an agreement or 'informal agreement' between political stakeholders not to prosecute apartheid-era crimes.

371 In a parliamentary question (NW2290) put to the Minister of Justice on 10 November 2020, Mr G Hendricks of the Al Jamah-Ah party asked for the reasons why no perpetrators of Apartheid-era killings of leaders such as Imam Haron, Steve Biko, Suliman 'Babla' Saloogee and hundreds of others had been prosecuted. He asked in particular, if the reason was the result of any "*agreement, secret or otherwise*"

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and "if so, was the agreement legal or political?" The Minister replied as follows: "*The NPA is unaware of such an agreement.*"

372 On 5 July 2021, the FW de Klerk Foundation released an editorial titled "The NPA's Decision to Prosecute 'Apartheid Era' Crimes", a copy of which is annexed hereto as **FA51**. The editorial referred to an 'informal agreement' not to prosecute apartheid era crimes:

> "Because of an informal agreement between the ANC leadership and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid era crimes."

373 In response to this editorial, Good Party secretary general Brett Herron said in a media article (Tymon Smith, A Renewed Commitment to the TRC Cases, Mail & Guardian, 26 July 2021) that De Klerk's reference to the agreement "*confirms one of South Africa's most disgraceful secrets*" and that it:

> "further confirms that the NPA was captured long before the term 'state capture' rose to the prominence it has, and that the ANC had accomplices in the genesis of our current capture pandemic, the party of apartheid led by De Klerk".

374 Herron described the editorial as "*a thinly veiled threat to the NPA to stay in its lane or the ANC will face consequences*". He added that "*what the De Klerk Foundation really wants is for the terms of its informal amnesty deal with the ANC to be upheld by the NPA*". A copy of this article is annexed hereto marked **FA52**.

375 The meeting report of the Justice Portfolio Committee meeting of 8 December 2021, disclosed that Hendricks asked Minster Ronald Lamola whether the government "*had been hampered by decisions taken at the Convention for a Democratic South Africa (CODESA) not to prosecute the TRC cases.*" He said, "*Minister Lamola had*

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to be honest with South Africa." The Minister said he "*was not aware of any agreements which provided that there would be no prosecutions of TRC matters*." The relevant extracts of this meeting report are annexed hereto marked **FA53**.

Deliberations on a further immunity

376 During July 1998, former SADF Generals called for a blanket amnesty for all sides. See the SAPA press release dated 14 July 1998 annexed hereto marked **FA54**.

377 In March 1999, the TRC denied the amnesty application of 37 ANC leaders, which included then Deputy President Mbeki.

377.1 The application was denied since it did not disclose any individual offences. See the SAPA press release dated 4 March 1999 annexed hereto marked **FA55**.

377.2 Shortly thereafter, Mbeki informed Parliament that government was considering further amnesty proposals that had been put forward by SADF generals. See the article titled '*Generals, ANC members talk about amnesty*' dated 1 January 2002, annexed hereto marked **FA56**.

377.3 Mbeki also sought to adjust the TRC legislation to allow for the grant of amnesty for collective responsibility, without the need for individual disclosure. An ANC spokesperson suggested that the SADF generals had promised to "come clean" but only if they were guaranteed amnesty. See the SAPA press release titled "*Mbeki wants changes to TRC rules on amnesty*" dated 22 May 1999 annexed hereto marked **FA57**.

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378 Bubenzer in his book in a chapter titled "*Bargaining Over the TRC's Legacy*" detailed secret consultations between the ANC government and representatives of the SADF and the security police from 1998 until early 2004. The main aim appeared to be to reach agreement on a legislative solution on how to avoid prosecutions in the wake of the TRC. A copy of the relevant extracts from Bubenzer's book are annexed hereto marked **FA58**.

379 According to an interview conducted by Bubenzer with former police commissioner and head of the Foundation for Equality Before the Law (**FEL**), Johann van der Merwe, in Pretoria on 5 May 2006, former President F.W. de Klerk assumed a central role in the consultations. According to Bubenzer:

379.1 De Klerk often consulted with President Mbeki directly or with other high-ranking members of the government.

379.2 The FEL's aim was to find a solution to avoid the prosecution of former members of the SAP who had not received amnesty.

379.3 Since a general amnesty was not politically or constitutionally feasible, the FEL proposed an indemnity procedure based on admission of the crime committed, but without the need to make full disclosure.

379.4 The talks continued until 2004, without an agreement being reached.

380 However, the approach proposed by FEL in relation to the '*admission of crimes but no full disclosure*' was adopted by the Pardons Reference Group established by President Mbeki under the Special Dispensation for Political Pardons in 2007.

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381 According to an interview conducted by Bubenzer with former SADF General Jan Geldenhuys (**Geldenhuys**) in Pretoria on 10 May 2006, consultations between government and a group of high-ranking former generals of the SADF commenced during 1998.

381.1 Former Chief of the SADF, General Constand Viljoen was approached by Jacob Zuma, then Deputy President of the ANC with the aim of discussing questions of criminal accountability arising from the past. Viljoen referred Zuma to Geldenhuys and the Contact Bureau (known in Afrikaans as the Kontak Buro).

381.2 As with the police negotiations, these talks were aimed at finding a mutual arrangement to avoid post TRC trials through a new indemnity mechanism. The government was represented by Jacob Zuma, who became Deputy President of South Africa in June 1999 (**Zuma**).

381.3 The talks were mediated and facilitated by Johannesburg businessman Jürgen Kögl, who was closely connected to leading ANC members. Apart from Zuma, other high-ranking members of the ANC, such as Penuell Maduna (then Justice Minister), Mathews Phosa, Sidney Mufamadi and Charles Nqakula also participated from time to time. On various occasions Thabo Mbeki was also present, initially in his capacity as Deputy President, and later as President.

381.4 The SADF was represented by Geldenhuys and other generals. Both sides had legal advisers present. The talks continued until early 2003, with a few follow-up meetings held in 2004.

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381.5 Bubenzer explored the motivation of the government in reaching out to the SADF generals in two interviews conducted with Jürgen Kögl on 12 May 2006 and 14 June 2006. Apparently, the government was, for amongst other reasons, interested in persuading the generals to come clean on its past third force operations in KwaZulu Natal and in particular to disclose the sites of arms caches, which could be used in future political violence.

382 On 21 December 2019, investigative journalist and author, Michael Schmidt, conducted an interview in Hartbeespoort with Major-General Dirk Marais (**Marais**), former Deputy Chief of the Army and the Convenor of the SADF Contact Bureau. Schmidt's confirmatory affidavit is annexed hereto marked **FA59**. Schmidt writes in his book 'Death Flight' that, according to Marais, the government was seeking a *quid pro quo*. Copies of the relevant extracts from 'Death Flight' are annexed hereto marked **FA60**. Marais claimed that Mbeki indicated in their discussions that:

> "They don't want us to be charged – and they don't want them to be charged"

383 Marais said in the interview that on his side at the talks were former Defence Minister General Magnus Malan, former Chiefs of the Defence Force Generals Constand Viljoen and Jannie Geldenhuys, and former Chief of the Army General Kat Liebenberg – although sometimes they brought in other generals such as former Surgeon-General Niël Knobel, or one of the former Chiefs of the Air Force, as required.

384 Marais told Schmidt that on the ANC/Government side, Mbeki's team usually consisted of the "security cluster", which initially included Minister of Defence Joe Modise, Minister of Safety and Security Sydney Mufamadi and Minister of Justice

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Dullah Omar. According to Schmidt, when Mbeki became President, Zuma's "security cluster" team would most likely have included Minister of Defence Mosiuoa Lekota, Minister of Justice Penuell Maduna (replaced by Brigitte Mabandla in Mbeki's second Cabinet), Minister of Intelligence Joe Nhlanhla (replaced by Ronnie Kasrils), and Minister of Safety and Security Steve Tshwete (replaced by Charles Nqakula).

385 On 5 May 2020, former Minister of Intelligence Kasrils emailed Schmidt regarding the ANC-SADF talks advising that he had 'no knowledge of virtually all the meetings and developments arising from such talks.' Schmidt no longer has a copy of this email.

386 Schmidt notes in his book, that during the interview, Marais showed him an unsigned handwritten letter he prepared for the signature of the former Chiefs of the SADF in early 2004. Marais permitted Schmidt to take photographs of the letter. The letter was addressed to Deputy President Zuma, and it recalled the initiation of the series of secret, high-level talks between the government and former SADF Generals, a copy of which is annexed hereto marked **FA61**. The letter stated *inter alia*:

> "A process of communicating between the ANC initially and the government lately with the former chiefs of the SA Defence Force was initiated by the Deputy President of South Africa Mr T. Mbeki when he approached General C.L. Viljoen in 19? (sic). General Viljoen after consultation with the former Chiefs of the Defence Force within the structure of the SADF Contact Bureau conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC.
>
> A convenor, Mr J. Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg. That meeting was in the form of discussions followed by a dinner hosted by Mr Kögl. It was attended by Mr Mbeki and various of his ministers as well as the Premier of Mpumalanga Mr M. Phosa, [leader of an ANC lobby arguing that its members be protected from prosecution], and by us the former Chiefs of the SADF.

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> There was enthusiastic agreement that the commenced communication should be continued and that more meetings should follow. We, the former Chiefs of the SADF, being aware of the Deputy President's tight work schedule, suggested that he appoint one of his ministers to represent the ANC in future deliberations. Mr Mbeki, however expressed the opinion that the process of communication, which was mutually agreed to, was so important to him that he preferred to remain the prime representative of the ANC in future deliberations.
>
> Many deliberations followed and mutual agreements were reached. When Mr Mbeki could not attend, he authorised somebody, usually a minister, and later on when he became president in 1999, you [Deputy President Jacob Zuma] represented him.
>
> In execution of mutual decisions, much effort was put in by the Contact Bureau and some of your ministers to prepare papers and submissions for acceptance by the Deputy President and later on the President. .....
>
> In similar fashion, we the former Chiefs of the SADF as members of the forum were flown to Cape Town for discussions with Ministers Maduna and Nqakula and thereafter with you on 17 February 2003."

387 Former Premier of Mpumalanga, Mr Mathews Phosa, in a telephonic call to Schmidt on 2 June 2020, denied the claim of Marais that he had been involved in an ANC lobby pursuing protection from prosecution.

388 Bubenzer writes that Geldenhuys and Kögl advised him that by the end of 2002, the consulting parties had agreed on a detailed proposal for the enactment of a legal mechanism which amounted to a new amnesty. It envisaged an amendment to the Criminal Procedure Act to allow for a new kind of special plea based on the TRC's amnesty criteria, followed by an inquiry by the presiding judge.

389 By late 2002 the proposal and draft legislation had been finalised by the Justice Department and was ready to be presented to Parliament for enactment. However, it first had be approved by President Mbeki, who ultimately rejected it in early 2003. Nonetheless, as has been set out above, the essential ideas remerged in the subsequent amendments to the Prosecution Policy.

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390 At the ANC's 51st national conference in December 2002 in Stellenbosch, a discussion of guidelines for a broad national amnesty, possibly in the form of presidential pardons, was scheduled. According to the head of the ANC presidency, Smuts Ngonyama, the ANC supported the idea of introducing a new amnesty law. He added that his party was generally against running trials in the style of the Nuremberg trials, since this would occur at the cost of nation-building. I attach hereto a copy of a news article marked **FA62**.

391 Prior to Mbeki's rejection of the amnesty legislation in early 2003, the SADF generals appeared to be on the brink of a breakthrough. Marais advised Schmidt in the aforesaid interview that after 7 years of negotiations, the generals and the Cabinet's security cluster had agreed on a legal framework for a post-TRC amnesty process. According to Marais the government arranged for "*a law writer in Cape Town*" to come up with the new legislation.

392 On 17 February 2003, a delegation of SADF generals led by Geldenhuys met with Justice Minister Penuell Maduna and Police Minister Charles Nqakula in Cape Town. The law drafter (a state official in the Department of Justice) was called in to read out the proposed legislation. Marais indicated to Schmidt:

> "... and when he finished, we said 'But that's got nothing to do with us'... because they [said] they will grant amnesty to everyone who will make a full statement of his [crimes committed] so General Geldenhuys said 'No, we don't need that. All our people who wanted to make statements and ask for forgiveness already went to the TRC. Our other people ... don't have to do that, so this means nothing to us .... The whole thing collapsed there .... This whole conversation collapsed..." (At page 146 of Death Flight).

393 According to Schmidt, the differences between the sides were now irreconcilable: the generals wanted a post TRC law granting a new blanket amnesty with no

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disclosure required – but the government appeared only willing to offer an amnesty based on full disclosure to be decided on a case-by-case basis.

394 The talks between the SADF Generals and the government came to a close during 2004, without resolution, as was evident from Marais' 2004 letter to Deputy President Zuma referred to above:

> "In spite of such submissions and apparent acceptances, little notable implementation was effected by the ANC or government. …
>
> Agreement on outstanding matters was again confirmed, yet more than a year later, no sign of implementation has become apparent, neither was there any effort on your behalf to inform us of any progress which could lead to eventual implementation.
>
> In view of the above, you are requested to inform us of the desirability from your point of view to keep the door open for further co-operation."

395 Deputy President Zuma did not respond to the letter.

Compilation of dockets and threats of private prosecutions

396 At least two organisations largely representing the interests of the former regime, the FEL and AfriForum, have called for prosecutions of ANC and PAC members, and threatened private prosecutions against ANC members and civil litigation if their members are prosecuted. Examples of such public statements are annexed hereto marked **FA63**. It appears that such threats may have played a role in shaping the approach of the government to the TRC cases.

397 In an interview conducted by Bubenzer with Johann van der Merwe in Pretoria on 5 May 2006, the latter claimed that the FEL, represented by attorney Jan Wagener, had compiled dockets for the prosecution of top ANC members, including President Mbeki. Adv Jaap Cilliers SC, who had represented Wouter Basson, apparently

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evaluated the dockets and claimed that the dockets contained sufficient evidence to support criminal charges. The PCLU requested the FEL to hand over the dockets for their consideration, but FEL refused to do so, claiming that would only be used if apartheid era officials were targeted for prosecution. The claimed dockets have never been handed over to the authorities.

398 Wagener, during his interview with Bubenzer in Pretoria on 8 May 2006, claimed that the threat of the FEL dockets played a role in persuading President Mbeki and the government not to proceed with the arrests in 2004 of the suspects behind the poisoning of Chikane.

399 According to Bubenzer, General Jan Geldenhuys told him at an interview in Pretoria on 15 May 2006, that the former SADF generals were also of the view that the issue of potential criminal liability of ANC members was "*a major consideration for the government*" and the former military would take the same steps as FEL if they were charged.

400 This is one of the key questions that only an independent commission of inquiry can resolve.

Former President Mbeki denies involvement in political interference

401 In an article titled "*Long-awaited NPA report gives no answers on ANC govt's alleged blocking of apartheid trials*" published by News24 on 21 February 2024, journalist Karyn Maughan pointed to uncontested evidence from various court cases demonstrating that "*powerful Mbeki administration officials blocked the prosecution of apartheid cases*". A copy of this article is annexed hereto marked **FA64**. Former

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President Mbeki was approached for comment, but his foundation, the Thabo Mbeki Foundation (**TMF**), referred enquiries to the current government.

402 However, on 1 March 2024, the TMF released a statement titled "*Statement by former President Thabo Mbeki on allegations of NPA interference by the Executive*", a copy of which is annexed hereto marked **FA65**. In this statement Mbeki strenuously denied any involvement in the suppression of the TRC cases:

> "During the years I was in government, we never interfered in the work of the National Prosecuting Authority (NPA). The executive never prevented the prosecutors from pursuing the cases referred to the NPA by the Truth and Reconciliation Commission.
>
> I insist on this despite a 2021 Supreme Court of Appeal judgment which found, on the strength of uncontested submissions by former National Director of Public Prosecutions (NDPP), Advocate Vusi Pikoli, that the NPA "investigations into the TRC cases were stopped as a result of an executive decision" which amounted to "interference with the NPA."
>
> I repeat, no such interference ever took place. If the investigations Adv Pikoli referred to were stopped, they were stopped by the NPA and not at the behest of the Government as alleged by the Advocate. There is no record of a single instance when the NPA stopped investigating and prosecuting any case on account of the so-called "executive interference" – at least not during the period 1999 - 2008."

403 Former President Mbeki asked why the NPA succumbed to political pressure and challenged the NPA to produce any illegal instruction from his government stopping the TRC cases:

> "There are some questions which the NPA must answer honestly.
>
> Who in the executive instructed the NPA not to do its work? Will the NPA publish this 'instruction' which, presumably, will be in its archives? Why did the NPA accept and respect what would have patently been an illegal instruction?
>
> Instead of propagating falsehoods, the NPA must investigate and prosecute the cases referred to it by the TRC.

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> I also recall that the same Pikoli who allegedly buckled under pressure of "executive interference" concerning the TRC cases, earned a lot of respect by portraying himself as an independent and principled NDPP who defied an "all too powerful" President Mbeki, who was supposedly hell-bent on stopping him from investigating and arresting the late former National Commissioner of Police, Jackie Selebi.
>
> The question arises, what happened to his cherished independence and commitment to principle when he acquiesced to 'members of the executive' on the TRC cases?"

404 Mbeki claimed that he and his administration always acted in accordance with the Constitution, and he called on the NPA to demonstrate integrity by apologising to victims for not prosecuting the TRC cases:

> "Conveniently, some people forget that the ANC was the principal architect of the Constitution of the Republic. During the years when I served as Deputy President and President of the Republic, I, together with my colleagues in Government, always bore this in mind and acted knowing that the Constitutional prescripts we helped to negotiate were binding on us.
>
> There was never any Minister of Justice during those years who was ever authorised to instruct any NDPP to act in one way or another. No NDPP, including Pikoli, ever approached me to complain that he/she had been instructed by a Minister, or any other official, to violate the independence of the NPA as prescribed by the Constitution.
>
> The NPA must demonstrate enough integrity by apologising for not processing the TRC cases, rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication."

405 The denials of former President Mbeki are not consistent with the brazen suppression of the TRC cases that occurred during his administration, and which has been set out above. It is for an independent commission of inquiry to consider and test the veracity of the denials of former President Mbeki.

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DEVELOPMENTS POST THE POLITICAL INTERFERENCE

406 It is difficult to pin a date on when the political interference came to an end. According to the SCA in *Rodrigues* the political interference took place between 2003 and 2017. However, given the ongoing delays in taking the TRC cases forward, suspicions linger that the obstruction and interference of the past have been difficult to shake off.

407 In order not to unduly burden this affidavit, most of the reports, minutes and other documents referred to in this section are not annexed but can be made available on request. In the electronic version of these papers, where available, hyperlinks are provided to these documents.

408 It should be stated that as far as we can ascertain there has been no mention of the TRC cases in the SAPS Annual Reports. (The SAPS Annual Reports prior to 2002, and those between 2004 and 2007 are not available online). There is also no mention of the TRC Cases in the DOJ Annual Reports which only deals with the question of reparations for those on the TRC's closed victims' list.

409 It is perhaps significant that the minutes of the Justice Portfolio Committee in Parliament recorded no mention of the TRC cases between 2011 and 2016. As mentioned above there was also no mention of the TRC cases during this period in the NPA's Annual Reports. There was only reference to the work of the MPTT.

410 For example, the NPA Annual Report of 2012/ 2013 made no mention of the TRC cases, just stating that the:

> "PCLU continued to execute its mandate as outlined in the Proclamation issued by the President and primarily focused on the management and

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direction of investigations and prosecutions of crimes which impact on national and international security ..."

411 Between 2016 and 2018, the only TRC case that was mentioned in the NPA Annual Reports was the Timol case, which as mentioned above, materialised though the efforts of the Timol family and their representatives.

412 Oddly enough, there was no mention of the Nokuthula Simelane case. As mentioned previously, in 2015 the Simelane family had filed papers in the High Court, in which the political interference was exposed in detail. This resulted in an indictment being issued in early 2016. None of this appeared in the NPA Annual Reports for those years. I suspect that the NPA maintained its silence on this matter to avoid having to deal with political interference, which was detailed in those papers.

413 Emboldened by the outcome of the reopened Timol inquest in 2017; Webber Wentzel, in a letter dated 18 January 2018, called upon the authorities to pursue 22 emblematic cases from the past (including the murders of the Cradock Four, PEBCO 3, and Richard and Irene Motasi). A copy of this letter is annexed hereto marked **FA66**. In late January 2018, a meeting was held with the NPA and DPCI (also referred to as **the Hawks**) at which the late investigator, Frank Dutton, outlined the available evidence in all these cases and the need to take expeditious action.

414 Both the NPA and DPCI agreed to prioritise these cases.

414.1 Although the Hawks appointed investigating officers, it was subsequently discovered that at least one officer was a former SB member, and another had a prior connection to the Motasi murder case.

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414.2 In that case, Richard Motasi had accused the officer in question of assaulting him and had sued him and others for damages, which according to the family, prompted his murder in 1987. Following complaints, the two officers were removed from the investigations, but it left deep suspicions about the bona fides of the DPCI in respect of their commitment to justice in respect of the TRC cases. Correspondence in this regard can be supplied on request.

414.3 Subsequently, the DPCI, at management level, has refused to engage with the FHR and its lawyers and private investigator in respect of the TRC cases, unless a power of attorney is provided in each case. This is even where there are clear links between such cases and matters where lawyers had received specific instructions from the families of the victims involved.

414.3.1 An example is the 1991 murder of Adriaano Louis Bambo by the SB. Bambo was an informer for the SB. He was killed, allegedly to prevent him from exposing the role of the SB in the murder of Nokuthula Simelane and others.

414.3.2 Bambo had been one of Simelane's guards following her abduction and would have observed the treatment meted out to her. Two of the accused in the Nokuthula Simelane case, Willem Helm Johannes Coetzee and Anton Pretorius, were Bambo's handlers and are implicated in the Bambo murder.

414.3.3 Notwithstanding the clear link between the Bambo and Simelane cases, the DPCI and the NPA have been reluctant to cooperate with

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the Simelane family lawyers, Webber Wentzel, since they do not have a power of attorney from the Bambo family.

414.3.4 The conduct on the part of the DPCI and the NPA speaks volumes about their approach and lack of sensitivity to the TRC cases. It also heightens the need for a specialised approach to these cases.

414.4 More than six years after the January 2018 meeting, of the 22 highlighted cases, only the Aggett, Haffejee, Dipale and Haron inquests have been concluded.

415 The meeting report (prepared by the Parliamentary Monitoring Group) of the Portfolio Committee meeting held on 4 October 2017 to consider the NPA's Annual Report for 2016/17 recorded the following:

> "Adv L Mpumlwana (ANC) [condemned] the NPA. There was a feeling in South Africa that justice was for the rich and for white people. It had been like that for a long time. When a white lady's car was hijacked, a helicopter had been sent and the car was found and returned within an hour. He remembered when New Zealander visitors had been raped. Ten helicopters had hunted down the rapists and they had been sentenced within two years. He complained about the association of whites with value and blacks with no value....
>
> **There was the Truth and Reconciliation Commission (TRC) and some people had not gone to the TRC. Where were those cases rotting? TRC was like a staged thing. They had tried to be very kind and let people come but some did not come and others did not make full statements. Was there a way of checking on those who had not got amnesty? Was there no movement towards prosecution?"** (Bold added).

416 In January 2019, the NPA implemented a decentralisation policy in relation to the TRC cases in which the cases were transferred from the PCLU to the provincial offices of the various DPPs. This is reflected in the NPA Annual Report of 2019/20:

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> "The PCLU underwent fundamental restructuring at the beginning of the period under review, and Adv Chris Macadam was appointed acting head of the unit. After an audit of the PCLU's workload, the organisation decided to adopt a decentralised model whereby prosecutions are conducted by prosecutors in the areas where the crimes were committed, with the PCLU performing a managerial or support role. The NPA has reaffirmed the original mandate of the PCLU, and all matters falling outside of the mandate were returned to the DPP offices with jurisdiction. The adoption of a decentralised model required that the DPPs appoint nodal points to manage the PCLU matters in their divisions. The nodal points were trained to enable them to properly manage PCLU cases, and a monthly reporting system was installed."

417 The NPA Annual Report of 2019/20 also noted that its hands were tied since the investigation of the TRC cases was the responsibility of the DPCI:

> "**In the S v Rodrigues TRC matter, the court found that the NPA had acted in breach of its duty in not resisting political interference by other departments and the executive. The NDPP was directed to investigate these matters further, and this investigation is still ongoing**.
>
> **It must be emphasised that the primary issue lies with the investigation of these matters, which is a responsibility of the DPCI. Due to the nature of the cases, it is difficult to access all the relevant information needed to make informed decisions.** The PCLU has undertaken a number of initiatives to prioritise cases. This includes commencing with a review of all the death in detention cases from 1963-1990, reviewing certain decisions not to prosecute and grouping cases to establish the existence of a *modus operandi*.
>
> **Efforts are being made to establish a research capacity to retrieve all historical information required for the proper investigation of TRC cases.** Initiatives to increase efficiency of the nodal points were interrupted by the COVID-19 crisis, which is preventing the holding of workshops, training seminars and other meetings." (Bold added)

418 The first comment by a cabinet minister on the interference that we are aware of was made by the former Minister for Justice, Ronald Lamola during his address to Parliament on the Budget Vote Debate of the DOJ on 16 July 2019 (a copy of which can be supplied on request):

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> "Furthermore, we've noted the recent judgment on the Rodrigues matter related to TRC cases. We assure victims with similar cases that interference with prosecutorial independence of the NPA will not be tolerated. We continue towards a durable and sustainable solution to all TRC related cases including consideration of interest of victims."

419 Between April and August 2019, several suspects and witnesses in apartheid-era cases died before the trials or inquests could commence. These included Sergeant Msebenzi 'Vastrap' Radebe, an accused in the Nokuthula Simelane murder case; Lieutenant Stephen Whitehead, lead interrogator of Neil Aggett; Ernest Matthis who saw Timol fall and was expected to testify in the murder trial of Jao Rodrigues; and Colonel James Taylor, who was involved in the arrest and brutal interrogation of Dr Hoosen Haffejee.

420 The minutes of the Justice Portfolio Committee meeting on 9 July 2019 on the NPA's Annual Performance noted:

> "Key service delivery initiatives of the NPA include restoring NPA credibility and public confidence, the successful establishment of the Investigative Directorate, ongoing staff development and training, recruitment of specialised skills, the resuscitation of the Aspirant Prosecutor Programme which will deploy 90 new prosecutors to district courts; **as well as ensuring that the Truth and Reconciliation Commission (TRC) prosecution cases are dealt with adequately.**
>
> Unfortunately, the NPA faces a massive credibility challenge and is seriously divided. There is a lack of confidence in the NPA. It has severe budgetary restrictions and will have to reduce its staff complement by 500 over the Medium-Term Expenditure Framework to remain within budget. It has a shortfall of R1.7 billion over the next three years. A deep-seated skills shortage plagues the NPA and it has an average 20% vacancy rate." (Bold added).

421 The Justice Portfolio Committee Report of 12 July 2019 reflected the following:

> **"In June 2019, the South Gauteng High Court found that the NPA had breached the Constitution by allowing political interference to stall the prosecution of cases in which the TRC either did not grant amnesty or there was no application for amnesty made to the TRC. The NDPP was**

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> **asked to consider charging those who had prevented the prosecution of these cases. In addition, the families of victims have also formally requested that a commission of inquiry be established**. For now, the NPA is in the process of establishing a task team to look into all cases of deaths in detention. The Committees regrets [sic] the delays in finalizing these cases and will monitor progress."

422 The minutes of the Justice Portfolio Committee meeting on 11 September 2019 noted the following comment by its chairperson:

> "The Chairperson referred to the TRC Report and said it had been 21 years since the finalisation of the report. There could not be a process that lasts more than 20 years. By the end of this term this had to be completed."

423 The minutes of the Portfolio Committee meeting of 4 March 2020 on the NPA's performance in the second and third quarters of 2019/20 reflected the following intent in relation to the TRC cases:

> "The Truth and Reconciliation Commission (TRC) prosecutions were a new focus area – the Timol case had been finalised lately. There were many cases in process but between 1963 and 1990 there had been 69 deaths in detention. The approaches to the NPA by families were only in respect of a few deaths. The NPA wanted to do a joint inquest of all deaths with common factors, for example, all deaths in a particular police station. That meant that there was a delay in moving cases forward. The Hawks had promised to follow up as rapidly as possible because people were dying. Rodrigues, who had been involved and convicted in the Timol case, had gone to court to apply for a permanent stay of execution. He had lost the case, but the judgement found that the NPA was guilty of preventing certain cases from going forward. The judgement required that the NPA investigate those NPA officials who were involved in delaying the cases.
>
> Adv Batohi said that the judgement referred to broader government officials and not just NPA officials."

Timol inquest follow-up

424 In the reopened Timol inquest, Judge Mothle found in his 2017 judgment that former SB officers, Warrant Officer Neville Els and Colonel Seth Sons, had lied under oath and that they should be investigated on perjury charges. It took Acting DPP

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(Gauteng Division, Pretoria) Adv George Baloyi more than 30 months to decide not to charge them.

425 On 22 June 2020 the Timol family took this decision on internal review to the NDPP. In these submissions the following was placed on record:

> "We have to place on record that it has taken the NPA more than 2.5 years to make this decision. **The time taken to reach this decision leaves a sense of shock and dismay**. This matter can hardly be described as complex or unwieldy. ... Moreover, there was a real urgency given the circumstances. Ahmed Timol was murdered in 1971 and the suspects and witnesses in this matter are all elderly. Accordingly, the NPA was acutely aware that time was a pressing factor. Yet the NPA dragged its feet notwithstanding the persistent and frequent enquiries made by Cajee with multiple NPA officials. ... In our respectful submission, such delay in these circumstances is inexcusable. ..." (Bold added).

426 The submissions, a copy of which can be supplied on request, concluded with the following depressing observations:

> We are of the respectful view that none of the reasons put up by the Acting DPP for declining to prosecute in this matter withstand scrutiny. **Regrettably we have come to the view, that even after a 2.5-year delay, no serious investigation was launched into these two cases.**
>
> We repeat our concern, that failing to hold former SB officers accountable for misleading courts and lying under oath, will simply invite others to do the same. It will also extend the total impunity SB officers enjoyed under apartheid to the new democratic order. (Bold added).

427 Notwithstanding the tardiness of Acting DPP Baloyi it took another two and half years for NDPP Batohi to overturn this decision, by which time a key elderly witness had become too ill to testify, effectively bringing an end to the case against Els. Such long delays cast serious doubt on the NPA's commitment to the TRC cases.

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Reopened inquests: Neil Aggett and Dr Hoosen Haffejee

428 In the Aggett case, the family had been pressing the NPA to reopen the inquest into the death in detention of Neil Aggett since January 2016.

428.1 The Aggett family attorneys, threatened the NPA with litigation to compel them to reopen the inquest through correspondence on 21 June 2016, 8 July 2016 and 11 August 2016. On 23 August 2016, the attorneys sent the NPA a letter of demand placing them on terms:

> "In the circumstances we hereby demand that the necessary recommendations to the Minister of Justice in terms of section 17A of the Inquest Act 58 of 1959 to reopen the aforesaid inquests be made by no later than 30 September 2016."

428.2 Lieutenant Stephen Whitehead, lead interrogator and tormentor of Aggett, died on 22 April 2019. He was only 62 years old.

428.3 On 29 July and 15 August 2019 lawyers acting on behalf of the families of the late Neil Aggett and Hoosen Haffejee threatened the Minister of Justice with an urgent High Court application if he did not instruct the judge presidents of the Gauteng and KwaZulu Natal Divisions to reopen the inquests.

428.4 On 16 August 2019, the Minister of Justice released a press statement announcing that the inquests into the deaths of Aggett and Haffejee would be reopened. Copies of the aforesaid correspondence can be made available on request. In the family's closing submissions in the Haffejee reopened inquest, it was stated that "*families should not have to take drastic steps like this.*"

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428.5 SB Colonel James Taylor, who led the brutal interrogation of Dr Hoosen Haffejee died on 19 August 2019, just days after the announcement of the Minister of Justice to reopen the inquest.

428.6 Whitehead could have been held to account if the authorities had acted expeditiously. More than 3 years elapsed between the original request for an inquest in January 2016 and his death in April 2019. The inquest only commenced on 20 January 2020.

428.7 It was noted in the Aggett family closing arguments in the Reopened Inquest that "*perpetrators of apartheid era crimes have taken their lead from the State's inaction. They know they have nothing to fear.*" The submissions noted that SB officers continued with their "*charade of innocence*" as they did before inquests under apartheid:

> "It is as if nothing has changed. They do not have the slightest concern of having to face the music for their lies and deceit. This is the price that we must pay for the readiness of our law enforcement authorities to trash the rule of law at the behest of powerful political forces."

428.8 On 4 March 2022, Judge Makume handed down his judgment which overturned Magistrate P Kotze's decision of nobody to blame and held that Aggett's death was attributable to foul play by the Security Branch. Judge Makume found that former SB officers Nicolaas Johannes Deetlefs, Johannes Nicolaas Visser, Joseph Petrus Woensdregt, Daniel Elhardus Swanepoel, Roelof Jacobus Venter and Magezi Eddie Chauke had persisted with their cover-up in the reopened inquest and committed perjury. He recommended that they be investigated with a view to prosecution.

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428.9 Some 2.5 years later the NPA has still not taken a decision. Deetlefs died in September 2023. In October 2024 the prosecutor assigned to the Aggett case left the NPA before completing her work on the case. To date no new prosecutor has been allocated to the case.

428.10 The Hoosen Haffejee reopened inquest ran between August and September 2021 at the Pietermaritzburg High Court, while closing arguments were heard in October 2022 and judgment was handed down on 13 September 2023. Judge Zaba Nkosi found that Haffejee had been brutally tortured and murdered by the Security Branch and called for a murder investigation against one surviving SB officer.

429 I am advised that the Timol, Aggett and Haffejee families are grateful to State Advocate Shubnum Singh for the dedication to justice she displayed in these cases. Although she did not appear in the Haffejee inquest, her meticulous preparation led to the reopening of that inquest. Tribute must also be paid to former State Advocate, Jabulani J. Mlotshwa, of the NPA's Johannesburg office for his dedication and sterling contribution to the Aggett and Cosas 4 cases.

COSAS 4 families take legal action

430 In September 2019, the families of the COSAS 4 requested the NPA and DPCI to investigate the callous entrapment murders of the four teenagers by the SB in 1982. After a year of perceived inaction, the families decided to take matters into their own hands and on 2 September 2020 they filed an application with the Krugersdorp Magistrates' Court seeking an order for the disinterment and forensic examination of the bodies.

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431 In her founding affidavit, Maide Christina Selebi, the sister of Eustice "Bimbo" Madikela, one of the COSAS 4, noted that her legal representatives had three meetings with the NPA and DPCI as well as written multiple communications, several of which were ignored. She noted that several high-ranking suspects had already died and that it had "*fallen on the families to bring this application*." She recalled that "*the COSAS 4 matter was handed over by the TRC to the NPA in 1999*" and that the families "*bring this application to find peace and closure*."

> "We have been forced to take matters into our own hands. We can no longer be expected to wait for the NPA and SAPS, who have already delayed this matter for some 21 years, to act."

432 Once the application had been filed, and to the credit of both the NPA (Gauteng Local Division, Johannesburg), in particular Adv Jabulani Mlotshwa, and the DPCI, expeditious investigations were thereafter launched and the post-mortem reports recovered. On 23 August 2021, former Askari Thlomedi Ephraim Mfalapitsa was charged with kidnapping and murder, and subsequently similar charges were preferred against former SB explosives expert Christiaan Siebert Rorich.

433 On 19 November 2021, historic crimes against humanity charges were added to the indictment, including apartheid as a crime against humanity, which was the first time such charges had been pursued in South Africa. Credit must be given to the Johannesburg office of the NPA for the courage in taking this important step. Crimes against humanity charges correctly characterises the systemic and widespread nature of these brutal crimes. Prosecutors in the Nokuthula Simelane and Caiphus Nyoka cases refused to include crime against humanity charges in those cases.

434 Thereafter the trial was delayed for more than two years, mainly because of the refusal of the SAPS Commissioner to pay the legal fees of former SB officer Rorich,

even though a judgment arising from the Nokuthula Simelane case, compelled him to do so.

435 Lawyers for the families intervened and litigated and ultimately secured a court order issued by Mokgoatlheng J on 4 May 2022 compelling the SAPS to pay Rorich's legal costs. The SAPS belatedly took this order on appeal, which was opposed by the families. On 5 December 2022 the FHR sent an open letter to the Minister of Police asking him to change course on the question of legal costs. Leave to appeal was dismissed on 12 January 2023. The SAPS then petitioned the SCA but abandoned its appeal in April 2023. The 'Stalingrad' tactics adopted by the defence teams have, to date, prevented the trial from proceeding.

436 As mentioned above, the application by accused no. 1, to overturn the refusal to grant him amnesty was dismissed by the High Court in November 2024, and in the same month the trial court heard the objection of the accused to the crimes against humanity charges, with judgment reserved and the criminal trial postponed to April 2025.

Cradock Four families take legal action

437 In July 2019, my attorneys at Cliffe Decker Hofmeyr (**CDH**) and FHR's private investigator retired Brigadier Clifford Marion (**Marion**) began liaising with both the NPA and DPCI to get the Cradock Four case off the ground.

438 This included helping to reconstruct the investigation docket that had gone missing from the head office of the NPA. Between July 2019 and June 2021 there were more than 140 interactions between Marion, my attorneys and the NPA and DPCI. The vast bulk of these interactions consisted of communications aimed at providing

information, documents and leads to support and enable the investigation. These are outlined in a chronology attached to my application in Case No. 35447/2021, which can be supplied on request.

439 I was particularly concerned about the missing investigation docket, given that it was well known that under apartheid the disappearance of an investigation docket generally pointed to a cover-up. After receiving no satisfactory response as to what happened with the missing docket, I decided to open a criminal complaint of theft in relation to the disappearance of the Cradock Four docket. My attorneys addressed several letters in this regard in September 2019, April and August 2020 to the NPA, which can be made available on request.

440 On 11 September 2020, I attended at the Cape Town Central police station to open a criminal complaint, but the officers there refused to accept my complaint saying that I had to report the case in Silverton, Pretoria. On 1 October 2020, one of my attorneys from CDH attended at the Silverton Police Station, but they also refused to accept the complaint saying that she had to go to the Independent Police Investigative Directorate of South Africa to investigate a docket that went missing from the NPA.

441 Out of sheer frustration, on 4 October 2020, my attorneys addressed a letter to the Minister of Police and National Commissioner of the Police seeking their intervention. A copy of this letter can be supplied on request. This eventually resulted in the DPCI confirming in a communication on 23 October 2020 that a criminal case had been opened for defeating the ends of justice and theft of a docket as per Silverton CAS 88/10/2020.

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441.1 My attorneys followed up several communications to the DPCI in March and May 2021 asking for progress reports in the investigation. On 19 May 2021, my attorneys were copied on an email which Brigadier Louw of the DPCI addressed to Colonel Hennie De Jager requesting him to give the investigation attention. It became apparent to us that our complaint was not being taken seriously.

441.2 Some two years after liaising with the NPA and DPCI and twice placing them on terms during 2020 to finalise their investigations, it became clear that the NPA and DPCI were making little headway. Copies of this correspondence can be made available on request. The Cradock Four families instructed our lawyers to launch an application to court for an order compelling the authorities to finalise the missing docket investigation and take a decision on the murder case. This application was launched on 20 July 2021, the 36th anniversary of the burial of the Cradock Four.

441.3 On 5 October 2021, Colonel Hennie de Jager of the DPCI advised my attorneys that all possible locations had been searched, and the docket could not be found and that accordingly the investigation into the missing docket had been closed. The communication was silent as to who might have been responsible for the docket going missing.

442 The review process disclosed the dire state of the investigations. It did, however, force the prosecution and investigation teams to engage closely with my representatives to ascertain what case could be salvaged at that late stage. The aforesaid application and correspondence can be supplied on request.

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443 Even before launching the aforesaid application in July 2021, more than ten suspects in the Cradock Four case had died, including all members of the SB hit squad, and since launching the application another five persons of interest passed away. With the death in May 2023 of the last remaining suspect, Hermanus Barend du Plessis, against whom there was a *prima facie* case, we had to accept that a prosecution was no longer possible.

444 In August 2023 we agreed to the holding of a third inquest, which was announced on 5 January 2024, and which was meant to start on 2 September 2024, but collapsed as result of the Eastern Cape NPA notifying the witnesses too late and failing to make timely arrangements for the legal costs of the legal teams of the persons of interest, thereby forcing a long adjournment to 2 June 2025. We fear that the last remaining witnesses will die before the inquest can proceed.

445 In early December 2024 we learned that the SANDF and SAPS had declined the applications of the former army and police officers for legal support at the inquest. All attempts to secure the expeditious intervention at ministerial level to resolve the impasse have failed. Unless resolved, this is likely to lead the indefinite postponement or permanent collapse of this inquest and all future reopened inquests involving apartheid era officials.

Imam Abdullah Haron reopened inquest

446 On 4 December 2019, the Haron family's lawyers made detailed written representations to the NDPP providing new evidence and setting out the grounds for the re-opening of the 1970 inquest into the death in detention of Imam Abdullah Haron in terms of section 17A of the Inquests Act.

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447 After more than two years had elapsed without a decision, Webber Wentzel placed the NPA and the Minister of Justice on terms in September 2021 and again in April 2022 demanding that a decision be taken. In the family's closing arguments, it was stated that "*such steps should not have been necessary*."

448 On 31 May 2022, some two and a half years after the family's representations to the NDPP, the Minister of Justice requested the Judge President of the Western Cape Division of the High Court to designate a Judge to re-open the inquest, which was held in November 2022. On 9 October 2023 the inquest court handed down judgment which found that Imam Haron had been tortured to death by members of the SB.

CALL FOR CHANGE IN APPROACH TO APARTHEID-ERA PROSECUTIONS

449 Since the decentralisation policy introduced by the NPA in January 2019, in terms of which the TRC cases were transferred from the PCLU to the provincial DPPs, had failed to deliver any tangible results in 18 months, the FHR called for an urgent change of direction.

450 In September 2020 it provided a memorandum to the President, NPA, SAPS and various Ministers titled '*Proposed New Approach to Apartheid Era Prosecutions*', which can be made available on request. This memorandum provided comparative research into the approaches adopted by several countries dealing with crimes committed in past conflicts. The FHR found that those countries which created dedicated capacities to investigate and prosecute such crimes were the most successful, whereas those that did not, invariably failed to deliver adequate justice.

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451 The minutes of the Portfolio Committee meeting of 7 October 2020 on the NPA's quarterly performance recognised considerable challenges with the TRC cases, most notably a disjunct between the investigative and prosecution functions:

> "TRC cases
> This is a huge priority for the NPA and an aspect which is seriously concerning. **The NPA is not an investigative agency. The DPCI is an investigative agency but without the requisite investigative and prosecutorial capacity in order to do this**. More people are needed to do this work, and where an investment is made, there should be a showing that it has in fact translated to results. **The NPA is struggling as potential witnesses, loved ones and suspects are dying without justice being served. The NPA is engaging with the DPCI, however there needs to be a push from a higher level**." (Bold added).

452 The FHR followed up with a legal opinion dated 13 January 2021 titled "*Exploring Legal Options for the Establishment of a Special Capacity to Investigate & Prosecute Apartheid Crimes*" which was supplied to the NPA and the Minister of Justice. A copy of the legal opinion can be made available on request.

452.1 This opinion considered the experiences of the multi-disciplinary approaches of the Specialised Commercial Crimes Unit and the Sexual Offences and Community Affairs Unit as well as various Investigating Directorates. These units, which brought prosecutors, investigators and analysts together in teams, had proved reasonably successful in tackling serious crime.

452.2 The opinion proposed establishing an Investigating Directorate or a specialised unit under a Special Director to deal with the TRC cases. This proposal did not find favour with the NPA, the Minister of Justice or SAPS.

453 The minutes of the DPCI briefing presentation to the Police Portfolio Committee meeting on 5 May 2021, reflected a decision to recruit more officers to deal with the TRC cases:

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"The following recruitment process will be finalised during the 2021/22 financial year.

- 104 Contract workers were appointed with effect from 2021/04/01 to deal with the backlog of cases such as Truth and Reconciliation Commission and Steinhoff cases."

454 In June 2021, the NPA and the DPCI issued a joint press statement. They announced a new approach to the investigations and prosecutions of the TRC cases, namely the establishment of a dedicated capacity:

> "... a TRC investigation strategy has been adopted by the NPA and DPCI to create dedicated and sustainable capacity to investigate and prosecute apartheid era atrocity crimes. The NPA is in the process of setting up a specialist unit to deal exclusively with these matters and will be appointing former experienced prosecutors in offices which require additional capacity. A dedicated national office capacity will provide specialised advice, coordination, and monitoring and support.
>
> The Directorate for Priority Crime Investigation also embarked on the process to establish a dedicated team by a recruitment drive to re-enlist a number of competent and highly skilled former police officials with wealth of knowledge in the detective environment. Thirty-four (34) of these members who were appointed from the 01 April 2021 for a contractual period of three years, are assigned to these cases."

The NDPP, Adv Batohi, added to the statement saying that:

> "Time is not in our side. We have a small window to address this; loved ones need to see justice being done; and justice will not be served until we act decisively against those that the NPA was once powerless to hold to account".

455 While the joint press statement spoke of establishing "a dedicated capacity" and or "a specialist unit" we are not aware of a specialist unit ever being established.

455.1 We are aware of an entity which has been referred to as the "TRC Component" (**the Component**). However, it remains opaque. It remained nameless for several months. We are only aware of one full time state

advocate serving in the Component. It does not appear anywhere on the NPA's website, and no contact details are offered to the general public.

455.2 While the Component reports to the Deputy NDPP and head of the National Prosecution Service, Adv Rodney de Kock, it has no full-time dedicated head. Given De Kock's onerous responsibilities for the entire prosecution service, he cannot be expected to devote adequate time to these cases.

455.3 From what we can see, in respect of the TRC cases, the buck does not stop with anyone. Queries in relation to cases are bounced around between the Component and the DPPs. Nobody seems to be able to take full and final responsibility for the cases. Prosecutor turnover on cases also seems to be high.

455.4 While we are familiar with the TRC Component coordinator, Adv Shubnum Singh, we are not aware of the staff compliment or the nature of the work they do.

455.5 While "dedicated" prosecutors have been appointed in the provinces, they do not report to the Component but to the DPP in question, who may have other priorities. The TRC Component maintains an arm's length from the cases. It enjoys no authority over provincial prosecutors and seems to be a largely toothless and ineffectual body.

456 According to a press statement dated 8 December 2021, issued by the Justice Portfolio Committee, the committee requested the NPA to provide quarterly progress reports on TRC cases, reflecting a desire on their part to play a greater supervisory role, given the lack of delivery:

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"The Portfolio Committee on Justice and Correctional today resolved to meet on a quarterly basis with the National Prosecuting Authority (NPA) in order to receive regular updates on progress regarding Truth and Reconciliation Commission (TRC) matters.

The undertaking comes after the committee noted last week that the NPA missed the deadline to provide information on whether to prosecute in the matter of the so-called "Craddock Four". The families of some of the Craddock Four have taken the NPA to court in order to get a firm commitment with timeframes for a resolution to the matter.

The committee today received a briefing from the Ministry of Justice and Correctional Services and the NPA on why the 2 December 2021 deadline was missed for issuing a prosecutorial decision for apartheid-era officials and ministers implicated in the 1985 murder of the Cradock Four. Committee members across the political spectrum expressed concern that these matters have been delayed for so long. More than two decades into democracy, families like those of the Craddock Four still do not have closure. The committee further expressed its disappointment at how the matter was handled, as families were not informed prior to the deadline that it would not be met, as further investigations are required."

457 The NPA Annual Report of 2021/22 reported the following about the TRC cases:

"Bringing justice to the victims of crimes committed during the apartheid era is a priority for the new leadership of the NPA. These heinous crimes remain a scar on our country and the NPA owes it to victims to ensure that justice is delivered, despite the long passage of time. To move forward on these complex cases, the NPA has created dedicated capacity and additional posts to deal with TRC cases. Thirteen additional prosecutors were appointed to assist with these cases. In total, the NPA has 23 dedicated prosecutors working on these matters in collaboration with the 34 dedicated DPCI investigators who were recently appointed. From 53 cases at the beginning of April 2021, the component had 115 cases at the end of March 2022, almost doubling the number of matters for investigation in one year. The cases have been identified from sources such as the TRC report, evidence presented at the TRC, reports received from family members of deceased persons and from all deaths in detention."

458 The minutes of the Justice Portfolio Committee meeting held on 25 October 2022 noted a decision by the NPA to appoint counsel to assess its work on the TRC cases:

"Regarding section 32(1)(b), the NPA was in accordance with the Rodrigues judgement. **The NPA had informed the Minister that it would be**

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> **appointing counsel to look at all of the initiatives and efforts that the NPA was making to deal with the Truth and Reconciliation (TRC) matters, and any possible interference in the work of the NPA.**" (Bold added).

459 On 24 October 2022, the NPA and DPCI announced in a joint statement the opening of four inquests into the apartheid-era crimes involving murders and disappearances of ANC activists and MK operatives committed in Kwa-Zulu Natal: Ntombikayise "Ntombi" Kubheka, Musawakhe "Sbho" Phewa, Zamukwenzani Bright Mlobeli/Sokhulu and Jameson Ngoloyi Mngomezulu.

459.1 Representatives of some family members suggested that the NPA may have been too quick to refer these cases to inquests as prosecutions may have been viable in some cases. Some families expressed a concern that referrals to inquests had become a default position of the NPA in respect of the TRC cases. Correspondence in this regard can be supplied on request.

459.2 I am advised that recently a decision has been taken to proceed with a prosecution in the Kubheka and Phewa matters.

460 In his report to the Justice Portfolio Committee on 25 November 2022, the Deputy NDPP, Adv De Kock announced that the NPA had hired 25 prosecutors to work on the TRC cases, while the DPCI had hired 40 investigators to work on the 129 apartheid-era cases that were under active investigation. In a media statement on the outcome of this meeting the Portfolio Committee noted that the failure to act in the past meant that the NPA was under pressure because witnesses were old and dying:

> "Mr Magwanishe said the committee will continue to monitor the progress and meet regularly with the NPA on the matter. "The nation needs closure on these matters. One of the lessons we must learn, **when you don't act on time, is that you are bound to act under unreasonable pressure. In**

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> **this case, some witnesses have died and some now claim they can't follow proceedings. We should have acted earlier and this should serve as a lesson to all of us**." (Bold added)

461 The NPA Annual Report of 2022/23 highlighted various challenges with the TRC cases:

> "**These are very old matters – dockets and inquest records are largely either destroyed or missing, and witnesses/suspects/persons of interest are often deceased or untraceable**. Another major challenge is that evidence and records remain in the control or possession of stakeholders and government organisations. A concerted effort has been made to trace and make available all records and evidence to enable investigators to properly conduct investigations."

462 The minutes of the Portfolio Committee meeting on the NPA and SIU Annual Performance Plans on 12 May 2023 claimed progress in the TRC cases:

> "It is the first time that the NPA is making progress in terms of accountability for the TRC cases. The entity has also brought in a lot of new capacity, with over 700 young professionals through the Aspirant Prosecutor Programme and this was the biggest intake through the programme since it was relaunched."

463 However, in the minutes of the Justice Portfolio Committee meeting on 11 October 2023 the NPA admits that it has been slow in finalising TRC cases:

> "Despite these successes, the NPA admitted that it has been slow in finalising TRC-related cases and **had only finalised 10 matters since September 2021. A further 135 matters were under investigation."**

464 It is noticeable that the NPA chose not to disclose the names of the 10 cases apparently finalised in the preceding year, nor did it identify the 135 cases that were apparently under investigation.

465 In the same meeting the following was reflected in the minutes:

> "Mr Dyantyi also appreciated the progress made by the NPA in the year under review, and he encouraged it to improve its performance going

forward. Afterwards, he mentioned that he had a few questions to pose and comments to make to the Authority.

One, **he suggested that the Committee be briefed on a separate occasion by the NPA on the work it has done on TRC cases, as he was not pleased that the entity had struggled to finalise these matters after nearly 30 years."** (Bold added)

NPA presentation to Justice Portfolio Committee in November 2023

466 On 21 November 2023, DNDPP Adv De Kock made a presentation to the Justice Portfolio Committee and disclosed that amongst other challenges were the turnover in prosecutors and destruction of documents:

> "Highlighting the matters that were reopened and under investigation, he said in October 2023, the NPA had 137 matters under investigation and 18 matters were finalised with either the decisions to prosecute, conduct an inquest or not to proceed with the matter due to the lack of evidence. Additionally, there were 13 matters on the court roll. Many families were requesting for a formal inquest to be held with evidence being presented before the court.
>
> Highlighting the challenges on the TRC matters, he said there was a capacity constraint, and prosecutors were employed on a contract basis. A deviation was obtained from the Department of Public Service and Administration (DPSA) for the creation of posts. There was a drastic exodus to the private sector. Within a year, the NPA lost ten dedicated prosecutors. New prosecutors meant the loss of [rapport] with families because the new prosecutors had to start from scratch to familiarise themselves with the investigator, families and investigations.
>
> The other challenges included the lack of dockets and inquest records as records were destroyed after ten years, meaning the evidence was lost. Documents were also destroyed post-1994. There was also a lack of access to TRC records and other documents which other government departments controlled. Additionally, the witnesses, accused, suspects and persons of interest were deceased or old. The witnesses were unwilling or afraid to cooperate with the Investigating Officers and the NPA. The government departments in possession of documents responded slowly in handing over the documents. The investigators had some challenges with the vehicles.
>
> Some areas were inaccessible and required appropriate vehicles to access victims and families. Obtaining experts and building a database of reputable service providers was also challenging, and utilising private experts was expensive. Additionally, the accused persons used delay tactics and last-

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> minute applications were made by legal counsels, resulting in matters languishing on court rolls...."

467 Under the list of challenges facing the NPA outlined by De Kock was a slide that stated:

> "Interference by private investigators, persistence by some to access list of matters under investigation to client hunt / name dropping / legal representation."

468. No detail was provided on the nature of the alleged interference, nor was it explained how seeking names of past crimes under investigation constituted a challenge for the NPA. As only the FHR has employed a private investigator to look into the TRC cases, and the FHR provides pro bono legal support to families, and it has requested the names of the murder cases being investigated, the accusations can only have been directed at the FHR.

469 It is quite apparent that De Kock and the NPA view the work of the FHR, its private investigator and its pro bono lawyers as unwelcome. It is likely that this antipathy is driven by the past litigation brought by the families to compel action in the Nokuthula Simelane, COSAS 4 and Cradock Four cases which exposed disturbing inaction on the part of the NPA and SAPS.

470 In our view the real reason why the NPA refuses to disclose the names of the closed cases and the 137 cases under investigation is because it does not wish to be held to account for its performance in these matters.

471 De Kock claimed that the NPA could not disclose the names of the deceased in the 137 cold cases under investigation because of security concerns in all cases. We doubt that there can be pressing security concerns in all cases. We suspect that

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the NPA wishes to avoid legal and investigative support being offered to those families, in order to avoid scrutiny in relation to those cases.

472 There is considerable irony in the NPA's approach, given that it was the work of family lawyers and private investigators that led to the reopening of the inquests of Timol, Aggett, Haffejee and Haron, and which contributed significantly to the prosecutions in the cases of Nokuthula Simelane, COSAS 4 and Caiphus Nyoka that are pending before the criminal courts.

473 In most societies serious about resolving old murder cases concerted efforts are made to reach out to the public for help and leads. This is standard practice, particularly in relation to cold cases and is often how such cases are solved. Yet the NPA chooses not to take this basic step in relation to the TRC cases. Reaching out to the public would also enable the families to secure pro bono legal help from organisations such as the FHR, but it seems that the NPA wishes to avoid this at all costs. It seems that the NPA would rather forego the leads that the general public might provide, even if it means eroding the prospects of solving the cases in the short time that is left.

474 In line with the NPA's preference to exclude private lawyers from the process, De Kock mentioned in his presentation that in the upcoming inquests, family members will be primarily represented by the NPA. Adv De Kock appeared to overlook the fact that the NPA represents the State not individuals.

475 The NPA may not take instructions from any party in any criminal proceeding. The interests of individuals do not always coincide with those of the State. Indeed, the NPA has ignored or turned down or ignored the bulk of the requests and proposals put to them by family members over the years.

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476 Notwithstanding this limitation, the NPA publicly states that it will be the lawyers of the families in the TRC cases. In so doing, the NPA acts unethically, as it misleads the families into believing they will be getting the same type of legal support as that offered by private attorneys and counsel.

477 The report of the NPA was roundly criticized by members of the Justice Portfolio Committee (**JPC**). DA MP Glynnis Breytenbach insisted that the next meeting should be held in person and that family members should be present. ANC MP Nomathemba Maseko-Jele asked why there was not a special unit dealing with the TRC cases, just like the Investigating Directorate that investigates corruption.

478 Notwithstanding the call for family members to be present at the next JPC meeting on the TRC cases, a meeting was held on 17 September 2024 without extending an invitation to families or the organisations representing them. In this regard, I point out that on 23 June 2023, following the last minute and abrupt cancellation by the NPA of a long-awaited meeting with the Cradock 4 families, I wrote a letter to the JPC, a copy of which is annexed hereto marked **FA67**, asking that families be permitted to participate in future meetings. In this letter I noted:

> "So far only the NPA has been invited to provide briefings. We believe it is high time for the Portfolio Committee to hear the side of the victims and the families."

479 My letter was ignored. At the 17 September 2024 meeting, the NPA stated that 104 unnamed new investigations had been opened since late 2021 and that a total of 126 unnamed cases were under investigation, down from the 137 cases mentioned at the JPC meeting in November 2023. The presentation was replete with operational graphs, flow charts, best practices, SWOT analyses and pointed to multiple 'accountability sessions' and trainings. It disclosed that the NPA had

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deployed 16 dedicated prosecutors to the TRC cases, while the DPCI had 24 dedicated investigators (down from 25 prosecutors and 40 investigators in November 2022). A copy of the NPA's full PowerPoint presentation, dated 17 September 2024, can be supplied on request.

480 In concluding this section, I note that while the political interference may have come to an end around 2017, its impact appears to linger. The NPA and the DPCI have been unable to build an effective capacity to pursue these cases. This lack of capacity has its roots in the political interference that took place from 2003, which helped to open the door to the subsequent period of rampant state capture. It seems that law enforcement organisations have not fully recovered from these devastating periods.

481 Regardless, it has been a frustrating and uphill battle for families to make progress in the TRC cases. Every small step forward has been hard fought.

482 Given the dire limitations in capacity, it is indeed regrettable that both the NPA and DPCI, and the State in general, choose not to take the bull by the horns and set up a truly specialised TRC unit or investigating directorate with both investigative and prosecutorial capacity. Instead, we are left with the disjointed and ineffectual decentralised approach with a TRC Component that has little or no impact on the cases.

THE CALL FOR AN INDEPENDENT COMMISSION OF INQUIRY

483 On 5 February 2019, ten former commissioners of the TRC addressed a letter to the President calling upon him to appoint a commission of inquiry into the political interference that has stopped the investigation and prosecution of virtually all the

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cases referred by the TRC to the NPA. They also called on the President to apologise to victims of apartheid-era atrocities who were denied justice and continue to suffer trauma. A copy of this letter is annexed hereto marked **FA68**.

484 The Commissioners wrote that the "families feel justifiably betrayed by South Africa's post-apartheid state which, to date, has turned its back on them. We owe them answers and we owe them an apology." They pointed out that instead of a standalone commission, and since the political interference has taken the form of state capture the President could instruct the then Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (also referred to as the **Zondo Commission**) to carry out the inquiry. Further alternatively the Commissioners suggested that the President could expand the mandate of the Mokgoro Commission of Inquiry – which was already seized with a probe into the NPA, to handle this inquiry. Aside from an acknowledgment, the President did not respond to the substance of this letter.

485 Since the President was not moved to act, I decided to make a direct approach to the Zondo Commission. I asked my lawyers to prepare comprehensive representations to that Commission to demonstrate that the NPA and SAPS had been captured in relation to the TRC cases, warranting the attention of the Commission.

Approach to the Zondo Commission

486 On 17 April 2019 my lawyers handed over my representations to the Commission, which were addressed to the Chairperson, Deputy Chief Justice Zondo; the Acting Secretary of the Commission, Peter Pedlar; the Head of Investigation, Terence

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Nombembe; and the Head of the Legal Team, Paul Pretorius SC. A copy of the cover letter is annexed hereto marked **FA69**. I have not attached the representations as they largely repeat what is contained in this affidavit, but they can be supplied on request.

487 I made these representations on behalf of the Cradock Four families as well as the following families, who supplied supporting affidavits:

487.1 Thembi Nkadimeng, the sister of Nokuthula Simelane who was abducted, tortured and murdered by the SB in 1983.

487.2 Imtiaz Cajee, the nephew of Ahmed Timol who was tortured and murdered by the SB at John Vorster Square in 1971.

487.3 Lasch Mabelane, the brother of Mathews Mabelane who was tortured and killed while in SB detention at JVS in 1977. Lasch has since passed away, without closure. The reopened inquest into the death of his brother has still not been held.

487.4 Jill Burger, the sister of Neil Aggett, who was tortured and killed while in SB custody in JVS in 1982.

487.5 Fatima Haron-Masoet and Muhammed Haron, the daughter and son of Imam Abdullah Haron who was tortured and killed while in SB detention in Cape Town in 1969.

487.6 Sarah Lall, the sister of Dr Hoosen Haffajee, who was tortured and killed by the SB at the Brighton Police Station in Durban in 1977.

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488 On 28 May 2019 the Acting Secretary of the Zondo Commission addressed a letter to me, a copy of which is annexed hereto marked **FA70**, in which he indicated that the Chairperson was of the view that the matter might fall outside the terms of reference of the Commission, but that the Commission would only decide that issue after we had delivered our comments or representations. On 12 June 2019, my attorney responded with our representations, a copy of which is annexed hereto marked **FA71**. These representations pointed out that:

488.1 The subject matters of state capture, corruption and fraud were "not confined purely to conduct, or abuse of power aimed at financial gain but also for undue or illegal advantage."

488.2 "Any form of inducement or for any gain of whatsoever nature" would include the shielding of suspects from investigation and prosecution through inducing members of the NPA and SAPS to drop the TRC cases.

488.3 The Prevention and Combating of Corrupt Activities Act 12 of 2004 (**PRECCA**) defined 'gratification' as including the avoiding of punishment, while the offence of corruption includes an abuse of a position of authority; or the violation of a legal duty which is designed to achieve an unjustified result.

488.4 PRECCA proscribed any conduct that required public officers to not adequately perform any official function; delay, hinder or prevent the performance of an official act; or exert any improper influence over the decision making of any person performing functions in a public body. It also specifically outlawed conduct aimed at:

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488.4.1 interfering with, hindering or obstructing the investigation of an offence.

488.4.2 not adequately performing a function relating to the institution or conducting of criminal proceedings;

488.4.3 delaying, hindering or preventing the performance of a prosecutorial function;

488.4.4 showing any favour or disfavour to any person relating to the institution or conducting of criminal proceedings; or

488.4.5 exerting any improper influence over the decision making of any person, including another member of the prosecuting authority or a judicial officer.

488.5 It was pointed out that the conduct of those who imposed their will on the NPA and SAPS to stop the investigation and prosecution of several hundred murder cases may fall within the scope of corruption as provided for in PRECCA. The same could be said of the prosecutors and police officers who acquiesced in the suppression of these cases.

488.6 It was asserted that an inquiry into the suppression of the TRC cases fell within the scope of the Commission's investigation launched on 11 April 2019 into the capture of the state's law enforcement agencies. It was pointed out that even though there have been leadership changes at the NPA and SAPS these institutions could not be expected to vigorously investigate themselves. In this regard it was noted that State Advocate, Torie Pretorius SC, in the Rodrigues stay of prosecution case admitted that

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the NPA had succumbed to outside political interference but claimed that the NPA was an innocent party.

489 The representations concluded with the following:

> "Perhaps more than any other class of cases, the suppression of the TRC cases, has been almost total in its impact. Virtually all the 400 cases were blocked. The impact this has had on the families of those murdered, their communities and on the fabric of society, is incalculable. This in itself demands an expeditious, thorough and credible inquiry into the machinations that resulted in such a massive denial of justice."

490 A call for a commission of inquiry, as well as an apology, were also made in a letter to President Ramaphosa on 23 June 2019 by the families of Chief Albert Luthuli, Steve Biko, the Cradock Four, Nokuthula Simelane, Ahmed Timol, Neil Aggett, Imam Abdullah Haron, Matthews Mabelane, Dr Hoosen Haffejee, Ashley Kriel, Caiphus Nyoka and several other families. A copy of this letter is annexed hereto marked **FA72**. They expressed their deep pain and anguish at having been denied truth and justice in the new South Africa. The families followed-up again a year later, and on 23 June 2020 they again wrote to President Ramaphosa imploring him to act. Their letters were ignored. A copy of this letter is annexed hereto marked **FA73**.

491 After nearly a year, I learned that the Commission's senior investigator, the late Frank Dutton and his team were taking affidavits from various witness. They also sought an affidavit from me which I supplied during August 2020. I have not attached my affidavit since it largely repeats what I have set out in this founding affidavit, but it can be supplied on request. My attorneys also provided the Commission with a list of persons of interest as well as a chronology of the political interference. That chronology has not been attached as it amounts to a repeat of what has been set out in these papers but can be supplied on request.

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492 This was, however, all to no avail as the 30 June 2021 closure of the Commission was looming. During the first quarter of 2021, we were informed informally that the Commission had run out of time and would not be able to complete its investigation into the political interference, which was abandoned.

Placing the President on terms

493 As a result, the former TRC commissioners, together with 18 civil society organisations, again pressed President Ramaphosa for a decision on a standalone commission of inquiry. A copy of this letter dated 25 March 2021 is annexed hereto marked **FA74**. In this letter, the former commissioners abandoned their call for an apology and focussed on the need for a commission of inquiry. They pointed out that the interference cut across multiple government departments and that:

> "It is accordingly not sufficient for there to be separate internal or departmental inquiries by the different institutions. Such inquiries will not be able to deliver the full history of the interference as it unfolded over time [and] over multiple entities. Moreover, such inquiries will not be able to compel the production of testimony and evidence from other departments. In any event, there appears to be considerable resistance to carrying out meaningful investigations at these levels; and it goes without saying that departmental officials should not be investigating themselves or their colleagues."

494 The commissioners set out why the subject matter of the proposed commission was a matter of great public concern, including that:

> "... there is a critically important need to restore public confidence in the institutions implicated in the suppression of the TRC cases. This is particularly the case in respect of the families of victims of apartheid-era crimes and their communities who have lost all trust and confidence in the SAPS and NPA.
>
> A further objective of the proposed commission is to reveal the truth pertaining to the suppression of the TRC cases, which gives it a deeper public purpose. This is necessary given the extent of disquiet and discontent around such serious lapses by public organs meant to uphold the rule of

law. There can be little doubt that such lapses have provoked much anxiety and worry amongst many South Africans who regard the suppression of these cases as a matter of great public interest and importance.

...

The TRC cases have been treated differently from other serious criminal cases for purposes of serving undisclosed political and ulterior ends. Such brazen arbitrariness should have no place in South Africa's constitutional order."

495 The commissioners attached to the letter draft terms of reference for the proposed commission, which are annexed hereto marked **FA75**. The proposed terms of reference included the following suggested issues to be probed:

"1.1 Whether, and to what extent and by whom efforts or attempts were made through any form of persuasion or inducement for any purpose, advantage or gain of whatever nature to influence or pressure members of the NPA and/ or the SAPS to refrain or stop investigating and/ or prosecuting apartheid-era cases referred by the TRC to the NPA, or to abandon or undermine such cases.

1.2 Identify the role played in the alleged interference by any person within or outside government, including any current or former members of the National Executive, office bearers and /or functionaries in any state institution or organ of state, including but not limited to the Department of Justice and Correctional Services, the Presidency, the National Intelligence Agency, the Department of Defence and the former Directorate of Special Operations.

1.3 Whether, and to what extent, any current or former member or functionary of the NPA and SAPS colluded in the alleged interference, or agreed, acquiesced, or succumbed to the alleged interference.

1.4 The nature and extent of the interference, if any, including:

1.4.1 the reasons or motivation behind the interference;

1.4.2 whether any person within or outside government issued formal or informal, written, or unwritten instructions or directions for the interference to proceed;

1.4.3 whether any formal or informal arrangements or agreements were made between persons within and/ or outside government to carry out the interference;

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1.4.4 how the interference was imposed on the NPA and the SAPS; and

1.4.5 how members of the SAPS and NPA were persuaded, influenced, or forced to cooperate in the interference.

1.5 Whether any person breached or violated the Constitution, any law, guideline, or ethical code by engaging in or facilitating the interference or failing to stop or expose such interference.

1.6 Whether any conduct committed during the interference, *prima facie*, amounts to the crime of defeating or obstructing the course of justice, or a crime in terms of the National Prosecuting Authority Act 32 of 1998, or the crime of corruption, particularly as framed in sections 9 and 19 of the Prevention and Combating of Corrupt Activities Act, 12 of 2005 or a crime under any other law.

1.7 The impact, if any, on victims, families, communities, the rule of law, the criminal justice system and related institutions, and South Africa as a whole.

1.8 The steps, measures and reforms needed to prevent a recurrence of the interference."

496 The TRC commissioners requested that the proposed commission be imbued with the necessary powers under the Commissions Act 8 of 1947 to compel the production of testimony and evidence. The commissioners concluded their letter with a quote from the late former President of the Constitutional Court and Chief Justice of South Africa, Justice Arthur Chaskalson, who said a few months after South Africa's democratic elections in 1994:

> "We need to remember that the first incursion into rights is often the most damaging; that once inroads are permitted, the will to resist subsequent incursions is lessened."

497 The commissioners advised that if they did not hear from the President by 30 April 2021, they would refer this matter to their attorneys, who would be instructed to vindicate the constitutional rights of families of apartheid-era crimes by bringing an appropriate application to court.

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498 On 6 May 2021, Mr Geofrey Mphaphuli, the Acting Head: Legal and Executive Services in the Presidency wrote to former TRC commissioners Yasmin Sooka and Dumisa Ntsebeza SC acknowledging receipt of their letter and advising that the matter had been referred to the DOJ for "*further attention and reply*." A copy of this letter is annexed hereto marked **FA76**. The DOJ never responded to the letter of the former commissioners.

499 On 8 June 2021 my attorneys addressed a letter to President Ramaphosa, copied to the then Minister of Justice, Ronald Lamola, placing him on terms. A copy of this letter is annexed hereto marked **FA77**. The letter noted that no response had been received from the Minister of Justice as per the Presidency's letter of 6 May 2021. The letter indicated the following:

> "We have been furnished with an opinion from eminent senior counsel indicating that the issue in question is one of significant public concern; and that in these specific circumstances, your failure to make a decision, or your refusal to appoint a commission, is susceptible to review under the legality principle as well as a Bill of Rights challenge.
>
> We have now been instructed by several families of apartheid-era victims (including members of the Cradock Four and Biko families) as well as multiple organisations to prepare an application to court for the appropriate relief. Counsel has been duly briefed in this regard.
>
> Our instructions are to place you formally on terms. Should we not hear from you within 10 days of receipt of this letter we will proceed to launch an application to court for an order compelling you to fulfil your obligations under the Constitution and to appoint a commission to inquire into the suppression of the TRC cases."

500 No specific response was received to this letter. Since the Justice Ministry appeared to be taking steps towards an inquiry, the litigation was placed on hold. The steps and their shortcomings are set out below.

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Justice Minister's plan for an internal inquiry

501 On 23 June 2021, Minister Lamola announced that the NPA will pursue an investigation into the alleged political interference and that the investigation will be overseen by a retired judge. Specifically, the investigation will consider whether the conduct of officials and others warrants any action in terms of section 41(1) of the NPA Act. I annex hereto marked **FA78** a News24 article dated 23 June 2021 reflecting the Minister's statement.

502 No details of the proposed inquiry were released. The Minister did not see fit to consult or engage with families and civil society organisations who had uncovered the interference and called for an independent investigation.

503 On 5 November 2021, the Minister, in his address to the Inaugural Fort Calata Foundation Memorial Lecture, indicated that he had appointed an inquiry to investigate the suppression of the cases referred by the TRC to the NPA. He indicated that the investigation would be presided over by a judge.

504 The Minister did not disclose the terms of reference of the inquiry or the identity of the selected judge. No indication was given as to how the Judge would be appointed and under what legal authority. When I asked the Minister at the lecture whether the inquiry would be open or closed, he said he would have to discuss this with the Judge. He declined to give his own view on the matter stating it "*would amount to a policy statement*". A recording of this lecture can be supplied on request.

505 Since the President was not involved in this process and no mention was made of the Commissions Act, it became clear that the envisaged inquiry was intended to be an internal inquiry, which are typically held behind closed doors. In my view, if it was

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intended to be an open and transparent inquiry, the Minister would have not hesitated to say so. It also raised eyebrows that the Minister wished to involve a judge in an internal enquiry conducted by an executive department.

506 On 9 November 2021, the former TRC commissioners, several family members and 13 civil society organisations, including the Nelson Mandela Foundation and the Desmond and Leah Tutu Legacy Foundation issued a press statement titled "*Call for an Independent Public and Open Commission of Inquiry into the Suppression of the TRC Cases.*" I was also a signatory to this statement. We expressed our concern at the Minister's plans, which appeared aimed at damage control and circumventing a public inquiry. A copy of this statement is annexed hereto marked **FA79**.

507 In our statement, we pointed out that since 2019 the President and Minister had ignored four requests from the TRC commissioners and the Apartheid Era Families' Victim Group (**AFVG**), and it seemed more than evident that government was anxious to avoid holding a public and open commission of inquiry in order to escape public scrutiny:

> "It appears that the State wishes to avoid an open and public inquiry into the suppression of the TRC Cases. This may be for purposes of damage control to ensure that the truth behind the suppression is carefully managed by a closed-door inquiry, away from the glare of public scrutiny. This is unsurprising given the role of senior members of the executive, NPA and SAPS in the suppression of the TRC Cases. Since a closed inquiry will be viewed with great suspicion, the inescapable conclusion to be drawn is that a judge is being asked to oversee an effective secret investigation to give it an air of respectability.
>
> Typically, a commission of inquiry includes public hearings, the power to subpoena witnesses and documents, the calling of witnesses, cross examination and the participation of victims and other stakeholders. While it is possible that attempts will be made to deflect criticism by allowing victims to make submissions and requiring the Judge to issue a report, it will remain a closed inquiry. There will be no public hearings and no

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> opportunity for victim representatives to ask tough questions to those who shut down justice. Victims, the media and the public will be effectively shut out of this inquiry.
>
> An inference will almost certainly be drawn that the inquiry has been so designed to protect powerful elements in society and shield them from scrutiny and embarrassment."

508 We expressed our concern that the government wished to stage manage the process and the proposal would amount to the executive investigating the executive:

> "The Minister is appointing an executive inquiry to investigate members of the executive. The suppression of the TRC cases involved multiple entities and individuals across the public sector, including the Department of Justice, the National Intelligence Agency, the NPA, the SAPS and the Department of Defence. The available evidence suggests that politicians, cabinet ministers, senior civil servants, police officers and prosecutors were all involved in efforts to ensure that the TRC cases never saw the light of day.
>
> An internal inquiry cannot hope to get to the bottom of a problem of this magnitude and sensitivity. An internal investigation will not be able to deliver the full history of the interference as it unfolded over time over multiple departments and within and outside government.
>
> An internal inquiry, unlike a commission of inquiry, will have no power to compel the production of testimony and evidence and will have to rely on requests and cooperation of individuals and different government departments.
>
> The track record of the SAPS and NPA in relation to the TRC Cases speaks for itself. It is well known that there remains considerable resistance to carrying out meaningful investigations of the TRC Cases, let alone investigations into the suppression of the cases. In these circumstances it is disturbing that the Minister has seen fit to reject a public commission of inquiry in favour of an internal investigation. Members of the executive will be expected to investigate their own colleagues. Such an inquiry will have little or no credibility in the eyes of the public, and the gloss of an 'oversight' role of a judge will not change this."

509 We expressed concern that the Minister was abusing the judiciary by requiring a Judge or retired Judge to offer a semblance of gloss to an internal inquiry, which in practice would be firmly in the hands of the executive.

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> "It is particularly disturbing that a Judicial Officer is required to lend judicial legitimacy to an investigation conducted by the executive. Not only is such an expedient function well outside the functions of the judiciary, but it is also harmful to that institution and is a breach of the separation of powers principle, rendering such an appointment unconstitutional, as the Constitutional Court has ruled."

510 In respect of the dire need for a commission of inquiry, we pointed out that there is no longer any dispute that the political interference happened, given that the NPA had admitted that it succumbed to the interference, and that in *Rodrigues* both the High Court and SCA had expressed their dismay at how such interference could take place in the new constitutional order. We noted that:

> "While some evidence has been uncovered in the *Nkadimeng* and *Rodrigues* matters, the reasons behind the suppression of the cases are not known and the sources of such interference remains opaque. It is not known if arrangements and agreements were struck with individuals and entities outside government. The full means by which the will of outsiders was imposed on institutions such as the NPA and the SAPS is yet to be exposed. It is not known how institutions with firm constitutional and statutory obligations to uphold justice so easily abandoned their duties in respect of these cases."

511 We pointed out that the subject matter is of great public concern:

> "Perhaps more than any other class of cases, the suppression of the TRC cases has been almost total in its impact. Virtually all the cases were blocked. Most of the cases cannot be resuscitated as many perpetrators, witnesses and family members have died over the past 20 years. The impact visited on the families of those murdered, their communities and on the fabric of society is incalculable. The harm done to the families and our society demands an expeditious, thorough, and credible inquiry into the machinations that resulted in such a massive denial of justice.
>
> There is a critically important need to restore public confidence in the government as a whole and the institutions implicated in the suppression of the TRC cases. This is particularly the case in respect of the families of victims of apartheid-era crimes and their communities who have lost trust in the government, especially the SAPS and NPA. An investigation held behind closed doors is likely to destroy all confidence and trust in the state.
>
> A closed-door inquiry will undermine the effort to reveal the full truth behind the suppression of the TRC cases. This will add considerable anxiety to

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> the affected families and communities who have been waiting decades for the truth. The suppression of the TRC Cases deeply violated their rights to human dignity, equality and the rule of law. The refusal to hold an open and public commission of inquiry only exacerbates the violation of these rights."

512 Since we were aware that there was some 'commission fatigue' given the experience of the State Capture Commission which had cost R1 billion and which was extended eight times, we pointed out:

> "It will no doubt be argued that the country is suffering 'commission fatigue' and cannot afford yet another commission of inquiry, particularly after the State Capture Commission which cost some R1 billion. Such an argument is deeply insulting to the families who endured apartheid-era crimes. Their loved ones laid down their lives for our democracy and its enshrined freedoms. Not only has the post-apartheid state turned its back on them and suppressed their cases, but in raising such an argument, it says they are not worthy of a rigorous public inquiry. It is also insulting to the families given the readiness of state officials to squander billions on mismanagement, corruption and nepotism.
>
> In any event, the State Capture Commission cannot be compared to an inquiry into the suppression of the TRC Cases. Unlike the State Capture Commission, there is an extremely limited set of witnesses and a very limited set of facts to explore. Whereas the State Capture Commission required years to complete its work, a commission into the suppression of the TRC Cases could be wrapped up in few months."

513 We concluded with a call for a public and open commission of inquiry with the necessary powers of compulsion under the Commissions Act:

> "The post-apartheid state engineered multiple incursions into the rights of victims of apartheid-era crimes over the last 20 years. The holding of a closed-door inquiry will constitute yet another incursion into their rights. This cannot be allowed to happen.
>
> The families of apartheid-era victims deserve nothing less than a fully open, public and transparent inquiry. This must include public hearings, the power to subpoena and compel the production of evidence, and the right of victims to be represented in the commission and to lead evidence and put questions to witnesses. Only a commission of inquiry can allow provide for such accountability.
>
> Accordingly, we the undersigned former TRC Commissioners, families and organisations again call on you to work with the President to speedily

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> appoint an independent and public commission of inquiry into the suppression of the TRC cases in terms of the Commissions Act 8 of 1947, with the necessary powers to compel the production of testimony and evidence."

514 It was hoped that the publicity and lobbying would move the government to do the right thing. It did not. While the Minister of Justice appears to have abandoned his plans for an internal inquiry there was no movement towards establishing a credible inquiry.

The Ntsebeza Inquiry

515 On 13 January 2023, the NPA issued a press statement titled "*NPA Further Enhances Efforts to Ensure Effective Handling and Prosecution of TRC Cases*". A copy of this statement is annexed hereto marked **FA80**. In this statement, the NPA asserted that "over the last couple of years" it had "focused on reopening and pursuing priority cases and enhancing its internal capacity and processes both to ensure effective handling of these cases and to prevent any undue political influence." It then announced an inquiry, which it stated was in line with the requirements set out in *Rodrigues*:

> "As part of this effort, the NPA has appointed Adv D Ntsebeza SC to review the measures that have been adopted to deal with and prosecute TRC matters and to provide recommendations as needed. This is in line with the remarks made by the Full Bench in Rodrigues v National Director of Public Prosecutions of South Africa and Others 76755/2018) (2019) in the South Gauteng High Court in 2019 where the court held:
>
> > "It is also for these reasons that the conduct of the relevant officials and others outside the NPA at the time should be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular, to consider whether any action in terms of Section 41(1) of the NPA Act is warranted. Finally, there must be a public assurance from both the Executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again. In this regard they should indicate the

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measures, including checks and balances, which will be put in place to prevent a recurrence of these unacceptable breaches of the Constitution."

The Senior Counsel will conduct a thorough assessment and make recommendations, if necessary, to strengthen the NPA's handling of TRC cases. Further, if Counsel finds evidence or information that could amount to a violation of Section 41(1) of the NPA Act, such issues will be escalated to the National Director of Public Prosecutions (NDPP) to take forward as appropriate. If necessary, the NPA will refer relevant matters for criminal investigation.

Senior Counsel has three months to finalise his report and recommendations. The NPA will provide the necessary support to ensure that this timeline is kept and relevant interventions and improvements are implemented without delay.

The NPA has engaged with the Executive as appropriate on this matter. The Executive is expected to release its own statement in due course, as per the remarks by the Court highlighted above."

516 I am advised that Adv Dumisa Ntsebeza SC indicated to interviewees, such as the FHR representatives, that he interpreted his mandate primarily as reviewing the measures adopted by the NPA to deal with and prosecute TRC matters. He did not anticipate investigating the political interference as that would require an investigation across multiple departments, not just the NPA, and he enjoyed no powers to compel testimony or the production of evidence.

517 Ntsebeza SC submitted his report to the NPA on 30 June 2023, but the NPA did not release it to the public. On 11 October 2023, 29 family members and 13 civil society organisations, including the Southern African Catholic Bishops' Conference and the Centre for Applied Legal Studies, called for the public release of the Ntsebeza Report. A copy of their statement is annexed hereto marked **FA81**.

518 Some 7 and a half months later, on 15 February 2024, the NPA eventually released the Ntsebeza Report, a copy of which can be supplied on request. Some of its key findings and recommendations are set out below.

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518.1 The NPA and the PCLU were swayed from their constitutional and statutory duties in relation to the TRC cases.

518.2 The Ntsebeza Inquiry could not investigate the political interference given the narrow ambit of its terms of reference, and its lack of an investigative arm.

518.3 A commission of inquiry "is the only sensible way forward in order to get to the bottom of why the TRC cases were never investigated or prosecuted with zeal."

518.4 A commission of inquiry must be established to investigate the extent and rationale behind the political interference and should look into the roles of multiple state entities as well implicated individuals.

518.5 It must be a public inquiry and be empowered to hold hearings and conduct a proper investigation, including the exercise of powers of subpoena and search and seizure.

President placed on terms again

519 We hoped that the President would act on the recommendations set out in the Ntsebeza Report, and the litigation was again held back to permit the President and his line departments time to digest the report and take action.

520 We understand from questions that were answered in Parliament in April 2024 that the former Minister of Justice, Ronald Lamola, considered the recommendations of Ntsebeza SC. However, by the expiry of the sixth administration's term at the end of May 2024, the Ntsebeza recommendations had not been implemented.

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521 Following the general elections in May 2024 and the establishment of the seventh administration, and in light of the appointment of Thembisile Simelane MP, the sister of the late Nokuthula Simelane, as the new Minister of Justice, it was decided to permit the new government more time to change course.

522 Accordingly, on 10 July 2024, we instructed our attorneys to again write to the President demanding the appointment of a commission of inquiry. In this letter we sought an answer from the President by 31 July 2024, failing which would take legal action.

523 We also advised in the letter that we were seeking constitutional damages against the government to vindicate our constitutional rights which had been breached by the suppression of the TRC cases. We proposed that the government meet with us in order to commence negotiations on the nature, extent and quantum of such damages. A copy of this letter is annexed hereto marked **FA82**.

524 On 13 August 2024, Mr. Geofrey Mphaphuli, Acting Head of the Legal and Executive Services in the Presidency sent a letter to my attorneys. He acknowledged receipt of my attorneys' letter dated 10 July 2024 and advised that the Department of Justice and Constitutional Development was requested to consider the matter and advise the Presidency. He indicated that the Presidency would revert to my attorneys once it is in "receipt of the report/advice" of the said department. A copy of this letter is annexed hereto marked **FA83**.

525 Since nothing further was heard from the President or Minister of Justice we were forced to launch these proceedings.

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VIOLATIONS OF THE LAW

526 I am advised that before I set out the basis for the relief we seek, I must set out the statutory and constitutional provisions that have been violated by the political interference that resulted in the suppression of most of the TRC cases.

527 I am advised that the State has a constitutional duty to address crime, which arises *inter alia*, from its duty in section 7 of the Constitution to "*respect, protect, promote and fulfil the rights in the Bill of Rights*". In addition, the State must, in terms of section 237 of the Constitution, perform this duty diligently and without delay.

528 Any agreement or arrangement not to hold to account and punish those who have committed the most heinous of crimes is at direct odds with the most basic feature of South Africa's constitutional order, namely, the rule of law.

529 Those who imposed their will on the NPA and the SAPS to stop or undermine the TRC cases from proceeding, as well as those within those organisations who acquiesced to these demands, violated multiple constitutional and statutory provisions. These are set out below.

529.1 Section 179(2) of the Constitution vests exclusive power in the NPA to institute criminal proceedings on behalf of the state. In other words, no other person or body may make decisions whether to prosecute or not. This exclusive power is also highlighted in section 20(1) of the NPA Act.

529.2 Section 179(4) of the Constitution enjoins the prosecuting authority to exercise its functions without fear, favour or prejudice and requires the enactment of legislation to give effect to this requirement.

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529.3 Section 205(3) of the Constitution, which states that the "objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law".

529.4 Section 32(1)(a) the NPA Act requires that:

> "A member of the prosecuting authority shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law."

529.5 Section 32(1)(b) of the NPA Act prohibits interference in the prosecution function:

> "Subject to the Constitution and this Act, **no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority** or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions." (Bold added).

529.6 Section 32(2)(a) of the NPA Act requires prosecutors to take an oath or make an affirmation that they will:

> "...uphold and protect the Constitution and the fundamental rights entrenched therein and enforce the Law of the Republic without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the Constitution and the Law'.

529.7 Section 32(2)(b) of the NPA Act requires that in the case of the NDPP, or a DNDPP or DPP, the oath be taken before the most senior available Judge of the High Court within which area of jurisdiction the officer is situated.

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529.8 Section 41(1) of the NPA Act stipulates that any person who contravenes section 32(1)*(b)* shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

529.9 The potential violations of PRECCA have been described above and will not be repeated here.

529.10 The NPA's Prosecution Policy made in terms of s 179(5)(a) and (b) of the Constitution, read with section 21(1) of the NPA Act, requires that the NPA must "*exercise its prosecutorial functions independently*". The preface to the Prosecution Policy asserts:

> "Effective and swift prosecution is essential to the maintenance of law and order within a human rights culture.
>
> Offenders must know that they will be arrested, charged, detained where necessary, prosecuted, convicted, and sentenced."

529.11 The NPA's Prosecution Policy stresses that:

> "The decision whether or not to prosecute must be taken with care, because it may have profound consequences for victims, witnesses, accused persons and their families. A wrong decision may also undermine the community's confidence in the prosecution system and the criminal justice system as a whole."

530 Every constitutional and statutory duty and obligation mentioned above was violated by those who imposed their will on the NPA, as well as the NPA leadership and its senior staff members involved in the abandoning of the TRC cases. Although the NPA enjoyed exclusive authority to institute criminal proceedings, on its own version, it allowed others to impose their will on the authority to stop prosecutions that otherwise would have been pursued.

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530.1 In so doing, the NPA and its responsible officials violated section 179(2) of the Constitution.

530.2 The Government officials and Executive Members who imposed their will, or attempted to impose their will on the NPA, and the NPA leadership and its senior staff members involved in the abandoning of the TRC cases, violated sections 32(1)(a) and (b) of the NPA Act.

530.3 The responsible officials also violated their oaths of office in terms of section 32(2) of the NPA Act and are potentially liable for criminal sanction in terms of section 41(1) of the Act.

531 In allowing others to effectively take their decisions, the responsible members of the NPA failed to act impartially and perform their powers and duties in good faith and without fear, favour or prejudice.

531.1 Their actions brazenly favoured political elites and perpetrators of apartheid era crimes, and severely prejudiced the interests of victims, their families and communities.

531.2 Accordingly, the NPA and the responsible officials violated section 179(4) of the Constitution and section 32(2) of the NPA Act.

532 The NPA, and its responsible officials, permitted other organs of state, alternatively members or employees of organs of state and/or other persons to improperly interfere or obstruct their authority in carrying out their powers, duties and functions. These violations, in turn, amounted to a violation of the rule of law itself, enshrined as a founding value in section 1(c) of the Constitution, which upholds the supremacy of the Constitution and the rule of law.

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533 The violations also amounted to a betrayal of the constitutional compact of truth, reconciliation and justice that our democracy was predicated upon, and which sought to provide the closure and healing that our nation required to move beyond the past, as enshrined in the preamble of the Constitution.

534 The entire scheme of the TRC Act presupposed that perpetrators of crimes in the apartheid era who did not apply for amnesty or who were denied amnesty would be prosecuted by the NPA. The violations described above accordingly were also violations of the TRC Act.

The NPA was required to resist political pressure

535 While pressure was brought to bear on the NPA, its officials were under a clear legal duty to reject such improper interference and obstruction. With a few exceptions, the leadership of the NPA did the bidding of the politicians and acquiesced with the political meddling in its work. Not only was the NPA required to reject such interference, but it was also required under law to stop such unlawfulness by:

535.1 Investigating, and where necessary, prosecuting those unlawfully interfering with the criminal justice process and obstructing the course of justice;

535.2 Exposing the interference by bringing it to the attention of Parliament's Portfolio Committee on Justice and/or the Public Protector; and

535.3 Taking steps to restrain and stop such interference and, if needs be, through seeking appropriate remedies, such as injunctive relief from the courts.

536 While Pikoli and Ackermann pushed back against the interference, as well as bringing it to the attention of the Justice Portfolio Committee, the balance of the NPA

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leadership over the period of the interference took no such steps and shamefully succumbed to the pressure.

537 The NPA's responsible officials permitted other organs of State, alternatively members or employees of organs of state and/or other persons to improperly interfere, hinder or obstruct the Authority in carrying out its powers and duties and functions. The actions of the responsible persons, both within and outside the NPA and SAPS warrant investigation into whether their conduct:

537.1 violated the aforesaid provisions of the Constitution and the NPA Act, in particular sections 32(1)(a) and (b) and 41(1);

537.2 amounted to the crime of defeating or obstructing the course of justice, in that these officials took active steps to supress the TRC cases in the face of a legal obligation to do otherwise;

537.3 amounted to the crime of corruption, particularly as framed in section 9(2) of PRECCA; and

537.4 where relevant officials are officers of the court, whether such officials are fit to serve as such in light of their conduct.

GROUNDS FOR DECLARATION AND CONSTITUTIONAL DAMAGES

538 The suppression of the TRC cases has been almost total in its impact. Virtually all the approximately 300 cases referred by the TRC to the NPA were blocked from proceeding from around 2003. This suppression lasted for a period of at least 15 years. Its effects are ongoing. The impact on the families of those murdered, their communities and on the fabric of society is incalculable.

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Denial of justice

539 The bulk of the apartheid-era cases have come to an end because suspects and witnesses have died, not to mention family members. The primary reason behind this monumental failure of justice has been the political interference which effectively killed off the TRC cases. Those behind these machinations knew that this would be the outcome. They must be held to account.

540 The vast majority of cases cannot be resurrected at this late stage. In my father's case, my legal team identified some 49 persons who were associated in one form or another with the Cradock Four case. Virtually all of them have died.

540.1 All six members of the police hit squad who murdered the Cradock Four have died. All the masterminds, against whom there was a *prima facie* case have died. Most of the members who sat on the State Security Council between 1984 and 1985 have died.

540.2 Since we launched our application to compel the NPA and SAPS to finalise their investigations in July 2021, the following persons of interest died: Eric Winter (former Cradock SB Commander), FW de Klerk (former State President), Johannes Velde van der Merwe (former SAP Commissioner) and Adriaan Vlok (former Minister of Police).

540.3 Most recently, Hermanus Barend du Plessis, former head of SB Black Affairs in Port Elizabeth died on 16 May 2023. He was the mastermind behind the gruesome murders of the Cradock Four, the PEBCO 3 and Sipiwo Mtimkhulu, Topsy Madaka, and Gcinisizwe Kondile amongst others.

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All were tortured and abused before their deaths. It is unforgiveable that the authorities allowed Du Plessis to go to his grave without facing justice.

540.4 While a third inquest into the Cradock Four case was belatedly announced on 4 January 2024, we have had to accept that after 39 years of waiting, 30 of them in the post-apartheid era, we will not see justice done in this case.

540.5 As mentioned above, the third inquest, which was due to commence in September 2024 collapsed because the NPA failed to give the witnesses sufficient notice of the inquest, who were not able to arrange funding for their legal costs in time. This was a remarkable lapse given that the same issue had emerged in all previous reopened inquests, pointing to the poor management of these cases and the failure to learn from past experience. The inquest was postponed to June 2025. There is a high probability that the remaining key witnesses, who are all in the twilight of their lives, may not testify, either through death or infirmness. They include:

540.5.1 88 years old Gerrit Nicholas Erasmus, former Lt General and head of the Port Elizabeth Security Branch.

540.5.2 84 years old Izak Johannes "Krappies" Engelbrecht, former Major General and head of the SAP's Counter-Intelligence department.

540.5.3 82 years old Christoffel Pierre "Joffel" van der Westhuizen, former Lt General in the SADF and former Officer Commanding Eastern Province Command. His legal representative has disclosed that he is in poor health. An attempt to take his evidence on commission

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has been stymied because the SANDF refuses to pay his legal costs.

540.5.4 75 years old Craig Michael Williamson, former head of Security Branch Intelligence.

540.5.5 75 years old Lukas Daniel "Neil" Barnard, former Director of the National Intelligence Service, who died on 13 January 2025.

540.5.6 75 years old Eugene Alexander de Kock, former head of the Security Branch's Vlakplaas Unit.

541 More than 10 years ago, on the 30th anniversary of Nokuthula Simelane's disappearance, her sister, Thembi Nkadimeng penned an opinion piece in the City Press titled 'My sister's heart' dated 26 December 2013, a copy of which is annexed hereto marked **FA84**. The piece sums up the impact of the suppression of that murder case on the Simelane family. It is a story of deep betrayal. I have included the following extracts below:

> "The story of my sister, Nokuthula Simelane, is about freedom and betrayal. My sister believed in freedom with every fibre of her being. It was her unshakeable dedication to freedom that took her to the Carlton Centre in Johannesburg on the morning of September 8, 1983. ....
>
> Instead of a scheduled rendezvous with a comrade, she was met by members of South Africa's hated security police, who shoved her into the boot of a vehicle. This betrayal was to condemn Nokuthula to a choice between life and death. An informant's life – a betrayal that would crush her spirit – or death with her dignity intact. In reality, there was no real choice for Nokuthula.
>
> Her commitment to what she loved most dearly made the first option unthinkable. My sister's death was not swift, and it was not painless.... Her torturers were convinced that with enough force this young, inexperienced woman would break and become an informant.

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They believed that it was just a question of more violence and more fear: a few more vicious blows to her head, to her face and her body, or perhaps a few more near-drownings in an icy dam. Maybe more days of solitary confinement shackled in handcuffs and leg irons in filthy conditions would push her over the edge.

The black police officers who testified before the Amnesty Committee of the TRC reported that after weeks of torture, my sister was unrecognisable. Her face was an appalling mess of bruises and swelling. She was too weak to walk. The last time they saw her was when she was being pushed into the boot of one of the white officer's vehicles.

My family and I have not rested since we learnt that my sister went missing. We know the most terrible things about what she suffered. But we don't know how she died and where her body is today. We have spent three decades looking for Nokuthula. We even appointed private detectives to assist us. Until we find her remains, or get answers about what really happened to her, we remain trapped in the past.

We did not expect the former South African Police to investigate themselves. However, we firmly believed that the new democratic South Africa would take the necessary steps. We were wrong. This was the second betrayal of Nokuthula and everything she stood for.

This betrayal cut the deepest. My father went to his grave without knowing what happened to Nokuthula. My mother, now sick and old, fears that she will die without knowing – and without burying Nokuthula's remains with the dignity she deserves. ....

The police and the prosecutors could have taken up the matter. However, they chose not to, though a police docket was opened in 1996. When I approached [the NPA], they advised me that their hands were tied as they were waiting for a new policy to deal with the so-called political cases. When the new prosecution policy emerged in late 2005, it essentially created a backdoor amnesty.

It gave perpetrators, like my sister's killers, a second opportunity to escape justice. Together with the widows of the Cradock Four, the young freedom fighters murdered by a police hit squad in 1985, I went to court to challenge the policy. In 2008 a Pretoria High Court judge struck down the policy, declaring it to be absurd and unconstitutional.

We thought this meant that the path was eventually cleared for justice to take its course. Again, we were wrong. This time the prosecutors claimed that the police were refusing to provide investigators. It took a high-level intervention for an investigating officer to eventually be appointed to the case in 2010 – but apparently the docket had gone "missing".

Three years later, even after finding the docket, there was no progress. It was clear to me that the authorities were not going to investigate the case seriously, let alone prosecute anyone. They even refused to charge those

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police officers involved in the kidnapping who did not apply for amnesty. At the beginning of 2013, I instructed my lawyers to demand the holding of a judicial inquest into her death.

This request was refused. After 17 years of idleness, the prosecutors advised us that their investigations were still not yet complete. We do not believe them.

We have lost all faith in the prosecutors and police. They have betrayed our trust. They now claim that they are occupied with inquiries, which could conceivably drag on indefinitely while witnesses and suspects grow old and die.

We do not know why the authorities in the new South Africa would turn their backs on one of their own. Nokuthula's ultimate sacrifice helped to pave the way for the freedom and democracy we now enjoy.

We cannot bury her, and we can find no peace. The betrayal of my sister, and what she stood for, is almost complete."

542 As mentioned above, Thembi Nkadimeng applied to court in 2015 for an order compelling the NPA and SAPS to take action (in *Nkadimeng 2*). This resulted in an indictment being issued in early 2016. Families should not have to go to court to get the authorities to do their jobs.

543 Eight years since the indictment for the murder of Nokuthula Simelane was issued, the criminal trial has still not started.

543.1 Two of the four accused have died since the issuing of the indictment. Timothy Radebe, died during 2019 and Frederick Mong died during 2021.

543.2 At least eight witnesses and family members have died since 2016.

543.3 On 6 June 2022, the very day that the belated trial was to begin against the two-remaining accused, the legal team representing the commander of the SB squad, Willem Coetzee, produced a flimsy two-page doctor's report claiming that Coetzee was mentally unfit to stand trial, requesting a

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postponement of the trial, which was granted, with no opposition from the NPA. More than 2.5 years later, this issue remains unresolved.

543.4 The presiding Judge in the Simelane case refused to hear or entertain representations from the family on the question of delay.

543.5 A graphical depiction of the delays in the Simelane case prepared by the FHR is annexed hereto marked **FA85**.

543.6 During 2016, the family requested the NPA to include crimes against humanity charges, including the crimes of apartheid and enforced disappearance on the charge sheet. It took some 5 years for the NPA to reach a final decision on this question towards the end of 2021. Ironically, the NDPP refused to include the charges on the grounds that it might delay the trial.

544 But for the political interference, this case could have proceeded in the early 2000s. If it had, it would have spared Nkadimeng, her mother, Ernestina Simelane, and family the agony of the last 20 odd years. Ernestina turns 85 this year.

545 More than 42 years has elapsed since four teenagers, known as the COSAS 4, were lured into a trap by the SB and cruelly blown up on 15 February 1982.

545.1 Three of the senior perpetrators, Jan Carel Coetzee, Abraham Grobbelaar and Willem Schoon (who authorised the operation) died before they could face justice.

545.2 Zandisile Musi, the only surviving member of the COSAS 4 who was severely injured in the 1982 blast, died in June 2021.

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545.3 Maide Christina Selebi is the sister of the late Eustace Madikela, one of the COSAS 4 who died on the scene. Maide is the only surviving member of the Madikela family. Her parents, siblings and husband have all passed on.

545.4 In 2021, the last two living perpetrators, both elderly, were charged with kidnapping and murder, and at the urging of the families, also with crimes against humanity, including apartheid as a crime against humanity. It was the first time that such international crimes had been brought in South Africa.

545.5 As mentioned above, the trial was delayed for years by the refusal of SAPS to pay the legal fees of the second accused, a former SB officer. The families had to intervene in order to force the SAPS to pay, while the NPA and the accused took a back seat in the matter. 'Stalingrad' type tactics employed by the accused's' legal teams in launching parallel civil litigation delayed the trial further and it has been postponed to April 2025.

546 In the PEBCO 3 case, three leading civic activists, Sipho Samuel Charles Hashe, Twasile Champion Galela and Qaqawuli Godolozi, were abducted in May 1985 from the Port Elizabeth airport in a joint Vlakplaas and SB operation. The activists were taken several hundred kilometres away to the remote Post Chalmers farm where they were viciously tortured and murdered.

546.1 Most suspects have died including Vlakplaas commander, Jan Hattingh 'Jack' Cronje, who deployed a hit squad to the Eastern Cape. Vlakplaas unit members, Johannes Koole and Kimani Peter Mogoai, have also passed on.

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546.2 All the Port Elizabeth SB members are deceased, including Gideon Nieuwoudt, Johannes Martin 'Sakkie' Van Zyl, Gerhardus Jacobus Lotz, HB Du Plessis and Harold Snyman.

546.3 Former Vlakplaas Colonel Roelf Venter apparently died of "natural causes" on 28 July 2024.

546.4 Only 2 members of the Vlakplaas unit involved in the PEBCO 3 hit remain alive today. Former Vlakplaas Warrant Officer, Gerhardus Cornelius Beeslaar, is about to turn 87 years old; and Joseph Tshepo 'Joe' Mamasela is in his 70s.

546.5 The sands of time are fast running out. Notwithstanding the urgency, the NPA has still not responded to a detailed 147-page memorandum dated 30 November 2023 submitted by the families which set out the evidence against the last surviving suspects.

546.6 Despite multiple follow up communications by the families' lawyers, they were only able to meet with the NPA on 3 December 2024. To the dismay of the families, the prosecutors said they were not ready to respond to the analysis of the evidence and recommendations of our lawyers, even after being in possession of the document for more than a year. More detail is provided in the supporting affidavit of Nomali Rita Galela filed evenly herewith.

547 According to the police version, Soweto Students Representative Council member, Matthews Mabelane, who was detained at JVS, fell to his death while attempting to escape out the window from a 10th floor interrogation room on 15 February 1977.

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The Mabelane family do not believe the official version that nobody was to blame for his death and have been pushing to reopen the inquest for several years, without success.

547.1 This struggle was spearheaded by Matthews' father, Philip Mabelane and his brother, Lasch Mabelane. Philip died on 9 May 2018, while Lasch died on 6 August 2020, without reaching closure.

547.2 On 1 August 2024, the family's legal team submitted detailed representations to the NPA seeking the reopening of the inquest. The representations included two expert forensic reports which explained why the police version was untenable.

547.3 More than 6 months later the NPA have still not made a decision.

548 In the Highgate Hotel Massacre, a group of balaclava-masked men shot dead five patrons at the hotel bar in East London and injured seven others on 1 May 1993. The families and survivors of the massacre have been seeking the truth for decades. Nobody applied for amnesty and no arrests were made. No inquest was ever held. Neville Harris, father of Deon Harris who was one of the five murdered, died in July 2023. He had been struggling for the truth for decades. Ongoing delays means that he has been deprived the opportunity to participate in the inquest, which is set down for hearing in late January 2025 in the High Court in East London.

549 In May 1987, Sbho Phewa a UDF activist, was abducted by askaris and handed over to the SB at Winklespruit in KwaZulu Natal. He was never seen again, and his body has not been recovered. At least three of the perpetrators, including the notorious Andy Taylor, died before they could face justice. As mentioned above,

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Lawrie Wasserman, who was charged with murder on 12 November 2024, died 4 days later.

550 Anti-apartheid youth activist Mxolisi 'Dicky' Jacobs was arrested by the SB in Upington in June 1986 and spent 129 days in detention until he was found hanging in his cell on 22 October 1986. Some 38 years later his family is no closer to the truth of what happened to him.

551 Richard and Irene Motasi were shot dead by Northern Transvaal SB operatives at Temba on 1 December 1987.

551.1 They were murdered in the presence of their 3-year-old son Tshidiso Motasi. He was callously left unattended throughout the night with the bodies of his parents.

551.2 Nobody has ever been prosecuted for these horrendous crimes even though several of the killers did not apply for amnesty. At least three of the killers have died, including the notorious Jaques Hechter who died on 20 July 2023.

551.3 Hechter was refused amnesty for his role in murdering Irene Motasi. When he appeared before the Amnesty Committee he testified that he had *"strangled, burned, shot, kicked and blew up 35 people."* Hechter was allowed to go to his grave without facing justice for the Motasi murders.

551.4 Gloria Hlabangane, the mother of Irene Motasi, is 92 years old. She is hoping to see justice done in her daughter's case, but time is not on her side. Two of the surviving suspects are well into their 80s.

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552 Dr Rick Turner, an anti-apartheid activist and academic was a leading figure in the 'Durban Moment', in the 1970s. Shortly before his banning order was about to expire, Turner was shot dead in his Durban home. He died in the arms of his daughters, 13-year-old Jann and 8-year-old Kim.

552.1 Evidence emerged in the reopened inquest into the death of Dr Hoosen Haffejee that the Turner house was being monitored round the clock by the SB until the day before the murder. The Turner family has been searching for the truth for decades. Nobody has been held to account.

552.2 Captain James Taylor of the Durban SB, who was implicated in the murder, died in 2019. The Turners have sought to reopen the inquest, without success so far.

553 It is not surprising that apartheid-era perpetrators, witnesses and family members are dying on a frequent basis given that most of the offences took place between the 1960s and 1980s and most of those responsible for these crimes were born between the 1930s and 1950s. They are typically in their 70s and 80s, or older. It is a race against time, but we see little urgency on the part of the authorities.

554 The denial of justice is further depicted in the supporting affidavits of my co-applicants that are attached to this founding affidavit. Each of these supporting affidavits tell the story of victims and survivors of apartheid era crimes, which were abandoned by the post-apartheid authorities. For most of them, justice remains out of reach thirty years into our democracy. Sadly, there are many more stories that have not been told in these papers.

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555 The political interference has been primarily responsible for the almost total denial of justice and closure in the TRC cases. The prejudice visited upon the families and their communities has been irreversible and incalculable. We have suffered considerable pain, suffering and indignity.

Violated Rights

556 I submit that accountable governance and social trust are built upon decision making by public officials that is reasonable and responsive. The political interference which suppressed the TRC cases or severely undermined the prospects of justice in those cases, has denied us our substantive rights and entitlements under the Constitution, which are set out below.

Rule of law

557 The fact that serious crimes committed under apartheid have been deliberately suppressed implicates the rule of law, enshrined in section 1 of the Constitution. As survivors and family members of victims of such crimes we were entitled to have these crimes properly investigated.

558 Crime, particularly serious crime, undermines the fabric of our society and violates, amongst other rights, the right to life, the right to freedom and security and the right to dignity.

559 Serious crime committed by agents of the State should be viewed in a particularly serious light. The perpetrators of such crime are often shielded from justice. During apartheid, the perpetrators of state sponsored crime enjoyed almost total impunity. The failure of the post-apartheid state to timeously investigate such cases,

particularly those cases which were not amnestied, points to political deal making or tolerance of such crimes for ulterior purposes.

560 The rule of law requires that the laws creating crimes must be obeyed. Prosecution decisions may not be subject to favouritism. The interference in the TRC cases displayed blatant favouritism for the perpetrators of crimes by those in high office, at the expense of victims.

561 This violation of the rule of law is exacerbated by the refusal or failure to get to the bottom of the suppression of these cases, through a credible, independent and open inquiry.

Principle of Legality

562 I am advised that the interference also implicates the principle of legality, which is central to the rule of law. The constitutional principle of legality requires that a decision-maker exercise the powers conferred on him or her lawfully, rationally and in good faith. Such decisions may not be arbitrary and must be rationally related to the purpose for which the power was given.

563 I submit that the past conduct of the Executive, the NPA, SAPS and other organs of state in the shameful colluding or acquiescing in the suppression of the TRC cases is not only arbitrary and irrational but also an act of bad faith.

564 During the period of interference, the TRC cases were not pursued by the SAPS and NPA notwithstanding repeated requests and pleas over many years. Such conduct is not rationally connected to the purpose for which investigative and prosecutorial powers were granted, namely the combating of crime, particularly the

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most serious crimes. There can be little doubt that the decisions behind the interference were irrational.

Human Dignity

565 The interference has violated our right to human dignity. The suppression of the cases and the ongoing delays have denied us, our families and our communities of our intrinsic worth as human beings.

566 The conduct of the responsible officials behind the interference has denied us justice within a reasonable time, or at all. In so doing they have exacerbated and prolonged our pain and trauma. We have been denied the possibility of closure of a most painful past. This conduct has breached our rights to human dignity.

567 The refusal or failure to take expeditious steps to investigate the known suspects behind the crimes against our loved ones has disrespected our rights as victims.

568 Ultimately, the interference infringes upon our rights to dignity in that it:

568.1 protects the perpetrators responsible for the heinous crimes against our family members, and/ or ourselves;

568.2 causes suffering to us and our families by denying us justice;

568.3 prevents us from reaching closure;

568.4 dishonours the respect, dignity, and value of ourselves and our families in the wider community; and

568.5 demeans South African society as a whole by betraying the constitutional compact made with victims as enshrined in the epilogue to the Interim

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Constitution and by undermining the purpose and spirit behind the TRC's amnesty process.

Right to life

569 The right to life as protected in section 11 of the Constitution is infringed as the interference has closed down justice in most of the cases or has severely undermined the prospects of a successful investigation and prosecution of the perpetrators who murdered our family members.

570 The political interference has also devalued the lives and memory of our loved ones.

Right to freedom and security of the person

571 The interference violates the right to freedom and security of the person enshrined in section 12 of the Constitution by closing down or undermining the investigations of the perpetrators who violated the bodily integrity of our family members by subjecting them to torture, assault, attack and other cruel and inhuman treatment.

Right to equality

572 The interference and the failure to take forward the crimes of the past violates the right to equal protection and benefit of the law enshrined in section 9 of the Constitution by unjustifiably discriminating against the survivors and families of victims of this class of crimes. The victims of the crimes committed in the TRC cases have been effectively treated as second-class citizens. Their cases were specifically selected for abandonment and neglect.

573 Once the TRC's amnesty process was concluded there should have been no reason to treat apartheid era crimes any differently from other serious crimes. Perpetrators

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of apartheid-era crimes have been treated more favourably than perpetrators of far less serious crimes. The effect of such differentiation is discriminatory, and because of its deleterious impact on victims of apartheid era crimes, it is also unfair.

Violation of South Africa's international law obligations

574 I am advised that the interference is substantively unconstitutional and invalid in that it constitutes an infringement of South Africa's international law obligations as set out in sections 231 to 233, read with section 39(b), of the Constitution, to uphold the right to justice and to investigate, prosecute and punish violations of human rights under the following treaties ratified by South Africa:

574.1 Article 2(3), read with article 2(1), of the International Covenant for Civil and Political Rights (**ICCPR**) by denying victims and their families an effective criminal justice remedy.

574.2 Article 6(1), of the ICCPR by permitting those who have violated the right to life to escape justice and punishment.

574.3 Article 7 of the ICCPR by contravening the duty to hold the perpetrators of torture or cruel, inhuman or degrading treatment or punishment responsible for their actions.

574.4 Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) by failing to give effect to the requirement that all acts of torture must be punishable by appropriate penalties.

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574.5 Article 7 of CAT by failing to give effect to the requirement that all acts of torture must be submitted to the competent authorities for the purposes of prosecution.

574.6 Article 12 of CAT by failing to ensure that competent authorities promptly investigate, wherever there are reasonable grounds to believe that an act of torture has been committed.

575 The conduct of the authorities described above is also inconsistent with:

575.1 Article 3(g) of the Constitutive Act of the African Union (**Constitutive Act**) by failing to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights.

575.2 Articles 4(m) and (o) of the Constitutive Act by failing to reject impunity and uphold the rule of law.

575.3 Article 11 of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (**Right to a Remedy Guidelines**) by not affording us "equal and effective access to justice".

575.4 Article 4 of the Right to a Remedy Guidelines by suppressing and undermining the TRC cases instead of investigating and prosecuting violations caused by crimes committed during apartheid.

576 I have set out earlier in this affidavit the principles, values and obligations arising from the TRC process, as well as the duties and obligations enshrined in the

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Constitution and various statutes not to interfere in the work of prosecutors and the police. I rely on these assertions for our grounds of relief but will not repeat them here.

577 In the circumstances I have set out sufficient grounds to warrant the declaration sought in the notice of motion that the interference:

577.1 violated the rule of law as well as our fundamental rights as set out above;

577.2 was in breach of the duties and obligations contained in the Constitution and the NPA Act and SAPS Acts to investigate and prosecute serious crime, and not to interfere with the legal duties of prosecutors and law enforcement officers;

577.3 was inconsistent with the principles, values and obligations arising from the TRC process read with the postscript to the Interim Constitution; and

577.4 was inconsistent with South Africa's international law obligations.

578 I submit further that I have demonstrated sufficient grounds for the granting of constitutional damages in the amounts, which are set out below.

CONSTITUTIONAL DAMAGES AND QUANTUM

579 Before setting out the amounts we seek by way of constitutional damages, I am advised that I need to describe the nature and character of the damages we claim.

580 Firstly, declaratory relief on its own will not suffice having regard to the long history of neglect visited upon the TRC cases.

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580.1 The interference was not transitory, it was systemic and particularly egregious.

580.2 The abandonment of the cases was not by mere negligence but as a result of deliberate decision and planning. Even when the so-called 'moratorium' period was over, state organs maintained their obstructionist approach and ensured that the cases would not proceed.

580.3 To this day, families are still struggling to see justice done in their cases. Accordingly, something more effective than the mere clarification of our rights is needed.

581 To be clear, we are not seeking delictual damages. An action in delict or any other private or public law remedy will not serve to vindicate the deep violation of our rights over decades.

581.1 Where our cases have collapsed, or have been severely undermined because of such neglect, no delictual remedy will ever resurrect or salvage those cases at this late stage.

581.2 The damage has been done. There is no way to turn back the clock. We have to look forward.

581.3 Accordingly, we do not seek compensation to redress the wrongs endured. The amounts sought are not for the personal use of anyone.

581.4 In saying this, we note that government bears the responsibility of providing reparations to victims of apartheid-era crimes. The reparations provided so far have been wholly inadequate, and many thousands of victims of gross

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human rights violations have been excluded by virtue of the government's cruel and unjustifiable closed list policy. In this regard we note with dismay that more than R2 billion remains unspent in the President's Fund, more than 20 years after the winding up of the TRC.

581.5 However, the question of reparations is beyond the scope of this application and no such relief is sought in these proceedings.

582 We are also not seeking an award of punitive damages. We see no point in punishing government. While we seek truth, accountability and justice there is nothing to be gained from penalising the state.

582.1 Any awards are ultimately borne by the taxpayer and the public at large, rather than by those actually responsible. For the same reason, a punitive damages award will do little to deter future bad conduct.

582.2 Since there is great demand for scarce public resources, we seek rather to employ any damages awarded in a forward-looking, community-orientated and constructive manner, to be described below.

583 Accordingly, we seek damages for the purposes of formal acknowledgement of what we have endured, meaning the vindication of our violated rights and to enforce constitutional values going forward. Ultimately, we aim to use any funds awarded to directly address the issues that caused the problems, and which may give rise to future wrongs. This would, in our view, constitute the only meaningful and effective vindication of the violation of our rights.

584 In the circumstances we seek constitutional damages for the following purposes, which is to enable families to:

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584.1 Advance truth, justice and closure by assisting them to pursue investigations, inquests, private prosecutions and related litigation in those cases that can still be taken forward.

584.2 Play a monitoring role in respect of the work of the policing and justice authorities charged with investigating and prosecuting the TRC cases.

584.3 Pursue commemoration, memorialisation and public education activities around the TRC cases.

585 Each head of damage will be dealt with in turn.

Advancing truth, justice and closure

586 Under this head of damage, we aim to pursue the few remaining cases where there is still a prospect of justice by way of public or private prosecutions, or inquests. This would be done through private investigations, legal work, research and analysis and supporting the work of detectives and prosecutors.

587 We note that the vast majority of cases can no longer be pursued by way of a prosecution, and in these cases, we aim to establish inquests or pursue other truth-seeking endeavours.

588 In particular, we would like to pioneer the use of structural investigations in South Africa, which involves interdisciplinary research into the organizational structures behind apartheid crimes. This includes investigating context, the *modus operandi* of the perpetrators, chains of command and links between cases in order to identify suspects and provides leads and technical assistance to the SAPS and NPA.

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589 We have demonstrated that where families, together with their legal representatives and private investigators, get involved in the investigation of cases, those are typically the matters that result in prosecutions or the reopening of inquests. This has been the case in respect of the reopened inquests into the deaths of Ahmed Timol, Neil Aggett, Hoosen Haffejee and Imam Haron; as well as the prosecution of the Nokuthula Simelane, COSAS 4 and Caiphus Nyoka murder cases.

590 The bulk of this work has been done by a small number of lawyers, investigators and experts working either pro bono or on considerably reduced human rights rates. By way of example, the lead counsel on the TRC cases has spent more than 100 days in court acting pro bono, not counting time in preparation. Just one of the law firms, the Pro Bono department at Webber Wentzel has devoted 9 654.53 hours to the TRC cases, which would have amounted to R23 233 247.00 in attorneys' fees, if the firm had been charging for its time. In this regard, see the supporting affidavit of Odette Helena Geldenhuys, the head of the Webber Wentzel pro bono team, is filed evenly herewith.

591 This is not sustainable going forward. Nonetheless, given the results, the experience has demonstrated that this was time well spent. It can be expected that more sustained support for such work will produce greater results. Such outcomes serve the ends of truth seeking, accountability and closure in the most tangible way, which has great meaning and value to the affected families and communities.

592 In estimating the amounts under this head of constitutional damages, we have relied on the records of time spent on the TRC cases by the law firm Webber Wentzel (see the supporting affidavit of Odette Helena Geldenhuys) as well as the support provided to the TRC cases over many years by the Foundation for Human Rights.

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In this regard see the supporting affidavit of Dr Zaheed Kimmie. See in particular annex **ZK** to Dr Kimmie's affidavit, as well as **table 2** to that annex, which sets out the specific costs associated with the provision of investigative, legal and other support to families pursuing inquests and prosecutions.

593 Accordingly, under this head of damage we seek a total amount of **R115,261,625.00**, calculated in accordance with Uniform Rules of Court 67A(3) and 69 (Scale A), and based on the anticipated support required to advance the TRC cases over the next 5 years, comprising the following amounts:

593.1 We anticipate that some 20 inquests will take place over the next 5 years and that each inquest will on average cost R3,843,875.00 which includes investigative, legal, expert and general support to the families of the deceased. This amounts to a total of R76,877,500.00

593.2 We estimate that some 10 cases will proceed to trial, incurring a total cost of R15,122,500.00. On average, the support provided to families of the deceased victims is expected to cost approximately R1,512,250.00 per case, including investigative and legal support, possible civil litigation or *amicus curiae* intervention, as well as disbursements.

593.3 We project that 15 cases will require comprehensive investigations but will not necessarily progress to inquests or prosecutions. The total estimated cost for these activities is R14,188,125.00 with each case costing an average of R945,875.00 including investigative, expert and attorneys' fees, possible civil litigation and disbursements.

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593.4 We estimate 3 cases may necessitate private prosecutions, with an anticipated total cost of R9,073,500.00 with each case costing approximately R3,024,500.00. We have assumed that private prosecutions require twice the funding of typical prosecutions to account for the need to provide security for costs.

594 As the window of opportunity for the finalisation of TRC cases is fast closing, we seek such amounts over a 5-year period, although the inquests and private prosecutions will likely be stretched over a considerably longer period. This amounts to R23,052,325.00 per year over the next 5 years.

Monitoring

595 This head of damages is aimed at enabling families and organisations to monitor the performance of the policing and justice authorities charged with investigating and prosecuting the TRC cases. They will also be required to monitor the role of those carrying out political and parliamentary oversight. Their tasks will include highlighting any shortcomings and proposing solutions, particularly in relation to any perceived interference.

596 The following amounts are sought:

596.1 One researcher and one communications/advocacy specialist at an average cost of R700,000.00 per person over 5 years [R7 million].

596.2 Logistical and administrative support [R1 million].

597 A total amount of **R8 million** is sought in respect of this function. This amounts to R1.6 million per year over the 5-year period.

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Memorialisation, commemoration and public education

598 This head of damages is aimed at enabling families and organisations to honour those who made the ultimate sacrifice for South Africa. It is aimed at assisting families and communities preserve the memories of their loved ones through commemoration, memorialisation and public education activities.

599 Such activities could include the holding of public events, publishing of books, making of documentaries and films, conducting seminars, trainings, intercommunity dialogue, social and cultural projects and exchange programs.

600 The ultimate aim of these functions would be to:

600.1 facilitate greater understanding of our past, promote the diminished voices of victims, transcend fault lines in society and promote the goal of "never again".

600.2 Involve participation of communities, in particular the youth.

600.3 Promote inter-generational dialogue about our past and encourage social exchange between communities.

600.4 Assist families to reclaim and affirm their violated rights; and to dignify the memories of victims.

601 The following amounts are sought for the proposed activities:

601.1 Fifteen memorialisation/ commemoration activities per year at R100,000.00 per activity for 10 years [R15 million].

601.2 Ten films/ documentaries at R1,000,000.00 per film [R10 million].

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601.3 Twenty books or publications at R200,000.00 per publication [R4 million].

601.4 Ten public education programmes at R1,500,000.00 per programme [R15 million].

602 These amounts are consistent with the amounts that the FHR has granted for similar projects over past years. In this regard I refer to the supporting affidavit of Dr Zaheed Kimmie.

603 A total amount of **R44 million** is sought in respect of these functions. This amounts to R4.4 million per year over the 10-year period.

604 The grand total sought for all the activities under the three heads of constitutional damages is R167,261,625.00 over a ten-year period.

605 It should be made clear, that should any constitutional damages be awarded, it will be open to all victims, families and organisations to apply to the proposed trust for funds for projects and cases that fall within the ambit described above, regardless of whether they were applicants in this case or not.

Proposed Trust

606 Should constitutional damages be awarded we propose that the court direct the creation of an independent trust to hold and disburse such funds, in accordance with the provisions of the Trust Property Control Act 57 of 1998.

607 It is proposed that the trustees be comprised of:

607.1 Two representatives from the families of victims in the TRC cases.

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607.2 One representative from the South African Coalition for Transitional Justice (**SACTJ**).

607.3 One former commissioner or committee member of the TRC.

607.4 An attorney or advocate who has specialised in human rights law with at least 15 years' experience.

607.5 A recognised academic specialising in transitional justice or history from a South African university.

607.6 A chartered accountant with at least 15 years' experience and registered with the South African Institute of Chartered Accountants (**SAICA**).

608 It is further proposed that the trustees be:

608.1 granted the necessary powers and discretions to effectively manage the trust and to decide on the location and administration of the trust,

608.2 empowered to make all operational decisions about the disbursement of funds,

608.3 audited annually and be required to publicly report on its activities once a year.

GROUNDS FOR COMMISSION OF INQUIRY RELIEF

609 In this part of the application, we set out our grounds for the relief declaring the failure or refusal of the President to establish a commission of inquiry into the suppression of the TRC cases to be:

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609.1 inconsistent with his constitutional responsibilities, and

609.2 a violation of the families of victims of apartheid-era crimes' rights to equality and human dignity.

610 In addition, we seek an order setting aside the President's decision and directing him to:

610.1 Promulgate the establishment of a commission of inquiry within thirty days of the grant of such an order; and

610.2 Make the provisions of the Commissions Act 8 of 1947 applicable to the aforesaid commission.

610.3 Request the Chief Justice to designate a sitting or retired judge to head the inquiry.

Commissions and the search for truth

611 I am advised that the highest court in our land has stipulated that the work of a commission is to "*search for truth*", which "*also serves indispensable accountability and transparency purposes.*" The Court held that *"not only do the victims of the events investigated and those closely affected need to know the truth: the country at large does, too.*"

612 As victims and family members we are entitled to the truth behind the closing down of the cases of our loved ones. The country is also entitled to know.

613 The Constitutional Court has also observed that commissions investigating matters of public concern, in addition to the function of advising the President, have "*a*

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deeper public purpose" particularly during times of "disquiet and discontent". The Court noted that public hearings are held "*in order to restore public confidence*" in the relevant institutions, where the focus is to "*reveal the truth to the public pertaining to the matter that gave rise to public concern*."

614 We ask for a public accounting for the deep miscarriage of justice that we have endured since the advent of our democracy.

Duty on the President to establish a commission of inquiry

615 I am advised that while section 84(2)(f) of the Constitution, which grants the President the power to appoint commissions of inquiry, is an original and discretionary power, there are circumstances in which the President is obliged to exercise the power. Indeed, presidential powers are never entirely unfettered, and typically such powers are coupled with duties.

616 Accordingly presidential powers must be exercised within the constraints that the Constitution imposes. In deciding whether or not to appoint a commission of inquiry the President must:

616.1 act in good faith;

616.2 not misconstrue his powers;

616.3 not infringe any provision of the Bill of Rights; and

616.4 not act arbitrarily and his decision must be rationally related to the purpose for which the power was given.

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617 We do not have evidence suggesting that the President has acted *mala fide* or for an ulterior purpose in not appointing a commission. However, we are concerned that since such an inquiry will have to probe the role of the government, and quite likely personalities who played leading roles in government, that political considerations may have crept into his decision. It is exceedingly difficult to shake this perception, which only grows with the ongoing refusal to get to the bottom of the suppression of the TRC cases.

618 We are the of the firm view that in declining to appoint a commission of inquiry into this question, the President has exercised his power under the Constitution improperly and misconstrued the nature of his powers. In doing so, he has also violated several of our rights protected in the Bill of Rights, as set out above.

619 While the Constitution does not constrain the subject matter of any commission of inquiry that the President may appoint, the Commissions Act limits commissions of inquiries to matters of "*public concern*". A central inquiry as to whether the President's decision was irrational or arbitrary is whether the interference is a significant matter of public concern demanding the appointing of a commission to get to the truth. I submit that it is.

Irrational or arbitrary decision

620 In the letters addressed to the President on 5 February 2019 (**FA68**) and 25 March 2021 (**FA74**) the former TRC commissioners pointed out that the approximately 400 cases suppressed by political interference comprised some of the most serious crimes in South Africa's history, including murder, kidnapping, torture and various crimes against humanity.

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621 An aggravating factor is that most of the TRC cases will not be able to be revived as suspects and witnesses have died. This means that the damage to the associated families and their communities is permanent and irreversible. An additional aggravating factor is that, to date, negligible progress has been made on the few cases that can be taken forward.

622 The former TRC commissioners pointed out that:

622.1 there was considerable evidence of the suppression of the TRC cases in court papers;

622.2 senior NPA officials had admitted under oath in *Rodrigues* that the NPA had succumbed to political pressure;

622.3 the full court in *Rodrigues* called for the NPA and the Executive to take steps to enquire into the suppression, which to date has not happened;

622.4 appropriate action to prevent recurrence can only be based on a full and thorough inquiry;

622.5 an inquiry is needed to uncover:

622.5.1 the reasons behind the suppression of the cases;

622.5.2 the sources of the interference;

622.5.3 the arrangements and agreements struck between individuals and entities within and outside government; and

622.5.4 how the will of outsiders was imposed on the NPA and the SAPS;

622.6 the available evidence pointed to the involvement of:

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622.6.1 multiple entities and individuals across the public sector, including the Department of Justice, the National Intelligence Agency, the NPA, the SAPS, the Department of Defence and the Presidency; and

622.6.2 persons possibly implicated included politicians, cabinet ministers, senior civil servants, senior police officers and prosecutors;

622.7 potentially serious common law and statutory crimes may have been committed;

622.8 families of victims of apartheid-era crimes and their communities have lost all trust and confidence in the SAPS and NPA;

622.9 the suppression has provoked much anxiety amongst many South Africans who regard the suppression of these cases as a matter of great public interest and importance;

622.10 the suppression of the TRC cases has deeply offended the human spirit and dignity of the families and their communities; and

622.11 the rights of the families to equality before the law has been grossly disrespected in that their cases were treated differently from other serious criminal cases for purposes of serving undisclosed ends.

623 The former TRC commissioners also pointed out the historical significance of pursuing the TRC cases, as well as the legal and moral obligations arising from South Africa's transition from apartheid to democracy.

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624 The letters dated 23 June 2019 and 23 June 2020 (**FA72** and **FA73**) addressed to the President by the families of Chief Albert Luthuli, Steve Biko, the Cradock Four, Nokuthula Simelane, Ahmed Timol, Neil Aggett, Imam Abdullah Haron and 14 other families expressed their deep pain and anguish at having been denied truth and justice in the new South Africa.

625 The subject matter clearly constitutes a matter of deep public concern at different levels:

625.1 The suppression of hundreds of serious criminal cases, mostly murders, constitutes a massive subversion of the rule of law.

625.2 Families have been impacted from across the country in all provinces.

625.3 The anguish they have experienced is evident from their letters to the President.

625.4 Several organisations have expressed their public concern at the failure to investigate and prosecute the TRC cases, and in this regard:

625.4.1 family members have established the Apartheid-Era Victims' Families Group to fight for justice.

625.4.2 Eleven organisations have formed the SACTJ to secure the rights of victims of apartheid-era violations.

625.4.3 The Foundation for Human Rights has established a specific programme called 'The Unfinished Business of the TRC', to focus on justice and accountability.

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626 The subject matter is without question an important one, and one that has provoked considerable anxiety amongst many people across the country, qualifying it as a matter of significant public concern. The President's refusal or failure to appoint a commission of inquiry:

626.1 Shuts down the search for the truth behind the massive denial of justice to hundreds of families.

626.2 Further undermines confidence in the implicated institutions and raises deep suspicions that these institutions have much to hide.

626.3 Gives rise to the impression that the implicated persons and institutions are above the law and are being shielded from scrutiny and protected from embarrassment.

626.4 Serves to heighten and exacerbate the already existing widespread disquiet and discontent.

627 Accordingly, there can be little doubt that the suppression of the TRC cases provokes considerable anxiety amongst many South Africans and is a matter of both historical and national importance. This warrants a properly empowered inquiry to uncover the truth to alleviate victim and public discontent, formulate corrective measures and restore confidence in the implicated institutions.

628 The President's failure or refusal to appoint a commission is irrational since the refusal or failure to appoint a commission is not rationally related to the purposes for which the power was given. His decision falls to be set aside.

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Irrational process or means

629 There is an additional ground of irrationality, which is related to process. The failure of the President and the former Minister of Justice to:

629.1 respond in substance to the four letters from the TRC commissioners and the victims' families' letters;

629.2 provide reasons for his refusal, which *prima facie* makes his decision an arbitrary one; and

629.3 make and communicate a formal decision.

630 This conduct has served to obstruct, delay and undermine an investigation into the interference. It has also served to prolong and exacerbate the harm visited upon the families and their communities.

631 The refusal or failure to make and communicate a formal decision also offends section 237 of the Constitution which provides that "*all constitutional obligations must be performed diligently and without delay*". It is also a violation of:

631.1 one of the founding values of the democratic South Africa as enshrined in section 1(d) of the Constitution which requires the state to "*ensure accountability, responsiveness and openness*"; and

631.2 section 195 of the Constitution, which requires the President to act in accordance with various basic values governing public administration, including the need to be transparent and respond to people's needs.

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632 Since South Africa is a constitutional state in which the principles of fairness and accountability are fundamental, the President is under a duty to act fairly. Indeed, a heightened duty to act fairly arises from the context which I have described. The President's conduct has fallen well short of this standard.

633 In addition, the attempt by the former Minister of Justice to set up an internal inquiry, as described above, would have amounted to asking one of the impugned departments to investigate itself.

634 Accordingly, the process or means adopted by the President and the former Minister to date has also been irrational.

Violation of the rule of law and Bill of Rights

635 I have set out the violations of the rule of law and the Bill of Rights endured by the families arising from the interference in the section dealing with our claim for constitutional damages. Those submissions apply equally in respect of our grounds for an order compelling the President to appoint a commission of inquiry. That detail will not be repeated here. It suffices to say:

635.1 The President's decision and/or the failure to take a decision is an affront to the human dignity of the families. In affording those behind the suppression of the TRC cases further opportunities to escape scrutiny, the intrinsic worth of the victims and families is degraded.

635.2 The President's decision violates the rights of survivors, victims and their families to life, human dignity and freedom and security of the person by:

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635.2.1 declining or failing to authorise an inquiry into the suppression of the investigations of perpetrators who infringed our rights by committing acts of murder, enforced disappearance, torture, assault and other cruel and inhuman treatment, and

635.2.2 failing to give value to the lives of victims of apartheid-era crimes.

Sufficient grounds

636 I respectfully submit that sufficient grounds have been set out for the relief declaring the failure of the President to appoint a commission of inquiry to be inconsistent with his constitutional responsibilities, and a violation of our rights; and for an order setting aside his decision and directing him to appoint a commission.

637 We specifically ask that the Court require that the provisions of the Commissions Act be made applicable to the aforesaid commission.

637.1 This is because a commission without the powers imbued by the Act could turn into a farcical exercise. It would not have the necessary powers to investigate effectively, and it could conduct its affairs behind closed doors.

637.2 An inquiry under the Act comes with extensive powers, equivalent to those of the High Court, including the power to lead evidence under oath, to summon witnesses, to require the production of documents and to criminalise conduct which may obstruct or prevent a proper investigation.

637.3 The Act also requires the hearings of the commission to be public unless the chairperson decides otherwise.

638 We also ask this Court to require the President to request the Chief Justice to designate a sitting or retired Judge to head the inquiry.

638.1 This is necessary in order to protect the proprietary and integrity of the commission. The Office of the President, as well as the Ministry of Justice and other government departments are implicated in the interference. It would accordingly be undesirable for such parties to be directly involved in the selection of the commissioners.

638.2 While the power to appoint the head of the commission is vested exclusively with the President, and he could decline to accept the designation of the Chief Justice, we believe he would be most ill-advised to do so.

GROUNDS FOR A MANDAMUS

639 I set out below our grounds for an order compelling the establishment of a commission of inquiry to investigate the suppression of the TRC cases.

Clear right

640 I submit that I have demonstrated the unlawfulness of the President's refusal or failure to appoint a commission of inquiry into the interference with the TRC cases. I have also demonstrated the serious impact that the interference has had on our lives, in addition to this issue being a matter of national public concern with huge implications for the rule of law in our country.

641 I have demonstrated further that an independent commission of inquiry is the only effective way in which we may learn the full extent of the interference, how it was

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imposed, the source of the interference, the identities of those responsible for it; and how to prevent it from occurring again.

642 In the circumstances, I have established a clear right for an order compelling the President to establish a commission of inquiry into the interference.

Injury actually committed or reasonably apprehended

643 I submit that I have demonstrated that the President's refusal or failure to establish a commission of inquiry infringed our constitutional rights and that further delay will seriously prejudice my rights and that of the families.

644 The stress and trauma that we have endured for decades will be considerably magnified by the failure to establish an open and transparent inquiry with the proper powers.

645 In the absence of a commission of an inquiry, the persons behind the interference will not be held to account. The nature and extent of their involvement will continue to remain unknown. Those responsible may remain in positions of influence where they can continue to perpetrate interference on the TRC Cases.

646 These factors further prejudice my rights and that of the families. It further prevents us from reaching closure. I have accordingly established a reasonable apprehension of injury.

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No alternative remedy

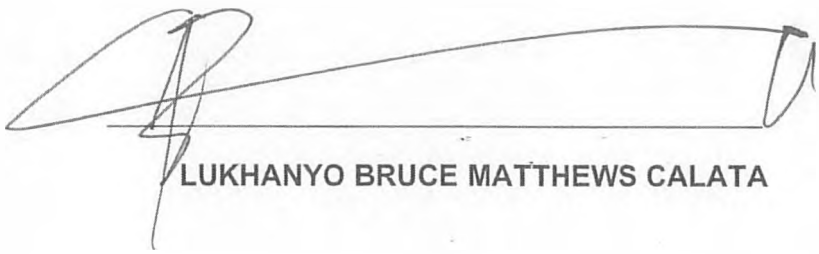
647 I submit that that we have no other viable or alternative remedy. We have exhausted all avenues of persuasion. Many years of knocking on doors and pleading for action to establish the truth behind the interference have fallen on deaf ears.

648 The relevant departments and functionaries cannot be expected to investigate themselves. The only way to address the interference is through an independent, open and thorough investigative process in the form of a commission of inquiry. No other remedy can deliver the truth, accountability and closure that we and many South Africans seek.

CONCLUSION

649 I am advised that on the basis of the '*Biowatch*' principle, should we be unsuccessful in our application against the state, we ought not to be mulcted with a costs order, as this is an application in which we seek to enforce and vindicate our constitutional rights. We humbly ask this Court to apply this principle if some or all of the relief sought is refused.

650 In the circumstances, I submit that a proper case has been made for the relief sought and I pray for the orders as set out in the Notice of Motion.



LUKHANYO BRUCE MATTHEWS CALATA

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Signed and sworn to before me at SANDTON on this the 17 day of JANUARY **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.

Nicola Irving

COMMISSIONER OF OATHS

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PHYSICAL ADDRESS: 15 Alice Lane
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Practising Attorney
Republic of South Africa

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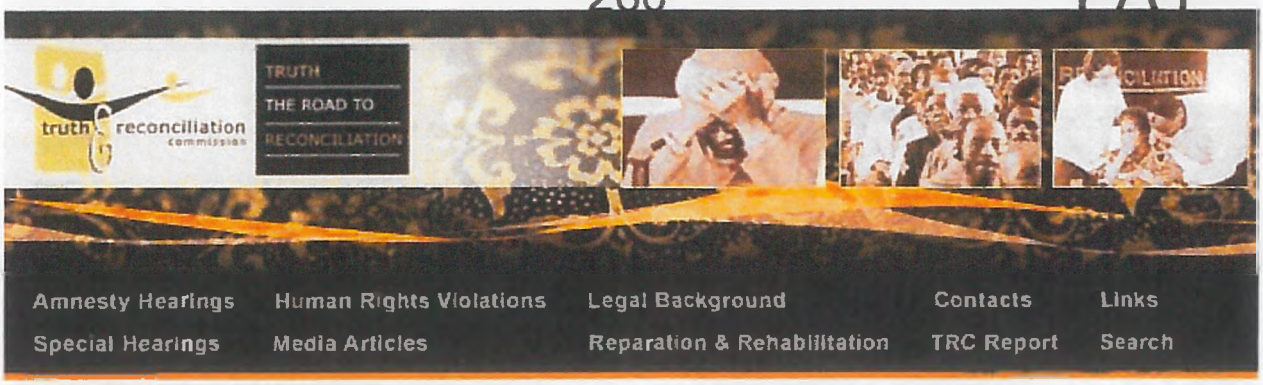

AMNESTY HEARINGS & DECISIONS

AMNESTY HEARING TRANSCRIPTS: 1996 - 1997 - 1998 - 1999 - 2000

AMNESTY DECISION TRANSCRIPTS*: 1996 - 1997 - 1998 - 1999 - 1999b - 2000a - 2000b - 2001

*On the Amnesty Decision Transcript pages, you can click on GRANTED/REFUSED under the 'result' field to open the file and read the transcripts. Please note that the 'result' field should not be used for statistical purposes. In many instances, there are several judgments in a case, where only one is indicated in the 'result' field. Read the transcripts for an accurate record.

Summary of Amnesty Decisions, 1.11.2000

STATUS	01.03.2000	01.07.2000	01.11.2000
Granted/Refused	29	35	54
No status	26	24	NIL
Duplication	32	32	37
Scheduled	136	144	88
Withdrawn	167	210	248
Decision o/s	243	292	302
Chamber	263	194	142
Hearable	284	94	NIL
Granted	643	766	849
Refused	5289	5321	5392
Grand Total	**7112**	**7112**	**7112**

NB: Witnesses at TRC hearings were able to give testimony in their home language. Translators and transcribers worked in most of South Africa's 11 official languages plus Polish. As a result, spelling errors (particularly of names) occur. There may also be incorrect transcription or translation in places. There are also many instances where a response was inaudible and gaps appear in the transcription. Differences in text formatting mean some of the documents contain embedded footers, headers and incorrect page numbers. Transcripts are arranged chronologically.

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Year	Name	Decision	Offence	Prior Conviction	Reason
1996	[illegible]	Refused	Murder of Samuel [illegible] on 11 May 1991	Convicted	Applicants did not show that their act was associated with a political objective and committed in the course of the conflicts of the past
1996	[illegible]	Refused	Murder of policeman Oupa Petrus Dithabe in Ventersdorp on the 23rd of April 1991	Convicted	Act not associated with a political objective
1996	[illegible]	Refused	Illegal possession of firearms		Applicant could not show membership or support of a "publicly known political organisation or liberation movement". The relationship between the act in question and the proclaimed political objective was also deemed too remote to hold
1996	[illegible]	Refused	Murder of [illegible] Grobelaar on the 30th of October 1991 in Maake [illegible] Kroonstad	Convicted	No evidence to suggest that the killing of the deceased was connected to a political objective
1996	[illegible]	Refused	Murder of [illegible] Dobson, [illegible] and Maria Claudine Roux on or about 14 October 1991, district Louis Trichardt; Motor vehicle theft, attempted robbery with aggravating circumstances, robbery, housebreaking, and the illegal possession of weapons	Convicted	Applicant could not show membership or support of a "publicly known political organisation or liberation movement" and the acts could not be associated with a political objective
1996	[illegible]	Refused	[illegible]		Could not find the acts to be associated with a political objective
1996	[illegible]	Refused	Malicious injury to property at the Hamendy Bottle Store at Keiskammahoek	Convicted	
1997	[illegible]	Refused	(a) The murder of one David Mayeso in Khutsong on 24 December 19[illegible], the applicant was convicted in the Supreme Court, and sentenced to 12 years' imprisonment (b) Attempted murder on one Sgotlo, committed at the same place, date and time as the previous offence. The applicant was sentenced to six years' imprisonment (c) Attempted murder on one David Maseko, committed at the same place, date and time as the two preceding offences. The applicant was sentenced to 6 years' imprisonment	Convicted	Applicant distanced himself from the offences and does not admit to any facts on the basis on which the Committee could make a finding that he had advised, planned, etc, any of those offences. Also found from the facts that the applicant had not made full disclosure
1997	[illegible]	Refused/	(a) The murder of Nomeni Abednego Mazwi at Khuma Township, Stilfontein, on 11 October 1990 (b) Attempted murder on Charles Mhlabiso at the same place and date	Convicted	Regarding the murder, application refused as a result of applicant not making full disclosure and because she denies having anything to do with it (in terms of Section 20(2) of the Act, an applicant can only be considered for amnesty in respect of an offence "which was advised, planned, directed, commanded, ordered or committed")
1997	[illegible]	Refused	(a) The murder of Nomeni Abednego Mazwi at Khuma Township, Stilfontein, on 11 October 1990 (b) Attempted murder on Charles Mhlabiso at the same place and date		Murder: applicant did not make full disclosure and applicant on his own evidence had not "advised, planned, directed, commanded, ordered or committed"
1997	[illegible]	Refused	4 counts of murder and 1 count of malicious damage to property committed on the evening of the 29th of September 1990 at [illegible], in the district of [illegible]	Convicted	Acts not found to be associated with a political objective (committed in an indiscriminate manner against private individuals with no evidence of prior purpose on the part of the participants; disproportionate to any supposed political objective)
1997	[illegible]	Refused	Murder of [illegible] Sebatane on the 25th of December 1991 at Kroonstad	Convicted	Rejected the evidence of the applicant that his acts related to his association with a political organisation
1997	[illegible]	Refused		Convicted	
1997	[illegible]	Refused	Ibid	Convicted	Ibid
1997	[illegible]	Refused	Ibid	Convicted	Ibid
1997	[illegible]	Refused	Murder of an unidentified individual on 10 May 1991 in Suid Heuwels, Johannesburg	Convicted	Offence not associated with a political act
1997	[illegible]	Refused	Four counts of murder and one count of malicious damage to property	Convicted	Applicants gave divergent evidence and could not show their acts to be associated with a political objective
1997	[illegible]	Refused	Murder of Mrs Nomsa Hanabe, illegal possession of firearms and ammunition, committed on the 14th of February 1991 at Uitenhage	Convicted	No proportionality between the offence and the alleged political objective the applicant claimed sought to be achieved
1997	[illegible]	Refused	Attempted murder of Bongani Anderson Mpitane, the murder of a child [illegible] Ngxumza and of unlawful possession of a firearm	Convicted	Acts not associated with a political objective or committed in the course of the conflicts of the past
1997	[illegible]	Refused	Murder of Miss Anne Foster and Mr John Geyser on 15 April [illegible] on Wakkeland farm, housebreaking and theft	Convicted	
1997	[illegible]	Refused	1. The attempted murder of Susan [illegible] (the deceased) on [illegible] July 1991 at [illegible]. 2. The attempted murder of Patrick Phehlane on the same date and at the same place. 3. Malicious damage to the property of Morgan Phehlane on the aforementioned date. 4. Assault with the intention to inflict grievous bodily harm to Edward Phehlane on the same occasion. 5. Malicious damage to the motor car of Edward Phehlane on the same day and at the aforementioned place	Convicted	
1997	[illegible]	Refused	Three counts of murder and two counts of attempted murder [illegible] Mapumulo		Failure to make full disclosure
1997	[illegible]	Refused	Murder of Mbongeni Jama on the 24th of February 1991 [illegible] Elandskop	Convicted	Act not associated with a political objective
1997	[illegible]	Refused	Four offences of murder and one of attempted murder, all allegedly committed on the 2[illegible] of February 1987	Convicted	Acts not accepted as committed for a political purpose or on behalf of any liberation movement
1997	[illegible]	Refused	Seven counts of murder, 27 of attempted murder, and unlawful possession of firearms	Convicted	
1997	[illegible]	Refused	- The murder of [illegible] for which he was sentenced to imprisonment for ten (10) years. - The murder of Bek Patrick [illegible] for which he was sentenced to three (3) years, which sentence ran concurrently with the previous one for ten (10) years. - The attempted murder of Simiso [illegible], for which he was sentenced to imprisonment for five (5) years. - Pointing a firearm for which he was sentenced to imprisonment for [illegible] months. - For being in unlawful possession of a firearm and ammunition, for which he was sentenced to imprisonment for two (2) years	Convicted	No political objective shown
1997	[illegible]	Refused	Assault upon Mr [illegible] at Louis le Grange Square, Security Branch, Port Elizabeth on 13 August 1985		Failure to make full disclosure and committee not convinced that the act was associated with a political objective
1997	[illegible]	Refused	Abduction and murder of George [illegible]	Convicted	Amnesty granted for the abduction, but refused for the murder because although the former related to a political objective in the pursuit of a recognized political organisation's adopted policy, the murder flowing from it
1998	[illegible]	Refused	[illegible] possession of hand grenade in contravention of [illegible] of Act [illegible] on or about 22 October 1993 at [illegible] Administration [illegible] the district of [illegible]		Amnesty granted for the first two offences, but refused for the final offence because that had an element of personal revenge and did not fall within the ambit of the Act
1998	[illegible]	Refused	Motor vehicle theft	Conviction (Committee noted "not a court of appeal")	Applicant denies that stole vehicle or had any knowledge that the vehicle was stolen. May have used vehicle for political purpose, but continued denial is a problem
1998	[illegible]	Refused	Theft of two motor vehicles 1993	Ibid	Ibid
1998	[illegible]	Refused	Alleged struck off role of attorneys for political reasons		Referred to no act, omission or offence envisaged under section 20 of the Act
1998	[illegible]	Refused	Murder and attempted murder		Not directed at a clear political opponent nor for furtherance of a political organisation aims; therefore not acts associated with a political objective as contemplated in the Act

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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

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Year	Name	Decision	Offence	Prior Conviction	Reason
1999a	[illegible]	Refused	2. The burning of the house and the burning of the clinic of Winnie Mandela. 3. The petrol bombing of the house of Bobby Sebotsa. 4. The petrol bombing of the house of Nicos. 5. The burning of the motor vehicle of Jani Mohapi. 6. The petrol bombing of the parental house of City Mzuzwana. 7. The organising of an attack on Zwelinyama Mzuzwana. 8. The petrol bombing of the house of City Mzuzwana's house. 9. The petrol bombing of the motor vehicle of the teacher, Thabang. 10. The petrol bombing of the house of the teacher, Bulosha. 11. The petrol bombing of the houses of Khuze and Selgopi Maicho. 12. The petrol bombing of the parish house in Botshabelo. 13. The assault and torturing of detainees at the Security Police in Fountain Street, Bloemfontein. 14. The attempted murder of Oupa Makhabalo		
1999a	[illegible]	Refused/	1. The murder of a certain Mr Venter. 2. The murder of a man known as "JJ" or Papie 3. The torture of comrades at Botshabelo. 4. The murder of Papi Steyn. 5. The planning to kill a certain Mr Kotoyi. 6. The unlawful use of gangsters. 7. Amnesty refused for the attack on the house of Mr Max Makhubalo – committee not satisfied that a full disclosure of all material facts made. 8. The burning of a Cortina of ms Janie Mohapi. 9. Attempted murder on an unknown Fidelity guard:	Convicted	Amnesty refused for the murder and robbery of Venter because the applicant's version did not satisfy the Committee that the offence falls within the ambit of the Act. Amnesty refused for murder of man known as JJ or Papie due to vague and inconsistent testimony that contradicted with other evidence led before the committee, not a satisfactory and reliable witness. Refused for the torturing of comrades at Botshabelo. Not satisfied that made truthful disclosure as his testimony was contradicted by every other witness who testified before the Committee. Amnesty could not be granted for the unlawful use of gangsters because the evidence did not involve the applicant in any specific act and general amnesty cannot be given. Amnesty could not be given for the murder of Papi Steyn because the applicant did not testify that he was in any way implicated therein. Amnesty could not be granted for the planning to kill Kotoyi because the applicant did not testify that he was in any way involved in this incident. Amnesty refused for the attack on the house of Mr Max Makhubalo – committee not satisfied that a full disclosure of all material facts made. Applicant withdrew application in respect of burning Sandra Mathabatha's house. Petrol bombing Louisa Mbongo's house; bombing the house of "the Nono girl", and burning the house of Rebecca Mothukane: amnesty refused because applicant himself did not aver any political motive. Attempted murder on an unknown Fidelity guard: refused – not satisfied the shooting was associated with a political objective.
1999a	[illegible]	Refused	Assaults, crimen injuria, intimidation during interrogations during 1972 to 1985 of ANC, PAC and SACP activists.		
1999a	[illegible]	Refused/	The murders of Abram Makalane, Samuel Masilela, Sepo Sibanyoni, Jeremia Mtudi, Thomas Phiri, Jeremia Mkabula, Morris Nkabinde, Matthew Kekutle, Stephen Makena and Elliot Sasage during 1986 near Nietverdiend and the offences connected therewith.		Amnesty granted for all detailed under 'offences'.
1999a	[illegible]	Granted/ Refused	Murders of Zweli Nyanda and Kieth McFadden during 1983 near Manzini, Swaziland. The conspiracy to kill and the murder or attempted murder of several people on the East Rand during or about June 1985, their death having been caused by the explosions of hand grenades and a limpet mine murders of Abram Makalane, Samuel Masilela, Sepo Sibanyoni, Jeremia Mtudi, Thomas Phiri, Jeremia Mkabula, Morris Nkabinde, Matthew Kekutle, Stephen Makena and Elliot Sasage during 1986 near Nietverdiend and the offences connected therewith. The murder of Joe Tsele in Bophuthatswana during or about 1986 The murder of Piet Ntuli, committed in kwaMhlanga, kwaNdebele during or about July 1986.		Amnesty refused for the assault of supporter of the liberation movement during interrogations. lack of particulars means impossible to identify a specific incident for which amnesty could be granted.
1999a	[illegible]	Refused			
1999a	[illegible]	Refused			
1999a	[illegible]	Refused	a) The kidnapping of Dirandra Makanjee; b) The kidnapping of Arulla Padayachee; c) The assault with intent to do grievous bodily harm in respect of Dirandra Makanjee; d) The assault with intent to do grievous bodily harm in respect of	Convicted	Not convinced acted with a political motive; rather convinced that the acts were criminally committed for personal gain.
1999a	[illegible]	Refused/		Convicted	Refused for the attempted robbery because Committee not convinced the firearm was in fact removed by the applicant or his comrades.
1999a	[illegible]	Refused	Accessory with regard to the murder of Monica Philemon Skonyana at Thokoza, on 23 January 1993	Convicted	Testimony fraught with inconsistencies and contradictions. Reasons given for involvement in the incident also deemed so improbable that found to be false. Decided the applicant had not made full disclosure.
1999a	[illegible]	Refused/	Attempted murder of 6 (six) people as well as the assault, in a separate incident, of one Abel Sehobodi at the so-called "Radora crossing" on the Krugersdorp - Ventersdorp Road on 12 December 1993		Amnesty refused to Martin because Committee found that he knew he was exceeding his mandate in taking the decision to fire shots at a roadblock set up for AWB policy purposes.
1999a	[illegible]	Refused	Attempt to take full responsibility for and apply for amnesty activities of MK and the SDU under the authority of the ANC.		"Insofar 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 "Insofar 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 of the Act."" Insofar 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 of the Act."

1999a	[illegible]	Refused/	1. The illegal possession of a machine gun and ammunition 2. The illegal possession of a hand grenade; 3. Murder and; 4. Attempted murder	Convicted	Granted for the possession of firearms and ammunition due to the political circumstances at the time
1999a	[illegible]	Refused	(i) Unlawful possession of 10 [illegible] (ii) Unlawful possession of 18 Special Revolver (iii) Unlawful possession of 54 rounds of 38 special ammunition On or about the 8th June 1986 at [illegible], Durban and [illegible]		The offence having occurred at a date after the cut off date
1999a	[illegible]	Refused	Members and leaders of the ANC who collectively took responsibility for policy decisions that led to cadres committing human rights violations		No specific acts, omissions or offences had been disclosed therefore the applicant could not comply with the Act.
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
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[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
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[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
[illegible]	[illegible]	Refused	As above		As above
1999a	[illegible]	Refused	Murder of Chris Hani 10 April 1993	Convicted	"In all the circumstances, we are not satisfied that the applicants comply with the requirements of the Act, in particular the provisions of section 20
	[illegible]	Granted/ Refused	1. Amnesty is hereby GRANTED to the following five applicants: (i) Maropeng Matthews Sehlwana (ii) Paul Phillipus Francois Fuchs (iii) Joachim Heinrich Kruger (iv) Laurens Martin Pretorius and (v) Frederick Christiaan Stephanus Swarts in respect of the murders of certain six members of uMkhonto weSizwe, namely Lenpa Montgomery Molol, Tlhabane Ranthu Mohai Mogashoa, Walter Titus Aset and three others whose identities have never been known, killed on the road between Breslau and Alldays, on or about 10 July 1986 2. Re: The making of false affidavits in connection with the murders of certain six members of uMkhonto weSizwe, namely Lenepa Montgomery Moloi, Tlhabane Ranthu Mohai Mogashoa, Walter Titus Aset and three other unknown killed on the road between Breslau and Alldays, on or about 10 July 1986 Amnesty is GRANTED to the following applicants for perjury and/or		Amnesty in respect of the abovementioned murders is REFUSED to the following applicants: (i) Andries Johannes Gerhardus Erwee (ii) Nicolaas Stephanus Coetzee (iii) Jacobus Petrus van der Berg (iv) Willem Johannes Hendrik van Dyk (v) Johannes Andries Nel Strydom (vi) Pieter Andries Dreyer (vii) Willem Johannes van der Merwe (viii) Josef Venter and (ix) Phillip Theunis CJ Faure. [illegible] due to the failure to make full disclosure of testimony.

Year	Name	Decision	Offence	Prior Conviction	Reason
1999a	[illegible]		defeating the ends of justice or the attempt thereof: Andries Gerhardus Erwee; Frederick Christiaan Stephanus Swartz; Pieter Andries Dreyer and Johannes Hendrik van Dyk.		
1999a	[illegible]	Granted/ Refused	(a) The murder of Albert Ntema on the 11th February 1991 at Gelukwaarts, Kroonstad. (b) The illegal pointing of a firearm at a person. (c) The illegal possession of a firearm.	Convicted	Amnesty refused for (b) The murder of Eurom Hapane on the 1st December 1990 at Daveyton. (c) The attempted murder of Casium David Gwele on the 1st December 1990 at Daveyton. As the committee found that these offences were not associated with a political objective.
1999a	[illegible]	Refused	Murder of Tebo Molele on 2 MAY 1992 at Gelukwaarts Kroonstad		Went beyond orders and attack not found to be associated with a political objective.
1999a	[illegible]	Granted/ Refused	VUSI MBATHA: This applicant applies for amnesty in respect of the crimes of murder of Bheki Khanyile. Granted. VICTOR WANDA MABASO: murder or murders of Steven Radebe, Bheki Khanyile and for the unlawful possession of firearms used in such murders together with the ammunition. Granted. SIDNEY VINCENT NKOSI: Granted to him in respect of the murder of Jabulani Dube, also known as Jabulani Yengwani together with offences incidental to the killing of the deceased; attempted murder on an unknown number of occupants of the Khumalo homestead and also all offences incidental to that attac; in respect of arson and malicious injury to property, to the property committed during the attack on the Khumalo homestead. SOLOMON DLAMINI, MOSES KUBEKA, CHRISTOPHER KHETE NGCOBO: Granted in respect of the armed robbery of Kliprivier Police Station, the theft of six pistols, one R5 rifle, six pump guns and three R1 rifles; the theft of the ammunition in respect of those firearms; the unlawful supply and distribution of firearms and ammunition; the assault on those police at the police station and the malicious damage to property in respect of the telephone wires. Insofar as it is necessary, AMNESTY IS ALSO GRANTED in terms of the Posts and Telegraphs Act for the cutting of these wires. AUBREY STIMBERD RADEBE: GRANTED AMNESTY as follows: For the murder of an unidentified policeman during the attack of the Casspir motor vehicle; for attempted murder on an undetermined number of unidentified policemen injured during the attack on the said Casspir motor vehicle; Furthermore he is GRANTED AMNESTY for the theft of the Casspir; He is also GRANTED AMNESTY for the undetermined number of murders of unidentified person shot at and killed at Katuza hostel; He is also GRANTED AMNESTY in respect of undetermined number of attempted murders on identified people shot at Katuza Hostel; He is also GRANTED AMNESTY in respect of malicious injury to property to the building known as Katuza Hostel; He is also GRANTED AMNESTY in respect of an undetermined number of unidentified persons shot at and killed at an unnamed hostel adjacent to Tokoza; He is also GRANTED AMNESTY in respect of an undetermined number of attempted murders of unidentified persons shot at and/or injured at the hostel which is unnamed and adjacent to Tokoza; He is also GRANTED AMNESTY in respect of malicious injury to property being the building of this hostel adjacent to Tokoza; Lastly he is GRANTED AMNESTY in respect of malicious injury to property for the attack on the bakkie thought to be the property of Bishop Khumalo. GOODMAN NSIDISI MBULI: GRANTED AMNESTY in respect of the murder of Pinpin Bhamarsa and the unlawful possession of a firearm and the ammunition SAKILE JETHRO MOTIALE and MZWAZE NHUMALO: GRANTED AMNESTY in respect of the following:- Each for the kidnapping of Mr Dube; Each for the unlawful possession of firearm and ammunition; Each for the assault of Mr Dube; Each for pointing a firearm at Mr Dube; Each for two attempted murders on Mr Dube; and each for malicious injury to property in respect of the damage caused to Mrs Sulkas' home. MBONGENI OTTO TSHABANGU: GRANTED AMNESTY in respect of an assault with intend to do grievous bodily harm on the unknown policeman. He is FURTHER GRANTED AMNESTY in respect of unlawful possession of a firearm or firearms and ammunition. BONGANI NKOSI: GRANTED AMNESTY in respect of the two murders of unidentified persons, being one committed in October 1993 and the other in June 1993 respectively; The unlawful possession of an AK47 and ammunition; Eleven incidents of arson as set out above; An undetermined number of incidents of arson at Mazibuko Street informal settlement; One count of malicious injury to property at Thabetha's homestead. JAMES TANKISO KOENA: AMNESTY IS GRANTED in respect of the murder of Morris Auro Ngoze on the 20th of November 1993. JOSEPH MZWENI: in respect of the unlawful possession of the firearm and ammunition amnesty IS GRANTED. JIMMY MAKHONDO: amnesty granted in respect of the unlawful possession of the firearm and ammunition IS GRANTED		JOSEPH MZWENI: Amnesty refused in respect of the attempted murder because acted with no political objective. JIMMY MAKHONDO: found that did not make full disclosure because testimony was deemed contradictory to the point of falsehood.
1999a	[illegible]	Refused	Robbery with aggravating circumstances, the killing of Isaac Magae and the killing of Johannes Bokaba	Convicted	Acts not associated with a political objective.
1999b	[illegible]	Refused	Murder and unlawful possession of firearms and ammunition	Convicted	Not satisfied that gave full disclosure; contradictory versions presented; unsatisfactory witnesses and convinced colluded in order to concoct the story; one applicant also denied guilt.
1999b	[illegible]	Refused	Murder of Sgt Malaoh ("the deceased"), robbery of the keys of a motor vehicle, attempted robbery of a firearm and the unlawful possession of a firearm and ammunition		Serious doubt as to whether a full political motive existed and whether a full disclosure was made.
1999b	[illegible]	Refused	Murder and robbery	(Unclear)	Offences not deemed politically motivated
1999b	[illegible]	Refused	2. The murder of a police assistant, Ntsana Collin Tsoanyana in Durban on the 28 th October 1993.		
1999b	[illegible]	Refused	NB: Incorrect Report filed under this name (report for David Solomon Simelane presents)		

Year	Name	Decision	Offence	Prior Conviction	Reason
1999b	[illegible]	Refused	1. The murder of Mr Cronje 68 years of age on 25 May 1986 on a farm in the district of Cradock. 2. The attempted murder of Mrs Cronje 63 years of age on the same day at the same farm. 3. Robbery of clothing and TV as well as R1500.00 in cash on the same occasion 4. Housebreaking with the intent to steal and theft of a motor car on the above date and same occasion.	Convicted, but acquitted on appeal – applying for amnesty to prevent being held liable in delict by dependents of deceased	Committee found applicant to have been in a leadership position during the committal of the act, at which time he silently condoned the rape of helpless victim Mrs Cronje indicating malice, spite and ill-will beyond the political objective pursued. Committee not satisfied that the offences were politically motivated and also doubted whether the applicant had made full disclosure.
1999b	[illegible]	Refused			
1999b	[illegible]	Refused	Attempted murder of Mathambo Sithole ("Sithole") committed on the 12th September 1992 at KwaMandiza, Mid-Illovo, as well as his conviction for the robbery of a Datsun E20 minibus, the property of one Msolwa Mnchunu, which was being driven by Sithole, committed on the 12th September 1992 at KwaMandiza, Mid- Illovo.	Convicted (8 years)	Granted for the attempted murder but refused for the robbery as the applicant in no way associated himself with the act
1999b	[illegible]	Granted/Refused	**GRANTED** amnesty for murder of Mr Oosthuizen, attempted murder on the other police officers and Mr Collie as well as for unlawful possession of firearms and ammunition.	Convicted	Because they deny guilt and involvement on conspiracy to commit robbery they are consequently **NOT GRANTED** amnesty for this offence.
1999b	[illegible]	Refused	Murder's of :- 1. Edwin Vuyani Nkomo; 2. Mbulelo Esau Mahena; 3. Msilane Ronel Sishange; 4. Oscar Amos Mhlangeni, and in respect of the attempted murders of : 5. Simon Morris and 6. Sekano Avonly Kgasi. Incidents occurred on 1 August 1986 in Orlando East, Orlando West and Chiawelo in Soweto near Johannesburg.		Not satisfied that the killings and attempted killings occurred in a political context. Also not satisfied that full disclosure was made and concluded that an honest account was not given.
1999b	[illegible]	Refused	Killing of Mr André de Villiers who was shot and killed outside his farmhouse in Addo, Port Elizabeth, on 17th August 1992; the attempted murders of two family members and attempted robbery	Convicted	Second applicant refused amnesty because not satisfied that killed the deceased for political objective –rather pecuniary interest.
1999b	[illegible]	Refused			
1999b	[illegible]	Refused	1. The murder of Thokozani Sydney Mthembu of Kwa Mashu, in the district of Inanda, KwaZulu Natal on 5th February 1993. 2. Robbery with aggravating circumstances of a firearm, being a 9mm Pietro Baretta pistol, which was issued to the said Mr Mthembu. 3. Illegal possession of a firearm being a 9mm pistol and ammunition without a licensed firearm from which such ammunition could be fired.	Convicted	Killing the deceased was completely disproportionate to the objective of disarming him that claimed had political motive.
1999b	[illegible]	Granted/Refused	Murder of Lifa Alwin Mtimkhulu, and unlawful possession of firearm and ammunition.	Convicted	With respect to a second killing and five attempted murders, the committee was not satisfied that the requisite political motive existed.
1999b	[illegible]	Refused	The attempted murder of Sipho Ndlovu at Sweetwaters; An attack upon unknown persons at Jesmondene; The murder of Solomon Dlamini on 19th November 1992 at Shongweni; The murder of Sathanathum Padayachee on 29th November at Pietermaritzburg; The murder of Sipho Zulu on 3rd December 1992 in the Claridge area; The murder of Jeffrey Durugiah on 21st April 1993 at Umkomaas.	Convicted	Did not accept that the sole motive for killing the individuals was political as evidence showed there to be other motives at play in all of the offences. Committee was convinced that the acts were rather committed out of ill will or malice or for personal gain.
1999b	[illegible]	Refused	Murder of Abinaar Ramphomane Mongwala, which crime he committed in collaboration with others at Musenville, Krugersdorp, on the 15th November 1991.	Convicted	Not motivated by a political ojective
1999b	[illegible]	Refused	1. The murder of Welile Oliphant at Tendergate Administration Area in the region formerly known as Ciskei; and 2. Arson, in that at the said place and time, before he shot and killed the deceased with a firearm, he poured petrol inside his house and thereby set it alight.	Convicted	Killing of the deceased deemed "unjustified" despite the existence of conflict between ANC and UDM supporters. Acted under no imminent threat nor in terms of any orders from organization.
1999b	[illegible]	Refused	Murder, robbery with aggravating circumstances, two counts of house breaking with intent to steal and theft, unlawful possession of	Convicted	Applicants not found to have made full disclosure of the material facts.
1999b	[illegible]	Refused	Attempted murder of 41 persons,	Convicted	Amnesty granted to the first applicant and refused (the second applicant for the named offenses. Reason being that the second applicant denies any knowledge whatsoever of the offences for which he was convicted and applies for amnesty
1999b	[illegible]	Refused	Robbery of a motor vehicle, the property of Isaac Khezamula Mashavani, which was being driven by Edward Mbhazima Mkhwanazi, at Alexandra, Johannesburg on 29 April 1994.	Convicted (10 years)	Testimony fraught with inconsistencies and contradictions; deemed non-disclosure aimed at establishing a political context to support the assertion that the acts were associated with a political objective.
1999b	[illegible]	Refused	Amnesty is GRANTED to the undermentioned applicants acting on the instructions of their commander, Loots, to kill Moatshe and the two operatives: GIDEON JACOBUS VAN ZYL JOHANNES ALBERTUS STEYN CHRISTOFFEL JOHANNES SMIT ISAK JOHANNES MARAIS WILLIAM CHARLES C. SMITH DANIEL JOHANNES NIEWENHUIS PHILIP RUDOLF CRAUSE for the killing of the two operatives Solomon Mlonzi (Code name - Krushev), Schoeman Ramokgoba (Code name - Mars) and Moatshe a Botswana citizen at Silent Valley near Derdepoort on or about 4 May 1983 and any other related offences connected therewith. Amnesty is GRANTED to Loots for the killing of two operatives namely, Solomon Mlonzi (Code name - Krushev) and Schoeman Ramokgoba (Code name - Mars) at Silent Valley near Derdepoort gate on or about 4 May 1983. Amnesty is GRANTED to General Steyn for being an accessory after the facts in respect of the killing of the two MK operatives namely, Solomon Mlonzi (Code name - Krushev) and Schoeman Ramokgoba (Code name - Mars) and for defeating the ends of justice in respect of the killing of both Krushev and Mars and Mr Moatshe.		Amnesty is **REFUSED** to Loots for the killing of Moatshe at Silent Valley near Derdepoort gate on or about 4 May 1983. This because the act could not be deemed associated with a political objective.
1999b	[illegible]	Refused	Murder of Mr Rudman and robbing him of certain items.		The Committee was not satisfied that the applicant was truthful when he made his testimony
1999b	[illegible]	Granted/Refused	Attack upon Albin Hansel, housebreaking with intent to rob and malicious damage to property; attack upon Erich Ralph Gudmanz, housebreaking with intent to rob; attempted murder of Johannes Didrik Pretorius and housebreaking plus malicious injury to property; granted for attempted murder Rachel Edith Marillier, housebreaking	Convicted	Refused for attack on Anne Elizabeth Klackers as not satisfied the applicants made full disclosure.
1999b	[illegible]	Refused	The killing on 1 September 1991 of Jeremia Assa Mkhwanazi. The killing on 18 October 1991 of Mr Job Mokgathi, a policeman.		Acting in self defense is not an act associated with a political objective as envisaged by the Act.
1999b	[illegible]	Granted/ Refused	1. Amnesty is **GRANTED** to the applicant in respect of the following offence a. The murder of Jonas Raboshoanana Ramphalile on 15 June 1990 at Plot 80, Frischgewaagd, district Kroonstad.		2. Amnesty is **REFUSED** in respect of: a. The murder of Zacharia Motokeng at Beltrim, in the district of Sasolburg on 2 January 1991 b. Defeating the ends of justice flowing out of acts connected with the above mentioned incidents. This because it could not be ascertained that the act was politically motivated. Claimed political motive was related to the killing of farmers in order to scare others off the land for repossession, however the individual concerned was not killed and lived in a village not on a farm. Committee could not distinguish the act from an ordinary criminal one.
1999b	[illegible]	Granted/Refused	(a) Attack on Jwara during or about 1986 at or near Killarney, Orlando West; (b) Attack on Madonere during or about the period 1986 - 1987 at or		Amnesty is **REFUSED** in respect of the attacks on Bongani and Modiane during or about 1992 at or near Mzimhlope township as the Committee was not satisfied that they related to the relevant political conflict.

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Year	Name	Decision	Offence	Prior Conviction	Reason
1999b	[illegible]		near Zone 1, Meadowlands; (c) Attack on unknown female counsellor's house in Orlando West during or about the period 1986 - 1987; (d) Attack on a municipal police guard at Mzimhlope women's hostel during or about 1987; (e) Attack on [illegible] during or about the period 1986 - 1987 at or near Orlando [illegible]; (f) Attempted robbery of a Coin Security vehicle during or about November 1991 at or near Emmarentia; (g) Killing of an unknown IFP leader during or about the period 1991 - 1992 at or near Mndhlale Street, Orlando West; (h) Attack on IFP members or supporters during or about the period 1991 - 1992 at or near Zone 1, Meadowlands; (i) Attack on an unknown IFP supporter near the Soweto Highway during or about the period 1991 - 1992; (j) Attack on a group of IFP members or supporters during or about the period 1991 - 1992 at or near Mabasotho Street, Mzimhlope; (k) Attack on Bica Mtjah during or about the period 1992 - 1993 at or near Mzimhlope Township; (l) Attacks on guards at or near the main gate of the Mzimhlope hostel during or about 1992; (m) Attack upon Mzimhlope hostel shops during or about the period 1992 - 1993; (n) Shoot-out at or near the main gate of the Mzimhlope hostel during or about 1992; (o) Fighting between IFP and ANC members and/or supporters at or near Anchor High School during or about 1993; (p) Unlawful possession of arms and ammunition in respect of: (i) Langlaagte case no. [illegible]; (ii) Sebokeng case no. [illegible]; (iii) Orlando case no. [illegible]		
1999b	[illegible]	Refused	1. The two applicants and one Thulani Hlatshwayo robbed one Stuart Brian Curtis on 26 October 1993 of a BMW car, registration number JSH 130T 2. The two applicants and Hlatshwayo also robbed Trevor Allan Farrow at gun point of his Mercedes Benz car, his wallet, watch, pens and ID document on 1 December 1993 3. The three of them robbed B.E. Thorpe of his Mercedes Benz, watch, pistol and R700.00 cash on 6 December 1993, also making use of a fire arm 4. On 11 February 1994 Khumalo and Hlatshwayo attempted to rob Constable Maake of his 9mm pistol. At the same time they attempted to escape		Failure to make full disclosure and further not satisfied that the act was associated with a political objective
1999b	[illegible]	Refused	Killing of Mr Adolf Duncan Johnston of the farm Sheepdrift in the district of Lions River, Natal		
1999b	[illegible]	Granted/Refused	Multiple counts of murder, attempted murder, arson, malicious damage to property, unlawful possession and supply of arms and ammunition, failure to report knowledge of killings, defeating the ends of justice, conspiracy to murder		[illegible] is REFUSED amnesty in respect of: 8.1 The kidnapping, rape and murder of [illegible] at Unit 2, Mpumalanga, on or about 18 April 1988 8.2 The kidnapping, rape and attempted murder of [illegible] Mpumalanga, on or about 18 April 1988
1999b	[illegible]	Granted/Refused	1. The murder of Vikani Jacobs Soubo on 3 January 1989; 2. The murder of Stanley Mduduzi on 12 January 1989; 3. The murder of Thokozani Hlela on 13 January 1989; 4. The murder of Linda Molei on 13 January 1989; 5. The murder of Sibusiso Frank Carrington Mdluli on 16 January 1989; 6. The murder of Bhekisani Alpheus Gwala on 16 January 1989; 7. The attempted murder of Sibusiso Johnson Sibisi on 27 October 1988 sentenced to 7 years imprisonment; 8. The attempted murder of Joseph Ndodo Duma on 30 November 1988 sentenced to 7 years imprisonment; 9. The attempted murder of Nicholas Ngo Bhekithemba Kulu on 31 December 1988 sentenced to 7 years imprisonment; 10. The attempted murder of Mpumalelo Sithole on 14 January 1988 sentenced to 7 years imprisonment; 11. The assault on Maxwell Bhapa Mbongwa with the intent to cause grievous bodily harm on 21 December 1988, sentenced to 2 years imprisonment; 12. The assault on Mandla Buthelezi with the intent to cause grievous bodily harm on 21 December 1988, sentenced to 2 years imprisonment to run concurrently with the previous sentences.	Convicted	Amnesty is REFUSED in respect of the murder of Majosi, the eleven year old child. Deemed a senseless murder as no evidence connected the child to the UDF.
1999b	[illegible]	Refused	1. The murder of Samuel Sipho Hlongwane; 2. The murder of Ngqongqosha Jerome Khuzwayo; 3. The attempted murder of Christopher Ngcobo; 4. The attempted murder of Zeblon Dube, and 5. Robbery with aggravating circumstances, as defined in Section 1	Convicted	Acted for personal gain without political motive.
1999b	[illegible]	Refused	Murder of the following persons on 14 December 1989, at or near Motherwell in the district of Port Elizabeth: 1. Warrant Officer Mbalala Glen Mgoduka; 2. Sergeant Amos Temba Faku; 3. Sergeant Desmond Daliwonga Mapipa; 4. Xolile Shepherd Sakati alias Charles Jack.	Nieuwoudt, du Toit and Ras Convicted.	Reason for killing the deceased was to avert their threats and cover up illegal activities of the Security Police, not connected with a political objective. Also deemed wholly disproportionate to any objective the applicants might have pursued.
1999b	[illegible]	Refused	Attempted murder of Bongani Jonas as well as any acts and offences committed during time as a Security Policeman between 1985 and 1993		Applicant denied having intention to kill Jonas. In respect of the other offences, blanket amnesty cannot be granted for unspecified acts.
1999b	[illegible]	Granted/Refused	Maci: murder of Mtolo and Ntshangla. Barnabus: Murder of Thabiso Mkoteli, malicious injury to property causing damage to the Mkoteli homestead and the unlawful possession of a firearm and ammunition. Booi: murder of Mr Dabula and for the unlawful possession of the firearm and ammunition. Mkhonto: murder of Absalom Booi Shozi and for the unlawful possession of a firearm and ammunition. Nhlapho: the murder of Mr Ngcobo and the unlawful possession of firearms and ammunition. Maduna: 1. The murder of Mvelisi Twala in 1991; The murders of an undetermined number of people in a shack at Mngadi Section, Thokoza in 1993; Arson in respect of the burning of the shack at Mngadi Section in 1993; The attempted murders of an undetermined number of people in the house at the corner of Radebe and Mngadi Sections, Thokoza, in 1993; Malicious injury to property in respect of the house at the corner of Radebe and Mngadi Sections, Thokoza, in 1993; Malicious injury to property in respect of the Buyafuthi hostel in 1994; The attempted murders of an undetermined number of people in the Buyafuthi Hostel in 1994; The attempted murders of an undetermined number of persons at the Mshayazafe hostel in 1994; Malicious injury to property in respect of the damage caused to the Mshayazafe hostel in 1994		Maci: refused amnesty for killing of Yekani as act not deemed associated with a political objective.

Year	Name	Decision	Offence	Prior Conviction	Reason
1999b	[illegible]		Dealing in and the distribution of firearms and ammunition in contravention of the Arms and Ammunition Act; The unlawful possession of firearms and ammunition between 1992 and 1994. Bhutelezi: an undetermined number of incidents of attempted murder and for the unlawful possession of a firearm (AK47) and ammunition. Moloi: murder of an unknown person; arson in respect of three shacks in the Mavimbela Section; and Malicious injury to property in respect of the door which was broken. Skhosana: three (3) counts of murder of unknown persons and one (1) count of unlawful possession of a firearm and ammunition. Zakwe: murder of Joseph Skosana Dlomini and for the unlawful possession of firearms.		
1999b	[illegible]	Granted/Refused	Murders of Matthew Goniwe, Sparrow Mkhonto, Fort Calata and Sicelo Mhlauli respectively The application of De Kock in respect of defeating the ends of justice and any offence incidental there to is GRANTED.		The applications of Taylor, Lotz, Van Rensburg, Snyman, Van Zyl and Du Plessis for amnesty in respect of the murders of Matthew Goniwe, Sparrow Mkhonto, Fort Calata and Sicelo Mhlauli together with all the other offences incidental to the commission of those offences are REFUSED; not satisfied that full disclosure made due to lacunae in evidence.
1999b	[illegible]	Granted/Refused	GRANTED amnesty for the offence of the robbery committed on 27 May 1993 at or near Dilston Farm, Umkomaas Valley in the district of Ixopo.		The application for amnesty in respect of the murder of Vetolo Joyce Ferrero and Mbubhama Mtolo is REFUSED. Deemed quite unnecessary on the applicant's own version and not associated with a political objective.
1999b	[illegible]	Refused	13 counts of attempted murder and arson on 16th April 1993.	Convicted (45 years)	Even if the applicant was driven by some vague political motive, the nature and gravity of the offences committed by him were totally disproportionate to any political objective
2000a	TSEDISO EPHRAIM MOALOSI (AM00292/96)	REFUSED	(a) Attempted murder of "Alias Motsheare; and (b) Attempted robbery	1. The applicant was never charged for (a). 2. The applicant was charged for attempted robbery, convicted and sentenced to 9 years imprisonment on the 3 November 1994.	No act or omission is disclosed which would constitute and offence. There is no disclosure of any information which points to any objective (let alone any political objective) to commit such an offence, there is no indication that the alleged order of Van Wyk was in the slightest related to the commission of an offence.
2000a	XOLA TEMBINKOSI YEKWANI (AM7970/97)	REFUSED	Murder of Mziwonke "Pro" Jack.	Unknown	Applicant did not meet criteria for amnesty
2000a	MICHAEL PHILLIP LUFF (AM3814/96)	REFUSED	17 year old youth, William Dyasi, was shot and killed by the applicant	Charged and the criminal trial postponed pending the outcome of this application	Applicant was acting in the execution of his general duties as a police officer in combating crime. Applicant's sole reason for acting against the deceased was his belief that the deceased had earlier committed an offence by stoning the community hall
2000a	VIVIAN KWENZOKWAKHE BHANIYA NGCOBO (AM3702/96)	REFUSED	1. The murder of Bhekithemba Isaac Shandu; 2. The murder of Mbuyiselwa Petros Mbokazi; 3. Unlawful possession of a firearm in contravention of Section 2 read with Sections 1, 39 (1) (h), 39 (2) and 40 of Act 75 of 1969; and 4. Unlawful possession of ammunition in contravention of Sections 36 and 40, Act 75 of 1969.	Convicted and sentenced	At the end of his testimony it was clear that he was not being truthful. Even if we could give him a benefit of doubt and assume that he was an ANC operative and that he went to the meeting to carry out political orders, he exceeded the terms of his mandate by shooting Mbokazi and Shandu.
2000a	BHAWULANI THULASIZWE NGCOBO (AM8026/97)	REFUSED	Murders of Cirbo Majola, Simiso Bhenqu, Shoti Nduli, Bhekisani Ncusa, Mandlethu Ngcobo, Ngoma Shelembe, Sihle Mkhize, Siyanda Ngubane, Ncamisile Zimu and Sewili Zimu	Never charged for murders	Application does not satisfy the criteria
2000a	ANDREW MAKOFANE (AM 1474/96)	REFUSED	Attempted murder of Lucas and Paulos Skosana.	Not stated.	Did not satisfy the amnesty criteria: not a political party member and no political objective.
2000a	MZAMO THABANI MLABA (AM 6419/97)	GRANTED/REFUSED	Murders of Secrete Nkonsenhle Mkhize and Sibusiso Brian Mlaba.	Convicted and sentenced.	1. The murder of Secrete Nkonsenhle Mkhize on 16 March 1994 at or near Hlanyeni in regard to which the applicant was convicted and sentenced to undergo 20 years imprisonment in the Natal Provincial Division of the then Supreme Court; and 2. the unlawful possession of a G3 rifle and ammunition in regard to which the applicant was convicted and sentenced to undergo 5 years imprisonment in the Natal Provincial Division of the then Supreme Court. The applicant's application for amnesty in respect of the murder of Sibusiso Brian Mlaba in regard to which he was convicted and sentenced to undergo 20 years of imprisonment in the Natal Provincial Division of the then Supreme Court is REFUSED.
2000a	LUNGELO LUPUWANA (AM6371/97)	GRANTED/REFUSED	Abduction and murder of the following persons: Lindile Kula, Nkosinathi Tuku and Nathan Kota.	Amnesty is GRANTED to the applicant for the following offences: The conspiracy and attempted abduction of Wana; The abduction of Kula; Tuku and Kota; Arson in respect of the motor vehicle of the deceased and For any offence or delict arising out of his participation in the incident Amnesty CANNOT BE GRANTED for the murder of the deceased.	The evidence does not suggest that he participated or associated himself in any way with the murder of the three.
2000a	GEBHU FANYANA NGUBANE (AM3272/96)	REFUSED	Murder of Manaluthi Mbokazi.	Convicted for murder and sentenced to six years imprisonment.	Not satisfied that the applicant made full disclosure of all the relevant facts
2000a	MHLESHUZWA JOSEPH NGEMA (AM 8078/97)	GRANTED/REFUSED	1. The murder of Simiso Edmund Miya on 29 June 1993 at Umgababa in the district of Umbumbulu. 2. The murder of Francis Bheki Hlatshwayo on the same day and at the same place. 3. The attempted murders of five other people namely; Sibusiso Luthuli; Sipho Sikhumbuso Luthuli, Mzo Mbonambi, Chunky Msiya and Ziswe Mbonambi on the same occasion. 4. The murder of Zwelethemba Wesley Hlongwane on 1 July 1993 also at Umgababa. 5. The assault on Sandile Nkomo on 1 July 1993 at the same place.	Convicted and sentenced.	In the result amnesty is GRANTED in respect of the following offences:- 1. The murder of Simiso Edmund Miya on 29 June 1993 at Umgababa in the district of Umbumbulu. 2. The murder of Francis Bheki Hlatshwayo on the same day and at the same place. 3. The attempted murders of five other people, namely; Sibusiso Luthuli; Sipho Sikhumbuso Luthuli; Mzo Mbonambi; Chunky Msiya and Ziswe Mbonambi on the same occasion. 4. The assault on Sandile Nkomo on 1 July 1993 at the same place Amnesty is REFUSED in respect of:- The murder of Zwelethemba Wesley Hlongwane on 1 July 1993, also at Umgababa.
		REFUSED/GRANTED	1. Armed robbery of an employee of a hotel in Rosebank and for which applicant was found guilty and sentenced to 5 years imprisonment. 2. Armed robbery of an employee of Flamingo Dry Cleaners and for which applicant was found guilty and sentenced to 4 years imprisonment. 3. Armed robbery of a petrol garage in Daveyton and for which applicant was found guilty and sentenced to 15 years imprisonment. 4. Armed robbery of awaiting trial prisoners which took place on --- and for which applicant was sentenced to 10 years imprisonment. 5. Attempted murder of a policeman whilst trying to escape from prison. Applicant was never convicted for this offence. 6. Attempted murder of a certain Mr du Plooy in Standerton during October 1981 and for which the applicant was sentenced to death.	Convicted and sentenced for same.	Amnesty is accordingly REFUSED in respect of all the offences of robbery, attempted robbery, escape, attempted murder and unlawful possession of firearms and ammunition committed by the applicant. As regards the arson of a bus depot shortly after June 1976, the Committee is prepared to accept that there was a political objective and therefore amnesty is GRANTED for the burning of the bus depot.

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Year	Name	Decision	Offence	Prior Conviction	Reason
2000a	EPHRAIM MOTTUMAN NKOSI (AM 3123/96)		The death sentence was later commuted to 30 years imprisonment. 7. Unlawful possession of firearms. 8. Unlawful possession of ammunition. 9. Arson to a bus depot in June 1976.		
2000a	1. SYDWELL MZWAMADODA NTISANA (AM 6359/97) 2. ZANDISILE EDWIN BONGWENI (AM 6360/97) 3. MAMELO NDZWANENKULU MPUTU (AM 6362/97) 4. PUMELELE GUMENGU (AM 3630/96) 5. THOMAS MAZIZI NTISANA (AM 6361/97) 6. FUNDEKILE BLACKIE NOMBANGA (AM 6364/97)	GRANTED/REFUSED	Conspiracy to commit treason, and crime of treason.	Applicants 1, 2, and 3 were charged and convicted for conspiracy to commit treason. Applicant 5 charged and convictedwith treason and murder together with a number of co-accused	Applicants 1, 2, 3, 5 granted amnesty because their application satisfied the amnesty criteria. Both the 4th and 6th Applicants deny that they acted in concert with the plotters and that they committed any offence or wrong. They both aver that they were merely performing their duties as policemen. Amnesty refused since this does not satisfy the amnesty criteria.
2000a	T.A. MZOBE (AM 4020/96)	REFUSED	a. the murder of Samuel Njabulo Ndlovela at Boboyi in the district of Port Shepstone on the 24th April 1993; b. the murder of Brian John Bazley at the same place and on the same date as mentioned in (a) above;	Sentenced	Does not satisfy requirements for amnesty: 1) not full disclosure; 2) unclear political objective; and 3) disproportionate actions.
2000a	1. PUMELELE GUMENGU (AM 3630/96) 2. ARON TYANI (AM 3786/96)	REFUSED	Murder of Sithembele Zokwe	Charged and trial pending	Does not satisfy requirements for amnesty: 1) not full disclosure.
2000a	MSHALAZA NICHOLAS MZELEMU (AM 8071/97)	REFUSED	Murders of Thembekili Ncama Sikobi and Landiwe Sikobi	Not stated.	Does not satisfy requirements for amnesty: 1) unclear political objective.
2000a	2. TEMPLETON ZAMEKILE PATO (AM 5865/97)	PUMELELE CIVILIAN HERMANS was withdrawn	2. Unlawful possession of ammunition; 3. Any further offence which arises from the conduct of the Applicants during the course of the incident in question. Applicants 1, 2, and 3: 1. The murder of NYAMEKO MAPEKULA, DAVID MVIMBI, EPHRAIM MOHAPE alias MZWANELE MATHIBWE and FAUTENJWA BASIA NKANYEZI; 2. Attempted murder of MICHAEL BASMENI; 3. Unlawful possession of various firearms including R4 rifles and shotguns; 4. Unlawful possession of ammunition; 5. Any other offences resulting from the incident in question.	Applicant 3 was charged, trial pending.	Satisfied the amnesty criteria.
2000a	LUCKY JAMES HLENGWA (AM 4089/96)	REFUSED	Murders of Samuel Sipho Hlongwana and Jerome Khuzwayo, the attempted murder of Zeblon Dube and robbery with aggravating circumstances.	Convicted and sentenced.	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) unclear political objective.
2000a	1. KHULULEKANI LAWRENCE MBATHA (AM 5363/96) 2. WALTER SMILES (AM 3364/96)	REFUSED	Applicant 1: Instructions to throw hand grenade on the 24th May 1993" at Kimberley and the victims Ezekiel Lebogang Mokone (killed) and Joane Nel (injured) Applicant 2: Threw a hand grenade into a crowd at the Trust Bank Centre, Kimberley. One person was killed and others were severely or slightly injured.	Convicted	Applicant 1: Does not satisfy requirements for amnesty: 1) actions were in contradiction to the political organisation's instructions. Applicant 2: Does not satisfy requirements for amnesty: 1) not full disclosure, and 2) inconsistent statements
2000a	1. EDWARD TSEHISI MOKATI (AM 5897/97) 2. SIPHO NICODEMUS MTEMBU (AM 6028/97) 3. JOHN ITUMELENG DUBE (AM 5310/97)	GRANTED/REFUSED	Unlawful possession of explosives, attempted murder and any other offence directly related to the bomb blasts at Vanderbijl Square Bus Terminus in Johannesburg and the Naledi Power Station in Soweto.	Not stated	Granted to Applicants 1 and 2. Refused to Applicant 3 in respect of the Vanderbijl Square bus terminus and Naledi Power Station – did not satisfy criteria of amnesty
2000a	1. GCINISIKO LAMONI DANDALA (AM 6535/97) 2. MBUSO ENOCK SHABALALA (AM 5727/97) 3. EUGENE DE KOCK (AM 0066/96)	GRANTED/REFUSED	Murder of Mr Batandwa Ndondo.	Not stated	Applicants 2 and 3 comply with the requirements of the Act. Applicant 1 does not satisfy the requirements of the Act: 1) not full disclosure, and 2) inconsistencies in testimony
2000a	SHADRACK PASEKA EWALA (AM 7587/97)	REFUSED	Murder of Maria De Freitas, the murder of Karel Engelbrecht, robbery of a firearm from Karl Engelbrecht, the unlawful possession of firearms and ammunition and escaping from custody	Pleaded guilty (but not stated if charged)	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) unclear political objective.
2000a	BONGANI SAVIOUR NGUBANE (AM 1946/96)	REFUSED	Killing of Mmenesi Naumalo.	Convicted and sentenced.	Does not satisfy requirements for amnesty: 1) unclear political objective.
2000a	THEMBINKOSI VIVIAN MABIKA (AM 7761/97)	REFUSED	Robbery with aggravating circumstances, attempted murder and the unlawful possession of a 9mm Makarov pistol and ammunition.	Convicted and sentenced.	Does not satisfy requirements for amnesty: 1) unclear political objective.
2000a	ZAMIKHAYA WELCOME MGANDELA (AM 7889/97)	REFUSED	Robbery, abduction and the unlawful possession of a firearm and ammunition.	Not stated	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) unclear political objective.
2000a	SITHEMBISO VANANA (AM 6540/97)	REFUSED	Murder of Mrs Jane Sophia Rossouw, the attempted murder of Mr Casper Gabriel Rossouw robbery, housebreaking with the intent to steal and theft and theft of a motor vehicle	Not stated	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) unclear political objective.
2000a	NKOLISEKO LONKI MBANGI (AM 0424/96)	REFUSED	Murder of Samuel Daniel Barnard and attempted robbery.	Convicted.	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) untruthful.
2000a	ZAKHELE AMOS ZULU (AM 2099/96)	REFUSED	Murder of Babulo Joseph Mthethwa, Hlaluhlomile Alphios Mabaso, Sitezi Dadada Ndimande and Johannes Hlatshwayo and the attempted murder of Msawenkosi Cele and Joseph Mphikiseni Nojiyeza	Convicted and sentenced	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) unclear political objective.
2000a	MICHAEL GAONAKWE LESHOMA (AM 7748/97)	REFUSED	Murder of Petronella Johanna Barnard and Willem Kasselman Fick, the attempted murder of Jacobus Johannes Christiaan van Meyeren and Hezekiel Mbelaphonsi Malinga and five robberies with aggravating circumstances.	Convicted and sentenced.	Inconsistent testimony
2000a	1. EUGENE ALEXANDER DE KOCK (AM 0066/96) 2. DAVID JACOBUS BRITS (AM 3745/96) 3. JOHANNES JACOBUS SWART (AM 3750/96) 4. WILLEM ALBERTUS NORTJE (AM 3764/96) 5. LAWRENCE JOHN HANTON (AM 4076/96) 6. ANDREW RUSSELL CAVILL TAYLOR (AM 4077/96) 7. JOHANNES ALBERTUS STEYN (AM 4571/96)	GRANTED/REFUSED	The conspiracy, planning, abduction, assault and killing of Goodwill Colin "Neville" Sikhakhane ("Sikhakhane").	Not stated	Amnesty is granted for the abduction, assault conspiracy, planning and killing of Goodwill Colin "Neville" Sikhakhane; unlawful possession of AK-47; assisting Sikhakane's family unlawfully enter SA; and for defeating the ends of justice with the killing. Amnesty is REFUSED with regard to the fraud and theft of State monies in connection with the killing.
2000a	MBHEKISENI MDUDUZI DLAMINI (AM 4246/97)	REFUSED	1. Murder of Paul Bertram Nicholson 2. Robbery with aggravating circumstances	Charged and sentenced	Does not satisfy requirements for amnesty: 1) Not clearly politically motivated, and 2) not on behalf of a political organisation
2000a	EUGENE ALEXANDER DE KOCK & OTHERS	CLARITY ON SEC 29 SUBPOENAS	Sought clarity about subpoenas	N/A	The fact that a person may be an implicated person does not preclude him or her from being a compellable witness in any hearing convened in terms of the Act.
	1. NNDWAMATO AMOS MUHADI (AM2717/96) 2. NDANDUleNI PHILIP RERANI (AM 2718/96) 3. NWADZANI DE VILLIERS SIDIMA (AM2719/96) 4. CHAFER NDIVHULATHI RAGWALA (AM 2720/96) 5. RODGAN KHATHUTSHELO ROMASITSI (AM 2723/96)	GRANTED/REFUSED	The applications are unusual as they relate (somewhat) to the practise of witchcraft in the area of the Northern Province. (a) the murder of Edward Mavhungu on the 6 April 1990; (b) arson in respect of the deceased's home on the 6 April 1990; and (c) public violence in respect of activities at and outside the	Six charged, one convicted (doesn't state who).	Granted to all applicants except: Applicant 2 (Rerani) as he did not have any reason, political or otherwise, to commit any of the offences. Applicant 13 and 14 as did not fully disclose facts of incident. A C MUDZIVHODI (AM7357/97) – must be a typo listed as Applicant 24 (AZWINNDINI CEDRIC MOLOVHEDZI (AM 7668/97)) – refused for the murder of

Year	Name	Decision	Offence	Prior Conviction	Reason
2000a	6. JOHNSON THIUNHAU MASITHULELA (AM 2724/96) 7. DAVID MAKANA NEMAKHAVHANI (AM 2725/96) 8. ABEL LUFUNO MULAUDY (AM 2726/96) 9. A D RAMMBWA (AM 2727/96) 10. A A MAIVHA (AM 4300/96) 11. J M MAKATU (AM 4319/96) 12. FUDUMULANI LAWRENCE MADUNA (AM 7348/96) 13. AVHAPFANI JOSPH LUSHWA (AM 3278/96) 14. TSHAMAAN EDISON TSHIBALO (AM 3277/96) 15. MAUBA DANIEL MAUMA (AM 2597/96) 16. JOSIA DAVHANA MUKUNDI (AM 3282/96) 17. NORMAN RAMALATA (AM 3283/96) 18. SAMUEL MASHUDU MATALA (AM 3284/96) 19. KUDZINGANA ASMUEL KUDZINGANA (AM 7254/97) 20. MALUTA SIMON MATSHISEVHE (AM 7206/97) 21. ASAPH MAMABURU (AM 7440/97) 22. JUSTICE RAMABULANA (AM 6323/97) 23. WALTER MUDZWIRI (AM 6678/97) 24. AZWINNDINI CEDRIC MOLOVHEDZI (AM 7668/97) 25. MUTSHUTSHU SAMUEL MAGORO (AM 2714/96) 26. SALANI PHILIMON BALOYI (AM 2534/96) 27. MARUBINI GEORGE LESHABA (AM 4315/96) 28. HARRIOT MATHEBULA (AM 4188/96) 29. MAVHULAMA JOHANNES MAKANANISE (AM 4301/97) 30. TSHINYADZO DANIEL MAUBA (AM 4109/96) 31. MBULAHENI VICTOR MURIELI (AM 7360/97) 32. FREDDY FHATUWANI DAVHULA (AM 7092/97) 33. MMABATHO POPULAR MULAUDZI (AM 3280/96) 34. MMBENGENI MUTALI (AM 3281/96) 35. SOLOMON MODISE MUENDA (AM 6379/97) 36. AUBREY LESHWEU MOEALENG (AM 4112/97) 37. T A MASHAMBA (AM 3279/97) 38. A K MUTHELO (AM 4289/96) 39. L F MUNYAI (AM 7956/97) 40. N MULANDZI (AM 6680/97)		deceased's home on the 6 April 1990.		Selinah because the target could not have been a political threat. Applicants 25 and 26 were refused amnesty for arson. Applicant 28 (Mathebula) as applicant denied guilt. Applicant 35 and 36 were refused because they did not comply with any of the criteria requirements. Applicant 38 because his actions were not based on any political motive.
2000a	MICHAEL BELLINGAN (AM2880/96)	REFUSED/DISMISSED	(i) the theft during the period 1988 - 1989, in the then Transvaal, of various cheques intended for the National Union of Metalworkers of South Africa ("NUMSA" - the role of this acronym in the incident will appear more fully later in this decision); (ii) the murder of Applicant's first wife, Janine Bellingan ("the deceased"), during the course of the night on 20 September 1991 or the early hours of the morning on 21 September 1991 in the family home at Sandton, Gauteng;	Convicted and sentenced for murder.	Refused for the NUMSA theft. Dismissed for murder – not full disclosure and not politically motivated.
2000a	APLA HIGH COMMAND (AM 7832/97)	REFUSED (heard in chambers)	These commanders did not specify their individual names as they are accepting collective responsibility for any act, omission, offence or delict committed by members of the PAC as a result of which people died, others were injured and property was damaged.	Not stated.	Refused because does not comply with requirements of the Act (no act, omission or offence was listed in application).
2000a	MAGOME FREDDY TLADI (AM 3043/96)	REFUSED	Murder of Matule Bapela	Sentenced and imprisoned.	Murder of the deceased in the given circumstances cannot be said to be "an act associated with a political objective" in terms of the Act.
2000a	GOLDEN HOLIDAY SEBGOBELA (AM 1026/96)	REFUSED	Murder of Poppy Seerane	Convicted	There is no evidence that the murder of the deceased is "an act associated with a political objective" in terms of the Act.
2000a	1. ISAAC SEMELA MOHAMANE (AM 1347/96) 2. SOLOMON NGAQOME SEBA (AM 1313/96) 3. JACE TUMI MOFOKENG (AM 4114/96) 4. PHILLIP TAEMANE MOSIA (AM 3127/96)	REFUSED	Murder of two members of the Qwa Qwa police force, namely Mokete Benjamin Makau and Tselane Jacobine Mosebi as well as of being in the unlawful possession of firearms and ammunition.	All convicted of and sentenced for the murders and of being in unlawful possession of firearms	Does not satisfy requirements for amnesty: 1) unclear political objective since ANC had terminated the armed struggle against the government and it was not the policy of the ANC to murder policemen and policewomen.
2000a	1. VAKELE ARCHIBALD MADSANA (AM 4418/96) 2. MDAMILE THOMAS GONYA (AM 7842/97)	REFUSED	Murders and attempted murders of several persons who were shot and killed by CDF members at Bisho.	Not stated.	We are not satisfied that the actions of Applicants constitute acts associated with a political objective as envisaged in the Act.
2000a	1. NKOSINATHI EMMANUEL NYAWUZA (AM 7807/97) 2. ELIJAH NYAWUZA (AM 3010/96) 3. FRANCIS THOBI MFIYWA (AM 4505/96) 4. FILBERT MAKHONYA NDIMANDE (AM 6456/97)	REFUSED	Killing of Victor Lembede	Charged and sentenced.	Applicants' version is untruthful where it conflicts with the testimony of the witnesses, particularly in regard to the reason for the attack on the deceased. We are satisfied that the deceased was killed in the course of an abortive attempt to rob the deceased's shop.
2000a	NTSUMBEDZENI ALSON TSHITAHE (AM 2364/96)	GRANTED/REFUSED	1.1 arson in respect of government vehicles committed during or about June 1976 at or near Sibasa Area, Venda; 1.2 arson in respect of government school buildings at the place and time referred to in paragraph 1.1 above; 1.3 terrorism more fully set out in Pietersburg Magistrate's Court Case No. RC166/78; 1.4 sabotage more fully set out in Pietersburg Magistrate's Court Case No. RC167/78. 1.5 Offences of Robbery and the Unlawful Possession of Firearms and Ammunition in respect whereof Applicant was convicted and sentenced in the Thohoyandou Regional court under Case No. RC63/92.	Not stated.	Granted for 1.1 – 1.4 and refused for 1.5. No explanation given.
2000a	PABALLO ERNEST PULUMO (AM 6634/97)	REFUSED	1. The murder of Jacobus Petrus Ward, a seventy year old male, on 21 December 1992, on the farm Emmaus in the district of Theunissen. 2. The murder of Emmarentia Cornelia Ward, a thirty year old female, on 21 December 1992 on the same occasion.	Unclear – it seems the applicant was found guilty and therefore convicted	The Committee is not satisfied that the offences are associated with a political objective and that the applicant and the deceased (Rasta Moleto) acted on behalf of or in support of a political organisation.
2000a	S.B. DLADLA (AM 3487/96)	REFUSED	Murder of Mr Madisela.	Not stated.	Does not satisfy requirements for amnesty: 1) Not involved in political matters; 2) not full disclosure
2000a	1. NZIMENI DANSTER (AM 0040/96) 2. MONWABISI ERIC KHUNDULU (AM 0050/96) 3. LOLLIE KWAKWARI (AM 4296/96)	REFUSED/GRANTED	1 Housebreaking with the intent to rob and murder, with aggravating circumstances on 6 February 1987; 2. The murder of Matheus Gideon Palvie a 63 year old male on 6 February 1987 on the farm Leeuwkloof in the district of Cradock; 3. The murder of Jeanette Johanna Palvie, a 54 year old female who died on 15 March 1987 as a result of injuries sustained during an assault on her on 6 February 1987 on the foresaid farm. 4. Robbery. 5. The illegal possession of a firearm in contravention of Section 2 of Act 75 of 1969 on 6 and 7 February 1987 to wit a 6.35mm Pistol serial no. 192710; 6. The illegal possession of .22 rifle serial no. 94980 on the aforementioned dates; 7. The illegal possession of ammunition on the aforesaid dates; 8. The malicious damage of the property of MG Palvie namely a VW Golf motor vehicle registration no. CAT12884 on 6 February 1987 at Cradock.	Convicted and sentenced.	Amnesty refused for counts 1 and 4 because robbery was for personal gain; granted amnesty for count 2 because it was politically motivated (even though a mistaken target); and amnesty for count 3 refused because this murder was disproportionate; amnesty granted for counts 5 to 8.
2000a	1. ZWELI ABSOLOM MHLONGO (AM 5272/97) 2. ASHLEY MURPHY MAGUDU (AM 0687/96)	REFUSED	Kidnapping and the killing of Hendrik Jacobus Pyper.	Convicted and sentenced.	Does not satisfy requirements for amnesty: 1) not truthful; 2) non political activities

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Year	Name	Decision	Offence	Prior Conviction	Reason
2000s	THEMBILE BAAS MZONDEKI (a.k.a THEMBILE ZINCA)	REFUSED	Offences committed just outside the Great Centenary Hall, New Brighton, Port Elizabeth	Not stated	Not clearly politically motivated.
2000s	MUSA MAHAMBANE (AM 6174/97)	REFUSED	Murder.	Convicted and sentenced	Does not satisfy requirements for amnesty: not for political purposes and not full disclosure.
2000s	DANNYBOY NHATHIBAZI (AM 1106/96)	REFUSED	Murder of Zwelibanzi Ntuli	Not stated	Does not satisfy requirements for amnesty: participation in the murder was not politically motivated.
2000s	AARON ZIBUSE ZULU (AM 2186/96)	REFUSED	1. The murder of Nduda Mkhize aged 13; 2. the murder of Thulani Mkhize aged 19; 3. the murder of Thule Mkhize aged 9; 4. the murder of Wanda Ngubane, aged 12; 5. the murder Nomusa Gwala aged 12; 6. the murder of Ngee Mkhize aged 10; 7. the attempted murder of 15 other school children; 8. and the attempted murder of the driver of a cream white bakkie with a white canopy, Mr Makeke and/or Mr Ngobane	Not stated	Does not satisfy requirements for amnesty: Not full disclosure
2000s	MPADI JOHANNES LEDWABA (AM 1188/96)	GRANTED/REFUSED	Committing public violence on the 14th April 1993 at Magogong Township.	According to the court records, charges of rape, murder and assault with the intent to cause grievous bodily harm were	Granted in respect of the offence of committing public violence on the 14th April 1993. Refused in respect of any other offence on the grounds that there was no full disclosure of the relevant facts.
2000s	FRANK SANDY BENNETTS (AM 4010/96)	REFUSED	1. Unlawful interrogation of members of the United Democratic Front; Assault with intent to do grievous bodily harm, assault, intimidation, unlawful detention and kidnapping of such members during the period 1985 - 1989 2. The "necklacing" of an unknown male in the vicinity of Chesterville near Durban. 3. The murder of a member of the Pan Africanist Congress whose name is unknown to the applicant.	Not stated	We are not satisfied that the applicant has made a full and truthful disclosure pertaining to any of these three incidents.
2000s	1. JOHANNES JACOBUS GELDENHUYS (AM 5461/97) 2. ANDREAS JACOBUS LIEBENBERG (AM 6352/97)	GRANTED/REFUSED	Applicant 1: assisting in the escape of Charles Sebe from prison in the Ciskei in 1986. Both applicants: any act committed by any of those persons under their command which may constitute an offence of which they have no personal knowledge	Not stated	Applicant 1 granted amnesty for assistance of Sebe because satisfied the amnesty criteria: full disclosure and context of political conflicts of the past. The application for amnesty for crimes committed by those under their control is refused because they could not disclose any information in this regard.
2000s	1. MTHETHELELI ZEPHANIA MNCUBE (AM 5889/97) 2. MZONDELELI EUCLID NONDULA (AM 7275/97) 3. JABULANI SYDNEY MOLLI (AM 6046/97)	REFUSED	Subpoena application for the summoning of J. Modise, L. Maloi, and R. Kasrils.	Not stated	Evidence wanted by Mr Wagener of the individuals will have no bearing on the applications of the applicants and is not necessary in order to arrive at a proper decision in these matters.
2000s	ZWELAKHE THANDINKOSI CEBEKHULU (AM 4444/96)	REFUSED	Shooting and killing of two persons.	Sentenced to life imprisonment in respect of the murder convictions and varying additional terms of imprisonment in respect of the other convictions.	The attack upon the victims was in no way associated with any political objective.
2000s	1. THEMBA STEPHEN ZIMU (AM 2806/96) 2. THULANI TERRENCE TSOTETSI (AM 4400/96) 3. NICHOLAS ZWILE CHAMANE (AM 0168/96) 4. MZWAKE SHADRACK KHUMALO (AM 8041/97) 5. MNKHOSENI SOLOMON KHUMALO (AM 8024/97)	REFUSED	Applicants 4 and 5 withdrew their applications. Applicant 1: conspiracy to murder of Sam Ntuli, murder of Vusi Shabalala, shooting and massacre at tavern and an attack on the Madlala Supermarket. Applicant 2: murder of Sam Ntuli, attack on the tavern, and killing of Norman Sithole. Applicant 3: massacre at the tavern	Applicant 2 convicted	Not satisfied that the first and second applicants have acted with a political objective.
2000s	1. RODNEY ABRAHAM MOEKETSI TOKA (AM 6034/97) 2. FRANCIS PITSI (AM 7193/97) 3. JOHANNES TSHIPANE MALEKA (AM 7412/97) 4. GEORGE MATHE (AM 3697/97) 5. REGINALD NDAH LEGODI (AM 7745/97) 6. THAPELO REUBEN KGOTSA (AM 7618/97) 7. ALFRED KGASE (AM 7737/97) 8. JOSEPH NKOSI (AM 2273/97)	GRANTED/REFUSED	Attacks on police, planting of limpet mines, bombings and unlawful possession and use of firearms and explosives.	Not detailed but seems that there was prior charges.	Amnesty granted to all for everything except to Joseph Nkosi in respect of (a) The murder of Patience Kulele; (b) The attempted murder of Rose-Mary Muzwayine; (c) Malicious injury to property House No. 855, Mamelodi Gardens.
2000s	KEVIN HALL (AM 1383/96)	GRANTED/REFUSED* * mistakenly captured as "granted" only on the website	A number of incidents in which he was involved during the period between December 1974 and February 1976 while he was doing compulsory military service as a conscript	Not stated	Granted for everything except refused for incident 3 whereby he was instructed to deliver unknown items to Pinetown and discovered that they were rifles and decided not to carry out the instruction. The applicant admitted this was not an act associated with a political objective.
2000s	JOSIAS SIEMISE (AM8044/97)	GRANTED/REFUSED	1. The murder of Zizi Shongwe and attempted murder of several other persons whose names appear below during or about 30 July 1991 at or near Ermelo. 2. The attempted murder of United Democratic Front ("UDF") members at Nkhomoplazi or at near Ermelo during or about 1990; 3. The murder of two (2) unknown scholars from Thembisa Secondary School at or near Ermelo during 1990; 4. The murder of three (3) scholars at or near Ermelo in or about 1991; 5. The attempted murder of Tilly Nkosi at or near Wesselton, Ermelo, during or about 1991; 6. The attempted murder of Mr Crucket at or near Extensia, Ermelo, during or about 1991; 7. The murder of Jackson Kubeka in Kati township at or near Ermelo during 1991; 8. Various crimes of murder, attempted murder and arson committed at or near Davel during or about 1991.	Not stated	Granted for offences 2, 3, 5, 6, 7, and 8. Refused for offences 1 and 4. Insufficient evidence for the former.
2000s	JACOBUS JOHANNES DE RU (AM 1780/96)	REFUSED	Killing of three (3) persons, Makhulu Solomon Khumalo, Richard Suputane Makhubo and Phophaphang Joseph Kabokane	Not stated	Not committed with political objective
2000s	JON HENDRICK ROELOFSE (AM 7955/97)	REFUSED	Murder of the Victor Zakhele Mlotshwa	Imprisoned	There is also no merit in the Applicant's claim that he was a supporter of the AWB and his action cannot be regarded as an action against a political enemy but an act of sheer racism.
2000s	1. MBAMBESENI BUTHELEZI (AM 6128/97) 2. BHEKINKOSI MKHIZE (AM 6131/97) 3. TEBOGO MAGUBANE (AM 6118/97) 4. VINCENT KHANYILE (AM 6124/97) 5. TIMOTHY SIHAS MAZIBUKO (AM 6122/97) 6. JACK MBBELE (AM 6119/97) 7. SONNY MICHAEL MKWANAZI (AM 6120/97) 8. THOMAS LUKHOZI (AM 7396/97) 9. MOSES MTHEMBU (AM 7394/97) 10. MHLUPEKI TSHABANGU (AM 7391/97) 11. SIPHO BUTHELEZI (AM 7319/97) 12. PETRUS MDINISO (AM 6127/97) 13. MHOLISENI SIBONGELENI MKHIZE (AM 6135/97) 14. PAULOS MCHIZELENI MBATHA (AM 6121/97) 15. RICHARD DLAMINI (AM 6132/97) 16. VICTOR MATHANDENI MTHEMBU (AM 1707/96)	GRANTED/REFUSED	An attack at Boipatong Township and at the informal settlement of Slovo Park in Vanderbijlpark.	Applicants 9 and 12 convicted and sentenced to prison terms.	Applicants 9, 12, and 18 were refused amnesty because there was no evidence that their theft of property was politically motivated.

Year	Name	Decision	Offence	Prior Conviction	Reason
2000s	17. SITHE[illegible] (AM [illegible]) 18. ANDRIES MADHANZANA[illegible]NGA (AM 1778/96)				
2000s	HENDRIK [illegible] (AM 064[illegible])	GRANTED/REFUSED	M[illegible] of Violet Mosemola	Convicted and sentenced	Satisfied the amnesty criteria: political object[illegible]
2000s	EMMANUEL [illegible] (AM [illegible])	REFUSED (DISSENTING JUDGE)	[illegible] the M[illegible] Mtetywa	Not stated	Conclude that amnesty should be GRANTED to the applicant as requested by him [illegible]
2000s	VOET MEHRIS SAMBO (AM [illegible]/96)	REFUSED	[illegible] member of the motor vehicle crime investigation section of the South African Police in [illegible] Komatipoort Mpumalanga on 29 October 1994	Convicted and sentenced to forty years imprisonment	Failed to make full disclosure of all relevant facts
2000s	[illegible]	REFUSED	Murder of [illegible] Mbongwa on 23rd January 1994 at Bhekezulu; the attempted murders of Emmly Ncedeni Mbongwa, Sifiso Mbongwa, B[illegible] Mbongwa, Muzikai Mbongwa and Khumbulani Mbo[illegible] at Bhekezulu	Not stated	Satisfied the amnesty criteria: full disclosure
2000s	ANDRE CLOETE (AM 1726/97)	REFUSED	Murder of 13 persons and the attempted murder of 8 persons at the home of the Ntuli family	Not stated	Not satisfied that the attack constitutes an act associated with a political objective
2000s	1. [illegible] (AM [illegible]) 2. PATRICK MANDLA NESELA (AM 7041/97)	GRANTED/REFUSED	Attempted murder of and robbery of a firearm, his participation in an attack on the Zenzele informal settlement, and the murder of Arnold Lotelo, the attempted murders of Ernest Zwane and Lucky Tabu and the robbery of a vehicle belonging to Mr Kotelo at Daveyten on 1st August 1993.	Not stated	Amnesty granted to Applicant 1 regarding: i. the attempted murder of and the robbery of a firearm from Sgt. Phala during 1993 at Daveyten, and ii. the attacks on the Zenzele informal settlement during August 1993 Amnesty refused to both applicants for all other counts
2000s	MBUSO ENOCK SHABALALA (AM[illegible])	GRANTED/REFUSED	1. The attempted murder of Leonard Nxumalo on or about 23 October 1982 at or near Zondo Street, eThandakukhanya in the district of Piet Retief	Charged regarding attempted murder	Refused regarding attempted murder of Nxumalo Granted regarding murder [illegible]
2000s	[illegible] SITHEMBI[illegible] MTHOLE (AM[illegible])	REFUSED	One count of Armed Robbery, one count of Conspiracy to commit Robbery and one count of Theft	Not stated	Not satisfied that the Applicant has complied with the requirements of the Act
2000s	[illegible] MSWANA (AM5944/97)	REFUSED	Offence of Armed Robbery	Not stated	Applicant has not made a full disclosure of the facts and circumstances
2000s	1. [illegible] (AM1896/96) 2. JACOB [illegible] MAPONYANE (AM7841/96) 3. [illegible] (AM[illegible]61/96)	REFUSED	Armed robbery, murder and attempted murder, which offences were committed by them on 7th October 1998 at Novo	Tried, convicted and sentenced to long terms of imprisonment	Not satisfied that the Applicants have made a full and truthful disclosure of all relevant facts pertaining to the offences
2000s	1. ZIBA GERALD MPANZA (AM6167/97) 2. SIFISO GOLIMAN MALEVU 3. MTHANDENI CLEOPHAS SHANDU	REFUSED	A robbery committed at Avoca Wholesalers, Empangeni	Not stated	We had difficulty in accepting their evidence
2000s	PATRICK LANCEDISI DLONGWENE HLONGWANE (AM 8038/97)	REFUSED	Numerous counts of arson and perjury which crimes were committed in Port Elizabeth during the 1980s	He testified against his comrades.	We are not satisfied that he had made a full disclosure
2000s	[illegible] MOSES [illegible] (AM[illegible]/96)	REFUSED/GRANTED	1. The illegal possession of explosives 2. Culpable homicide 3. Attempted murder	Convicted in respect of the three offences and sentenced to 12 years imprisonment.	Refused regarding count 2 and 3. The applicant [illegible] any offence or delict
2000s	[illegible] BHEKINDLWE NHLABATHI (AM [illegible])	REFUSED/GRANTED	1. Unlawful carrying of passengers (Piet Retief) - fined R[illegible].00 2. Possession of stolen property - fined of R60.00 3. Mob rioting in Johannesburg (sentenced to 4 years) 4. Helping freedom fighters crossing into South Africa from Swaziland (1984 - 1990)	Convicted	Refused for counts 1, 2, and 3 because they preceded his involvement with the ANC Satisfied that count 4 was politically motivated
2001	[illegible]	Refused	1. The murder of Wessels Cronje Odendaal at Kaldeniglontein farm, Wepener district, Orange Free State on the 25 February 1992; and 2. Robbery of money and arms with aggravating circumstances		Fabricated information to bolster claims that his actions were politically motivated and gave clearly contradictory testimony. The Committee was not satisfied that the acts committed were politically motivated, that the applicant
2001	[illegible]	Refused/	High treason and the storage and distribution of illegal weaponry during or about to period 1991 until 1993	Convicted	
2001	[illegible]	Refused	Participation in various acts of abduction and unlawful detention of supporters of the African National Congress ("the ANC") in the former Bophuthatswana Bantustan during 1986 and 1987	Not convicted that the applicant committed an offence	
2001	[illegible]	Refused	1. The fact that his training as a medical [illegible] Thembisa and Kathlehong Hospitals allowed him "to practice" on black civilian patients in order to equip him to save lives of SADF members, had [illegible]		
2001	[illegible]	Refused			
2001	[illegible]	STRUCK			Applicant failed to appear at the hearing or respond to notice thereof
2001	[illegible]	STRUCK			As above
2001	[illegible]	STRUCK			As above
2001	[illegible]	Refused	1. [illegible]breaking committed during the period 24 to 26 July 1992 at the farm Smaldeel at the home of Mr Potgieter; 2. Attempted murder of Mr Potgieter on 16 August 1992 at the farm Smaldeel 3. The murder of Mr Godfrey[illegible] on 22 August 1992 at the farm Almansnek in the district of Vryheid; 4. The robbery with aggravating circumstances of certain items from Mr and Mrs Heuer on 22 August 1992 at the farm Almansnek in the district of Vryheid 5. Two counts involving the unlawful possession of a firearm and ammunition	Convicted	Not satisfied that applicant made a full disclosure of all relevant facts
2001	[illegible]	Refused	Granted amnesty for Arson		Refused amnesty for malicious injury to property (wrecking cell at Burgersdorp prison on 11 August 1991) because the Committee did not deem this action sufficiently aimed at furthering the political struggle and objectives of APLA and the PAC, finding instead that it was aimed at improving the conditions of his incarceration whilst awaiting trial
2001	[illegible]	Refused	Any offence or delict directly linked to the kidnapping of, the assaults on and the murder of Sipho Charles Hashe, Qaqawuli Godolozi and Champion Galela in the Eastern Cape on 8 to 10 May 1985		Committee not satisfied that the applicant made full disclosure of all the relevant facts
2001	[illegible]	Refused	Murder of Musi Francis Shabangu on 30th/31st March 1991	Convicted	Contradictions and inconsistencies in the evidence given led to the rejection of the Applicant's version and finding that he had not shown himself to have acted in accordance with a political objective
2001	[illegible]	Refused	9 counts of murder, 6 counts of attempted murder and six charges relating to the illegal possession of arms and ammunition	Convicted	Committee not satisfied that the applicant committed the offences for which amnesty is sought with a political objective as envisaged in the Act or that the applicant made a full and truthful disclosure of the all material facts related to the incident
2001	[illegible]	Refused	1. House breaking 2. Robbery and 3. Murder of Jacobus Hendrickse Janse van Rensburg at House No		Numerous inconsistencies, contradictions, and improbabilities led the Committee to believe that the same acts had not made truthful disclosure. Additionally, the applicants did not establish a political motive, and the Committee felt that the act
2001	[illegible]	Refused	1. The murder of Joshua Meshack Mokoane; 2. The murder of Reginald Moeng; 3. The attempted murder of Owen Tebogo Bala; 4. Robbery of Owen Tebogo Bala of an amount of Five Thousand Rand (R5 000.00) 5. Robbery of a Toyota Cressida vehicle bearing registration and numbers BDD 367 belonging to Stronghold Security Company; 6. Armed Robbery of the former Transvaal Provincial Administration ("TPA") personnel of an amount of Eighty Nine Thousand Rand (R89 000.00) at Zonkizizwe, Heidelberg, in or about October 1992 7. Unlawful possession of an unlicensed firearm and ammunition 8. Robbery of two (2) firearms and two (2) shotguns 9. The killing and/or attempted killing of an unknown number of members of the Inkatha Freedom Party ("IFP") at Zonkizizwe Township during April 1993	Convicted	Committee not satisfied the applicant's testimony was truthful. Further deemed the act motivated by criminal rather than political objectives.
2001	[illegible]	Refused	1. The murder of Jabu Fatima Mbat[illegible];	Convicted	Committee not satisfied that the act was associated with a political objective or [illegible]

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Year	Name	Decision	Offence	Prior Conviction	Reason
2000	[illegible]	Refused	Malicious damage to property, crimen injuria, intimidation and defamation as well as any other offences connected to Strutsom operations at Wits University between 1982 and 1986. Arson at the Media Resources Centre Wits in 1984. Damage to the property of activists between 1982 and 1986. Illegal recording of conversations between 1982 and 1986 in Johannesburg. Distributing pamphlets leading to the offence of defamation. Intimidation between 1984 and 1985 at Yeoville. Disruption of protest gatherings between 1982 and 1986 at Wits. Intimidation, theft, assault and crimen injuria connected to the disruption of the One Million Signature campaign in 1986 in JHB city center. Theft, housebreaking, trespassing and malicious injury to property connected to the theft of documents between 1982 and 1986. Burning of a lawyer's vehicle 1985 Johannesburg. Petrol bomb attack at the residence of Sathsbavian Cooper in Frakenwald grounds of Wits University in 1985. Discrediting the opposition throughout the country between 1986 and 1992 leading to offences including crimen injuria. Blackmailing a journalist between 1984 and 1986 in JHB.		Amnesty refused for reconnaissance between 1982 and 1994 at various places in Johannesburg and refused for being an accessory after the fact to various incidents that occurred between 1979 and 1994. This was because no offences were disclosed in relation to these two issues.
2000	[illegible]	Refused			Amnesty for the torture of Mr Simelane refused to Coetzee, Pretorius and Meng due to their not having made full disclosure.
2000	[illegible]	Refused	Destruction of weapons which had been exhibits in trials against activists.		The destruction was deemed to have been committed in the normal course of their duties and so the application disclosed no offence, hence amnesty was
2000	[illegible]	Granted/ Refused	1. the supply of arms to the Ciskean Defence Force during or about the period 1990-1991; 2. the creation of unlawful arms caches at or near Cullinan and Vlakplaas during or about 1990 1992; 3. the provision of arms other than pipe guns to the Inkatha Freedom Party during or about 1989; 4. the manufacturing of tyre bombs and the modification of hand grenades during the same period; 5. the manufacture of "funny rounds" of ammunition during or about the period 1990-1992. 6. the establishment of an unlawful arms cache at Applicant's home situated at Kilner Park, Pretoria during or about 1990. 7. the unlawful destruction of arms at Paardenfontein at or near Pretoria at the time of the dissolution of C Section of the Security Branch.		Amnesty is REFUSED in respect of: 1. the unlawful training of members of the Ciskei Defence Force in the handling of weapons unlawfully provided to them during or about the period 1990-1991; 2. the manufacture and supply of pipe guns to the Inkatha Freedom Party during or about 1989 (personal gain); 3. the transportation of firearms from Namibia to Vlakplaas during or about 1989 (done in ordinary course of his duties therefore no offence)
2000	[illegible]	Refused	Killing of Eustice "Bimbo" Madikela, Ntshugo Matabogo (referred to as "Matubane" in the application forms) and Fanyana Mtlapo (collectively referred to as "the deceased") and the attempted killing of Zandisile Musi ("Musi") in an explosion at Krugersdorp on or about 15 February 1982 ("the incident").		Committee not convinced that there was any direct or proximate relationship or nexus between the offences and the political objective which the Applicants alleged they pursued. In the circumstances their actions were also deemed wholly disproportionate.
2000	[illegible]	Refused/	1. The unlawful supply of firearms to be used by Craig Dull in an attempted coup d'état in the former Transkei during or about November 1990; 2. The unlawful entry into and search of a house in the Strand/Stellenbosch area and holiday home of the parents of the activist Hein Grosskopf subsequent to a bomb explosion in Krugersdorp on a date unknown to the Applicant.		Amnesty REFUSED for: 1. the transportation of firearms from Oshakati, Namibia to Vlakplaas in the Republic of South Africa; 2. Recruitment of one Meryon Fourie in the United States of America to discredit the African National Congress ("ANC"); 3. Involvement with the collection of Military Intelligence in the United Kingdom; because no offences were disclosed for which amnesty could be granted in these cases. 4. Establishment of an unlawful arms cache at the Applicant's private home; 5. Unlawful dealing in firearms; because these acts were committed for personal gain negating the requirement of a political objective.
2000	[illegible]	GRANTED/REFUSED	1. The supply of SAM-7 missiles to Ciskei during the period 1990-1991. 2. Creating arms caches in the Northern Transvaal Security Branch and aiding and abetting the commission of fraud during the period 1990-1992. 3. Supply of weapons to the Inkatha Freedom Party during the period 1990-1992. 4. The manufacture of "funny rounds" of ammunition. 5. Transporting arms from Namibia to South Africa. 6. Establishing a private arms cache. In addition to the above the Applicant also applies for amnesty in respect of the following: 1. The unlawful military training of members of the Inkatha Freedom Party in KwaZulu Natl during or about 1991. 2. The supply of weapons to one Phillip Powell who was involved in the unlawful training of members of the Inkatha Freedom Party in KwaZulu Natal. 3. The explosion of landmines on an unknown date at an unknown location. 4. The explosion of landmines on an unknown date at an unknown location. 5. Supplying of ammunition to other units. 6. The theft of an unidentified BMW motor car on an unknown date. 7. The packaging of explosives into an unidentified kombi motor vehicle on an unknown date. 8. Malicious injury to property by damaging two unidentified "Untag" vehicles with so-called "funny givies" in order to damage the engines. 9. The destruction of explosives from Dvamboland at Paardenfontein near Pretoria on an unknown date and the destruction by explosives of an unidentified blue Toyota motor vehicle.	Not stated.	The Committee is satisfied that, with the exception of incidents three and five of those incidents, all the other acts committed by the Applicant were acts associated with a political objective and full disclosure was made.
2000	NICOLAAS JOHANNES VERMEULEN (AM4358/96)	REFUSED	The detention of African National Congress and other liberation movement members; interrogation of potential State witnesses; interrogation of former liberation movement members (askaris) into the South African Police and the searching of premises for operatives.	N/A	The facts disclosed do not constitute any offence.
2000	JAN DANIEL POTGIETER (AM5418/97)	GRANTED/REFUSED	Distribution of arms and handgrenade incident.	Not stated.	We are satisfied that the incident is directly related to the past political conflict involving members and supporters of the IFP and ANC.
2000	VICTOR MNDISI BEVIDIKHA NDLOVU (AM5753/96)	REFUSED	Unlawful establishment of a weapons cache (DLB) in the Swaziland/Pongola border during 1992	N/A	No offence has been disclosed and neither has a full disclosure of material facts been made.
2000	JOHANNES HENDRIK PETRUS HANEKOM (AM1066/96)	GRANTED/REFUSED	Transportation of weapons - Piet Retief, and from Oshakati to Pretoria.	Not stated.	Granted for the first transportation count. Refused because there is no indication that Applicant's participation in the transportation of the weapons from Oshakati to Pretoria amounts to an offence.
2000	PETRUS CASPARUS SNYDERS (AM5206/97)	REFUSED	Facilitating the escape of detainees from lawful custody and providing employment to two members of the Transkeian police.	Not stated.	It is clear that Applicant's actions in assisting the two Transkeian police officers were in no way unlawful. The facts accordingly does not disclosure any offence.
2000	JOHANNES VELDE VAN DER MERWE (AM4157/96)	REFUSED	False claims and weapons.	Not stated.	It is clear that the activities in question were not unlawful. The application accordingly does not disclose any offence.
2000	DIDUW GERBRANDT WILLEMSE (AM3701/96)	GRANTED/REFUSED	1. Damage to Jewish church 2. Applying poison to the garden of Blaauw or Whelpton 3. Damaging the vehicle of Dirk Coetzee 4. Despatching a radio bomb to Lusaka 5. Transportation of home-made weapons to Kwazulu Natal 6. Transportation of ak47 assault rifles to Harrismith 7. Video recording of the effect of "doctored" ammunition 8. Submission of fraudulent claims 9. Destruction of documents, and 10. Not [illegible]	Not stated.	

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Year	Name	Decision	Offence	Prior Conviction	Reason
2001	IZAK DANIEL BOSCH (AM3765/96)		10. Not pursuit of operation at [illegible].		Granted for counts 1 to 9. Refused for count 10 because Applicant neglected to make a full disclosure.
2001	[illegible] ANE SEEPE (AM7157/97)	(G) RANTED/REFUSED	Unlawful possession of a firearm and housebreaking with intent to steal.	Arrested and charged with housebreaking with the intent to steal	REFUSED in respect of housebreaking with the intent to steal.
2001	[illegible] RE BENZIEN (AM5314/97)	REFUSED	Not stated	Not stated	Not satisfied that Applicant has made a full disclosure of all relevant facts.
2001	MANUEL ANTONIO DUFANT (AM4032/96)	GRANTED/REFUSED	***deadlink to decision on website***		
2001	JOHANNES JACOBUS GELDENHUYS (AM5461/97)	REFUSED	"Temporary abduction" of Kwane and Charles Sebe	N/A	Not clearly associated with the political conflict and not clearly politically motivated.
2001	EUGENE ALEXANDER DE KOCK (AM0066/96)	GRANTED/REFUSED	Supply of weapons to the [illegible] Freedom Party, supply of weapons to Philip Powell, supply of [illegible] vehicle to Themba Khoza, supply of motor vehicles to Victor [illegible] of IFP informers, and	Not stated.	Refused for the count of supply of motor vehicles to Victor Ndlovu because not associated with a political objective. Granted for other counts.
2001	DONALD SPENCER GOLD (AM 3666/96)	REFUSED	Participation in an operation to capture a known African National Congress ("ANC") operative in Swaziland.	Not stated.	Does not satisfy requirements for amnesty; the incident was "not unlawful or [illegible]".
2001	1. BUTANA ALMOND NOFEMELA (AM0064/96) 2. EUGENE ALEXANDER DE KOCK (AM0066/96) 3. WILLEM ALBERTUS NORTJE (AM3764/96) 4. IZAK DANIEL BOSCH (AM3765/96) 5. JOHANNES VELDE VAN DER MERWE (AM41[illegible]/97) 6. NICHOLAAS JOHANNES VERMEULEN (AM4358/97) 7. WILLEM FREDERICK SCHOON (AM4396/96)	GRANTED/REFUSED MINORITY DECISION	Various offences flowing from an incursion into Lesotho on or about the 19th December 1985.	Not stated.	Satisfied that the 2nd, 3rd, 4th, 6th and 7th applicants have complied with the requirements of the Act and in respect of all the other offences for which amnesty is applied for.
2001	1. CARL CASTELING BOTHA (AM3633/96) 2. LEON ANDRE MAREE (AM3634/96) 3. WOUTER JACOBUS BASSON (AM3635/96) 4. ABRAM VAN ZYL (AM3636/96) 5. DANIEL DU TOIT BURGER (AM3667/96) 6. PIETER JOHAN VERSTER (AM5471/97) 7. EDWARD WEBB (AM7304/97) 8. FERDINAND BARNARD (AM7304/97)	GRANTED/REFUSED	Offences committed by them on behalf of the Civil Cooperation Bureau.	Applicant 8 convicted of murder and sentenced to an effective term of six years imprisonment.	Evans and is GRANTED amnesty in respect of the placing of a baboon foetus in Archbishop Tutu's garden; 6. Pieter Johan Verster is REFUSED amnesty in respect of the explosion at the Early Learning Centre and the conspiracies to assassinate Dullah Omar and Gavin Evans; 7. Edward Webb is REFUSED amnesty in respect of the explosion at the Early Learning Centre and is granted amnesty in respect of the placing of a baboon foetus in Archbishop Tutu's garden; 8. Ferdinand Barnard is REFUSED amnesty in respect of the conspiracy to assassinate Dullah Omar and is GRANTED amnesty in respect of the placing of a baboon foetus in Archbishop Tutu's garden.
2001	[illegible] (AM4075/96) [illegible]	REFUSED	The [illegible] and detention of Mr Herbert Mbali during or about November 1982 by agents of the security branch of the then South African Police.	Not stated	The incident constitutes an act associated with a political objective.
2001	1. EUGENE ALEXANDER DE KOCK (AM0066/96) 2. JOHANNES [illegible] (AM3748/96) 3. [illegible] PETER MOG[illegible] (AM3749/96) 4. THAPELO JOHANNES MBELO (AM3785/96) 5. GERHARDUS STEPHANUS SCHOON (AM5806/96) 6. PAUL JACOBUS VAN DYK (AM5012/96) 7. FREDERICK JOHANNES PIENAAR (AM5014/96) 8. GERHARDUS CORNELIUS BEESLAAR (AM5640/96) 9. MZIZI AUBREY [illegible] 10. ALMOND BUTANA NOFEMELA (AM0064/96)	GRANTED/REFUSED	Various acts in an operation where Mr Jameson Ngoloyi Mngomezulu was abducted from his home in Swaziland, seriously ill-treated, eventually killed and his body disposed of through an explosion at [illegible] Bay	Not stated	Amnesty is GRANTED to the first, second, third, fourth, eighth, ninth and tenth Applicants and REFUSED to the fifth, sixth and seventh Applicants because they did not make a full disclosure.
2001	1. HENDRIK JOHANNES PRINSLOO (AM4907/96) 2. JOHANNES PETRUS [illegible] (AM5466/97) 3. SAREL DU PLESSIS CRAFFORD (deceased) (AM5468/97) 4. DANIEL JACOBUS KRUGER ([illegible]/97) 5. SMUTS PHILEMON MATHEBULA (AM3756/96) 6. KOKELA JEREMIAH MATJENI (AM[illegible]/96) 7. ERIC GOOSEN (AM4158/96) 8. WILLEM JOHANNES MOMBERG (AM4159/96) 9. JOHANNES JACOBUS STRIJDOM (AM5464/97) 10. JAN HATTING CRONJE (AM2773/96)	GRANTED/REFUSED	The kidnapping, assault and murder of Justice Mbizana (the Deceased), also known as MK Mandla.	Not stated	The 1st, 2nd, 4th, 5th, 6th, 7th and 8th Applicants are all GRANTED amnesty for their respective roles in the abduction, assault and killing of the Deceased and the disposal of his body. The 10th Applicant is GRANTED amnesty for the abduction of and assault by the 5th Applicant on the Deceased. 10th Applicant is REFUSED amnesty for the killing of and disposal of the body of the Deceased. Did not make full disclosure The 3rd and 9th Applicants are REFUSED amnesty. Did not make full disclosure
2001	PHILIP NAMIJO MASILO (AM2060/96)	REFUSED	The robbery and murder of Guerrino Ettore Zilio.	Serving imprisonment term.	Does not satisfy requirements for amnesty: no political objective
2001	1. VONTIE MOMKULU MOTI (AM6230/97) 2. THAPELO PATRICE MASEKO (AM5918/97)	REFUSED (/GRANTED)	A number of armed robberies which acts were committed, primarily by Vontie Mzimkulu Moti.	Moti was convicted and sentenced.	Amnesty should be granted to Maseko because he satisfied the amnesty criteria: full disclosure and politically motivated. Refused because not committed with political motivation.
2001	HENNI VAN DER WESTHUIZEN (AM8073/97)	GRANTED (/REFUSED)	1. Accessory after the fact and defeating the ends of justice with regard to the attempted murder of Mr Justice Albert Louis Sachs and the malicious damage to property in respect of a Honda Civic motor vehicle being used by Sachs, on 7 April 1986, in Maputo, Mozambique. 2. Accessory after the fact and defeating the ends of justice with regard to the shooting of two or three ANC operatives in Maseru Lesotho and the abduction of Simon Mokgotha from Lesotho to Ladybrand during the period March to August 1986. 3. Accessory after the fact and defeating the ends of justice with regard to the murder by poisoning of Gibson Ncube "Gibson Mondlane" on 5 April 19[illegible] in Mozambique;	Not stated.	Amnesty refused for count 5 because the Applicant has not disclosed any specific act or omission constituting an offence or delict for which amnesty can be considered Granted for counts 1 to 4 because it satisfies the criteria for amnesty.
2001	THULANI MUZOKHONA MYEZA (AM6198/97)	REFUSED	5 murders for which he has not been prosecuted.	Serving sentence for two other murders committed in separate incidents.	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) unclear political objective.
2001	JOHAN FREDERICH VERSTER (AM7931/97)	GRANTED (/REFUSED)	All offences directly resulting from the unlawful destruction of records relating to the activities of DCC during or about the period 1987 - 1993.	Convicted and sentenced	Satisfied the amnesty criteria: full disclosure and politically motivated.
2001	[illegible] MOTSHWANE MOISI (AM7226/97)	REFUSED	An attack upon the SASOL II complex.	Not stated.	Failed to make a full disclosure.
2001	JOHANNES LODEWIKUS GREBENAUW (AM[illegible]/97)	REFUSED	An incident which occurred during or about the period 1988 – 1989 in which a SACTU member was killed.	N/A	Not satisfied that Applicant's conduct constitutes an offence or delict.
2001	[illegible] AARON DINGANE (AM6428/97)	REFUSED	Unlawful possession of arms and ammunition as part of the robbery incidents.	Not stated	The offence was clearly not associated with a political objective.
2001	MAPHUTHI JOSEPH CHIDI (AM0708/96)	REFUSED	1. The murder of Gideon Mogngoen 7 May 1986 at Tembisa by pouring petrol on him and setting his body on fire while still alive. 2. Any other offence or delict directly linked to the offence mentioned and flowing from the evidence given by the Applicant before the Committee.	Not stated.	Not satisfied that a full disclosure had been made.
	1. ZUKILE MBAMBO (AM2892/96) 2. DUMISANI NCAMAZANA (AM2891/96)	GRANTED (/REFUSED)	1. The murder of [illegible]; 2. The murder of [illegible]; 3. The murder of [illegible]; 4. The robbery of [illegible] of a [illegible] motor vehicle; 5. Unlicensed possession of arms and ammunition; 6. The attempted murder of [illegible] and Mthuthuzeli Simon Pellam with a machine gun at or near the [illegible] Dam turn off, East London, on or about 25 March 1994 (Only Pellem was injured); 7. Conspiring and attempting to ambush white pupils at or near the Nahoon Dam turn off travelling in a bus from King William's Town and en route to East London on or about 25 March 1994. (No person was injured); 8. The abduction and armed robbery of [illegible] Mbopngwa of an Opel [illegible] Station Wagon vehicle bearing registration letters and numbers [illegible]13507 in Mdantsane on or about 25 March 1994; 9. The abduction of Mzimkulu Maxwell [illegible] in East London on	Convicted and sentenced to 16 years imprisonment.	

Year	Name	Decision	Offence	Prior Conviction	Reason
2001			or about 25 March and forcing him to take them to numerous places with his vehicle in the Mdantsane-East London area where the Applicants committed crimes; 10. Theft of a Ford Sierra Station Wagon vehicle bearing registration letters and numbers CES9291 at NU 14 in Mdantsane, which belonged to Nomhle Faith Freddie on or about 25 March 1994; 11. Conspiring in Butterworth and subsequently attempting to murder white teachers at or near John Knox Bokwe College in Mdantsane in or about 25 March 1994. (This only applies to Ncamazana); 12. Conspiring in Butterworth to murder white patrons in the Railway Station Bar in East London on or about 26 March 1994; 13. The attempted murder of Matt Hughes, Errol Potgieter, Errol Wilson and other patrons in the High Gate Hotel bar in East London on or about 26 March 1994. (No person was injured in the incident); 14. Armed robbery of Petros Ndoda Matakane of a Honda Ballade vehicles bearing registration letters and numbers CE 88283 in Mdantsane, East London, on or about 27 March 1994; 15. The murder of Constable Williams a member of the Crime Reaction Unit at or near Da Gama Textiles Factory in East London on or about 28 March 1994; 16. The attempted murder of Zandisile Victor Klaas, Christos Stassions, Zaharoula Stassions, Basil Rush, Wesley McClelland, Harold Lockam, Colin Kopke, Alfred Kopke, Alfred Page, Ross Templeton, Deon Whittle, Eric Bedser, Trevor Bonniface, Harry Wright, Johan De Berg, Harry Lockam, Lance Shephard, Valda du Plessis, Sueyn Poovan, Anthony Bulton, Fredericka Hempel and Margaret Longanthan at or near the De Gama Textiles Factory in East London on or about 28 March 1994. (No person was injured); 17. The attempted murder of Craig Brown, Cecil Hunter and Gerhard Killian at or near Da Gama Textile Factory on or about 28 March 1994. (No person was injured); 18. The pointing of a machine gun at Charlie Lodewyk Postman at or near Da Gama Textile Factory on or about 28 March 1994 (This only applies to Ncamazana); 19. Contravening the provisions of Section 32(1)(a) read with Sections 1, 39 and 40 of Act No. 75 of 1969 in that during the period 25 - 28 March 1994 in the Mdantsane - East London area the Applicants were unlawfully in possession of unlicensed arms and ammunition; 20. Contravening the provisions of Section 32(1)(b), read with Section 1, 39 and 40 of Act No. 75 of 1969 in that during the period 25 to 28 March 1994, in the Mdantsane - East London area, the Applicants were unlawfully in possession of an M26 handgrenade and an M791 firing grenade		Refused for count 6 because by own admission they had no instruction to carry it out.
2001	1. JOHAN HENDRIK LE ROUX (AM4148/96) 2. EUGENE ALEXANDER DE KOCK (AM0066/96) 3. WILLEM ALBERTUS NORTJE (AM3764/96) 4. EUGENE FOURIE (AM3767/96) 5. DAVID JACOBUS VAN DER WALT (AM3769/96) 6. THAPELO JOHANNES MBELO (AM3785/96) 7. GAROUTUWEWE CHRISTOPHER MOSIANE (AM3768/96) 8. SIMON MAMDPO RADEBE (AM3749/96)	GRANTED/REFUSED MINORITY DECISION	The kidnapping, torture and murder of Japie Kareng Maponya.	Not stated.	Refused to Applicants 1 to 3 because they did not give a truthful account of events.
2001	PATRICE MNCEDISI OLDNGWANE (AM8028/97) SUPPLEMENTARY DECISION	REFUSED	1. Possession of a stolen 7.65 Presto Automatic Pistol presumably during 1980. 2. Accidentally discharging a firearm during or about August 1980 at Port Elizabeth when one person was injured. 3. Stabbing and killing one Maolisi Geuma at a shebeen in Port Elizabeth. 4. Supplying information to the security branch in regard to persons present at the United Democratic Front offices in Port Elizabeth during 1985. 5. Repelling an attack by a group of persons on the house of Thamsanqa Linda during 1985 when some persons were allegedly killed. 6. Assaulting an old man, Mpumelelo Mpundu during the same incident at Linda's house. 7. Acquiring weapons, together with one Dennis Goodson at Jozini near the Mozambican border. 8. Unlawfully obtaining firearm licences during or about 1992. 9. Wrongly assuming responsibility for the massacre at Bambayi near Durban during or about 1993. 10. Applicant's appointment as general of the Natal Liberation Army ("NLA") during or about early 1994, planning certain operations by NLA and the unlawful possession of 60 boxes of AK47 ammunition and an F1 handgrenade. 11. Possession of 3 bags containing homemade firearms and explosives, 14 pipeguns, 20 rounds of shotgun ammunition and a bottle of poison with a view to killing African National Congress leaders during late May or June 1994. 12. Planning a revenge attack on an ANC member allegedly responsible for killing an Inkatha Freedom Party member during 1993, for a reward of R5000. 13. Conspiring and attempting to kill ANC leaders attending the sitting of the new KwaZulu Natal legislature after the 1994 national elections in Ulundi during May or June.	Not stated	We are not satisfied that the incident constitutes an act associated with a political objective. We are not satisfied that Applicant's conduct constitutes an offence or a delict. The incident occurred beyond the cut off date for amnesty. Applicant acted for personal gain.
	DIRK JOHANNES COETZEE (AM0063/96) BUTANA ALMOND NOFOMELA (AM0064/96) NATSHAVHENI DAVID TSHIKALANGA (AM0065/96)	GRANTED/REFUSED	Applicant 1 for 23 incidents. Applicant 2 for 20 incidents.	Applicant 2 was convicted and sentenced.	Applicant 1: REFUSED in respect of the conspiracy to murder. REFUSED to the applicant in respect of all offences or delicts directly linked to the diamond dealing, the murder of a so-called diamond dealer and the stealing of a motor car during October 1981. REFUSED in respect of the cover-up of shootings at Lindley during August or September 1981 on Messrs Motaung, Mokoena, Lephatswe and Radebe. REFUSED in respect of the theft of Escudos from so-called Escudo Racketeers

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Year	Name	Decision	Offence	Prior Conviction	Reason
2001					during the period 1977 to December at the Oshivelo Border Post. Applicant 2: REFUSED in respect of the assault on Mr Fanie Mitzie REFUSED in respect of the murder of Johannes Hendrik Lourens on 11 September 1986 at Skeerpoort in the district of Rietz.
2001		GRANTED (PARTIALLY)	Applied for amnesty for 86 incidents.	Not stated	1. INCIDENT 21 - in respect of the stealing of plants because that involved personal gain; 2. INCIDENT 25 - because it does not relate to "our struggle of the past" as contemplated in Act 34 of 1995; 3. INCIDENT 44 - because it was not an offence or delict in terms of the then prevailing law; 4. INCIDENT 52 - no offence or delict; 5. INCIDENT 54 - in respect of theft that was for personal gain; 6. INCIDENT 55 - in respect of theft that was for personal gain; 7. INCIDENT 62 - because it was for personal gain; 8. INCIDENT 63 - because it was authorised by legislation; 9. INCIDENT 71 - no offence or delict; 10. INCIDENT 76 - no offence or delict; 11. INCIDENTS 75, 77, 79, 80, 81, 82, 83, 85 because it is neither an offence or delict; 12. INCIDENT 86 - for personal gain.
2001	PAUL ERASMUS (AM3690/96)	REFUSED	1. The murder of Christina Masupa (also known as Manto) on 2 July 1987 at Daveyton. 2. The murder of Eunice Shabangu on the same date. 3. The murder of Catherine Nkosi on the same occasion. 4. The murder of Melonah Mbata on the same date and at the same place. Offences 5 to 8 relate to the attempted murders of Richard Mbatha, Godfrey Masupa, Trevor Cindi and Elinale Masupa. The ninth offence is in respect of arson relating to the house of Elinale Masupa.	Charged and convicted	
2001	PHINEAS NDZOVU (AM4702/96)	REFUSED	Assaulted two of the newspaper's journalists and also committed the offences of malicious injury to property and arrmed injuria.	Convicted and sentenced to a fine on 13 July 1994.	Does not satisfy requirements for amnesty: 1) not full disclosure; and 2) disproportionate actions Not satisfied that the incident constituted an act associated with a political objective.
2001	PIET RUDOLPH (AM6329/97)				

Total Cases Refused: 358

Amount of Refused Cases of Serious Crimes	
Murder/Killing	185
Attempted murder	70
Kidnapping/Abduction	20
Massacres	7
Assault	20
Robbery	50
Arson	14
Rape	0
Possession	53
Conspiring	2
Attacks	13
Injury	7
Torture	0

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COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION

REPUBLIC OF SOUTH AFRICA

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10 July 2020

In accordance with s 16(1)(c)

MEMORANDUM OF INCORPORATION

OF

FOUNDATION FOR HUMAN RIGHTS (RF) NPC

Registration Number: 95/08044/08

('the Foundation')

The Foundation is a Non Profit company without members, and with the following object:

Attaining a society freed from injustice and building a human rights culture through a vibrant civil society and an entrenched participatory democracy, using the Constitution of South Africa as a tool.

This object shall be achieved by, *inter alia*, supporting civil society organisations and public institutions, and engaging in activities to promote the increased awareness of and respect for the protection and fulfillment of the human rights contained in the Constitution.

ADOPTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation was adopted by the Foundation, in accordance with section 16(1)(c) of the Companies Act, 2008 ('the Act'), as evidenced by the special resolution to which this Memorandum of Incorporation is annexed.

In this Memorandum of Incorporation:

(a) A reference to a section by number refers to the corresponding section of the Act; and

(b) Words that are defined in the Act bear the same meaning in this Memorandum as in the Act.

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1 INCORPORATION

1.1. The Foundation was incorporated as an Association not for Gain under section 21 of the previous Companies Act, but is now a non profit company, as defined in the Act.

1.2. The Foundation is governed by:

1.2.1. the unalterable provisions of the Act that are applicable to non profit companies;

1.2.2. the alterable provisions of the Act that are applicable to non profit companies, subject to:

1.2.2.1. any limitation, extension, variation or substitution set out in this Memorandum; and

1.2.2.2. the provisions of this Memorandum of Incorporation.

2 OBJECTS AND POWERS OF THE FOUNDATION

2.1. The objects of the Foundation are as set out on the cover sheet.

2.2. The Foundation shall have all the legal powers and capacity of an individual:

2.2.1. except to the extent necessarily implied by its stated objects;

2.2.2. except to the extent that a juristic person is incapable of exercising such a power or having such a capacity; and

2.2.3. subject to such restrictive conditions (as contemplated in section 15(2)(b)) and other limitations or qualifications contained in this Memorandum of Incorporation.

2.3. The powers of the Foundation may only be executed in accordance with the main object of the Foundation.

2.4. The Foundation may not:

2.4.1. amalgamate or merge with, or convert to, a profit company; or

2.4.2. dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposal of an asset occurs in the ordinary course of the activities of the Foundation.

2.5. All of the activities of the Foundation shall be carried out in a non-profit manner and with an altruistic or philanthropic intent and no such activity shall be intended to directly or indirectly promote the economic self-interest of any director, officer or employee of the Foundation, otherwise than by way of reasonable remuneration payable to that director, officer or employee.

3 MEMORANDUM OF INCORPORATION AND FOUNDATION RULES

3.1. This Memorandum of Incorporation of the Foundation may be altered or amended in the manner set out in section 16, 17 or 152(6)(b), subject to the following:

3.1.1. if the Foundation is exempted from payment of normal tax a copy of any such amendment shall be sent to the Commissioner for the South African Revenue Service or his authorised representative;

3.1.2. if the Foundation is registered as a Non-Profit Organisation then a copy of any amendments shall be sent to the Directorate of Non-Profit Organisations.

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3.2. The authority of the Foundation's Supervisory Board of directors to make rules for the Foundation, is limited or restricted to the extent that the powers of the Foundation are limited by this Memorandum of Incorporation.

3.3. The Supervisory Board shall publish any rules made by delivering a copy of those rules to each director by ordinary mail, or by electronic communication, provided that the directors concerned have consented to the delivery of such communication by electronic mail.

3.4. The Foundation shall publish a notice of any alteration of the Memorandum of Incorporation or the Rules by delivering a copy of these to each director by ordinary mail or electronic mail provided that the directors concerned have consented to the delivery of such communication by electronic mail.

4 OPTIONAL PROVISIONS OF THE ACT

4.1. The Foundation elects, in terms of section 34 (2), to comply voluntarily with the provisions/ some of the provisions of Chapter 3 of the Act, in that the Foundation:

4.1.1. will appoint an auditor, in terms of sections 90 to 93, and

4.1.2. will set up and appoint members to an audit committee, in terms of section 94.

5 FOUNDATION NOT TO HAVE MEMBERS

5.1. As contemplated in Item 4(1) of Schedule 1 of the Act, the Foundation has no members.

6 COMPOSITION OF THE SUPERVISORY BOARD

6.1. The number of directors shall be a minimum of eight and a maximum of twelve persons (three of whom are not 'connected persons' [as defined in the Income Tax Act 58 of 1962, as amended ("the Income Tax Act")] in relation to one another). No single person shall, directly or indirectly, control the decision-making powers of the Foundation.

6.2. In addition to satisfying the qualification and eligibility requirements set out in section 69 to become or remain a director of the Foundation, a person shall have skills, experience, suitable qualifications, professional competence and expertise in relation to the development and human rights sector, an interest in human rights and development and a sincere commitment to the ideals of the Foundation.

6.3. In addition to the appointed directors, the Executive Director shall serve as a director of the Foundation, *ex officio*.

6.4. Directors, excluding the Executive Director, shall serve two consecutive terms of three years each and shall retire at the meeting of directors following the expiry of their second term of office.

6.5. Directors retiring in terms of clause **6.4.** shall be eligible for reelection.

6.6. At the meeting at which the member of the board retires in the manner aforesaid, the remaining directors may fill the vacated office by electing an eligible and suitable person thereto. If it does not do so, the retiring member of the board shall, if offering himself for re-election, be deemed to have been re-elected, unless such meeting resolves not to fill such vacated office or resolves that such retiring member should not be re-elected.

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6.7. The directors shall have the power at any time to appoint any other suitable person as a director either to fill a casual vacancy or as an addition to the board.

6.8. The office of a director shall *ipso facto* be vacated:

6.8.1. if by one month's written notice to the Foundation, the director resigns from office;

6.8.2. if the director ceases to be a director by virtue of the Act;

6.8.3. if he/she is a director ex officio and ceases to occupy the relevant position or office, unless the remaining directors decide otherwise;

6.8.4. if the director is directly or indirectly interested in any contract or proposed contract with the Foundation and fails to declare her/his interest and the nature thereof in the manner required by the Act;

6.8.5. if the director is removed from office by resolution signed by not less than two thirds of the directors;

6.8.6. if the director no longer fulfills the role or qualifications which led to his/her appointment, as per clause **6.2.**; or

6.8.7. if the director fails to attend three consecutive meetings of directors, without being excused therefrom by the remaining directors, and the remaining directors resolve to exclude him/her from office.

7 AUTHORITY OF THE SUPERVISORY BOARD

7.1. The authority of the Foundation's Supervisory Board of directors to manage and direct the business and affairs of the Foundation, as set out in section 66 (1) is limited or restricted to the extent that the powers of the Foundation are limited in this Memorandum.

8 SUPERVISORY BOARD MEETINGS

8.1. The Foundation's Supervisory Board of directors may consider a matter other than at a meeting, and the directors may, instead of voting to make a decision at a meeting, adopt a decision by written consent of the majority of directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided upon. A decision so made shall have the same effect as if it had been approved at a meeting. Each decision so made shall be recorded in writing and tabled for ratification at the next ensuing meeting of directors.

8.2. No less than 25% of the directors (or at least three directors, whichever is greater) may requisition a meeting of the Supervisory Board.

8.3. The Foundation's Supervisory Board of directors may conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

8.4. The Foundation's Supervisory Board of directors may determine the manner and form of providing notice of its meetings.

8.5. The Supervisory Board of directors may proceed with a meeting despite a failure or defect in giving notice of the meeting, if all of the directors of the Foundation

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8.5.1. acknowledge actual receipt of the notice;

8.5.2. are present at a meeting; or

8.5.3. waive notice of the meeting.

8.6. The directors shall appoint a chairperson, from their number, who shall preside over all meetings of the board and perform the tasks set out in this Memorandum and all the other normal functions of a chairperson of the Foundation. If no chairperson is elected, or if the chairperson is not present at a meeting within fifteen minutes after the time appointed for holding it, and the deputy chairperson is not present, the directors present may choose one of their number to preside at that meeting.

8.7. The directors shall also appoint a deputy chairperson who shall perform the office of chairperson when the chairperson is absent, as well as such other tasks as are delegated to him/her by the chairperson.

8.8. The directors shall appoint a treasurer who shall liaise with the Executive Director to ensure that the programmes are conducted within the Foundation's budgetary constraints, but the treasurer shall remain responsible to the Supervisory Board to ensure that she/he is regularly informed of all the Foundation's financial affairs and that proper accounting records are maintained for the Foundation.

8.9. A director who will not be able to attend any meeting, shall be entitled to appoint another of the directors as his/her proxy, to exercise his/her vote in their stead (in addition to his/her own vote). Such appointments shall be made in writing in advance of the meeting, and shall be communicated to the chairperson of the meeting. Those directors represented by proxy at any meeting, shall be considered present at the meeting for quorum purposes.

8.10. The rules for directors' meetings are as follows:

8.10.1. the directors shall meet together not less often than quarterly for the dispatch of business, but shall otherwise regulate their meetings as they think fit.

8.10.2. the quorum necessary for the transacting of business of the board shall be three directors, and once quorum has been established for a meeting the meeting shall remain quorate notwithstanding any temporary absence of a director from the said meeting.

8.10.3. questions arising at any meeting of the Board shall be decided by consensus, failing which, by voting;

8.10.4. each director shall have one vote on a matter before the board, except as provided in **8.13.**;

8.10.5. except as otherwise provided in this document, a majority of the votes cast on a resolution will be sufficient to approve that resolution; and

8.10.6. in the case of a tied vote, the matter being voted on shall fail.

8.10.7. for a special resolution to be adopted at a meeting of directors, it must be supported by at least 75 % of the directors who voted on the resolution.

8.11. For a resolution to be adopted by written vote of directors it must be supported by:

8.11.1. at least 50% of the total number of directors, in the case of an ordinary resolution; or

8.11.2. at least 75% of the total number of directors, in the case of a special resolution,

which votes shall be those received within 20 days of the resolution's being submitted to them.

8.12. A special resolution is only required for those matters set out in section 65 (11), being the amending of the Memorandum of Incorporation, ratifying actions by the Foundation or directors in excess of their authority, approving an application to transfer the registration of the Foundation to a foreign

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jurisdiction, amalgamating or merging with another non-profit company, approving the voluntary winding up of the Foundation, or disposing of all or a greater part of the assets of the Foundation.

8.13. Directors shall

8.13.1. disclose in advance,

8.13.2. inform the relevant meeting of material information and answer questions concerning,

8.13.3. not take part in any consideration of and leave the relevant meeting after disclosure concerning and

8.13.4. not be entitled to vote on or sign any document in relation to

any matter in which they or any person in relation to whom they are a 'connected person' (as defined in the Income Tax Act), has a personal financial interest.

8.14. The Foundation shall keep minutes of the meetings of the board, and any of its committees, and include in the minutes:

8.14.1. any declaration given by notice or made by a director as required by section 75 with reference to the personal financial interests of the director, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter; and

8.14.2. every resolution adopted by the board, which resolutions shall be dated, sequentially numbered, and will be effective from the date of the resolution, unless the resolution states otherwise.

8.15. Copies of the minutes of every meeting shall be dispatched by the person appointed by the board from time to time, to all directors within 30 days of the holding of the meeting.

9 ACCOUNTING RECORDS, BANKING AND RECEIPT OF DONATIONS

9.1. The directors shall cause such accounting records as are prescribed by section 28 to be kept.

9.2. The accounting records shall be kept in the registered office of the Foundation or at such other place or places as the directors think fit and shall always be open to inspection by the directors.

9.3. The financial transactions of the Foundation shall be administered via one or more bank accounts which shall be opened in the name of the Foundation.

9.4. The Foundation shall be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any representation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

10 EXPENDITURE AND USE OF RESOURCES

10.1. The income and property of the Foundation, whencesoever derived, shall be applied solely towards the promotion of its main object or invested and no funds will be distributed to any person other

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than in the course of undertaking any 'public benefit activity' (as defined in the Income Tax Act) and no portion of the income or assets of the Foundation may be paid or transferred, directly or indirectly, to the directors or persons appointing directors of the Foundation; provided that this shall not prevent:

10.1.1. the payment in good faith of reasonable remuneration to any officer or servant of the Foundation, for any services rendered to the Foundation.

10.1.2. payment of an amount due and payable by the Foundation in terms of a *bona fide* agreement between the Foundation and that person;

10.1.3. payment in respect of any rights of that person, to the extent that such rights are administered by the Foundation in order to advance a stated object of the Foundation; or

10.1.4. payment in respect of any legal obligation binding on the Foundation.

10.2. No remuneration (as defined in the Fourth Schedule to the Income Tax) shall be paid to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the appropriate sector and in relation to the service rendered, and no person shall be economically benefited in any way which is not consistent with the objects of the Foundation;

10.3. If the Foundation is approved under section 18A(1)(b) of the Income Tax Act, the Foundation shall be obliged to utilise at least 75% of the funds received by the Trust which qualify for deductions under this section (being funds received from South African donors where an 18A receipt has been issued) within a period of twelve months from the end of the financial year in which the funds are received, provided that this shall not apply if the Commissioner for the South African Revenue Services waives, defers or reduces the obligation to distribute in terms of the proviso to section 18A(1)(b)(ii).

10.4. The Foundation shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a director of the Foundation or of a related or inter-related company, or to a person related to any such director, unless it

10.4.1. is in the ordinary course of the Foundation's business and for fair value;

10.4.2. constitutes an accountable advance to meet

10.4.2.1. legal expenses in relation to a matter concerning the Foundation; or

10.4.2.2. anticipated expenses to be incurred by the person on behalf of the Foundation;

10.4.3. is to defray the person's expenses for removal at the Foundation's request; or
is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

10.5. The Foundation shall not use its resources directly or indirectly to support, advance or oppose any political party.

10.6. No expenditure shall be incurred by or on behalf of the Foundation except on authority of the board or of the person or persons to whom the board has generally or specifically delegated the power to authorise expenditure. The Board shall establish and maintain a delegation framework which shall record such delegation of its powers.

11 REMUNERATION OF DIRECTORS

11.1. The directors shall be entitled to a fee for carrying out their duties as directors of the Foundation, and shall also be entitled to receive all travelling, accommodation and other expenses properly incurred by them in or about the performance of their duties directors on the Supervisory Board, including those of attending and travelling to and from meetings of the Supervisory Board.

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12 ANNUAL FINANCIAL STATEMENTS AND RETURNS

12.1. The directors shall, in accordance with sections 29 and 30, cause to be prepared and laid before the board such annual financial statements as are referred to in those sections which annual financial statements shall:

12.1.1. be prepared within 6 months of the end of each financial year;

12.1.2. be audited voluntarily, as provided in this Memorandum;

12.1.3. include an auditor's report;

12.1.4. include a report by the directors as to the activities and financial state of the Foundation; and

12.1.5. be approved by the Board and signed by an authorised director.

12.2. A copy of the annual financial statements shall, at least 21 days prior to the relevant board meeting, be sent to every director of the Foundation.

12.3. The Foundation shall file annual returns with the Companies and Intellectual Property Commission within 30 business days of each anniversary of its date of incorporation, along with such payment, documents and information as may be required from time to time.

13 NONPROFIT ORGANISATIONS ACT

13.1. The directors may apply for the Foundation to be registered as a Non-Profit Organisation and shall, if so registered, ensure that the Foundation complies with all the requirements of the Nonprofit Organisations Act No.71 of 1997.

14 INDEMNIFICATION OF DIRECTORS

14.1. Every director and officer of the Foundation, every member of any committee of the Foundation, and any person employed by the Foundation as auditor, shall be indemnified by the Foundation against all liability incurred by him as such director, officer or auditor, in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in respect of any proceedings which are abandoned or in connection with any application under Section 77(9) in which relief is granted to him by the Court.

14.2. No director, officer or employee of the Foundation shall be liable for

14.3. loss or expense incurred by the Foundation through the insufficiency or deficiency of any security in or upon which any of the moneys of the Foundation are invested;

14.4. any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom monies, securities or effects shall be deposited;

14.5. any loss or damage occasioned by any error of judgment or oversight on his/her part; or

14.6. any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his/her office, or in relation thereto, unless the same happened through his/her own negligence, default, breach of duty or wilful misconduct or wilful breach of trust.

14.7. The authority of the Foundation's Board of directors to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, to indemnify a director in respect of liability

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and to purchase insurance to protect the Foundation or a director, as set out in sections 78 (3), 78 (5) and 78 (6), is not limited or restricted by this Memorandum of Incorporation.

15 EXECUTIVE DIRECTOR

15.1. The Foundation will be headed by the Executive Director who shall be employed by the Foundation. The Executive Director shall be responsible to the Supervisory Board for:

15.1.1. managing the Foundation; and
the implementation of its programmes.

15.2. The Executive Director shall be established and have its principal offices and/or branch offices in Pretoria or such other place as decided by the Executive Director in consultation with the Supervisory Board.

15.3. The Executive Director shall employ and be responsible for the staff of the Foundation which shall consist of any staff as she/he may reasonably require to carry out the functions and tasks of the Foundation.

15.4. The functions and tasks of the Executive Director shall include:

15.4.1. co-operation with the Supervisory Board;

15.4.2. preparing the programmes, including annual workplans an annual budgets;

15.4.3. establishing management procedures;

15.4.4. setting up a computerised system for administering the programmes;

15.4.5. defining the funding criteria to serve as a guideline to the Foundation when deciding on applications;

15.4.6. supervising and preparing recommendations for approval of applications;

15.4.7. monitoring projects implemented within the framework of the programmes;

15.4.8. establishing regulations for the use of funds, advance payments and reporting to be enforced in connection with each individual grant;

15.4.9. ensuring that all projects be subject to an audit and random checks;

15.4.10. preparing for Supervisory Board meetings and preparing policy papers for discussion by the supervisory Board;

15.4.11. attending each meeting of the Supervisory Board as secretary;

15.4.12. preparing annual implementation reports regarding the programmes, including progress reports and financial statements, for the Supervisory Board and the Foundation;

15.4.13. contracting with third party consultants and others for the implementation of the programmes;

15.4.14. fund-raising for the programmes; and

15.4.15. communicating with Ministers, government officials, NGOs and civil society.

16 OFFICERS, COMMITTEES, STAKEHOLDERS AND PATRONS

16.1. The Board of directors may appoint any officers it considers necessary to better achieve the objects of the Foundation.

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16.2. The Board of directors may appoint committees of directors, and delegate to any such committee any of the authority of the Board, and/or include in any such committee persons who are not directors.

16.3. The authority of a committee appointed by the Foundation's Board, as set out in section 72 (2)(b) and (c) is limited and restricted to the extent that the powers of the Foundation are limited by this Memorandum of Incorporation.

16.4. The Board of directors may invite such stakeholders as it sees fit to form an advisory council of the Foundation. The Board may consult with such advisory council on matters of vision, policy and other matters which concern the stakeholders represented by such council from time to time.

16.5. The Supervisory Board may from time to time appoint patrons of the Foundation for certain periods and upon such terms as may be determined by the Supervisory Board.

17 WINDING UP, DE-REGISTRATION OR DISSOLUTION

17.1. Upon its winding up, deregistration or dissolution no past or present director of the Foundation, or person appointing a director of the Foundation, is entitled to any part of the net value of the Foundation, but the assets of the Foundation remaining after the satisfaction of all its liabilities shall be given or transferred to some other organisation or organisations to be determined by the directors of the Foundation at or before the time of its dissolution, or failing such determination, by the court and which:

17.1.1. are non-profit,

17.1.2. have objects similar to its main object;

17.1.3. if the Foundation is so registered, is/are registered in terms of the Nonprofit Organisations Act, 1997; and

17.1.4. if the Foundation is exempt from income tax, donations tax and estate duty, under the relevant laws of the country is/are:

17.1.4.1. any similar public benefit organisation, which has been approved in terms of section 30 of the Income Tax Act;

17.1.4.2. any institution, board or body which is exempt from income tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity; or

17.1.4.3. any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) of the Income Tax Act,

and is/are required to use such assets solely for the purpose of carrying on such public benefit activities as are similar to the objects of the Foundation.

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FOUNDATION FOR HUMAN RIGHTS

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Private Bag X124, Braamfontein, Johannesburg, 2017
Tel: +27(0)11-484-0390
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A just society for all

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD MEMBERS OF THE FOUNDATION FOR HUMAN RIGHTS HELD AT JOHANNESBURG ON 15 NOVEMBER 2024

Present:
Adv Lesala Mofokeng (Chairperson), Yasmin Sooka, Andile Stofile, Judge Mahendra Chetty, Dr Zaheed Kimmie

Apologies:
Prof Jonathan Klaaren, Nondumiso Nsibande

Item 4.2: *Unfinished Business of the Truth and Reconciliation Commission*

The Executive Director noted that the Constitutional Damages case, in which family members of victims of Apartheid-era gross human rights violations were claiming that their constitutional rights had been violated by the State's failure to effective investigate and prosecute perpetrators, was close to be being finalised.

The Executive Director indicated that, given the FHR's long involvement in post-TRC matters and the FHR's support for the resolution of individual cases it would be appropriate for the FHR to join the case as a co-applicant.

The Board was in agreement with this proposal and unanimously resolved that:

- The Foundation for Human Rights would join the Constitutional Damages case as a co-applicant,
- The Executive Director was authorised to depose an affidavit on behalf of the FHR in this matter

CERTIFIED A TRUE EXTRACT
DATE: 29 December 2024
CHAIRMAN: Adv Lesala Mofokeng

LC NGI

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
CASE NUMBER: 76755/18

In the matter between:

JOAO RODRIGUES	Applicant
and	
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA	First Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
THE MINISTER OF POLICE	Third Respondent

SUPPORTING AFFIDAVIT ON BEHALF OF FIRST RESPONDENT

I, the undersigned,

RAYMOND CHRISTOPHER MACADAM,

do hereby make oath and state that:

1.

I am an adult male employed by the National Prosecuting Authority (NPA). I am an admitted advocate and since 2003 to date serve as a Senior Deputy Director of Public Prosecutions in the Priority Crimes Litigation Unit (PCLU) located in the Office of the National Director of Public Prosecutions (NDPP) (First Respondent).

2.

I depose to this affidavit solely to comment on the averment made by the Applicant that the NDPP acted improperly in not dealing with the matter which forms the scope of this application in either 1996 or 2003 (the **Timol**-case). I was not involved in making the decision

to institute the current criminal proceedings against the Applicant and the processes which flowed therefrom.

3.

It is necessary to provide certain background information to give context to my account.

4.

The Truth and Reconciliation Commission (TRC) was established to ascertain the fullest extent of politically motivated human rights' abuses committed between 1 March 1960 and early May 1994. I shall refer to these crimes as TRC cases. The TRC was mandated to grant amnesty to perpetrators who made a full disclosure of their involvement in human rights' violations.

5.

TRC cases were originally dealt with by the Attorneys-General in the Provinces and Self-Governing Territories.

6.

A further development was however the appointment of a Commission of Enquiry headed by Judge Richard Goldstone to investigate some of the most serious cases.

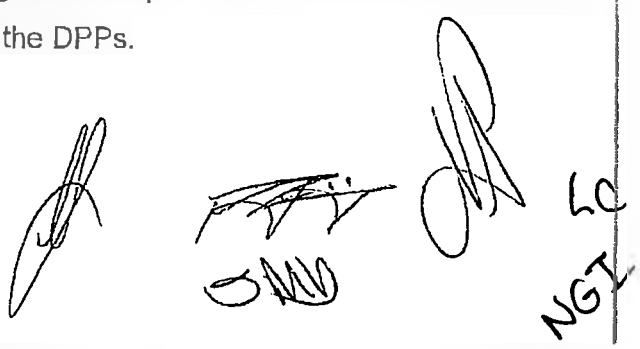
7.

When the Commission dissolved Dr Jan D'Oliveira SC, the then Attorney-General Transvaal, was appointed to head up a team to continue with the work of the Commission and to facilitate the institution of prosecutions.

8.

When the **NPA Act 32 of 1998** came into effect in October 1998 an NDPP (Mr BT Ngcuka) was appointed and the Attorneys-General became Directors of Public Prosecution (DPPs). The DPPs were seized with certain matters, many of which were put on hold pending applications for amnesty lodged by the accused with the TRC. When the TRC released a report calling for the prosecution of persons who had either been refused or not applied for amnesty provided that there was sufficient evidence, Ngcuka set up a TRC unit in his Office to deal with TRC cases not being already dealt with by the DPPs.

9.



This unit however dissolved because the amnesty process had not been concluded and therefore it was unclear which cases should be considered for prosecution. Furthermore it also lacked an investigative capacity.

10.

The unit headed by Dr D'Oliveira had ceased to function once the **NPA Act** came into effect.

11.

In March 2003 the PCLU was established by **Presidential Proclamation** as a Special Directorate in the Office of the NDPP. The **Proclamation** authorised the NDPP to refer priority crimes to the PCLU. Adv AR Ackerman SC (Ackerman) was appointed as Special Director and I was transferred from a component of the Directorate of Special Operations (DSO) to serve as one of his Deputies.

12.

Shortly after the establishment of the unit Ngcuka summoned Ackerman and I to his Office and informed us that he had decided that the PCLU should take over the TRC cases which had not been finalised either by the DPPs or by the defunct TRC unit. He further advised that the DSO would conduct any investigations which may be necessary. The DSO was a special NPA investigative unit established by virtue of an amendment to the **NPA Act**.

13.

In order to establish what cases required attention Ackerman and I took the following steps:

13.1 All the DPPs were visited and invited to handover any TRC cases which they were not in a position to finalise themselves.

13.2 We met with the Divisional Head of the Detective Services of the South African Police Services (SAPS) who issued an instruction to his Provincial Heads to refer all outstanding TRC dockets to the PCLU.

13.3 Two former TRC researchers were appointed to trawl the TRC archives in order to identify cases warranting attention.

13.4 Interviews were conducted with former members of the TRC and D'Oliveira units.

14.

This exercise did not result in the **Timol**-case being identified as one which warranted further attention.

15.

Ackerman and I however also entertained requests for investigations from victims and other members of civil society. This resulted in the **Timol**-matter being brought to my attention by a member of his family.

16.

This led to me on 5 May 2003 requesting a Chief Investigating Officer (Leask) of the DSO to conduct investigations into the matter. I attach herewith as **Annexure RCM1** a copy of my letter to Leask setting out the information which had been brought to my attention and outlining what investigative steps should be taken.

17.

On 15 May 2003 I submitted a report setting out the cases which had been identified as a result of the outreach programme described above. The **Timol**-case was identified as a matter which required investigation. This report was addressed to the NDPP, the Head of the DSO and his Head of Operations as well as Ackerman. It is attached as **Annexure RCM2**.

18.

In terms of the DSO's legislative mandate it was for the Special Director of the DSO and not the Head of the DSO to issue declarations to investigate certain matters. At that stage the Special Director was Adv MG Ledwaba (Ledwaba).

19.

Ackerman and I met with Ledwaba to arrange for the DSO to conduct the investigations specified in **Annexure RCM2**. The meeting was unpleasant as Ledwaba made it clear in no uncertain terms that the DSO would not investigate any TRC matters and that these should all be referred to SAPS. A copy of a letter addressed by Ledwaba to Leask dated 15 July 2003 reflecting this decision is attached hereto as **Annexure RCM3**.

20.

As a result of the decision by Ledwaba Ackerman and I met with Commissioner De Beer (De Beer), the Divisional Head of the Detective Service of SAPS, and requested SAPS to take over the investigations. On 26 September 2003 De Beer replied to Ackerman informing him that the request had been discussed with the National Commissioner (Selebi). The letter was further to the effect that the investigation of the matters was a DSO responsibility and that if it was required that SAPS in fact investigate then either Ackerman or the NDPP should

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approach the President and ask him to confirm which agency should conduct the investigations. A copy of the letter is attached hereto as **Annexure RCM4**.

21.

I can confirm that neither the NDPP nor Ackerman approached the President as recommended.

22.

Ackerman and I however made a number of attempts aimed at persuading Ledwaba to reconsider his decision not to investigate. These are set out in a copy of a letter written to Ledwaba by Ackerman dated 11 November 2003 appealing to him to appoint investigating officers and pointing out that, in the absence thereof, the PCLU would not be able to deliver on its mandate. Both the NDPP and Head: DSO were copied in the letter which is attached as **Annexure RCM5**. The NDPP shortly thereafter resigned and Dr Ramaite SC was appointed as the Acting National Director of Public Prosecutions (ANDPP).

23.

The DSO however did not appoint investigators as requested and consequently none of the TRC matters requiring investigation could be taken further.

24.

In 2004 I was assigned a case relating to an international nuclear weapons syndicate which required my attention on a full-time basis until late 2007.

25.

I therefore no longer continued to deal with TRC matters but Ackerman regularly discussed these cases with me.

26.

At a certain stage Ackerman informed me that he intended prosecuting three former Security Branch members for their role in the poisoning of Reverend Frank Chikane. This was because all the evidence implicating them had already been led in the prosecution of Wouter Basson and no further investigations were necessary. He indicated that he had contacted the suspects' attorney to arrange for them to appear in court.

27.

Shortly thereafter he informed me that the ANDPP had put the prosecution on hold pending the formulation of special TRC Guidelines. He further indicated that there was now a moratorium on the investigation and prosecution of TRC cases pending the adoption of the Guidelines.

28.

Neither Ackerman nor myself were involved in the drafting of these Guidelines. At a certain stage Ackerman showed me a copy of the Guidelines. We were both of the view that they were unconstitutional in that they made provision for the NDPP not to prosecute perpetrators if they met the criteria for granting amnesty as had been applied by the TRC.

29.

Subsequently an application was brought by members of civil society in the High Court sitting in Pretoria which resulted in the Guidelines being declared unconstitutional for that reason.

30.

Adv Pikoli (Pikoli) was appointed as the NDPP. I was informed by Ackerman that Pikoli had set up an inter-departmental task team which would advise Pikoli on making decisions in TRC matters. Ackerman and Ramaite were the NPA representatives in the task team. On one or two occasions I stood in for Ackerman in meetings of the task team when he was not available. I noticed that the task team was predominantly comprised of members of the intelligence community who were more intent on cross-examining me as to why matters should be investigated rather than addressing the issue of all the outstanding cases.

31.

At a certain stage Pikoli was suspended and fired despite the Commission which enquired into his fitness to hold office in fact finding that he was competent to be the NDPP. Adv Mpshe SC (Mpshe) was then appointed as the ANDPP.

32.

If memory serves me correct in early 2009 Mpshe summoned me to his office and showed me a letter written by SAPS indicating that it was withdrawing from the task team. This would mean that again TRC matters would not be investigated because at that stage a decision had already been taken to disband the DSO. Mpshe instructed me to negotiate with SAPS to agree to investigate the matters which he said I should take over from Ackerman.

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33.

Ackerman informed me that he had already disposed of a number of matters which had not required investigation and gave me a list of small number of cases (I estimate no more than ten (10)) which I had to attend to. The **Timol**-case was not one which he had indicated should be investigated.

34.

I attach as **Annexure RCM6** a trail of emails between myself and various role-players showing my efforts to try and have these matters investigated. I initially had a series of meetings with Rayman Lalla, the then Divisional Head of the Detective Service of SAPS. He however informed me that the National Commissioner had decided that the cases had to be investigated by the Directorate Priority Crimes Investigation (DPCI). I therefore made a number of unsuccessful attempts to secure a meeting with Commissioner Dramat, Head: DPCI.

35.

Ultimately I met with Assistant Commissioner Lebeya (Lebeya) on 26 November 2009 where the issue of conducting investigations was positively discussed resulting in me writing a letter on 18 January 2010, attached hereto as **Annexure RCM7**.

36.

As a result thereof Senior Superintendent Bester was appointed to oversee the investigations of the ten (10) cases I had identified.

37.

Adv Menzi Simelane (Simelane) was appointed as the NDPP and he instructed me to guide a series of serious corruption investigations being conducted by the DPCI in the Northern Cape. He thereafter appointed me to represent the NPA in two (2) civil matters where decisions not to investigate / prosecute international crimes were being challenged. I was thereafter seized with a number of cases where complaints had been made calling for the arrests of current or former Heads of State for war crimes or crimes against humanity. This made it very difficult for me to focus on the ten (10) TRC matters. I did however increase the number of investigations due to representations being received in new matters.

38.

When Mr Nxasana (Nxasana) was appointed as the NDPP I was removed from my duties in the PCLU in order to act as a dedicated prosecutor for foreign bribery cases. Adv SK

Abrahams (Abrahams), then a Senior State Advocate, was appointed to take the TRC matters over from me.

39.

In June 2015 Abrahams was appointed the NDPP and the issue as to whether I should continue as the dedicated foreign bribery prosecutor arose. I had meetings with him in which I indicated that if he did not wish me to continue with that responsibility I would again be willing to do TRC matters. He however informed me that he was thinking of taking all TRC cases away from the PCLU and did not make a decision on terminating my appointment as the foreign bribery prosecutor.

40.

Due to the fact that another business unit of the NPA had instructed the DPCI to take all the foreign bribery files away from me I could no longer work on those matters. The TRC cases had however become important due to complaints about delays in finalising certain matters. I therefore decided to again give attention to the matters. One of the matters which I had decided should be investigated was the **Aggett**-matter which also related to a death in detention. At that stage the **Timol**-matter was receiving attention in the media and I recall specifically a TV interview with Adv Bizos SC (Bizos) in which he alleged that **Mr Timol** had been murdered. I therefore considered it appropriate to request the DPCI to re-open the matter and gave various instructions (dealt with hereunder) regarding the further investigation of the case.

41.

Adv Johnson (Johnson) who was at that stage acting as the Head of the PCLU informed me and a Senior State Advocate who was assisting me with the cases that we should not continue to work with TRC cases as they were going to be removed from the PCLU. I was however concerned that this would result again in the cases being neglected resulting in me drafting a Memorandum in January 2016 requesting the NDPP to confirm whether the TRC cases would be dealt with by the PCLU or the DPPs. I did not receive a reply to this Memorandum and at this stage cannot locate my copy thereof.

42.

On 4 February 2016 I was approached by Dr Pretorius SC (Pretorius) who had then taken over from Johnson as the Head of the PCLU. He informed me that a request had been received to re-open the inquests in the **Aggett**- and **Timol**-matters and required an opinion

from me. I attached as **Annexure RCM8** a copy of my opinion of even date in which I expressed the opinion that both matters should be fully investigated and that consideration to re-opening inquests should only be given once a decision whether or not to prosecute had been taken. I emphasise para 12 of my opinion in which I indicated that it was imperative that the NDPP should decide whether TRC cases should remain with the PCLU or not.

43.

Subsequently I was informed by Pretorius that a decision had been taken to re-open the **Timol**-inquest. While the inquest was in progress Pretorius gave me a copy of a letter which I had written on 25 February 2004 to Mr Cajee, the nephew of **Mr Timol**. This letter is attached hereto as **Annexure RCM9**. He also showed me a report addressed by Ackerman to *inter alia* Ramaite and Pikoli dated 30 October 2006. I attach this report hereto as **Annexure RCM10**. He requested me to provide him with an affidavit responding thereto. I attach as **Annexure RCM11** a copy of the affidavit which I subsequently signed and which was commissioned. I have not attached the annexures referred to therein as they have either been attached elsewhere in this affidavit or are no longer relevant for the purpose of this application.

44.

At the time of deposing to this affidavit I was not in possession of **Annexure RCM1**. At this stage when I have now had sight of both this document and **RCM9** I recall that **RCM9** was written after both the DSO and SAPS had refused to investigate TRC cases. If memory serves me correct Leask had informed me that as a result of the decision taken by Ledwaba that the DSO would not investigate TRC cases he was unable to comply with my original request for investigations. Since he was however traveling to Cape Town on other investigations he contacted Ivor Powell and questioned him regarding the confession apparently made by the Applicant in this matter. The allegation was however denied by Powell and Mr Cajee was informed accordingly. I did not hear anything further from Mr Cajee and was shortly thereafter assigned other work.

45.

In order to depose to this affidavit I tried to locate such TRC files as may still be available resulting in me finding a report of 24 October 2006 addressed by Ackerman to Ramaite which is attached hereto as **Annexure RCM12**. This report identifies the advocates dealing with various TRC matters and reflects that I was not the person who decided to close the **Timol**-matter.

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46.

In December 2017 I was contacted by the NDPP's Office Manager who requested me to collect certain of Pikoli's documents which he had found in a strongroom. I collected the documents from him and perused the contents. The documents included the following:

46.1 A second draft of an Indemnity Bill making provision for the President to grant indemnity to persons committing politically motivated crimes from 1 March 1960 (**Annexure RCM13**).

46.2 The terms of reference of the Amnesty Task Team dealing with the criteria which the NPA applies relating to TRC cases, the formulation of Guidelines and whether legislative enactments are necessary. The document (**Annexure RCM14**) concludes by referring to the views of the intelligence agencies.

46.3 The further report of the Amnesty Task Team (**Annexure RCM15**) *inter alia* looking into whether private prosecution and civil litigation can be eliminated where a decision not to prosecute is taken and whether a person aggrieved with a decision not to prosecute can approach the International Criminal Court (ICC).

46.4 A letter dated 8 February 2007 (**Annexure RCM16**) addressed to Pikoli by the then Minister of Justice expressing her concern that the NPA was proceeding with TRC prosecutions as she was under the impression that the NPA would not.

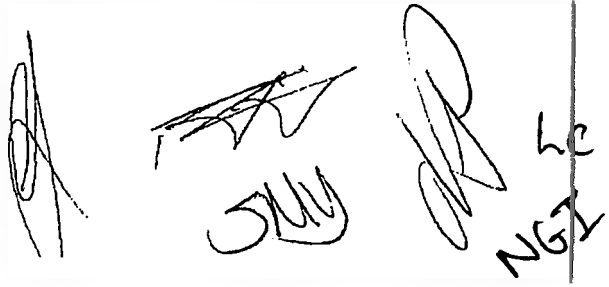
46.5 A Memorandum (**Annexure RCM17**) addressed to the Minister by Pikoli setting out in considerable detail what he construed to be interference with the dealing of TRC matters by other Government departments and concluding:

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

47.

These documents speak for themselves and go a long way in explaining why from 2003 the PCLU constantly struggled to have TRC cases investigated. The first three documents appear to have been authored by the Justice Department during the period when a moratorium was placed on TRC cases pending the formulation of Guidelines. The last two documents were authored by or addressed to Pikoli.

48.



On the limited occasions when I was seized with TRC matters I always believed that such matters including the **Timol**-matter should be properly investigated so that decisions whether or not to prosecute could be taken.

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

R C MACADAM

Date: **1 November 2018**
Time: **09:15**
Place: **PRETORIA**

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 **PRETORIA** on **1 NOVEMBER 2018** at **09:20**

_____: (RANK)
COMMISSIONER OF OATHS

Full names:	**ALBERTUS MARTHINUS MATHYS FLYNN**
Rank:	**COLONEL**
Address:	**218 VISAGIE STREET, PRETORIA**
Ex Officio:	**SA Police Service**

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SCORPIONS

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Office of the Head
Special National Projects
Directorate of Special Operations
HEADQUARTERS

INTERNAL MEMORANDUM

TO: DEPUTY HEAD

CC: CIO A G LEASK

FROM: HEAD SNPU

DATE: 5 MAY 2003 REF: A/INV/5/03 TRC

RE: INQUEST: AHMED TIMOL

1. On 2 May 2003 I was requested to investigate the above matter by the deceased's nephew Imtiaz Timol (082 445 2086) after he had been referred to my office by Minister Pahad in the President's Office.

2. The following documentation has been made available:
   - (i) Extract from George Bizoz's Book;
   - (ii) Article by Ivor Powell;
   - (iii) TRC hearing; and
   - (iv) Details of the SAPS members involved in the interrogation.

3. Imtiaz further informed me that:
   - (i) the inquest record has been destroyed;
   - (ii) he has the contact details of a fellow detainee now in England who can assist;
   - (iii) he has photographs of the body of the deceased; and
   - (iv) Ivor Powell informed him that Sgt Rodriquez had told his daughter what had really happened.

4. The following investigation focus areas are identified:

(i) George Bizoz must be interviewed to establish whether he has the post mortem report and any other information;

(ii) Ivor Powell (DSO Cpt) must be interviewed re 3(iv);

(iii) Researchers to establish whether there is any additional TRC material and whether the policeman involved after linked to any other human rights abuses;

(iv) the other detainee will have to be interviewed; and

(v) once all the evidence has been obtained the Chief State Pathologist will have to be requested for an opinion on the injuries and the claim that the witness fell from a 10 storey building.

.....
ADV R C MACADAM
HEAD
SNPU

LC
NGT

sl/ audit trc cases

Office of the Head
Special National Projects
Directorate of Special Operations
HEADQUARTERS

INTERNAL MEMORANDUM

TO: NDPP REF: TRC GENERAL

CC: HEAD DSO
HEAD OPERATIONS
ADV ACKERMANN

FROM: HEAD SNPU

DATE: 15 MAY 2003

RE: AUDIT OF TRC CASES

A. CASES BEING PREPARED FOR PROSECUTIONS:

1. MOTHERWELL BOMBING

(a) Leg One

The accused were all refused amnesty. On review however the High Court ordered that their applications be reheard because the TRC failed to lead evidence. Investigations conducted by my office indicate that the accused supplied a false motive for killing the deceased. Evidence will be made available to the TRC so that amnesty can be refused on a proper basis. This will open the way for legs two and three.

SCORPIONS

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South Africa

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

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(b) Leg Two

The three accused convicted in the 1996 prosecution were granted leave to appeal against their convictions to the SCA. I have taken over the argument of the appeal from the DPP Eastern Cape due to the fact that the prosecutor has retired.

(c) Leg Three

The prosecution of SAP General van Rensburg for ordering the killing of the Motherwell Four.

2. BRIAN NGULUNGA

The prosecution of SAP General van Rensburg for ordering the killing of Brian Ngulunga.

3. PEBCO 3

The prosecution of the Security Branch members responsible for the kidnapping of the deceased at Port Elizabeth Airport.

4. WAUCHOPE

Prosecution of AZAPO leader George Wauchope for murder and other related charges. I am awaiting the Minister's response to representations by the accused that he not be prosecuted.

5. POWELL

The prosecution of Phillip Powell for possessing hand grenades in April 1994. The matter is with the NDPP.

6. NQUTU ARMS CACHE

The prosecution of J. M . Nqcobo and others for the concealment of the weapons found in the Nqutu Bunker in May 1999.

7. The prosecution of the CCB members responsible for the bombing of the Early Learning Centre (it must however be established that the accused did not receive indemnity in terms of the Indemnity Act of 1990).

B. POTENTIAL FURTHER PROSECUTIONS ARISING FROM THE ABOVE

1. Murder of the PEBCO 3

There is currently no reliable evidence on the murder charge. If the accused are however convicted of kidnapping it is likely that at least one of them may supply information as to the killings in order to obtain a lesser sentence.

2. Cradock 4

There is no reliable evidence on this case. The TRC however established that the crime was committed by the same people who were involved in the Motherwell and PEBCO 3 cases. The successful prosecution of these cases could lead to some of the perpetrators coming forward also to obtain lesser sentences.

C. NEW CASES BEING EVALUATED FOR PROSECUTION PURPOSES

1. Murder of the COSAS 4
2. Murder of Askari Strongman Sambo
3. Murder of detainee on the East Rand by "Timol" Coetzee
4. Murder of Askari Dan Maboto
5. Allegations by IFP sentenced prisoner to have knowledge of murders in the East Rand from 1988
6. 447 dockets relating to APLA handed over by SAPS Crimes Against the State Unit
7. 6-8 dockets linking AWB to Pre election bombings previously dealt with by Advocate Fick

D. HIGH INTEREST CASES WHICH REQUIRE ATTENTION IRRESPECTIVE OF THE NATURE OF AVAILABLE EVIDENCE

1. Murder of Victoria Mxenge
2. Kidnapping, torture and murder of Ntombi Khubeka
3. Kidnapping, torture and murder of Nokutulu Simelane
4. Decision by DPP Pretoria not to prosecute SAP General Engelbrecht
5. Uninvestigated allegations against SAP General Bassie Smit
6. Ciskei Coup De AT
7. Transkei Coup De AT

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8. Pre Election Train Violence in Gauteng
9. Murder of Reggie Hadebe
10. Murder of Dulcie September
11. Refusal of Amnesty to 37 High Ranking ANC officials
12. Decision by DPP KZN not to prosecute IFP hit squads

E. REPRESENTATIONS TO INVESTIGATE SPECIFIC CASES

1. Death in detention Ahmed Timol
2. Murder of UDF activist Nelson Sithole
3. Murder of Pro Jack
4. Murder of IFP families in Table Mountain by A. M. Zulu
5. Murder of ANC supporter Batondo
6. False Conviction of Skouldies
7. Assault on A. Bult
8. Vlakplaas member Piet Snyders
9. Murder of Castro Khumalo

F. CASES IN THE PROCESS OF BEING CLOSED

1. Assault on Carl Niehaus- complainant does not desire a prosecution
2. APLA murder Mphahlela attacks on police stations; lack of reliable evidence
3. Mphaphela murder charges- lack of admissible evidence against him
4. Winnie Mandela- lack of reliable evidence
5. Steve Biko- crime prescribed in 1997
6. Smit Murders- perpetrators deceased
7. Ermelo Black Cats- lack of reliable evidence
8. IFP Murders Chadwick- accused in a mental institution in the United Kingdom

G. ASSISTANCE TO OTHER AGENCIES

1. Police Intelligence supplied with a breakdown of AWB amnesty hearings to assist in profiling of persons currently involved in Right Wing Activities
2. TRC supplied with material relating to IFP human rights abuses to assist them to oppose IFP application to have findings against it set aside

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H. REPARATIONS RELATED ACTIVITIES

1. Exhumation of bodies of Mamelodi 10
2. Reparations of remains of victims in the Kwaggasnek incident in Lesotho
3. Representations by members of the public to locate their missing relatives
4. Partnership with SA Disappearance Foundation

I. INVESTIGATION PUT ON HOLD PENDING THE APPEAL IN THE BASSON CASE RELATING TO JURISDICTION FOR CONSPIRACY TO COMMIT CRIMES OUTSIDE THE RSA

1. Murder of Anton Lubauwski
2. Lesotho Raid
3. Botswana Raid
4. Swaziland Raid

J. POLICY CONSIDERATIONS

1. Prosecutions not to be conducted on a piece meal basis except where special circumstances (e.g. witness on point of death, accused about to leave RSA or engaged in current criminal activities)
2. Once all the cases earmarked for prosecution have been investigated a presentation will be given to the NDPP in order for him to confirm the prosecution strategy. Thereafter prosecutions will be instituted
3. After convictions have been obtained attention will be given to cases which currently had evidence since convictions may act as incentive for perpetrators to come forward

Kind regards,

ADV. R. C. MACADAM
HEAD
SNPU

LC

NGT

./nvestigations

P. O. Box 752,
PRETORIA
0001

VGM Building
Hartley St.
Weavind Park
0001
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Tel: (012) 845 6431
Cell: 082 498 6033

Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

INTERNAL MEMORANDUM

TO : CIO Leask

FROM : Adv M G Ledwaba

DATE : 15 JULY 2003

SUBJECT : SNPU INVESTIGATIONS

1. Due to the recent creation of the PCLU it has become necessary to re-define the mandate and operations of the SNPU as follows:

   (i) **TRC cases**

   I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used. Notwithstanding the above decision Adv **TONGWANE** must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators and you are accordingly authorized to conduct the necessary handovers.

   (ii) **Operation Sunflower**

   Advocate **MACADAM** will continue to oversee the disruptive action with the Consumer Council with your assistance. Once the SAPS report is received and evaluated, I will make a decision on the final disposal of the case.

NGJ

(iii) **Operation Black Widow**

Adv **TONGWANE** must oversee the finalization of the investigation and conduct the prosecutions which may arise.

(iv) **Operation Final Curtain**

SAPS must continue with the investigations under the direction of the prosecutor arranged by Adv **ACKERMANN**. You may give limited assistance to SAPS and the prosecutor on specific aspects when necessary.

(v) **Foreign Mercenaries**

Adv **PRETORIUS** has been delegated to assess all cases currently being investigated by both SAPS and the DSO. (I have communicated separately to the Regional Head Gauteng in this regard). I will make a decision as to the involvement of the DSO in such investigations once I have received a report from Adv **ACKERMANN**.

Adv M G Ledwaba
HEAD : OPERATIONS

/tp

RCM 4

O.F.-S. 002-0222 SAP 21

SUID-AFRIKAANSE POLISIEDIENS SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X302

Verwysing Reference	3/9/9/1(93)
Navrae Enquiries	Div Comm De Beer
Telefoon Telephone	(012) 393 2191
Faksnommer Fax number	(012) 393 2193

Afdelingskommissaris/Divisional Commissioner
Speurdiens / Detective Service
Hoofkantoor / Head Office
PRETORIA
0001

2003-09-26

Advocate AR Ackermann, SC
Special Director
Head: Priority Crimes Litigation Unit
National Prosecuting Authority
Church Square
PRETORIA
0001

Dear Advocate Ackermann

INVESTIGATION OF TRC CASES

Your letter dated 20 August 2003, as well as the preceding discussion between ourselves, have reference.

As agreed at our meeting, I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of ex-policemen. It is therefor understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations(DSO).

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: **"In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard."**.

You are aware of the fact that the capacity created for the D'Oliveira Committee is presently with the DSO.

SMY

NGT

In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seem to be common cause that the initial understanding was that the **DSO** would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

If the President indicates that the South African Police Service should be involved in the investigations, the instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues.

You are therefor requested to approach the President on the matter, where after we can take the matter further, if necessary.

Kind regards.

DIVISIONAL COMMISSIONER: DETECTIVE SERVICE
JF DE BEER

LC

NGI

RCM 5

er/memo

Office of the Head
Priority Crimes Litigation Unit
HEADQUARTERS

INTERNAL MEMORANDUM

TO: ADV GEOPH LEDWABA

CC: 1. NDPP
2. DR S RAMAITE SC
3. ADV LF MCCARTHY SC

FROM: ADV A R ACKERMANN SC

SUBJECT: INVESTIGATION OF TRC CASES BY THE DSO

DATE: 11 NOVEMBER 2003

P. O. Box 1511
SILVERTON
PRETORIA
0127

VGM Building
123 Westlake Str
Weavind Park
0184

Tel: (012) 845 6431
Fax: (012) 845 7224

Dear Geoph

1. In the light of current developments, I am constrained to document the history of the above saga.

i) In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In addition Advocate Sonn gave the President a full briefing on the matter.

ii) In 2002 the SNPU was established in order to investigate the cases.

iii) In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP

iv) In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC cases identified for prosecution.

My prosecution strategy was endorsed and Advocate McCarthy indicated that there would be no problem in having the cases declared in terms of Section 28 of the NPA Act. The NDPP briefed the Minister and Justice Portfolio Committee accordingly.

v) Shortly thereafter and in the same month you were presented with applications in terms of Section 28 relating to the cases.

vi) In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you. (Copy attached)

vii) In response thereto I requested Commissioner De Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of De Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate experience to the DSO in order to capacitate it to conduct these investigations.

viii) After receipt of De Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.

ix) On 3 November 2003you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigations.

x) On 6 November 2003 Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.

xi) On 10 November 2003, Adv Macadam presented you with Section 28(i)(b) declarations. You informed him:

a) That you are not prepared to sign any declarations

b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigaion and familiar with all the witnesses and the facts of the cases.

c) That during the course of 10 November 2003 another investigator will be appointed.

d) The President should not be approached to involve SAPS

2. As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted. There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the *bona fides* of the National Prosecuting Authority into serious dispute and do irreplaceable damage

LC

NGJ

Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in terms of Section 28(1)(b). This chapter in our country's history must be closed without further delay.

Kind regards

ADV AR ACKERMANN SC
SPECIAL DIRECTOR
HEAD: PCLU

RC176

Helena Zwart (H)

From: Sibongile Mzinyathi
Sent: 20 May 2009 07:50 AM
To: Willie Hofmeyr (WA); Helena Zwart (H); Aubrey T. Mngwengwe
Cc: Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman
Subject: RE: Investigators for TRC cases

Thanda

This is for your information/attention.

Kind regards

S Mzinyathi

From: Willie Hofmeyr (WA)
Sent: 19 May 2009 08:56 PM
To: Helena Zwart (H)
Cc: Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman; Sibongile Mzinyathi
Subject: RE: Investigators for TRC cases

HI

It sounds like a good idea, but let me do some consultation in the DSO on the issue.

Regards

Willie

From: Helena Zwart (H)
Sent: Mon, 18 May 09 13:23
To: Willie Hofmeyr (WA)
Cc: Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman
Subject: Investigators for TRC cases

Dear Willie

I met this morning with Commissioner Lalla concerning the appointment of SAPS investigators to investigate the TRC cases where victims have asked the NPA to look at prosecutions. We have been taking quite a beating due to the fact that nothing has been done on these matters for a number of years and in fact, in certain cases, the victims are threatening us with *mandamus* applications. In this regard, Commissioner Lalla asked me to provide him with the names of three/four investigators who had the necessary experience. We are only looking at a small number of cases, plus-minus nine. Obviously, no progress at all will be made if the investigators do not have previous knowledge of the relevant Apartheid security structures and role players therein.

The only persons I could think of off-hand, were CSI Marion and three/four of his KZN DSO investigators, who were previously involved with the Goldstone Commission and ITU. All these persons have indicated their willingness to transfer to SAPS. Commissioner Lalla indicated that the TRC investigations would constitute a special tasking and the investigators would be permitted to finalise these cases before taking on other commitments. He also indicated that he would pay the costs of the investigations from his budget. This would ensure that they could deal with these matters irrespective of whether they are located in DPCI or any other police structure. He asked me to communicate directly with you on this issue.

Kind regards

Chris Macadam

From: Bezuidenhout Colla - Superintendent [mailto:BezuidenhoutColla@saps.org.za]
Sent: 07 July 2009 08:56 AM
To: Helena Zwart (H)
Subject: RE: TRC cases

Hallo Helena,

Comm Lalla agreed to the meeting but requested that we involved Deputy National Commissioner Dramat. Welma will speak to his office and let you know. We are currently looking at the week of the 20th July.

Regards,

Colla

Superintendent Colla Bezuidenhout
Staff officer: Divisional Commissioner: Detective Service
Tel : +27 12 393 1024
Fax : +27 12 393 2193
Cell : +27 82 778 3694

From: Helena Zwart (H) [mailto:hzwart@npa.gov.za]
Sent: 01 July 2009 11:34 AM
To: Bezuidenhout Colla - Superintendent
Subject: TRC cases

Dear Colla

Can you set up a short meeting with the Commissioner when he is available to discuss the TRC matters? We are under intense pressure and have been called upon to report on progress to the Minister and the Justice Portfolio Committee. The one matter which requires investigation prescribes on 12 September 2009 and this case must be fully investigated and the family afforded an opportunity to exercise their right to a private prosecution before the crime prescribes.

Our previous discussions on this topic did not materialise due to the fact that Willie Hofmeyr was not appointed as the head of DPCI.

Kind regards

Chris Macadam

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www.npa.gov.za/ReadContent458.aspx

LC

NGT

Helena Zwart (H)

From: Lalla Rayman - Divisional Commissioner [LallaR@saps.org.za]
Sent: 14 July 2009 08:32 AM
To: Helena Zwart (H)
Subject: RE: TRC cases requiring investigation

Dagsê Helena

Kommissaris Dramat se kantoor het nou net geskakel hy wil die vergadering uitstel na Augustus. Hy is nie beskikbaar volgende week nie.

Ek sal die nuwe datum met jou kommunikeer.

Groete

Welma

-----Original Message-----
From: Helena Zwart (H) [mailto:hzwart@npa.gov.za]
Sent: 13 July 2009 04:08 PM
To: Lalla Rayman - Divisional Commissioner
Subject: TRC cases requiring investigation
Importance: High

Beste Welma

Aangeheg vind asb. 'n lys van die TRC-sake wat by die vergadering bespreek gaan word. Sal jy asb. so vriendelik wees om dit aan te stuur na die twee Kommissarisse, aangesien ons nog nie Kommissaris Dramat se kontakbesonderhede het nie?

Het Colla die dringendheid van die Lubowski-saak met jou bespreek?

Baie dankie en groete!

Helena Zwart
NPA

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Helena Zwart (H)

From: DPCI:Head [dpci.head@saps.org.za]
Sent: 28 August 2009 02:02 PM
To: Helena Zwart (H)
Subject: FW: TRC/Nuclear matters

Good day Mr Macadam,

We wish to acknowledge receipt of your e-mail. DNC Dramat is unable to meet with you presently but will revert back to you in due course.

Thank you

Secretary : Pumla N Mphothulo
The Head : Directorate for Priority Crime Investigations
6th Floor Koedoe Building
Tel : 012 393 5463
Fax : 012 393 5079
Cell : 082 778 3664
E-mail : (internal) DPCI : Head
(external) dpci.head@saps.org.za

From: Bezuidenhout Colla - Superintendent
Sent: 27 August 2009 07:18
To: Helena Zwart (H)
Cc: DPCI:Head
Subject: RE: TRC/Nuclear matters

Good morning,

Commissioner Dramat's office is at room 627, 6th floor, Koedoe building (opposite Police Head office in Pretorius str). His office number is 012 393 5463 and email dpci.head@saps.org.za His secretary is Pumla.

I will ask Comm Lalla about joining the meeting and will inform Helena.

Regards,

Colla

Superintendent Colla Bezuidenhout
Staff officer: Divisional Commissioner: Detective Service
Tel : +27 12 393 1024
Fax : +27 12 393 2193
Cell : +27 82 778 3694

From: Helena Zwart (H) [mailto:hzwart@npa.gov.za]
Sent: 26 August 2009 12:19 PM
To: Bezuidenhout Colla - Superintendent
Subject: TRC/Nuclear matters

Dear Colla

I recently had a telcom with your Commissioner in which he advised that the TRC and the nuclear matters which we have previously discussed would now have to be attended to by Commissioner Dramat. Is it possible to provide me with Commissioner Dramat's address and fax number so that I can set up a meeting with him? Would your Commissioner be amenable to facilitate the meeting, as it might help if the two of us can inform Commissioner Dramat of the history of these matters.

Kind regards

Chris Macadam

Deputy Director of Public Prosecutions
Office of the National Director of Public Prosecutions
National Prosecuting Authority of South Africa
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Mobile: 082 498 6033

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RCM7

Priority Crimes Litigation Unit

The National Prosecuting Authority of South Africa
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18 January 2010

Assistant Commissioner Lebeya
Directorate for Priority Crime Investigations
South African Police Service
Private Bag X302
PRETORIA
0001

Dear Commissioner Lebeya

INVESTIGATION BY SAPS OF CRIMINAL OFFENCES ARISING FROM THE TRC

My letter dated 13 July 2009, addressed to Deputy National Commissioner Dramat and Divisional Commissioner Lalla, and our meeting of 26 November 2009 have reference.

The issue related to the appointment of investigators to investigate the 11 matters identified by the NPA, which were itemised in my letter of 13 July 2009. Subsequently, the Acting National Director of Public Prosecutions declined to prosecute in the Lubowski matter and consequently, only the remaining 10 cases on the list required attention.

Senior Superintendent Bester of your office attended our meeting and informed you that he was in possession of a number of further dockets which he felt also required investigation. On 6 December 2009, I had a meeting with Senior Superintendent Bester and established that these dockets related to cases against the Liberation Movements in respect of which a decision was taken in 2004 by the then National Director not to prosecute. It should be noted that in the main, all the suspects implicated in the dockets had applied for and received amnesty. I therefore informed Senior

Superintendent Bester that there was no basis upon which these cases could be reopened.

Consequently, only the remaining 10 cases on the list require attention. Since you raised the sensitivity of the matters with me, the National Director of Public Prosecutions was given a full written briefing on the matters. I had a meeting with him today and he indicated that SAPS should in fact investigate all the matters which required investigation. The matters should be referred to my office once the investigations have been concluded. Should you require any guidance as to how the matters should be investigated, you are at liberty to approach me for any such assistance which you might require.

Given the nature of the cases, it may be desirable that we meet to discuss the issues in person and in this regard, I would be grateful if you could indicate when you would be available to meet with me.

Yours sincerely

ADV RC MACADAM
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
PRIORITY CRIMES LITIGATION UNIT
OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SMY

4C

NGI

/Z56 forms

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Tel: X126431

INTERNAL MEMORANDUM

TO	:	DR JP PRETORIUS SC ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS: PCLU
FROM	:	ADV RC MACADAM SDDPP: PCLU
DATE	:	4 FEBRUARY 2016 (Opinion requested on even date)
SUBJECT	:	OPINION: REOPENING TIMOL/AGGETT INQUESTS
REF	:	10/3/1/PCLU

Dear Torie

1. This opinion is provided arising from a meeting between members of the NPA and Messrs Varney, Dutton and others. An oral presentation was given, motivating the reopening of both inquests.

2. In order to address the request, it is necessary to briefly refer to the relevant provisions of the Inquest Act:

   2.1 Section 5 requires that an inquest be held in respect of each natural death where the deceased is suspected of having died of unnatural causes.

   2.2 Section 16 requires the inquest Magistrate to make findings as to:

      2.2.1 the identity of the deceased
      2.2.2 the date and cause of death
      2.2.3 whether the death was caused by a criminal act on the part of any person

   2.3 Section 17 requires the Magistrate to refer the inquest to the DPP in the event of either not being able to determine the death or in the event of a finding of criminal liability. He is also required to refer the matter to the DPP irrespective of his findings if so requested.

2.4 Section 17(2) empowers the DPP <u>at any time</u> [my emphasis] after receipt of the inquest request the Judicial Officer to reopen the inquest and take further evidence.

2.5 Section 17A(1) also empowers the DPP to request the Minister to request the Judge President to appoint a Judge to reopen the inquest.

3. Sections 17(2) and 17A(1) both empower the DPP to cause inquests to be reopened on the basis of further evidence. The sole difference is whether the Minister and the Judge President must be involved and whether the inquest would be reopened by the original Inquest Court or by a Judge appointed by the Judge President. The invocation of section 17A(1) would be a more time-consuming process and would also place a burden on the High Courts which are under pressure with their existing civil and criminal rolls.

4. In my view, it would be appropriate to invoke section 17(2) where the new evidence would lead to certain of the original findings being amended, but would have no other public interest consequences, e.g. a prosecution or in a transparent manner to test the new evidence orally. Section 17A(1) would in my view be appropriate if there was high public interest in the new evidence, but the DPP was of the view that it should first be tested before instituting a prosecution.

5. It has to be stated that if the DPP is of the view that new evidence justifies the institution of a prosecution, then there is no need to first reopen the inquest before instituting the said prosecution.

6. The background to the two cases is as follows:

6.1 <u>Achmed Timol</u>

6.1.1 He died in detention in Johannesburg in October 1971 while under interrogation by the Security Branch having been arrested on charges linked to his involvement with the SACP.

6.1.2 The then Attorney General declined to prosecute and a formal inquest was held in the Johannesburg Regional Court, which handed down a verdict that he had committed suicide and that the police were not responsible for his death.

6.1.3 Shortly after the establishment of the PCLU in 2003, Mr Timol's nephew (a member of the NIA) approached the unit and indicated that he had established that the inquest record and docket were not available. (Governmental archive directives require the destruction of documentation after a certain period.)

6.1.4 He however alleged that the daughter of Sergeant Rodriques (who had been alone with the deceased immediately before he fell to his death) had approached Ivor Powell (then a journalist) and informed him that her father had confessed to her that the deceased had been murdered. The NDPP had directed that the DSO must assist the PCLU with the investigation of TRC matters. The DSO reported that the journalist had been interviewed, denied the allegation and produced the newspaper article which he had written, which contained no confession or new evidence. In the circumstances the DSO deemed it inappropriate to approach Rodriques or his daughter. The nephew was satisfied with this explanation and the matter was not taken further.

LC NGI

3

6.1.5 In late 2015, I however asked the DPCI to register an enquiry due to extensive publicity given to the matter by the media and as a result of statements made by Adv Bizos SC and the family.

6.2 Neil Aggett

6.2.1 Dr Aggett died in police custody in Johannesburg in 1982 after a lengthy period of detention and interrogation by the Security Branch.

6.2.2 The then Attorney General declined to institute a prosecution and a formal inquest was held before a Regional Court Magistrate in Johannesburg. He handed down a verdict to the effect that the deceased had committed suicide and that the police were not responsible.

6.2.3 In 2013, a group of Dr Aggett's friends submitted a petition to the President and Minister of Justice, calling for the prosecution of the police officials responsible for his death.

6.2.4 As a result of this petition, the PCLU requested the DPCI to open an enquiry.

7. The status of the PCLU/DPCI investigations:

7.1 Achmed Timol (I/O Captain Ben Nel)

7.1.1 It has been established that the original inquest and docket are not available.

7.1.2 A copy of the inquest donated by the family attorney to Wits has been downloaded. It is missing 652 pages, which include the evidence and cross-examination of all the police officers involved. However, on the remaining evidence it was possible to establish who the witnesses were and what the issues in dispute were.

7.1.3 Captain Nel has been requested to canvas the availability of all the witnesses, i.e. the police officials, medical doctors and members of the deceased's family.

7.1.4 It has been established that other detainees who were never called as witnesses could possibly shed light on the matter. The first is a Mr Mohammed Essop, who was arrested at the same time as Timol. The second is Quentin Jardine, whose identity, it is alleged, led to the deceased deciding to commit suicide. The third is a Mr Pahad, whom it is alleged was arrested arising from Timol's interrogation. Ms Fullard has been tasked to uplift the detention files from DoJ&CD so that Captain Nel can conduct the necessary investigations in this regard.

7.1.5 It has been established that the TRC appointed a journalist, Piers Pigou, as an investigator and he dealt with the Timol matter. He has indicated that he is available for an interview when he returns to the country. As a matter of interest, it was in fact he who approached Sergeant Rodriques and not Ivor Powell. His notes reflect that Rodriques stood by his original statement. It may therefore be that Timol's nephew confused the two journalists and what Rodriques said.

hc

NGT

7.1.6 It has been established that Gordon Winter published a book in which he claimed to have first-hand knowledge of the Timol incident. Ms Fullard has undertaken to establish whether he is alive and where he is residing.

7.1.7 A Methodist priest in the UK made public statements to the effect that when Timol's body was viewed in the mortuary, it showed signs of gross mutilations. This claim would have to be followed up although it is in conflict with the evidence of the three doctors who testified at the inquest, including a pathologist, appointed by the family.

7.1.8 What also has to be followed up is whether the police, who were involved in the incident, were involved in other cases, which could have a bearing on their version in this matter. It would also have to be established whether there were other incidents involving detainees which would be relevant.

7.2 **Neil Aggett** (I/O Col Sam Mahlangu)

7.2.1 Col Mahlangu indicated that he was unable to locate the original inquest and docket.

7.2.2 He however established that a copy of the inquest was available on the Wits website and requested the PCLU to peruse it and to thereafter indicate whether further investigations were required.

7.2.3 The record is in the regional of some 8 500 pages and has been uploaded in blocks, which makes online reading time-consuming. Obviously downloading 8 500 pages would place an extreme burden on the office's printing facilities.

7.2.4 It has however been established that Adv Bizos SC, who acted for the family, conceded that there was no evidence to justify the conclusion that the deceased had been murdered. (Adv Bizos SC was assisted by a private pathologist and other medical experts.) He however submitted that Whitehead and Cornwright (the two officers responsible for Aggett's interrogation) should be prosecuted for culpable homicide. If the learned advocate is in fact correct, then the crimes prescribed in 2002 and no prosecution is feasible as requested by the deceased's friends.

7.2.5 The matter is however complicated by the fact that the former Deputy Judge President of the KZN High Court (Nicholson DJP) has published a book, alleging that the facts of the Aggett matter demonstrate unequivocally the crime of murder by induced suicide. If the learned Judge is correct, then the NPA would still have jurisdiction to prosecute on a charge of murder.

7.2.6 It has been established that Goosen, Pollock and Erasmus applied for amnesty on charges relating to breaking into the house of Aggett's parents, looking for evidence to support the claim that he had committed suicide. The TRC material has been uplifted and has been perused.

7.2.7 Aggett's detention file was also uplifted, but it contains no relevant information.

7.2.8 Deborah Quin was given the list of witnesses, who testified at the inquest and was requested to establish their availability, present whereabouts and

NGT

also whether any of them were connected to other incidents which would be relevant. She is also looking into the issue of whether there were other deaths in detention at the same time, which could be relevant. She has already indicated that Cornwright is deceased and that Auret van Heerden, who was in detention in close proximity to Aggett, is currently in an old age home in the USA.

8. Currently the two matters are not receiving the attention of the PCLU due to firstly, operational constraints which arose since October 2015. (Adv Bukau was given an urgent espionage-related case and uncertainty surrounded Adv Macadam's position due to the NDPP on 8 October 2015, indicating that he had not cancelled his appointment as the OECD Foreign Bribery Prosecutor.) In a meeting with Adv Macadam in September 2015, the NDPP raised the issue as to whether the TRC matters should be taken away from the PCLU. As a result of all these uncertainties, a memorandum was prepared in January 2016, requesting the NDPP to confirm whether the PCLU should continue to deal with TRC cases or whether they should be referred to the DPPs. A response to this memorandum is still outstanding.

9. In my view, a decision on the request made by Messrs Dutton *et al* cannot be taken solely by the NPA.

9.1 Both are the subject of enquiries being conducted by the DPCI and clearly the views of the relevant senior managers within the DPCI should be canvassed.

9.2 In the Aggett matter a group of his former colleagues has formed an association, *"Friends of Neil Aggett"*, which has called for the prosecution of the police officials involved. The request to reopen the inquest runs contrary to the group's position. The group has a direct interest in the matter and its view should be consulted.

9.3 Also in regard to the Aggett matter, although Cornwright is dead, Whitehead is still available and would clearly be affected by the reopening of the inquest. He would be entitled to legal representation, access to relevant material and the right to challenge any new evidence.

9.4 In the Timol matter, it still has to be established whether any of the police involved in his interrogation are still alive and whether any new evidence could result in a prosecution of them on a charge of murder.

10. In my view, it would be inappropriate at this stage to reopen the two inquests. On what has been placed before me it would not appear that Mr Dutton has conducted a comprehensive investigation which would justify all the relevant factors which would have to be taken into consideration by both the NPA and the presiding officers of the inquests.

10.1 The original inquests are not available and consequently the NPA would have to request Wits to make available its originals and to pay for all the relevant copies to be made.

10.2 A decision would have to be taken as to whether to invoke section 17(2), 17A(1), which would require a determination as to whether the witnesses and suspects are available, whether a charge of murder is feasible, whether a *viva voce* hearing, which would involve having to provide the suspects with legal representation, is necessary.

10.3 In my view, a Presiding Officer and the Judge President (if section 17A(1) is invoked) would be reluctant to reopen the inquests, to receive only Dutton's evidence and before the police have concluded their investigations and the NPA decided that there are no prospects of a successful prosecution. This would be particularly apposite in

the Aggett matter where there are 8 500 pages of evidence to be perused, numerous witnesses who would be required to be recalled and where Whitehead could still be prosecuted.

11. In my view therefore, it would be inappropriate to accede to the request prior to the conclusion of the DPCI investigations and the NPA deciding not to prosecute. I am of the view that even if a decision not to prosecute is taken, then there would be new evidence which would justify the reopening of the inquests. At this stage it is not possible to predict what the consequences of this new evidence would be and therefore it cannot be predicted:

    11.1 whether the additional statements should simply be placed before the Regional Court, which could in chambers consider them and elect to amend the original Magistrate's findings

    11.2 whether a Judge should be appointed to hear the additional evidence *viva voce*

12. Having said that, it has to be, in the strongest possible terms, stated that it is imperative that the NDPP make a decision as to whether the TRC cases must remain with the PCLU or not. It will serve no purpose to decline the request, but to be placed in the position that two or more years down the line the cases have not been finalised because either the DPCI or NPA or both are unable to commit the necessary resources to finalise the matters timeously. It has to be emphasised that the Aggett matter requires a considerable amount of work due to the volume of evidence to be assessed, which may include an MLA request to the USA to interview Van Heerden. In the Timol matter there are also indications that evidence may be located in the UK, which would also have to be accessed through an MLA process.

13. Currently a member of the PCLU could give almost fulltime attention to the two matters. However, it is only to be anticipated that this will not be the case when shortly the unit's current workload will increase.

14. It is recommended that you:

    14.1 advise the NDPP not to accede to the request to reopen the inquests until the investigations have been concluded and a decision taken not to prosecute

    14.2 request the NDPP to, as a matter of urgency, make a decision as to whether the TRC matters must remain with the PCLU.

Kind regards

ADV RC MACADAM

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RCM 9

Office of the National Director of Public Prosecutions

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25 February 2004

A/INV/5/03/TRC

Imtiaz Cajee
P O Box 1888
GARSFONTEIN EAST
0060

Dear Sir

INVESTIGATION INTO TIMOL CASE

I acknowledge receipt of your fax of 18 February 2004 and have to inform you hat the case is registered under the above reference number. Last year investigations were conducted into the allegations that former security branch officer Rodrigues head confessed to his daughter who in turn informed IVOR POWELL.

The investigations produced negative results. I confirm that you furnish me with the following documents:

i) Extract Bizos' book
ii) Article Powell
iii) TRC transcripts
iv) INPUT Detainee
v) Photographs

The testimony of a detainee who was held out of the window was not included.

I would be grateful if you would furnish me with a copy of it as well as any other relevant material, which you may have. The case will again be considered the light thereof.

Kind regards

RC MACADAM
DEPUTY HEAD: PCLU

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RCM 10

/Z56 forms

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INTERNAL MEMORANDUM

TO: DR MS RAMAITE

CC: ADV VP PIKOLI

CC: ADV K PILLAY

FROM: ADV AR ACKERMANN SC

SUBJECT: 1. DETAILS OF TRC CASES CLOSED BY THE PCLU

2. REAPPOINTMENT OF SENIOR SUPERINTENDENT BRITZ

DATE: 30 OCTOBER 2006

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1. On 25 October 2006, the PCLU was requested by the "TRC Committee" to furnish more details regarding all the cases which the PCLU had declined to prosecute. The PCLU was also requested to furnish the background which led to the prosecution of one Blani.

2. <u>TRC CASES CLOSED</u>

2.1 <u>Death in detention Ahmed Timol</u>

2.1.1 This death in detention matter goes back to 1971.

2.1.2 The nephew of the deceased requested that an allegation that one of the police officers who had interrogated the deceased had confessed to a journalist be investigated.

2.1.3 The DSO traced and interviewed the journalist who denied the allegation. There was no other evidence to prove that the

deceased had definitely been murdered and all other crimes had prescribed.

2.1.4 The matter was therefore closed.

2.2 Death in detention of Steve Biko

2.2.1 Mr Ngcuka asked that this matter be investigated because of its high profile.

2.2.2 The DPP: Eastern Cape had recommended that no prosecution be instituted due to lack of evidence.

2.2.3 It was established that all the doctors who had treated the deceased were dead, except for the Chief State Pathologist, who, when consulted, conceded that he could not exclude that the injury to the deceased's head could have been accidentally caused.

2.2.4 The police officer in charge of the interrogation who was responsible for making the decisions as to whether the deceased should receive medical treatment himself died after he was denied amnesty by the TRC.

2.2.5 The evidence against the remaining police officers only established *culpable homicide* which had prescribed in 1997.

2.2.6 The NDPP made a press statement to the effect that no prosecution was possible. An NGO organization obtained the opinion of Adv Trengove who also concurred with the decision.

2.2.7 Subsequent to this decision, the police officer who transported the deceased to Pretoria also died.

2.3 Carl Niehaus

2.3.1 A member of public asked for a prosecution after the media published an interview with Carl Niehaus in which he alleged that he had been tortured during detention.

2.3.2 Mr Niehaus was consulted and did not desire prosecution.

2.3.3 File closed.

2.4 Skoulides

2.4.1 Skoulides had been convicted of murder.

2.4.2 After his release from prison, his sister alleged that he had been framed by the CCB. There was no evidence to substantiate this claim and it was suspected that the purpose of the allegation was made so as to have the convict's criminal record deleted so that he could emigrate to Greece.

2.4.3 The file was closed.

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2.5 Nelson Sithole

2.5.1 The deceased was a Cape Town activist. He was killed outside his home. No perpetrators were identified and arrested by SAPS.

2.5.2 His lawyer alleged that the perpetrators were known to SAPS.

2.5.3 The DSO interviewed the eyewitnesses, perused the SAPS docket and interviewed a convicted prisoner whom the lawyer claimed knew about the case. The prisoner denied all knowledge of it. The witnesses had not identified the attackers. SAPS were of the view that the deceased was the victim of a criminal gang which was terrorizing that area. An identification parade had been held to see if the victims could identify members of the gang who were in custody on other charges but with negative results.

2.5.4 File closed.

2.6 Pro Jack

2.6.1 A person was refused amnesty for the murder of a Western Cape activist.

2.6.2 The TRC asked that this matter be looked into.

2.6.3 The DSO investigated the matter and came to the same conclusion as the TRC's Amnesty Committee, to the effect that the amnesty applicant had lied in respect of each and every material aspect relating to the murder of the deceased. There was no acceptable evidence to prosecute him or any other person and the file was closed.

2.7 AM Zulu

2.7.1 A convicted prisoner was refused amnesty for his role in the killing of a number of people in the Table Mountain area.

2.7.2 The TRC: KZN recommended that this matter be looked into further.

2.7.3 The convicted prisoner was an unreliable witness in his amnesty application and there was no other acceptable evidence implicating the persons whom he alleged had taken part in the attack with him.

2.7.4 The file was therefore closed.

2.8 Bult

2.8.1 Representations were made to the NPS by Bult, who alleged that he had been assaulted by the police during the Apartheid Era.

2.8.2 His allegations were however not serious enough to warrant investigation by the TRC unit which had been mandated by the NDPP only to consider serious human rights

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abuses.

2.8.3 The file was therefore closed.

2.9 Castro Khumalo

2.9.1 The victims requested that a prosecution be instituted.

2.9.2 The deceased was a member of a group of activists who had been killed by the Security Branch.

2.9.3 The perpetrators had however all received amnesty, but the bodies of the deceased had not been traced.

2.9.4 The case was therefore referred to the Missing Persons' Task Team for further action.

2.10 Winnie Mandela

2.10.1 She was implicated in the kidnapping of a youth in Soweto.

2.10.2 These allegations had been investigated by a component of the D'Oliveira Investigation Unit. It was established that all the relevant witnesses had been extensively interviewed and all had been found to be unreliable. Various allegations as to the location of the body of the missing person had been followed up with negative results.

2.10.3 There was therefore no reliable evidence to institute a prosecution against Mrs Mandela. It was noted that she had been convicted on another charge. The allegations that she was involved in the murder of Dr Asvat were also investigated with negative results. The allegations of Falati, Cebenkulu and Richardson were also looked into and it was found that these three persons were thoroughly unreliable and had strong motives to falsely implicate Mrs Mandela.

2.10.4 The file was therefore closed.

2.11 Ermelo Black Cats

2.11.1 The D'Oliveira Investigation Unit had charged members of an IFP grouping called the Black Cats for various crimes committed in the Ermelo area.

2.11.2 The investigations had been put on hold pending the finalization of the TRC.

2.11.3 The main 204 witness was interviewed by the DSO and found to be thoroughly unreliable.

2.11.4 The TRC had refused to grant him amnesty and the DPP: KZN had also rejected similar allegations made by him relating to activities in KZN.

2.11.5 The witness also indicated that he would not testify unless he was released from prison

first. There was therefore no evidence to prosecute and the file was closed.

2.12 Chadwick

2.12.1 The accused was a UK citizen who absconded to the UK after being indicted for the murder of two suspected IFP supporters.

2.12.2 The DPP: Pretoria applied for his extradition which he resisted in the UK for a period of almost eight years.

2.12.3 When his final appeal against extradition was exhausted, the UK authorities requested an undertaking from the NPA that the evidence available was sufficient to ensure this conviction.

2.12.4 A key witness had retracted his statement and there were other evidential problems. The original extradition application had to be abandoned although a new witness had been found. The UK authorities indicated that a fresh extradition application would have to be lodged before extradition could be granted on his version. Given the fact that the accused had been in custody for several years, combined with the fact that there was medical evidence suggesting that he could have been insane at the time of the crimes, it was not considered worth bringing a fresh application.

2.12.5 The Acting NDPP confirmed this decision.

2.12.6 Interpol has been requested to establish whether there is truth to the rumours that the accused might try and return to South Africa. If he were to voluntarily come to South Africa, the extradition problems would not apply.

2.13 Anton Lubowski

2.13.1 The original TRC unit was looking into this matter which related to the murder of a Swapo leader in Namibia.

2.13.2 A South African Court would only have jurisdiction in the event of evidence of a conspiracy to murder the deceased formulated in South Africa.

2.13.3 All the available evidence was perused. The most likely candidate to have killed the deceased was an Irish citizen, Aitcheson, who was arrested in Namibia, but skipped bail.

2.13.4 There was no reliable evidence against any other parties and the file was closed.

2.14 Ciskei *coup d'etat*

2.14.1 The original TRC unit was looking into this matter.

2.14.2 It was established that although certain former Military Intelligence members had indicated their intention to apply for amnesty on the basis that the *coup* had been

orchestrated so as to ensure the murder of ANC supporters, they had withdrawn their applications.

2.14.3 The former Head of State of Ciskei had been prosecuted for ordering the killing of two alleged coup conspirators, but had been found not guilty by the Bisho High Court.

2.14.4 There was no other evidence available to justify a prosecution of any person and the file was closed.

2.15 General Basie Smit

2.15.1 Mr Ngcuka asked that this matter be looked into as a result of media attention.

2.15.2 The available evidence as gathered by the D'Oliveira unit was considered and found to be inadequate to base any prosecution for a human rights abuse. The suspect was a former Head of the Security Branch.

2.15.3 The file was therefore closed.

2.16 *S v Bongani Wana*

2.16.1 This matter relates to the murder of Zolile Sangoni, Zonwabele Mayapi and an MK cadre Gift Mgibe who were killed by Vlakplaas operatives in 1988 in Umtata.

2.16.2 Mr Wana had applied for amnesty but later withdrew his application.

2.16.3 After a careful perusal of the TRC transcript and consulting with all relevant potential witnesses it became clear that there was no sufficient evidence upon which prosecution of Mr Wana can be instituted.

2.16.4 The matter was then closed.

2.17 Representation by Mr SM Mavuya

2.17.1 Mr Mavuya claimed to have been an informer during 1984 and was applying for amnesty and requested protection from members of his community.

2.17.2 We however informed him that we have no such authority and that TRC committee has disbanded. His activity did not amount to any criminal offence thus we could not even consider it in terms of prosecution guidelines.

2.18 Representation by Mpho Masemola

2.18.1 This matter arose from a representation by Mr Masemola, a former ANC who claimed to have been arrested and subsequently tortured in 1985.

2.18.2 He also claimed that in 1991 members of the Counter Insurgency Unit shot at him during a march he had organised. We however informed him that in as far as the

torture in 1985 the matter has since prescribed and in respect of 1991 shooting there was no evidence to support his allegations as he bases his accusations on assumptions.

2.19. Representation by Mr N Dlamini

2.19.1 Mr Dlamini had made allegations against Swaziland police whom he claimed to have sold out some MK cadres during 1985 to 1986. Unfortunately he could not supply us with any proof apart from a newspaper article from Times of Swaziland which we did not receive.

2.19.2 Apart from lack of substance in his allegations the NPA does not have jurisdiction in crime committed in Swaziland. He could not indicate to us his interest in the matter when requested to do so.

2.20 Thabo Armando Sithole

2.20.1 The mother of Thabo requested the NPA to investigate death of his son who died in police custody after being arrested for robbery in 1976.

2.20.2 They received a report from Greytown police that he committed suicide by hanging himself.

2.20.3 The PCLU could not find any records of the inquest and the police in Greytown police station could not assist us as they could not find any records of Thabo though they remember that he was indeed detained there. The PCLU therefore decided to close the file as there was no further action contemplated.

2.21 Murder of Michael Mcetywa

2.21.1 The matter arises from a representation by Zolile Mcetywa who is the son of the deceased who was an ANC chairperson in Pongola and murdered in 1993.

2.21.2 A man called Mavuso is currently serving 25 years for the murder.

2.21.3 During his amnesty application which was refused, he implicated a number of IFP leaders.

2.21.4 The family of the deceased requested the PCLU to consider prosecution of the implicated IFP leaders.

2.21.5 After reading various documents and consulting with Mavuso it transpired that he is the only witness who can be used but he demanded that the NPA secures his release before he can testify against the IFP leaders.

2.21.6 Apart from his evidence there was nothing to corroborate him. We therefore closed the file as there was no further action contemplated.

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2.22 Smit murders

2.22.1 Perpetrators all deceased except one suspect who apparently lives in Australia.

2.22.2 Insufficient evidence to apply for extradition.

2.22.3 Matter closed.

2.23 Refusal of amnesty to the President and other high-ranking ANC officials

2.23.1 The TRC refused amnesty to the President and plus-minus 37 other high-ranking ANC members certain of whom held Ministerial positions or other key positions in Government.

2.23.2 The TRC found that they had not disclosed that they had committed specified crimes.

2.23.3 There was no evidence implicating them in criminal offences and the file was closed.

2.23.4 The NDPP, Mr Ngcuka, made a media statement to this effect as the DA was making an issue of the matter.

2.24 IFP Hit Squads (allegations of Luthuli, Mbambo, Mkhize and Hlongwane)

2.24.1 The DPP: KZN asked that this matter be looked into as a result of the controversy which the allegations had caused in the province.

2.24.2 Certain IFP supporters, e.g. Luthuli, Mbambo, Mkhize and Hlongwane had made various allegations against high-ranking IFP officials.

2.24.3 Luthuli had been used as a witness in one case, but the accused had been acquitted and Luthuli was found to be an unreliable witness by the Court.

2.24.4 A Deputy in the DPP's Office: KZN had considered all the allegations and had declined to prosecute as a result of the discrepancies between the versions of the accomplice witnesses.

2.24.5 After their release from prison, Mbambo and Mkhize were interviewed and indicated that they did not want to testify in any matters. Hlongwane had been refused amnesty and indicated that he was not prepared to testify unless released from prison. He had a poor reputation for reliability.

2.24.6 There were therefore no reliable grounds upon which the decision of the DPP: KZN not to prosecute could be reversed and the file was closed.

2.25 Bombing of Early Learning Centre and other Western Cape CCB activities

2.25.1 A request was received from the Legal Resources Centre in Cape Town requesting that CCB members who had been refused amnesty for the above case be prosecuted.

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2.25.2 It was established that the main perpetrators had either been granted indemnity under the Indemnity Act or in terms of section 204 of the Criminal Procedure Act, arising from their testimony in the Wouter Basson and Ferdi Barnard prosecutions.

2.25.3 The only persons who could be prosecuted were Ferdi Barnard and the whistle-blower who had assisted the victims.

2.25.4 In the case of Ferdi Barnard, he was serving a lengthy gaol sentence in C-max. Were he to be charged, he would have to be transferred to Cape Town, posing a burden on Correctional Services. Any sentence he would have received for this case would run concurrently with his current sentence. No useful purpose would therefore be achieved by prosecuting him.

2.25.5 The prosecution of the whistle-blower would undermine reconciliation.

2.26 Plus-minus 80 cases against members of the Liberation Movement

All these cases were investigated by SAPS and closed by Ackermann for a number of reasons, i.e. offences were not of a serious nature, amnesty had been granted to the perpetrators or the perpetrators could not be traced.

2.27 S v Blani

2.27.1 The two deceased were an elderly married couple who resided on the farm, Enhoek.

2.27.2 The accused was associated with an organization known as the "Addo Youth Congress".

2.27.3 At a certain stage the accused conspired with other members of the organization to attack the farm of the deceased.

2.27.4 On the night of 17 June 1985, the accused and his co-conspirators armed themselves and travelled to the farm of the deceased.

2.27.5 Upon arrival, the group cut the telephone connection to the farm and proceeded to the farmhouse.

2.27.6 The group then broke into the house despite attempts by the deceased to defend himself with a firearm.

2.27.7 Both deceased were assaulted and killed inside the house.

2.27.8 The group ransacked the house and removed certain items.

2.27.9 The Murder & Robbery Unit in Port Elizabeth originally investigated this matter.

2.27.10 The suspect was linked to the crime by fingerprint evidence.

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2.27.11 A warrant for his arrest was obtained but not executed, because he could not be traced. This warrant was never cancelled by SAPS.

2.27.12 As a result of Commissioner Fivaz's instruction of 7 November 1996, namely that all cases be referred to Dr D'Oliveira's Unit, the docket came into possession of Britz. The investigation diary of the docket confirms that on 16 July 2003, Director Nel received it for further investigation. Director Nel established that certain suspects were still outstanding on warrants and thereafter traced them. He thereafter furnished the Serious & Violent Crimes Unit in Port Elizabeth with copies of the witness statements with instructions to trace the suspects and witnesses.

2.27.13 In 2003, Britz referred the docket to the PCLU, requesting a prosecution of Blani on the basis that he had been traced by SAPS and had not applied for amnesty. This case is reflected as case No 266 in the SAPS register.

2.27.14 On 25 January 2005, the accused pleaded guilty and received a partially suspended term of imprisonment.

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.

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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.

ADV AR ACKERMANN SC

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RCM 11

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

In the matter of: Case Number: 01/17

RE-OPENED INQUEST: MR AHMED TIMOL

AFFIDAVIT OF ADV. RAYMOND CHRISTOPHER MACADAM

1.

I am a Senior Deputy Director of Public Prosecutions in the office of the National Director of Public Prosecutions.

2.

Since 2003 I have been a member of the PCLU.

3.

My attention has been drawn to paragraphs 27 to 30 of an affidavit made by Mr Imtiaz Cajee, which was placed before this Honorable Court on 14 August 2017. In my view this creates the impression that I had investigated a complaint made to the then National Director that the police officers involved with the death of Mr Timol be charged with murder and had advised Mr Cajee that my investigation had produced "negative results". This is not a true reflection of my involvement in the matter.

4.

I was not aware of a complaint made to the National Director but was approached directly by Mr Cajee who informed me that the daughter of Sgt. Rodrigues had approached a journalist Ivor Powell and informed him that her father had told her how the deceased was murdered. I immediately reported the allegations to the DSO ("The Scorpions") A Chief Investigating Officer was sent to interview Mr Powell and establish whether Sgt. Rodrigues could be charged with murder. I was informed that after

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investigation no basis for the allegations could be established. Mr Powell was emphatic that no such approach had been made to him.

5.

On 25 February 2004 I wrote to Mr Cajee informing him that this investigation had produced negative results. I did however invite him to supply me with additional information so that the case could be reconsidered. I did not however hear anything further from him. I attach a copy of my letter addressed to him as RCM1.

6.

Shortly thereafter, I was assigned a very lengthy prosecution relating to an international nuclear weapons syndicate and was no longer involved in TRC cases.

7.

I have had sight of the letter dated 29 November 2006 entitled "Report of the progress made by the Task Team on TRC Cases" which was attached as Annexure "A" to Mr Cajee's affidavit. I was not the author of the report. As the report clearly indicates it related to the work of a task team. I was not a member of this task team. As the report also reflects it was the decision of this team to close the matter relating to the deceased.

8.

At a later stage I was again instructed to deal with TRC cases. The investigation of these matters was now the responsibility of the DPCI. In late 2015 I looked into this matter and was of the view that it should be investigated. I therefore requested the DPCI to open an investigation into the matter.

9.

I downloaded the copy of the inquest record which was held by Wits and requested the police to establish the whereabouts of the implicated parties, witnesses and medical experts. I also contacted Mr Piers Pigou who had dealt with the matter at the TRC. I also requested a researcher to obtain the detention files of persons who were detained at the same time as the deceased. Copies of my communications are attached hereto as RCM2 and RCM3.

10.

I was however assigned a very urgent matter relating to international terrorism and plans to carry out terrorist attacks in South Africa. I briefed Adv. Pretorius SC on what work had been commenced on.

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the matter of the deceased. He informed me that he would monitor the police investigation and later advised me that he had decided that it would be appropriate to hold a formal inquest.

_____

DEPONENT

Thus signed and sworn to at _____ on this _____ day of _____ 2017

The Deponent having knowledge that he knows and understands the contents of this affidavits, that it is both true and correct to the best of his knowledge and belief, that he has no objection to taking the prescribed oath and that the prescribed oath would be binding on his conscience.

_____

COMMISSIONER OF OATHS

FULL NAME: _____

BUSINESS ADDRESS:

_____

_____

_____

_____

CAPACITY: _____

AREA: _____

LC NGI

RC7/12

/Z56 forms

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INTERNAL MEMORANDUM

TO: DR MS RAMAITE

FROM: ADV AR ACKERMANN SC

SUBJECT: AUDIT OF CASES EMANATING FROM TRC PROCESS

DATE: 24 OCTOBER 2006

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1. HISTORICAL BACKGROUND

1.1 After the closure of the Goldstone Commission in 1993/94 the government of the day decided that its work in investigating human rights abuses relating to conflicts of the past should continue under the supervision of the then Attorney General of Pretoria, Dr J D'Oliveira. A team of the South African Police Service was seconded to his office to conduct the necessary investigations.

1.2 The team was divided into two groups. One focusing on offences committed by security force members and the other group on offences committed by Liberation Movements and the Right Wing.

1.3 This latter team comprised of Director Nel and Senior Superintendent Britz.

1.4 The Attorney General decided that Deputy Attorney General Fick would supervise all the investigations conducted by the two police officers while he would deal with cases involving security force members.

1.5 On 7 November 1996 the National Commissioner at the request

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of Dr D'Oliveira instructed all his Provincial Commissioners to submit all outstanding and unsolved cases pertaining to the entire political spectrum of the conflicts of the past to Dr J D'Oliveira's office. Such instruction also related to cases where not all the accused had been prosecuted.

1.6 With the appointment of the NDPP the cases dealt with by D'Oliveira were transferred to his office while Fick continued to deal with the cases originally allocated to him i.e. the Liberation Movement cases. He continued to be assisted by the SAPS members, Nel and Britz. Their contracts were routinely extended by SAPS.

1.7 The NDPP however instructed Fick not to institute any prosecutions without his authorisation and no prosecutions were therefore instituted.

1.8 With the creation of the DSO in 2001 the cases with the NDPP were transferred to the DSO Head Quarters. Fick however continued with his cases assisted by the two police officers.

No prosecutions were instituted because the TRC's final report and the President's response thereto were outstanding.

1.10 With the creation of the PCLU in March 2003, the NDPP assigned all TRC matters to it after the TRC had tabled its final report and the President had mandated the NDPP to institute prosecutions where appropriate, arising from the TRC process.

1.11 The PCLU was not an investigative agency and was therefore dependant on SAPS and the DSO for investigations. The PCLU reports monthly to a Deputy National Director and the NDPP approved all its decisions to institute TRC prosecutions and, in certain high profile cases, certain decisions not to prosecute.

1.12 The DSO policy guidelines for prosecutions in these matters were accepted by the PCLU. In essence, these were to the effect that prosecutions should only be instituted for serious human rights abuses, based on reliable evidence while accepting that humanitarian factors and the interests of reconciliation could also be taken into consideration.

3 It was decided that Ackermann would take over Fick's cases and Macadam would take over the DSO cases.

1.14 The PCLU conducted an audit of all the cases in both offices.

1.15 In this auditing process it was established that the police officers at Fick's office at the DPP Pretoria had registered 395 police dockets.

1.16 During 2003/2004, Ackermann declined to prosecute in +- 80 of the abovementioned cases.

1.17 Similarly +- 50 cases from the DSO were finalised by Macadam and Ackermann.

1.18 The audit process further identified a small number of cases warranting prosecution which are dealt with hereunder.

1.19 The 395 police dockets which were in the possession of Nel and Britz were returned to SAPS and the NDPP informed Commissioner Tim Williams that these dockets were police property and that the NPA had no interest in them except if SAPS desired prosecutions in which case they could be re-submitted for these purposes. The then Director General of Justice, Mr V Pikoli and other high ranking officials were present when this discussion between the NDPP and Williams took place. As of the date of this memo, no such dockets have been submitted to the NPA for decision.

2. CASES FINALISED IN COURT

2.1 *S v Khwezi Ngoma and Others* (Mhaga)

This matter involved four APLA cadres who attacked Willowvale police station in 1994 resulting in the death of a policeman and another injured. They didn't apply for amnesty. They made representation through their attorneys requesting a withdrawal of the charges but it was rejected and entered into plea bargain and received suspended sentences.

2.2 *S v Aron Tyani & Another* (Mhaga)

The matter relates to the attempted murder and murder of Stembele Zokwe an MK cadre during 1987 and 1988 by the Transkei security police. They were convicted and sentenced to direct terms of imprisonment in 2005.

2.3 *S v Eugéne Terre'blanche* (Ackermann)

In November 2003 the accused pleaded guilty to several charges of terrorism, linked to 1994 pre-election bombings. He was sentenced to 6 years wholly suspended.

2.4 *S v Blani* (Macadam and Ackermann)

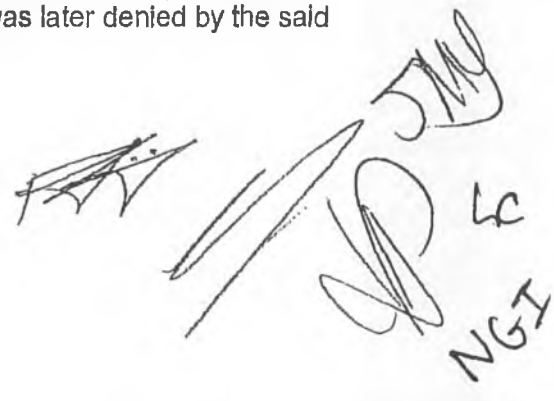
The accused was convicted on two counts of murder in Grahamstown High Court and sentenced to a partially suspended sentence.

3. MATTERS CLOSED BY PCLU

3.1 Death in detention Ahmed Timol

3.1.1 This matter relates to the death of Ahmed Timol who died in police detention on 27 October 1971 during interrogation by the Apartheid Security Police.

3.1.2 There was an allegation that one of the interrogators had confessed to a journalist that Timol had been murdered and that was followed up but was later denied by the said journalist.



3.1.3 The matter was therefore closed.

3.2 Death in detention of Steve Biko

The matter prescribed in 1997 as evidence only proves culpable homicide which according to our criminal law prescribes after 20 years.

3.3 Carl Niehaus (Macadam)

3.3.1 Victim tortured during detention.

3.3.2 Victim does not desire prosecution.

3.3.3 File closed.

3.4 Skoulides (Macadam)

3.4.1 Victim's sister alleged that her brother had been framed for a murder committed by the Security Forces.

3.4.2 No evidence to substantiate this claim.

3.4.3 File closed.

3.5 Nelson Sithole (Macadam)

Closed – no evidence as to perpetrators.

3.6 Pro Jack (Macadam)

Closed – no reliable evidence as to perpetrators.

3.7 AM Zulu (Macadam)

No admissible evidence arising from TRC.

3.8 Bult (Macadam)

Offence not serious – assault common.

3.9 Castro Khumalo (Macadam)

Matter was referred to Missing Persons' Task Team.

3.10 Winnie Mandela (Macadam)

No reliable evidence.

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3.11 Ermelo Black Cats (Macadam)

No reliable evidence to prosecute IFP members in Mpumalanga linked to this incident.

3.12 Chadwick (Macadam)

Extradition request withdrawn because of a lack of evidence.

3.13 Anton Lubowski (Macadam)

No evidence.

3.14 Ciskei *coup d'etat* (Macadam)

No evidence.

3.15 General Basie Smit (Macadam)

No evidence.

3.16 *S v Bongani Wana* (Mhaga)

3.16.1 This matter relates to the murder of Zolile Sangoni, Zonwabele Mayapi and an MK cadre Gift Mgibe who were killed by Vlakplaas operatives in 1988 in Umtata.

3.16.2 Mr Wana had applied for amnesty but later withdrew his application.

3.16.3 After a careful perusal of the TRC transcript and consulting with all relevant potential witnesses it became clear that there was no sufficient evidence upon which prosecution of Mr Wana can be instituted.

3.16.4 The matter was then closed.

3.17 Representation by Mr SM Mavuya (Mhaga)

3.17.1 Mr Mavuya claimed to have been an informer during 1984 and was applying for amnesty and requested protection from members of his community.

3.17.2 We however informed him that we have no such authority and that TRC committee has disbanded. His activity did not amount to any criminal offence thus we could not even consider it in terms of prosecution guidelines.

3.18 Representation by Mpho Masemola (Mhaga)

3.18.1 This matter arose from a representation by Mr Masemola, a former ANC who claimed to have been arrested and subsequently tortured in 1985.

3.18.2 He also claimed that in 1991 members of the Counter Insurgency Unit shot at him

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during a march he had organised. We however informed him that in as far as the torture in 1985 the matter has since prescribed and in respect of 1991 shooting there was no evidence to support his allegations as he bases his accusations on assumptions.

3.19 Representation by Mr N Dlamini (Mhaga)

3.19.1 Mr Dlamini had made allegations against Swaziland police whom he claimed to have sold out some MK cadres during 1985 to 1986. Unfortunately he could not supply us with any proof apart from a newspaper article from Times of Swaziland which we did not receive.

3.19.2 Apart from lack of substance in his allegations the NPA does not have jurisdiction in crime committed in Swaziland. He could not indicate to us his interest in the matter when requested to do so.

3.20 Thabo Armando Sithole (Ackermann)

3.20.1 The mother of Thabo requested the NPA to investigate death of his son who died in police custody after being arrested for robbery in 1976.

3.20.2 They received a report from Greytown police that he committed suicide by hanging himself.

3.20.3 The PCLU could not find any records of the inquest and the police in Greytown police station could not assist us as they could not find any records of Thabo though they remember that he was indeed detained there. The PCLU therefore decided to close the file as there was no further action contemplated

3.21 Murder of Michael Mcetywa (Mhaga)

3.21.1 The matter arises from a representation by Zolile Mcetywa who is the son of the deceased who was an ANC chairperson in Pongola and murdered in 1993.

3.21.2 A man called Mavuso is currently serving 25 years for the murder.

3.21.3 During his amnesty application which was refused, he implicated a number of IFP leaders.

3.21.4 The family of the deceased requested the PCLU to consider prosecution of the implicated IFP leaders.

3.21.5 After reading various documents and consulting with Mavuso it transpired that he is the only witness who can be used but he demanded that the NPA secures his release before he can testify against the IFP leaders.

3.21.6 Apart from his evidence there was nothing to corroborate him. We therefore closed the file as there was no further action contemplated.

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3.22 Smit murders (Dr Pretorius)

3.22.1 Perpetrators all deceased except one suspect who apparently lives in Australia.

3.22.2 Insufficient evidence to apply for extradition.

3.22.3 Matter closed.

3.23 Refusal of amnesty to the President and other high-ranking ANC officials

No evidence that specific crimes had been committed, which attracted personal criminal liability could be found. Consequently, the case was closed.

3.24 IFP Hit Squads (allegations of Luthuli Mbambo and Mkhize)

No reliable evidence upon which to overturn the decision of the DPP: KZN not to prosecute.

3.25 Bombing of Early Learning Centre and other Western Cape CCB activities (Macadam)

The perpetrators were all granted indemnity in terms of the Indemnity Act or in terms of section 204 of the *Criminal Procedure Act, 1977 (Act 51 of 1977)*.

3.26 Plus-minus 80 cases against members of the Liberation Movement (Ackermann)

All these cases were investigated by SAPS and were all closed.

4. POTENTIAL PROSECUTIONS IDENTIFIED BY PCLU

4.1 *S v Otto & 2 Others* (poisoning of Rev. Chikane) (Ackermann)

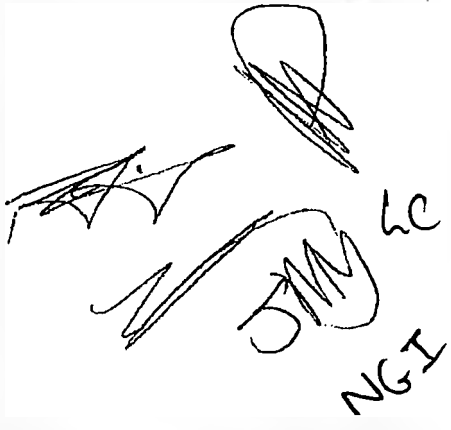
4.1.1 Indictment already drafted in 2004 – prosecution was put on hold pending approval of guidelines.

4.1.2 In February 2006, NDPP authorized prosecution.

4.1.3 In terms of the guidelines, representations were received from the accused which were considered by the NDPP.

4.1.4 On 19 September 2006, Ackermann was directed to proceed with the prosecution against the accused.

4.1.5 Beginning of October 2006, it was decided to put prosecution on hold, pending the obtaining of a legal opinion on whether the accused have received indemnity or not in terms of the Indemnity Act, 1990.



4.2 Pebco 3 (Ackermann)

4.2.1 In February 2004, the three accused were charged in the High Court on three counts of kidnapping and murder.

4.2.2 The matter is currently on review.

4.2.3 Next court appearance of accused is August 2007.

4.3 Cradock 4 (Ackermann)

4.3.1 Potential prosecution.

4.3.2 Legal obstacles.

4.3.3 Extensive investigations required.

4.4 *S v Botha and Others* (kidnapping of Ntombi Kubheka) (Ackermann)

4.4.1 Priscilla Ntombi Kubheka was an MK operative who lived in KwaMashu township in Durban.

4.4.2 She was kidnapped by Askaris, interrogated, tortured and subsequently killed by members of the Security Branch C1 Unit in 1987.

4.4.3 Seven members applied for amnesty for kidnapping, killing and disposing of the body of Kubheka. Only Baker and Radebe received amnesty while Botha, Du Preez, Van der Merwe and Visagie were refused. Docket in possession of PCLU.

4.5 S *v Coetzee and Others* (Nokuthula Simelane Kidnapping) (Ackermann)

4.5.1 Nokuthula Simelane was an underground MK operative acting as a courier and had been a major communication link between an MK base in Swaziland and SA.

4.5.2 She disappeared in 1983 after being sent on a mission in SA .

4.5.3 Docket in possession of PCLU.

4.6 Cosas Four (Ackermann)

4.6.1 The matter relates to the killing of Eustice Bimbo Madikela, Ntshingo Mataboge, Fanyana Nhlapo and attempted killing of Zandisile Musi (collectively referred to as the Cosas Four) in an explosion at Krugersdorp on or about 15 February 1982..

4.6.2 The four officers and an Askari who were involved in the incident applied for amnesty and were refused.

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4.6.3 The PCLU is not in possession of the docket.

4.7 Murder of Askari Strongman Sambo

The matter had been identified as a potential prosecution case but a decision has already been made by the DPP in Pretoria not to prosecute.

4.8 Matter of SAP General Engelbrecht

The matter had also been identified for prosecution but a decision was made by the DPP in Pretoria not to prosecute General Engelbrecht.

4.9 Death of George Mashele and Lilian Magosha (Mhaga)

4.9.1 This office received representation from Joseph Yende who claims to be the son of Lillian and brother of George.

4.9.2 George and his mother died during a raid by the SAP at his home in July 1992.

4.9.3 According to the police statements and post-mortem reports, the two died as a result of hand grenade explosion.

4.9.4 There is no evidence to rebut that version but Yende claims that there are witnesses who claim to have seen otherwise.

4.9.5 The PCLU is currently arranging consultations with them to verify these allegations. The family was compensated by the TRC for the incident.

4.10 Nicolas Boykie Thlapi (Dissappearance in police custody) (Mhaga)

4.10.1 ANC branch in Klerksdorp submitted a memorandum demanding investigation into the disappearance of Boykie in March 1986 after being arrested by police with other members of Ikakgeng Youth Congress.

4.10.2 The matter is currently investigated by Capt Mathi of Klerksdorp serious and Violent Crimes Unit.

4.11 Lethlapa Mphahlele (Heidelberg Tavern and St James Massacre)

4.11.1 A representation was received by PCLU from Democratic Alliance and the father of Lynn Fourie who was killed during the attack.

4.11.2 A number of APLA cadres involved in the attack applied for and received amnesty after serving sentences. Mr Mphahlele applied for amnesty but later failed to appear before the commission resulting in his application refused in his absence.

4.11.3 As soon as an investigator is appointed for the case a decision will be made on whether

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to prosecute or not.

4.12 Bathandwa Ndondo (Murder by Vlakplaas operatives in 1985) (Ackermann)

4.12.1 Batandwa Ndondo was an MK underground cadre operating in Transkei after his expulsion from the University of Transkei for his political involvement.

4.12.2 He was wanted by the Security police in Transkei and the Vlakplaas operatives and subsequently murdered in 1985. We received a representation from Adv Dumisa Ntsebeza requesting prosecution of the police officer who did not receive amnesty.

4.12.3 A decision had been made by the former NDPP not to prosecute him, we are therefore still considering the request as this will require overturning the previous decision if we decide to prosecute.

4.13 Moss Morudu (kidnapping and murder) 1987

4.13.1 Moss Morudu was a Cosas member in Mamelodi and had been politically active during 1986.

4.13.2 He was alleged to be a member of the underground unit of Umkhonto Wesizwe under the command of Obet Masango.

4.13.3 He disappeared from his home during October 1986 after the Security police had been looking for him in connection with a landmine explosion.

4.13.4 He was kidnapped by three security operatives under the pretence that they were MK cadres taking him to exile for military training. He was never seen again by his family.

4.13.5 The three officers who kidnapped Moss received amnesty for kidnapping and others did not apply for amnesty. As soon as an investigator is appointed a decision will be made on whether to prosecute or not.

4.14 Kidnapping and murder of Betty Boom, Mashiya and Selamane

The perpetrators were refused amnesty by the TRC.

4.15 Kidnapping and murder of Mbulelo Ngono

The perpetrators were refused amnesty by the TRC

4.16 Gaberone raid

The perpetrators were refused amnesty by the TRC

4.17 Maseru raid (General Johan van der Merwe implicated)

The perpetrators were refused amnesty by the TRC

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4.18 Samora Machel (Dr Pretorius)

This matter was reopened in 2005.

4.19 Philip Powell (Macadam/Ackermann)

4.19.1 NDPP directed that the PCLU apply for the extradition of Powell.

4.19.2 However, accused indicated that he wished to make representations.

4.19.3 Representations are awaited.

4.20 Victoria Mxenge (Macadam)

Allegations of an amnesty applicant must be investigated.

4.21 George Wauschope (Macadam)

4.21.1 The accused is a former leader of AZAPO. He was indicted to stand trial in the Johannesburg High Court in 1989 on charges of murder and attempted murder.

4.21.2 He absconded and took up exile in Zimbabwe.

4.21.3 The TRC rejected his application for amnesty, because he denied that he had admitted any crime.

4.21.4 In 2003, representations were made on his behalf to Minister Maduna to withdraw the charges.

4.21.5 The DSO evaluated the case in order to enable the Minister to respond.

4.21.6 The victims, who were also the eyewitnesses, were traced and they confirmed their allegations against the accused and also requested that he be prosecuted.

4.21.7 On their version, it would appear that the accused shot the deceased in the mistaken belief that he was a member of COSAS and in the process wounded an innocent bystander.

4.21.8 The former NDPP and the Minister decided that the prosecution should proceed.

4.21.9 The case was referred to the DPP: Johannesburg, who has in turn requested SAPS to conduct investigations.

4.21.10 These investigations are in progress.

4.22 Eugéne de Kock

4.22.1 De Kock's legal representative has indicated that he has laid a wide ranging number of charges with SAPS relating to matters which were not put before the TRC or in respect of which false testimony was presented to the TRC.

4.22.2 These allegations must be considered insofar as they are relevant to the TRC processes.

ADV AR ACKERMANN SC

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RCM 13

ANNEXURE "B"

REPUBLIC OF SOUTH AFRICA

INDEMNITY BILL

(Second Draft)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B - 2003]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP VRYWARING

(Tweede Konsep)

(MINISTER VIR JUSTISIE EN STAATKUNIDGE ONTWIKKELING)

[W - 2003]

010902AE

BILL

To provide for the granting of indemnity by the President to persons who make full disclosure of all relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the period from 1 March 1960 to the cut-off date; for the said purpose to establish a Committee on Indemnity to consider and investigate applications for indemnity and to make recommendations to the President; and to provide for matters connected therewith.

PREAMBLE

SINCE the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provided for a law to be adopted by Parliament in terms of which amnesty should be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past;

AND SINCE that law was adopted and the mechanisms and procedures established by that law have run their course and have been concluded;

AND SINCE there remains a need for reconciliation and reconstruction as contemplated in that Constitution;

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TERMS OF REFERECE OF THE AMNESTY TASK TEAM

The Task Team is to consider and report on the following:

1. What criteria does the National Prosecuting Authority apply in deciding on current and impending prosecution of cases flowing from the conflict of the past.

2. The formulation of guidelines that will inform current, impending and future prosecution of cases flowing from the conflict of the past.

3. Bearing the above-mentioned guidelines in mind, whether legislative enactments are required.

4. Whether any of the two Bills that have already been formulated can be proceeded with, bearing in mind the views of our intelligence agencies.

DRAFT

Leon Robinson
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RCM 15

AMNESTY TASK TEAM

FURTHER REPORT

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FURTHER REPORT: AMNESTY TASK TEAM

1. **Background Information**

1.1 On 3 March 2004 the Amnesty Task Team submitted a Report to a Heads of Department Forum for consideration.

1.2 The Heads of Department discussed the Report with members of the Task Team, whereafter they deliberated the Task Team's proposals and recommendations *in camera*. Following these deliberations, the Heads of Department indicated that they prefer the Task Team's recommendations relating to the establishment of a Departmental Task Team (hereinafter referred to as Option 1). They, however, requested the Task Team to give further consideration to the following aspects relating to Option 1:

(a) Parallel structures in order to assist the proposed Departmental Task Team, are not acceptable. In performing its functions the proposed Task Team must make use of existing structures.

(b) Consider whether there is a way in which private prosecution and civil litigation can be eliminated if the National Director of Public Prosecutions decides not to prosecute? Investigate the possibility and desirability of legislation, if required.

(c) The proposed Task Team should work under the direct supervision of an Inter-Ministerial Committee.

(d) It is important that the proposed Task Team, the Inter-Ministerial Committee and the National Director, in performing their functions and reaching decisions, should take national interest into account.

(e) Advise the Forum on whether a person who is aggrieved by a decision of the National Director may approach the International Criminal Court.

(f) Advise the Forum on a time line for the completion of the work of the proposed Task Team. Twelve months was mentioned as a possibility.

2. **Discussion**

2.1 **The establishment of a Departmental Task Team**

Before discussing the above aspects, the Task Team once again considered the question whether legislation is required to establish the proposed Departmental Task Team. The Task Team met with two senior State Law Advisers of the Office of the Chief State Law Adviser. They confirmed the Task Team's conclusion in paragraph 3.4 of its Report, namely, that the recommendations pertaining to the establishment of a Departmental Task Team is an administrative process and does not require any legislation. They, however, recommended that the process and the establishment of the proposed Task Team be put into writing and suggested that the parties commit

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themselves to the process in a Memorandum of Understanding. The Task Team supports this proposal of the State Law Advisers

2.2 **Ad paragraph 1.2(a): The involvement of existing structures**

The Task Team supports this proposal of the Forum. However, in order to ensure the effective cooperation of such existing structures it is important that the existing structures, prior to the implementation of the proposed structure, commit themselves and give their full support and cooperation to the proposed process. It is proposed that such existing structures should be parties to the Memorandum of Understanding contemplated in paragraph 2.1 *supra*.

2.3 **Ad paragraph 1.2(b): Consider the possibility and desirability of eliminating private prosecution and civil litigation in cases of no prosecution**

2.3.1 The question whether it is possible or desirable to eliminate private prosecution and civil litigation elicited much debate within the Task Team. The Task Team obtained a written legal opinion from Adv JH Bruwer (attached hereto as Annexure "A") and also discussed the question with the two State Law Advisers referred to in paragraph 2.1 above. They are all in agreement that any legislation eliminating private prosecution and civil litigation will at least affect a person's right to equality (section 9(1) of the Constitution) and the right of access to courts (section 34). They also indicated that it is doubtful whether the motivation for such legislation would meet the requirements of section 36 (limitation clause) of the Constitution, and in case of the enactment of such legislation, an amendment of the Constitution would be required.

2.3.2 The State Law Advisers referred to in paragraph 2.1 above, indicated that they would advise against the enactment of any further legislation, since it would limit the rights of the victims or other interested parties. They further agreed with the Task Team that the proposed legislation, eliminating private prosecution and civil litigation, might be seen as a further amnesty process, which would be inconsistent with the Heads of the Department's view that Option 2 (a further amnesty process) is not an option at all.

2.3.3 In the final instance we wish to draw the Forum's attention to an article in *Rapport* of 7 March 2004 relating to the question of amnesty. During an interview with Archbishop Desmond Tutu, he expressed the view that every person who has not received amnesty through the TRC-process may be prosecuted and any new agreement to stop prosecutions is undesirable, since it will, among others, have the effect of negating the amnesty process of the TRC.

2.3.4 In the light of the above, the Task Team is of the view that private prosecution and civil litigation can only be eliminated by way of legislation and a Constitutional amendment. The Task Team is of the view that such a step would not be desirable.

2.4 **Ad paragraph 2.1(c): The establishment of an Inter-Ministerial Committee**

The Task Team supports this proposal. However, it wishes to point out that the State Law Advisers are of the view that the establishment of such a further structure may constitute a cumbersome process and increase the possibility of conflicting views

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between the various role-players and structures. Furthermore, they pointed out that the process might be seen as an attempt by the Government to put undue pressure on the National Director of Public Prosecutions in reaching an independent decision.

2.5 **Ad paragraph 2.1(d): National interest should be the paramount objective**

The Task Team wholeheartedly agrees with this viewpoint of the Forum.

2.6 **Ad paragraph 2.1(e): The involvement of the International Criminal Court**

This question was also referred to Adv JH Bruwer for his advice. In paragraph 3 of Annexure "A" he comes to the conclusion that, taking into account the provisions of section 5(1), read with section 5(6) and the definitions of the relevant crimes of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), "it is not inconceivable that a complainant who is prohibited by legislation contemplated in paragraph 1(a) from instituting a private prosecution in the national court may approach the International Criminal Court for relief". The Task Team agrees with this viewpoint.

2.7 **Ad paragraph 2.1(e): Setting a time line for the Task Team to complete its work**

The Task Team is hesitant to propose a specific time line at the stage when the process is to be announced. The setting of a time line in respect of the TRC process led to expectations and the subsequent extension of the TRC process, although justified and unavoidable, led to fierce criticism. It is proposed that the President should rather indicate that it is expected that the Task Team will finalise its work within a specified period and that such period will be determined taking into account the extent to which its objectives are achieved.

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MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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Adv Vusi Pikoli
National Director of Public Prosecutions
Private Bag X752
PRETORIA
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8 February 2007

Dear Adv Pikoli

RE: TRC MATTERS

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

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

I trust that you find the above in order.

With warm regards

MRS B S MABANDLA
MINISTER

NATIONAL DIRECTOR
9/2/07
NATIONAL PROSECUTING AUTHORITY

COPY

RCM 17

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

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

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to—

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

(b) inform the Minister about the problems the NPA is experiencing in the implementation of this policy and guidelines; and

(b) propose a way forward.

2. BACKGROUND INFORMATION

2.1 Background relating to initial proposals

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

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

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

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

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

"(a) *Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard.*

(b) To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—

(i) the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;

(ii) the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision.". (Emphasis added)

2.2 Background relating to Amended Prosecution Policy

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

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

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

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

3. IMPORTANT FEATURES OF AMENDED PROSECUTION POLICY

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

(a) The Amended Prosecution Policy emanates from and is based on the statement of President Thabo Mbeki to the National Houses of Parliament and the Nation, on 15 April 2003, when he gave Government's response to the final report of the Truth and Reconciliation Commission (TRC).

(b) The President, among others, stated that the question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.[2]

(c) The President further stated that as part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearth the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.[3]

(d) It is important to note that the President made it clear that—

[1] Attached hereto as Annexure "A".
[2] See paragraph A.1(b) of Appendix A to Amended Prosecution Policy.
[3] See paragraph A.1(c) and (d) of Appendix A.

(i) the decision to be taken by the NPA (whether to prosecute or not) should be in accordance with the normal legal process;

(ii) in order to reach a well-considered decision, the NPA should work together with the Intelligence Agencies, which include the NIA and the SAPS;

(iii) the agreements entered into between the NPA and those persons who are prepared to unearth the truth of the conflicts of the past, should be in accordance with standard and normal execution of justice;

(iv) such agreements should be in accordance with the NPA's prosecution mandate; and

(v) such agreements should be in accordance with existing legislation.

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

(a) The *dicta* of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid. (See *The State v Wouter Basson CCT 30/03.*).[4]

(b) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).

(c) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.

(d) The existing prosecuting policy and general directives or guidelines issued by the National Director to assist prosecutors in arriving at a decision to prosecute or not.

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

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

(a) the *Priority Crimes Litigation Unit* (PCLU) in the Office of the National Director shall be responsible for overseeing investigations and instituting prosecutions in all such matters;

(b) the PCLU **"shall be assisted in the execution of its duties"** by a senior designated official from the following State departments or other components of the NPA:

(i) The National Intelligence Agency.

(ii) The Detective Division of the South African Police Service.

(iii) The Department of Justice & Constitutional Development.

(iv) The Directorate of Special Operations.

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

(a) the decision whether to prosecute or not vests in the prosecuting authority and in terms of the Amended Prosecution Policy, in particular, the National Director;

(b) such decision must be exercised in accordance with the Constitution and existing legislation;

(c) the abovementioned State Departments only have a role to play insofar as they must assist the NPA in the investigation process and the gathering of information so as to assist the NPA in reaching a well-considered decision whether to prosecute or not.

4. PROBLEMS RELATING TO IMPLEMENTATION OF AMENDED PROSECUTION POLICY

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

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

4.2 During the middle of 2006, a meeting was held at the Office of the Presidency to attend to the abovementioned problems. The National Commissioner, the National Director, the Directors-General of Justice and NIA, and Mr Jafta of the Presidency, attended this meeting. It was agreed that a Working Committee should be established. This recommendation was taken to the Ministers in the Cluster. At a subsequent meeting attended by the Minister for Safety and Security, the Minister of Social Development and Minister Thoko Didiza (as Acting Minister for Justice and Constitutional Development), it was agreed that such Working Committee (now referred to as a Task Team), should be established to assist the NPA.

4.3 Following the above agreement, the National Director called a meeting at the Office of the NPA. The Heads of Department as well as representatives of all relevant State Departments to serve on the Task Team were invited. All Departments were represented at this meeting. At this meeting—

(a) the terms of reference of the Task Team were explained and agreed to;

(b) it was agreed that Dr Silas Ramaite (Deputy National Director of Public Prosecutions) would chair the meetings of the Task Team.

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

4.4.1 Subsequently, on 6 December 2006, the Office of the PCLU received the e-mail marked "B" from Dr PC Jacobs of the SAPS. Furthermore, the National Director received letters from the National Commissioner and the Director-General: NIA, dated 6 February 2007 and 8 February 2007, respectively. (Attached hereto as **Annexures "C"** and **"D"**, respectively)

4.4.2 According to Dr Jacobs, his understanding is that the Task Team must submit a final recommendation to a Committee of Directors-General in respect of each case. He also points out that the National Commissioner is of the view that this procedure should be followed in respect of each investigation that has been finalised. However, he does not elaborate on the role of the Committee of Directors-General.

4.4.3 In his letter dated 6 February 2007, the National Commissioner points out that he has been briefed regarding the meeting of the "Task Team set up in terms of the Cabinet guidelines on the outstanding Truth and Reconciliation Commission (TRC) matters". According to the National Commissioner his understanding is that the officials designated on the Task Team "will provide recommendations to the Directors-General who will, as a collective, advise the National Prosecuting Authority as the decision maker of prosecutions". The Director-General: NIA

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

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

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

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

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

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

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

5. CONCLUSION AND WAY FORWARD

5.1 There is clearly a misunderstanding regarding the role of the Task Team and the role of the relevant State Departments referred to in the Amended Prosecution Policy. In accordance with the approved Amended Prosecution Policy[5], the NPA is of the view that the duty of the Task Team or the relevant State Departments is to assist the NPA "in the execution of its duties". However, nothing prevents such a Task Team or Departments (whether individually or collectively) to make recommendations to the National Director, provided that the National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a Task Team or relevant Department. Such a procedure would be unconstitutional.

[5] See paragraph B.6 of Appendix A.

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

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

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

15-02-2007

Adv VP Pikoli
National Director of
Public Prosecutions

Ms BS Mabandla, MP
Minister for Justice and
Constitutional Development

Report for the Office of the National Director of Public Prosecutions

Since the meeting with the above office in early February 1999, the Commission has begun a process of establishing mechanisms for identifying potential cases. The following is a report on progress thus far.

A: Categories of violations

In discussing possible prosecutions, we have identified a range of categories and/or issues around which we believe prosecutions can be considered. We would recommend that there be some discussion around these categories to determine viability as well as prioritisation.

1. **Torture:**
   Much of the Commission's data on torture is to be found in HRV statements. However, the 'private' nature of torture and absence of witnesses frequently makes corroboration difficult. Bearing this in mind, the Commission has begun to draw up an initial list of all security force members implicated in torturing more than three victims. This list is extensive and includes many rural cases.

   Another possible approach is to look at amnesty applications and hearings where torture was conceded and to identify the names of co-perpetrators who have not applied for amnesty. Such a list could then be checked against our HRV statements for further evidence. This figure would considerably reduce the potential number of cases. It would however be more difficult to extract as few security force members applied specifically for torture. Rather, evidence of torture often only emerges during amnesty hearings and is thus embedded in transcripts rather than on the TRC database.

2. **Post-Caprivi hitsquads:**
   The Commission has a fairly rich seam of data and information on this category. It is also one which we believe would be relatively easy to proceed on immediately given that at least one case was previously prepared by the ITU but not prosecuted [also see KZN report].

3. **Cases involving a cover-up by the security forces:**
   There are a number of potential cases in KZN including the cover-up by senior policemen of the Trust Feeds massacre. Another potential case would be the cover up of the Ribeiro killings by senior military personnel, but this may already be an AG case.

4. **Destruction of Documents**
   The Commission conducted a lengthy enquiry and investigation, assisted by the National Archives and the Human Rights Commission, into the destruction of literally scores of tons of documentation relating to state security in the early 1990s. Much of this destruction, authorised by the former government and overseen by the National Intelligence Service, clearly constituted unlawful destruction. In the course of this investigation, much documentation was collected and an overall report was drawn up, as well as comprehensive reports dealing with the SAP, the SADF and the NIS. Verne

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Harris of the National Archives was centrally involved in this investigation and would be prepared to provide assistance.

5. **Gun-running**
The Commission conducted an investigation into gun-running and received several amnesty applications in this regard. While the investigation was inconclusive, a comprehensive report and other documentation is available. This area is seen to be significant in its capacity to begin to unravel networks involved in fomenting violence in the 1990s.

6. **Assassinations**
The Commission has received amnesty applications in respect of several of the high profile assassinations. Not all implicated persons applied in all of these cases and thus possible prosecutions could arise. In other cases such as the assassination of Joe Gqabi in Zimbabwe and Victoria Mxenge, no amnesty applications were received. We are currently assembling information on the Gqabi case.

7. **Winnie Madikizela-Mandela**
Extensive documentation has been collected around Mrs Madikizela-Mandela and the MUFC and a comprehensive investigative report was compiled. [We need to establish whether this is currently being pursued by the AG's office]

8. **Samora Machel**
Also a possible AG matter.

9. **Target identification**
The Commission investigated the process whereby the security forces identified targets the purpose of which included, inter alia, physical elimination. This included a range of structures, sometimes involving more than one arm of the security forces/ intelligence structures. Such evidence is primarily contained in amnesty applications and section 29 hearings. While there was insufficient time to conclude this investigation, there is evidence regarding the establishment in the mid-1980s of a target identification centre within, firstly military intelligence and subsequently the project section of Special Forces.

However, much of the evidence given to the TRC, while acknowledging the existence and purpose of such target identification groups, refers to planned but subsequently cancelled operations. In other words the gaps in our evidence are in directly linking specific processes of target identification with specific killings. One possible exception would be cross-border raids which are discussed below.

10. **Cross-border raids**
While difficulties clearly exist in bringing charges for the execution of cross-border activities, there are no doubt possibilities of conspiracy to murder charges relating to the planning of such operations, which invariably took place on SA soil.

The Commission did receive several amnesty applications relating to cross border activities from former Security Branch members, but virtually none from the SADF, although SADF members are cited in a number of the Security Branch applications.

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Clearly, the possibilities of extradition to a large degree influenced the willingness to disclose involvement in such activities and would presumably be a factor to be considered.

B: Other Regional Cases

In addition to the above, we have asked personnel in regions to identify possible cases for prosecution. This process is logistically difficult owing to the fact that regional offices have closed and documentation has been transferred to the national office in Cape Town. Further, regional staff except for those servicing the Amnesty Committee are no longer in the employ of the Commission. Despite this, we have received some feedback:

1. **KZN**
The KZN region has begun to identify cases where people who did not apply for amnesty have been implicated. The KZN region also has a number of HRV statements implicating perpetrators where such information was not previously disclosed during investigations due to perceived police partiality.

This is a mammoth task and needs to weighed up in relation to:

- The likely unwillingness, given the current climate in KZN, of amnesty applicants to testify against their leadership
- The capacity of Chris McAdam's office to deal with new cases considering his involvement in Richmond;
- The mooted Commission of Inquiry into political violence in KZN.

Nonetheless, some preliminary work has been done and a report is attached.

2. **Eastern Cape**
A former researcher in this region has been approached to identify potential cases. Her report is attached and deals primarily with cases in East London and the western part of the Eastern Cape. A further report is awaited dealing with the eastern side of the Eastern Cape (primarily Ciskei and Transkei regions).

It should be noted that the list of cases drawn up here differs from the KZN one in the sense that it takes as its starting point HRV statements where specific concerns were raised by deponents regarding the failure of the criminal justice system in investigating and successfully prosecuting such cases. Given pressure on resources, a policy of low level corroboration was adopted for most HRV cases and thus most of such cases were not comprehensively investigated by the Commission. This would mean that such cases would still require extensive ground work and investigation. However, such cases may well be important in ensuring that justice is seen to be done in cases that are not well known and do not involve profiled people.

There is a need for some discussion around such issues before proceeding as a different and lengthier modus operandi is required to identify such cases more broadly.

3. **Western Cape**

A very preliminary list is attached.

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4. **Gauteng**

Former and current investigators have similarly been approached and a report is awaited.

5. **Free State**

The former Orange Free State fell under the Commission's KZN office. There are a number of potential cases here, but given the pressure on time, KZN personnel have requested assurance that some capacity exists (or will be established) to deal with such cases before they proceed.

C: Section 30 notices and S29 investigative enquiries

A preliminary spreadsheet of section 30 notices sent out is available. This list only reflects Section 30 notices sent out during the preparation of the TRC Report and does not include all S30 notices arising from individual HRV statements or those sent out by the Amnesty Committee following an amnesty hearing.

Also available is a table of all Section 29 investigative enquiries that were held, reflecting person, issue and whether amnesty applications were received.

D: Analysis of indemnity and amnesty applicants

We are also currently engaged in a process of identifying whether perpetrators implicated either via HRV statements or in amnesty applications previously applied for indemnity. In this regard our IT department has devised a programme whereby lists of those on the various indemnity lists in the 1990 to 1994 period have been correlated with amnesty data. This spreadsheet is currently being analysed. The IT department are engaged in a similar exercise in relation to HRV data.

E: Further issues

1. It needs to be emphasised that the Commission has very limited resources at present. The Commission itself is in suspension; the remaining HRV component consists of one Commissioner and one researcher; regional offices have closed and documentation transferred to the national office; and the Amnesty Committee is hard-pressed to complete the amnesty process on schedule.

   Further, it needs to be understood that our HRV material is currently archived according to victims and not perpetrators. Similarly, amnesty material is filed according to applicant and information regarding co-perpetrators is thus potentially scattered across numerous files or embedded in transcripts of amnesty hearings. While our database provides an initial tool for identifying cases to which individual perpetrators may be linked, the task of retrieving all statements and documentation is a lengthy and painstaking one.

   Given this, it is suggested that a fairly limited focus is worked out that would enable existing staff to begin feeding cases/ material through, without engaging in what would virtually mean copying the entire TRC archive.

   We further propose that in determining a more limited focus, the resources of the TRC Task of the NDPP is taken into consideration. Thus, for example, if the current capacity in KZN is already stretched, it is questionable as to how productive it would be to involve

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already over-burdened TRC staff in assembling numerous dossiers around KZN cases.

We recommend that a draft plan or framework that prioritises specific categories or regions is drawn up.

2. In view of the extremely limited resources, a line of communication needs to be developed that prevents potential duplication of tasks. Thus for instance, the request forwarded to Advocate Coetzee on 4 March 1999 in many respects duplicates work arising from the meeting in Cape Town.

3. We still urgently require a list of cases already being pursued by the various AG offices.

7 March 1999

LC NGT

Potential Prosecutions: KZN Region

Please note this is just the beginning of a draft list, and the names and incidents are examples

A: Security Branch

1) **Dreyer, JG**
Abduction of Ndluli and Cleophas Ndlovu from Swaziland 1975
Torture of Michael Gumede and Harry Gwala in PMB in 1975 - see amnesty of JD Potgieter
[See section 30 notices]

2) **Myeza, "Spuiker" Vusi Ismael**
Commander of the group of askaris under Andy Taylor.
Killing of Khambule in Kwamashu on 28 May 1982 at shopping centre.
See section 29 hearing

3) ***Buchner, JAC**
1976 Swaziland raid
Affidavit of askari Mdande re Mozambique raid
Early 1981 abduction of Joe Pillay in Swaziland by askaris (see amnesty applications of Dirk Coetzee, Andy Taylor, David Tshikilange)
See also section 30 notices for cross border raids

4) **Viktor, JJ**
1980 attempt to murder Chris Hani in Lesotho (amnesty of Eben Frederick Coetzee)

5) **Robertshaw, CAP**
Abduction of (KZN/FN/176/DN) Sipho Themba Frederick Msomi in March 1984
Torture of Rieaz (Mo) Shaik in June 1985. Yunis Shaik detained and tortured. Brandt Visagie (AM5169/97), Christo Nel (AM6609/97). Police involved in interrogation and torture of Mo were Lt Botha, Lt Robertshaw, Col Coetzee.
29 June 85 - Shirish Soni detained ISA s29 - Father granted restraining order. Lt CAP Robertshaw, Visagie and Col Baker mentioned in affidavits.
24 May 88 - Ficksberg, MK member Steve Bogashu killed, Robertshaw implicated - amnesty and witness statements

6) **Moses Nzimande**
Vlakplaas askari
June 1985 - Ingwavuma, Jameson Ngoloyi Mngomezulu (KZN/NNN/340/EC) Abduction and killing of MK commander from Swaziland. See amnesty applications of Gert Schoon and Vlakplaas members, Van Dyk (AM5013/97) GC Beeslaar, Mngadi, BA Nofomela, De Kock, askari Thapelo Johannes Mbelo, Johannes Koole, and Steve Bosch.

7) **Murder of Victoria Mxenge**
Murder of civil rights lawyer Victoria Mxenge on 1 August 1985. According to a statement by Jimmy Mbane, an askari Thabiso Sphamla, Eric Maluleke, Peggy Hadebe and Samuel went to Durban by car, where they murdered Victoria Mxenge. He alleges that they were paid on their return for the operation. Thabiso told this to Mbane when he was drunk. Also see Pat Hlongwane statement on Malinga in detention in exile and his final demise. See ANC second submission re SB Ntombela

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8) **HJP Botha**
May 1987 murder of Ntombi Khubeka. See amnesty applications.

9) **Const Elliot Mfanozi "Vusi" Ninela**
Murder of MK member Njakazi in Warwick Ave, Durban - see amnesties of Tjaart Fourie and Cloete. MK Mandla and Col Wearing also implicated.

10) **Sgt Mbongonkosi Simon Makhaye**
Involved in the kidnapping of Blessing Ninelo; murder of a person armed with a grenade in Sobantu in 1990; killing of Vula operative Shabalala. Also worked in Port Shepstone and Tongaat - allegedly tasked to kill informant for speaking to TRC - subpoenaed to TRC, but revealed nothing. Now working at Loop Street Police Station.

B: Warlords and Traditional Leaders

1) **South Coast**
Chief Mavundla,
Sgoloza Xolo (deceased but sons still involved in violence)
*Chief Khawula - Hlanzeni area of Umgababa

2) **Magabeni**
Mkhize
Chief Patisizwe Luthuli

3) **Amanzimtoti**
See Vusi Hlengwa (IFP) amnesty

4) **Durban and Surrounds**

Ndwedwe/Sonkombo
Phineas Mfayela and son,
Dladla (AM6599/97),
RB Hlope - Inkatha chairperson for the area (AM4504/96);
Petros Mbongeni Ndlovu

Lindelani
Thomas Mandla Shabalala (currently involved in violence) several amnesties and HRV statements implicating him

Umlazi
SE Shozi (IFP)

Chesterville
Mpanza
Nala, J - SPU training with Vlakplaas askaris

5) **North Coast**

Mandeni/Sundumbili
Owen Nzama (KZP station commander – check amnesties of Caprivi Trainees)
*Chief Mathaba
Mr Cele

hc NGT

Mrs Mbuyazi (Israel Hlongwane)

6) **Ulundi**
Xesibe (relating to Caprivi, Mandleni-Matleng)

7) **Midlands**

Pmb
Velaphi Ndlovu (IFP) Mweli amnesty
Abdul Awetha (IFP) Mweli amnesty

Greytown
Psychology Ndlovu (IFP)

Richmond
Paulos Vezi (IFP)
Mzimela (IFP)
Meeding (SAP)

Ixopo
Chief Robert Mkhize and family (see Mbhele amnesty)
Chief Xhawulengeni Mkhize (deceased but sons still involved in violence in Highflats area)

8) **Nqutu**
Themba Khoza - attack on Chief Molefe's house (check others involved)

C: ANC perpetrators

1. **Bodyguards of Zweli Mkhize**
Amnesty applicants Tobias Ronnie Mbanjwa (AM5967/97) and Sakhamuzi Horale Elvis Ndaba (AM6387/97) were denied amnesty for a killing in Dambuza (PMB)

2. **Killing of IFP leaders**
The Commission undertook an investigation into the alleged killing of 400 IFP leaders. A comprehensive report and extensive documentation and/or references is available.

D: Section 30 notices

Section 30 notices were sent to the following people:

1) **Operation Marion**
Bhengu, S (IFP)
Blaauw, HM Col (SADF)
Botha, L Col (SAP)
Botha, PW (NP)
*Buthelezi, MG Dr (IFP)
Cloete, A Sgt (SADF)
Groenewald, PJ Gen (SADF)
Jacobs, GM Lt-Col (SADF)
Khumalo, MZ (IFP)
Langeni, L Capt (KZP)

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Malan, MA Gen (SADF)
Mathe, SM Gen (KZP)
Mncwango, M (IFP)
More, JR Col (SADF)
Nieuwoudt, JA Col (SADF)
Opperman, J Capt (SADF)
Putter, A Vice-Admiral (SADF)
Smith, SJJ Gen (SAP)
Van Den Berg, MA Col (SADF)
Van der Merwe, J Gen (SAP)
Van Niekerk, CJ Col (SADF)
Van Tonder, CJ Gen (SADF)

2) **Esikhawini - Caprivi**
Biyela, BB (IFP)
*Buthelezi, MG Dr (IFP)
Buthelezi, T (IFP)
Dlamini, DD (amnesty)
Hlongwane, IN (amnesty)
*Langeni, L Capt (KZP)
Luthuli, DW (IFP) (amnesty)
*Khumalo, MZ (IFP)
Mathaba, K (Chief – IFP)
Mathenjwa, N (IFP)
Mbambo, RN (KZP) (amnesty)
Mbuyazi, L Mrs (IFP)
Mbuyazi, S (IFP)
Mkhize, R (IFP)
Mkhize, BG (KZP)
Mchunu, Major (KZP)
Mthethwa, CJ Rev (IFP)
Mthethwa, J (IFP)
Mzimela, CPJ Brig (KZP)
Mzimela, Robert (IFP)
Ndlovu, P (KZP)
Ntombela, D (IFP)
Nyawose, D
Zulu, Prince G (IFP)

3) **Trust Feeds Massacre**
Gabela, J (Inkatha and police agent - refused indemnity as a state witness)
Marx, CP Gen (SAP)
Van den Heever, J Supt (SAP)
Van Zyl, JPR Major (SAP)
Should also include KZP responsible for hiding police suspects at Mlaba Camp - Langeni
Should also include *Chief Khawula for hiding of special constables

4) **The 7 Days War**
Meyer, Daan Director (SAP)
Should also include Ntombela

5) **Mlaba Camp**
Armstrong, S (IFP)
*Buthelezi, MG Dr (IFP)

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Jamile, Hlankaniphani (check – should be under Khuzwayo murder)
Jamile, BS (IFP)
Langeni, L Major (KZP)
Mathe, SS Gen (KZP)
*Mthethwa, C (IFP – Minister of Justice)
Nyawose, D
Powell, P (IFP)

6) **Khuzwayo murder - Clermont**
Jamile, H
Jamile, BS
Khumalo, MZ

* Denotes people mentioned in more than one category

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POTENTIAL EASTERN CAPE CASES

Method of identifying cases:

All I have done is conduct a survey of the synopses of the Public HRV Hearings in the Western part of the Eastern Cape, including the first hearing in East London. In many of these cases the perpetrators were identified but were not brought to justice, or the cases were a travesty of justice. In many cases the victims' families specifically requested that the case be investigated and that the perpetrators be brought to justice. Someone could do a full database search but I don't have access now – so have just looked at cases with which I am familiar.

There are other 'big' cases which could be the subject of criminal prosecution – for example, the Uitenhage amaAfrika conflict – but investigators would need to look at the evidence in order to decide. In the testimony the individual perpetrators are not named.

These are cases where named perpetrators have not applied for amnesty or have been denied amnesty, or where perpetrator has not been named but there is evidence of who in the generic sense (eg security police) was the perpetrator. They are also cases where the family have specifically requested further legal action, investigation, or that the perpetrator be 'brought to justice'.

I have identified certain types of case which should be followed up, and then given examples of each type of case. This is by no means an exhaustive list of individual cases within that category. I have also given the synopsis of the case from the Hearing Summaries – ie this is not drawn from the database and needs to be checked against the database for corroboration, investigation, whether perpetrators are identified etc. The hearing at which the case was heard is given in brackets at the end of each example.

a) Cases of death in detention/police custody:

Sithembele Zokwe

Testimony was given by the mother of the victim. **Nonceba Beauty Zokwe,** and by his neice, **Mampi Zokwe.** Sithembele was killed by the Transkei Police on **12 January 1988** at **Nqamakwe, Transkei.** Sithembele was a member of Umkhonto we Sizwe. In 1987 he was abducted and shot by Transkei police, and left for dead. He survived, and in January 1988 the Transkei police arrested him, took him to his home at Nqamakwe and shot him repeatedly. They then took his body and when his mother finally found where the corpse was being held, she found "a big hole on the side of his head and there were papers and plastics protruding from the hole." Two Transkei policemen were arrested and charged with the murder of Sithembele Zokwe. The state claimed that they had planted hand-grenades near his body, to make it appear that he had died in an armed confrontation with police. The two police officers escaped from custody two days before they were due to stand trial in Umtata in November 1988, and they are still free. His mother wants the perpetrators who killed him to be brought to justice. She also wants the identity of the perpetrators who took out his brain, and the tape-recording of his funeral which the police made. She is also asking for some financial assistance. (EL Hearings)

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Mzukisi Melvin Nobadula

Testimony was given by the brother of the victim, **Mpumelelo Benjamin Nobadula,** about the **death in detention** of his brother in **Port Elizabeth** in **December 1977.** Mpumelelo was a student activist. His brother, Mzukusi, was not an activist. Mzukisi was arrested at 3 or 4 am at his New Brighton home, and appeared in the Grahamstown Supreme Court on a case against Thozamile Botha and two others. He refuted a statement he had been forced to sign implicating Botha. The accused were released, but Mzukisi was redetained. The lawyer was informed that he had died in police custody. Mpumelelo identified his brother's body in the mortuary, and saw that the body had scars, burn marks and blood on it. However, at the post-mortem Dr Laing (the district surgeon) said he had died of natural causes. Mpumelelo believes that his brother was detained and tortured in his place, and died in the same way as Steve Biko and Lungile Tabalaza. He is requesting that the Commission investigate his brother's death, and put up a monument to those who died - like the monument to the people who died during the sinking of the *Mendi.* (Second PE hearings)

Popi Michael Vukile Magwaca

Testimony was given by the wife of the victim, **Amanda Eunice Magwaca**, about the **disappearance in police custody** of her husband in Port Elizabeth in **1986.** Her husband was a member of the UDF street committee in Kwazakele township. He was detained by security police at home with four other 'comrades' on the morning of 20 June 1986. Her lawyer was informed that her husband had been held at Bethelsdorp Police Station, but that he had escaped from custody.

Wonga Billie, one of those detained with Popi Magwaca, testified that on 23 or 24 June 1986 Popi was removed from his cell at Bethelsdorp police station by security policemen. This was the last time they saw him.

Mrs Magwaca is requesting an investigation into the disappearance in police custody of her husband. She wants his remains so that she can give him a proper burial. She is also requesting support for her children from the state, as she believes that her husband died in the hands of the state.
(Second PE Hearings)

Lungile Tabalaza

Testimony was given by the mother of the victim, **Mrs Priscilla Ntokazi Tabalaza.** Her son died in detention in the custody of the South African security police at the Sanlam buildings in **Port Elizabeth** on **10 July 1978.** An inquest was held into his death, but the court did not find any member of the police responsible. Mrs Tabalaza wants the commission to investigate the circumstances surrounding her son's death, and establish how he died and who was responsible. (EL Hearings)

Mapetla Frank Mohapi

Testimony was given by witness **Nohle Mohapi**, wife of Maptela Mohapi. Mapetla was regional organiser of the **South African Students Organisation** and a member of the **Black Peoples Convention.** Mapetla Mohapi died in detention at Kei Road police station in **East London** in **1976.** Mrs Mohapi was told by the police that Mapetla had hanged himself with his jeans. However, a 'suicide note' from Mapetla

was apparently not in his handwriting. Mapetla had on previous occassions been detained, interrogated and severely tortured, and served with a banning order. After the death of Mapetla, Nohle was detained and subjected to torture, threats and severe ill-treatement, and was served with a banning order. Mrs Mohapi requests the Commission to find out who was responsible for her husbands' death, so that his children can be given an explanation and the hurt caused by his death can be healed. (EL Hearings)

Saul Kholisile Ndzumo

Testimony was given by the son of the victim, **Sithilufu Ndzumo.** His father, Saul Ndzumo, died in policy custody at **Idutywa, Transkei in 1980.** Saul Ndzumo was a Minister of Interior and Social Welfare in the Transkei Government. He was arrested at home by members of the Transkei police force in 1980, and died in custody at the Idutywa police station from 'excessive bleeding' and a 'clot on the brain'. The family heard over the radio that he had died in police custody, and a lawyer instructed to represent the family was arrested by Transkei police and deported. A post-mortem was conducted without the knowledge and presence of the family. The family is requesting the Commission to investigate the death of Saul Ndzumo, and for the perpetrators to be brought to justice. (EL Hearings)

Xoliswa Ethel Mboya

Mrs Mboya testified that her brother, John Vuyisile Mboya, died in police custody in Cradock in 1992. He had removed the South African flag and tried to put an ANC flag on the top of the police offices in Cradock during a march into town. After being arrested he was taken by police to offices where he was shot for allegedly resisting arrest. He was shot inside the offices and there were no witnesses except for police. There was no prosecution of those responsible. (Cradock hearings)

Boniswa Elsie Khethwa

Mrs Khethwa testified that her son, Simphiwe Khethwa, was assaulted and shot dead by police at Venterstad in 1986. He was 13 years old. The police had come to her house looking for the older brothers who were activists, and Simphiwe had run away. The police chased him and he did not return. It is not clear whether he died of a broken neck or a gunshot wound. Mrs Khethwa's father was forced to watch the post-mortem, and told that his grandson deserved to die. The death certificate was taken by police and never returned. A charge against the police was laid but never came to anything.

Mrs Khethwa is requesting an investigation into the case, including what the findings of the post-mortem were, and what happened to the death certificate. She is also requesting a tombstone for her son and assistance with her own medical expenses. (Cradock hearings)

b) Cases involving public order policing

NB there were many such cases testified to at the Grahamstown HRV hearings - each case needs to be checked as to whether the IU found the relevant documents, and whether the case was 'closed'. Louise Flannagan notes that there were cases where the IU found the inquest record and there was clearly evidence indicating that the perpetrator should be prosecuted - but that such prosecutions often did not happen.

Bully Aliston Kohl

Testimony was given by the victim's parents, **Mr Robert and Mrs Cecilia Kohl**, and also by his friend and witness to his shooting, **Tyrone Austin.** Bully Kohl was fatally wounded when shot by a policeman during a funeral in **Grahamstown** on **12 May 1985.** He was a member of the Students Representative Council at the Mary Waters High School, and was also a member of the Grahamstown Youth Movement. He attended the funeral of a friend in Joza township. The police acted provocatively at the funeral, and fired on the mourners after diverting their route, hitting Bully Kohl. His friend Tyrone Austin tried to get him to hospital quickly, but was prevented from doing so by the police - firstly they would not let him out of the house where he had carried Bully, to find a car; secondly, once he had a car, he was stopped at a roadblock for a time. Bully died on the way to the hospital. Subsequently, when Tyrone was detained under the State of Emergency regulations, the policeman who had shot Bully told Tyrone that he had been aiming at Tyrone. When Bully's father went to the police station, he claimed the police were 'holding a party', and that they taunted him about the death of his son. The inquest found nobody responsible for the death of Bully Kohl. His father was told after a year that the body of his son could be exhumed to identify the origin of the bullets; but he was not willing for this to be done after such a long time. Moreover, the policeman responsible, who is known to them, has since died. However, Bully Kohl's parents would like the matter to be investigated, as well as the death of others in Grahamstown; a girl of fourteen was apparently also shot dead on the same day. (EL Hearings)

Thando Gene Mpambani Ngwila testified about the death of his brother, **Luvuyo Mpambani,** in Uitenhage in 1987. Luvuyo was 15 years old at the time of his death, and a member of the Uitenhage Youth Congress. On **25 August 1987** he was apprehended by men wearing balaclavas and driving a car in KwaNobuhle. He fled and the men chased him, shot him twice in the back, and assaulted him while he was lying on the ground. They prevented his mother from going to him while he was still alive, and turned back an ambulance called to assist. The attack was made jointly by members of ***amaAfrika*** **and municipal policemen**, who are known to the witness and are named in testimony. The witness is requesting that the municipal policeman who shot his brother is brought to justice. He is still a policeman in Uitenhage. (Uitenhage hearings)

William Gilbert

Mr Gilbert testified about the killing of his son, George Oupa Gilbert, in Graaff-Reinet in 1986. His son was 18 years old at the time of his death. Police in 'hippos' were moving around the township, and some policemen came into Mr Gilbert's yard and wanted to break into one of the shacks in the backyard. Oupa prevented a policeman named Hills from breaking the lock of the shack. Mr Gilbert told his son to leave the policeman alone. The policeman then broke into a shack, found nothing inside, and made a comment that "PW Botha had said that policemen should not argue with blacks but should shoot them dead like flies". He left, threatening that he would be back. Later, Oupa was shot by Hills as he was about to enter a neighbour's yard.

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Mr Gilbert took the case up through a lawyer, but the policeman, Hills, was acquitted. Mr Gilbert wants the arrest of those who were acquitted. When asked if he would accept amnesty for Hills, he said "He had no mercy for me then, I have no mercy for him now. After I asked him to leave my house and children alone, he shot my son".

Mr Gilbert is unemployed, ill and waiting for a pension. He is asking for counselling, as well as a tombstone for his son and some form of assistance. (Cradock hearings)

Nombulelo Ethel Msutu

Mrs Msutu testified that her son, COSAS member Mthunzi Pendly Msutu, 21, was shot dead by Constable Nobele in Tantyi location, Grahamstown, on 18 July 1986. After the shooting, police dragged the body to the home of a Councillor where they surrounded the body with stones to give the impression he was involved in an attack on the Councillor's house. The funeral was restricted and disrupted by heavy police presence. At one point the coffin was opened at the graveyard. A court case failed because witnesses would not testify, for fear of their lives. (GT hearings)

Nomalady Nomelumzi Tyuku

Ms Tyuku testified that her brother, Madodana Tyuku, died after he was shot in the spine during a police raid in Nemato township, Port Alfred, on 06 November 1985. The undertaker offered a lump sum to the family if they would accept the death as illness. They refused. A court case was opened and the perpetrator, a constable, was acquitted. (GT hearings).

Melvin Mkwenkwe Ndotshayisa

Notayiti Mavis Ndotshayisa gave evidence about the **killing** of her husband by **municipal police** on **24 September 1985** in **Soweto, Port Elizabeth**. On the night of 24 September, the *amaTshaka* raided their home and demanded 'the boys'. When her husband tried to stop them from assaulting their daughter Norita, one of the policemen shot him in the knee. His wife ran out and heard a second shot. The municipal police then went to report to a 'hippo' where 'white senior officers' were waiting. She went into the house and found her husband with a severe stomach wound. By the time the ambulance arrived he had died. An inquest found nobody responsible for his death. Mrs Ndotshayisa is requesting that the perpetrators be found and brought to justice, and that she be provided with financial support as her husband was the breadwinner. (Uitenhage hearings)

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c) Cases involving homeland security forces/vigilantes (Ciskei and Transkei)

[Check with Louise Flannagan and Abner Jack re further investigation into these cases]

Billy Shiyani

Testimony was given by the victim, **Billy Shiyani**, about the attack on him in **Mdantsane, East London** on **25 December 1988.** Shiyani was an ANC activist and trade unionist, formerly chairman of COSATU in East London. He and a group of other people in two cars were ambushed as they were parked outside a bottle-store, and fired on with automatic rifles. Two people were killed in the attack; Shiyani's girlfriend, Nori Njoli, had her head blown away, and Ms Virginia Panziso was also killed. Shiyani, who was sitting next to Ms Njoli, was shot in the spine and lost consciousness trying to get help. He recovered in hospital. The Ciskei police claimed that they had investigated the matter but that there was not enough evidence to prosecute anyone. Shiyani is requesting the Commission to investigate the matter and find out who was responsible for the killings, as he believes it was a politically-motivated attack. One of the other men who was with them at the time, Jeff Wabena, was subsequently assassinated. (EL Hearings)

Andile Rweqana

Testimony was given by the brother of the victim, **Mxolisi Rweqana,** and by his close friend and witness to his death, **Mzwaxolo Matoto Nano.** Andile Rweqana was an activist who had been arrested recently for distributing pamphlets about June 16. He was sleeping at his friend Mzwaxolo Nano's house at **Phakamisa Location, East London** on **17 July 1987** when it was surrounded by Ciskei police and soldiers of the Ciskei Defence Force. They fired on the house in the middle of the night. Andile was shot at close range through the window of the bathroom, and his body removed by the police. Mr Nano was forced into the boot of a car, then detained for a week, threatened, but released without charge. On his return home, he found his room had been burnt out. The perpetrators of the murder are known and are still at large, and the family are requesting that they be brought to justice. (EL Hearings)

Sister Janet Mahonga

Testimony was given by a friend and witness to the events, **Mike Kota.** He testified that Sister Janet Mahonga, a community leader and ANC Women's League activist in **Seymour, Ciskei** died after an attack on her house on **21 October 1992**. Her house was attacked by two men wearing balaclavas, and a petrol bomb was thrown at her chest. She died of burns after five days in hospital. Neighbours who came to help put out the fire in her house were shot at by Ciskei police at the nearby police-station, who taunted them by saying "It serves you right". The sister who had called the ambulance to help Janet Mahonga was also threatened, and subsequently left the area. An inquest found that members of the Ciskei police were responsible for the arson attack on her house, but charges against the policemen were withdrawn due to lack of evidence. The police responsible are known to the community and are still in the police force; Mr Kota is asking the Commission to ensure that they are removed from the police force, as there will be no peace in Seymour while they are still there. In addition, he is requesting that the investigation into the murder and

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arson charges be reopened, and that Sister Mahonga's four children receive some assistance. (EL Hearings)

Mandisa Nongenisile Mbovane

Testimony was given by the victim's father, **Jackson Mbovane.** His home in **Ndakana location, King Williams Town**, was attacked on 10 September 1992 and partially burnt down. He and his wife then left home. When they returned, his children reported that while he was away members of the Ciskei Peace Force had demanded liquor and had assaulted his daughter. He then went to Nolizwe place, where the Peace Force in Ndakana was based, and reported the assault to Chieftainess Nolizwe Sandile. That night, three people came to his home and demanded entry, claiming to be policemen. They then broke a window and fired three shots, after which they fled. One of the shots killed his daughter, Mandisa Mbovane. The matter was reported to the police but up until the present there has not been any progress in the case. He wants the perpetrators to be identified and brought to court if necessary, and he also would like assistance for the education of Mandisa's two children, as he is unemployed. (EL Hearings)

d) Killings by identifiable members of the mass democratic movement/liberation movements

Aubrey Jacobs Fulani (Nokuzola Carol-Anne Fulani - wife) was a policeman who was abducted and **killed** by UDF-aligned 'comrades' in Port Elizabeth in 1985. His wife was also abducted and he was brutally burned in her presence. She wants the commission to investigate the matter and see that the perpetrators, who are known to her, are brought to justice. She also received no compensation at all from the government for the death of her husband. (First PE hearings)

Mattys Stols

Testimony was given by the victim's wife, **Sybil Robin Stols,** about the murder of her husband in **Port Elizabeth** on **3 July 1987.** Thys Stols disappeared on 3 July, having gone out to have a drink. His body was found on 4 July in Veeplaas (Soweto by the Sea) township. His body was burnt beyond recognition, had 24 stab-wounds and was mutilated. He was a mechanic who was apolitical. The police told her that the murder was politically motivated. Eight people were charged but not convicted for the murder. She requested the Commission to investigate why those who were responsible for her husband's death are not imprisoned.
(Second PE hearings)

Mick Fikile Mpehlo

Testimony was given by **Nontuthuzelo Mpehlo**, the widow of Mick Mpehlo who was shot and killed in the street in **Grahamstown** on **27 July 1986.** Mick Mpehlo was a successful businessman who was under suspicion of being an informer who had betrayed Steve Biko, although his wife denies this and claims that he did not even know Biko. When her husband was shot in 1986, their business was being boycotted, and their home had been attacked with petrol bombs. In addition, their drivers and vehicles were attacked and burnt by 'comrades'. Mr Mpehlo approached community leaders at the offices of the United Democratic Front in High Street to try

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and solve these problems and clear his name; however, although a meeting was called, the community leaders did not respond and so his efforts were fruiteless. Her husband was then shot dead outside the home of another person in the area; he was shot from behind while he was talking and joking with others. While she was preparing for the funeral, youths looted their shop, threatened her, pointed guns at her and chanted freedom slogans in front of the house. In addition to the emotional trauma of these events, Mrs Mpehlo was bankrupted by these events. To her knowledge, nobody was tried for the murder, and the police have not given her any information on the matter. She is thus calling for investigation into who was responsible for the killing; she wants an apology from the perpetrators; and she wants some form of compensation for her loss or financial assistance with the education of their children. (EL Hearings)

Ntombizodwe Cynthia Mketshane

Mrs Mketshane testified that her husband, municipal policeman Mthuthuzeli Stweart Nziweni, was stoned to death in Adelaide in July 1986. He had previously been ordered by a group of youth to leave the township and stay in town. His body was buried in Bedford because of threats that a grave in Adelaide would have been desecrated. The Adelaide Magistrate's Court was unable to find the named culprits. (Gtown hearings)

(See also cases from Grahamstown and PE hearings of UDF assaults and killings of AZAPO members in Port Alfred)

Wendy Sizeka Ramathe

Mrs Ramathe gave evidence to the Commission about the **murder** of Nontsikelelo Dlanjwa and the attempted murder of herself by *amabutho* of **Veeplaas in Port Elizabeth** on **29 July 1986**. She and Mrs Dlanjwa were employees of the Municipal Department of Health, Welfare and Pensions. Two petrol bombs were thrown between herself and Mrs Dlanjwa by a young man known to them both. Both women sustained severe burns and Mrs Dlanjwa died after eleven days in hospital. The UDF denied that it was responsible for this attack. Mrs Ramathe was told that the attack was because "we were working with the system". However, she suspects that a 'third force' influenced the youth to attack them, "to make it look as if her work with Molly was not favoured by the comrades" (She was involved with a community project with Molly Blackburn among others). Her sister-in-law, Mrs Mayinga, testified that charges against the youth responsible came to nothing as they were not identified. Mrs Ramathe lost an ear, cannot sit without support, and has no job as a result of the attack. Her house was looted and her furniture taken, but police did not investigate. She is requesting that the Commission bring forward the perpetrators to confess and state why they did what they did. (Uitenhage hearings)

e) Cases of torture.

I think it is going to be extremely difficult to bring charges of torture against the police – but here is an example where a women was tortured with electric shocks and names the perpetrator and his current position. There are many other torture cases but I am not convinced about the possibilities or value of bringing prosecutions against individual policemen – maybe a group action against the head of security

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police/minister of police etc (Vlok?) should be considered? This would need considerable research.

Victoria Nondzuzo Makinana-Vena

Mrs Vena gave evidence to the Commission about her **torture and severe ill-treatment in 1986**. She was an activist of the Uitenhage Women's Organisation. On 1 July 1986 she was detained in **KwaNobuhle, Uitenhage** by security police. Money was taken from her clothing and she was taken to the Uitenhage police station where she was interrogated and tortured. She was given electric shocks to her neck, and threatened and verbally abused by the security police. She was then taken to North End prison where she was held until January 1987 without charge. She became ill in prison because of poor diet and manual labour. She experienced severe headaches, painful knees and legs, and a weak bladder. She was released in January 1987 and suffered a stroke. She is now unable to work and gets a disability grant, with which she supports her three school-going children. She told the Commission that a security policeman called Gerber who was responsible for her torture is now head of Crimestop in Uitenhage. She is requesting that he not be allowed to retain that position. She is also requesting assistance with repairs to her house, as the walls and door were damaged by the police when she was arrested.

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PROSECUTIONS: WESTERN AND NORTHERN CAPE

Killings by SAP

- Killing of the Guguletu Seven, 3 March 1986
- Killings in police custody: inter alia
  - Killing of MK member Zola Michael Dubeni, March 1987 by the security police
  - Killing of ANC member Patrick Welile 'Deks' Dakuse on 23 January 1989
- Killing allegedly during arrest: Killing of MK member Samuel Mzuga Baloi on 22 February 1990 in Guguletu by SAP members and askaris
- Killing of Adri Faas in Paarl, 28 August 1985 by SAP

Killings by other groups

- Killing of ANC member Mziwonke 'Pro' Jack, 1991, by members of the ANC. This should only be looked at when the relevant amnesty application has been heard, which implicates others.
- The attack on the home of Prince Gobingca in September 1989 allegedly by allies of Mali Hoza and the Lingethu West Town Council in which seven people died. Charges were withdrawn for unknown reasons.
- Khayelitsha killings 1990s. Several cases implicate Lingelethu West town councillors under Mayor Mali Hoza. The TRC did not achieve conclusive investigative results. However, it is apparent that in several cases the SAP investigation was completely inadequate. In certain cases charges were withdrawn for unknown reasons, eg the killing of Nomsa Mapongwana in October 1990.
- Violations associated with members of a renegade SDU in Trevor Vilakazi area, Khayelitsha including the illegal transfer of weaponry from the Ciskei, and killings.
- An investigation into why certain ANC members were acquitted of the murder of ANC member Nelson Maseko in Plettenberg Bay on 24 March 1990 despite eyewitnesses.

Witdoek Attacks, May/June 1986

The Commission uncovered a range of documentation from SSC level to the local JMC indicating a positive attitude towards the witdoeke. An assessment would need to be made in conjunction with attorneys from the LRC (Steve Kahanovitz) regarding the previous court case which was settled by the withdrawal of the action and the allegations set out in the claim. Thus there was no judgement and no court decision.

Torture by SAP Cases

- There are several identifiable torture perpetrators in small rural towns such as Mossel Bay, Kimberley, Upington, and Worcester.
- Further, there are members of the Cape Town Terrorism Detection Unit (colleagues of Jeffrey Benzien) such as Piet Goosen, Warrant Officer Nel and others who are linked to torture.
- Torture of members of the Bonteheuwel Military Wing by members of the SAP's special Unrest Investigation Unit members, under Captain Louis van Brakel.

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truth & reconciliation commission

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11 March 1999

VC Saldanha
Office of the National Director of Public Prosecutions
Maize Board Building
Belvedere Rd
Arcadia
PRETORIA
0002

Dear Vincent

Thank you for the opportunity of meeting with your unit earlier this week. I hope that you found the occasion productive.

We look forward to your feed-back as regards the preliminary document which I gave to you regarding potential prosecutions, as well as other matters discussed during the meeting.

I will be meeting with Martin Coetzee hopefully in the next week regarding the information you require and I will respond to you later regarding the outcome and logistics of obtaining such information.

Regards

Yasmin Sooka
Commissioner

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1. Adv. Ferreira
(012) 321 9988

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tions

Attention : Adv. C.B. Ferreira

Per Telefax: (012) ~~328-9940~~ 3211848

Advocate Ferreira

HUMAN RIGHTS VIOLATION FILES AND OTHER RELEVANT RECORDS

Your letter dated 31st August 2000 (and stamped 2000-09-11).

We acknowledge receipt hereof and shall respond in due course.

Yours faithfully

ADV. P.C. PRIOR

106 Adderley Street Cape Town, 8001 Tel (021) 245 161 Fax:(021) 233 280 / 245 225.
Sanlam Centre, 10th Flr, Cnr Von Wielligh & Jeppe Str, Johannesburg, 2001 Tel (011) 333 6330 Fax:(011) 333 0832/6341.
Metlife Building 9/10th Floor 391 Smith Street Durban, 4000. Tel.(031) 307 6767 Fax:(031) 307 6742/49
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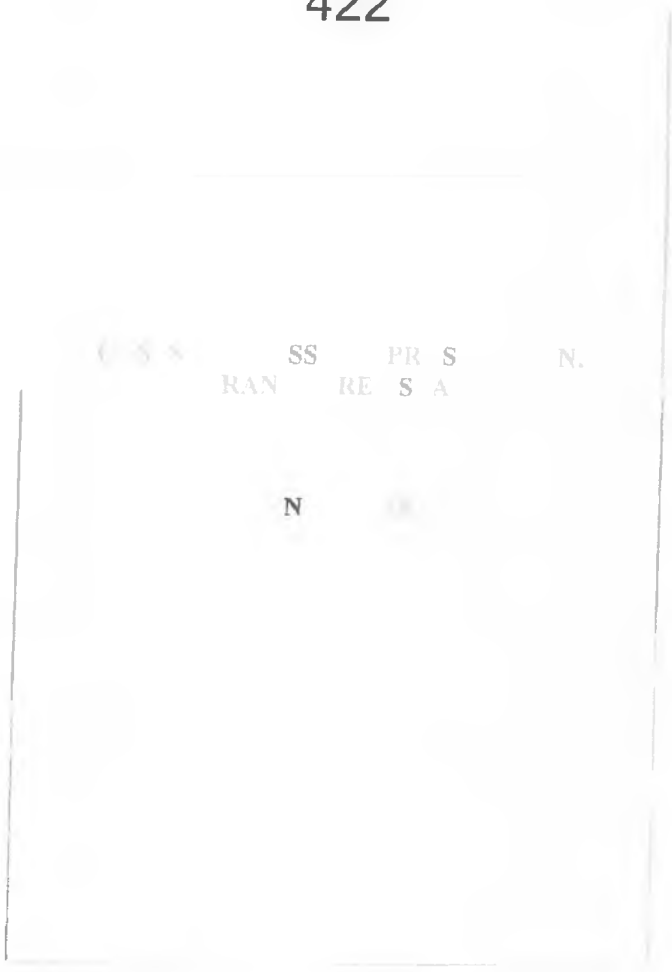

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organisation
12/2/1992 'Stormberg' Verkeerdevlei	Murder & severe assault	Mr RJ Fourie killed & Ms May	Amnesty applicants: Mishek May Hendrik Leeuw Daniel Magoda Order. John Showa (deceased)	
January 1991	Murder	Mr M Rampahle	Convicted: JJ de Ru, ex-SAP police officer AM1780/96 who implicated his superior as having given orders to have the victim killed Another person mentioned is Officer Mafaje who was present at the killing, but did not participate.	SAP Security Branch
1990, Date unknown Brandfort	Murder	Councillor Susan Phelane Patrick Phelane (11 years) Edward Phelane	Jack Menera (amnesty applicant) & underground structure of the SDU	UDF/ANC

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1989-1992 Kroonstad	Allegations: Three Million Gang created/supported by SB, as counterinsurgency strategy to undermine UDF & ANC activism. Justice officials worked to undermine criminal prosecutions against gang members. See p. 366-369 TRC report Vol. 3	Affidavits made to Commission Mr PM Thulo Mr JJ de Ru MS Taka FM Taje HRV statement of SAP officer Petros Mzosane	see affidavits by persons as mentioned in previous column for details	
October 1987, Parys Police Station & Sasolburg Police Station	Assault & Torture	Isaac Maduma KZN/JRW/058/PS	Cst. Hennie Sochiva & others, Parys police station, assault Torture, Sasolburg Police Station, unclear	SAP
April 1986 Fountain Police Station Bloemfontein	Torture	20 UDF activists incl: White Mohapi KZN/TIS/038/BL	Sgt. Mamome Sgt. Motsamai (both amnesty applicants) Col. Coetzee Col. Stevenson (both gave orders to assault victims)	SAP.SB
1986 (during state of emergency) Bethlehem	Assault	Polediso Motsoeneng KZN/MR/268/FS	Maj. Stephenson forced victim's father to beat him	SAP

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4/5/1985 Odendaalsrus police station	Murder	Sipho Mutsi COSAS regional organiser KZN/ZJ/115/BL	W/O Maxwell Sithole D/Cst. Magwesa Moya Cst Mashabe Cst Makhuwe See. Post Mortem 9/5/85 Inquests, Welkom Mag. Court Dec 1985 &1988	SAP Odendaalsrus
May 1985 place unknown	Murder	Sello Mofokeng KZN MR/240/WL	counsellor operating with the A-team, name not provided	
March/April 1985 Tlali Park, Thabong, Welkom	Assault	Thabo Ramatsa KZN/AT/005/FS	members of A-Team, identified by victim at a parade, but none charged	A-Team (emerged in April/May 1985. leader Councillor Albert Phakathi, deceased & several community councillors) see page 362-3

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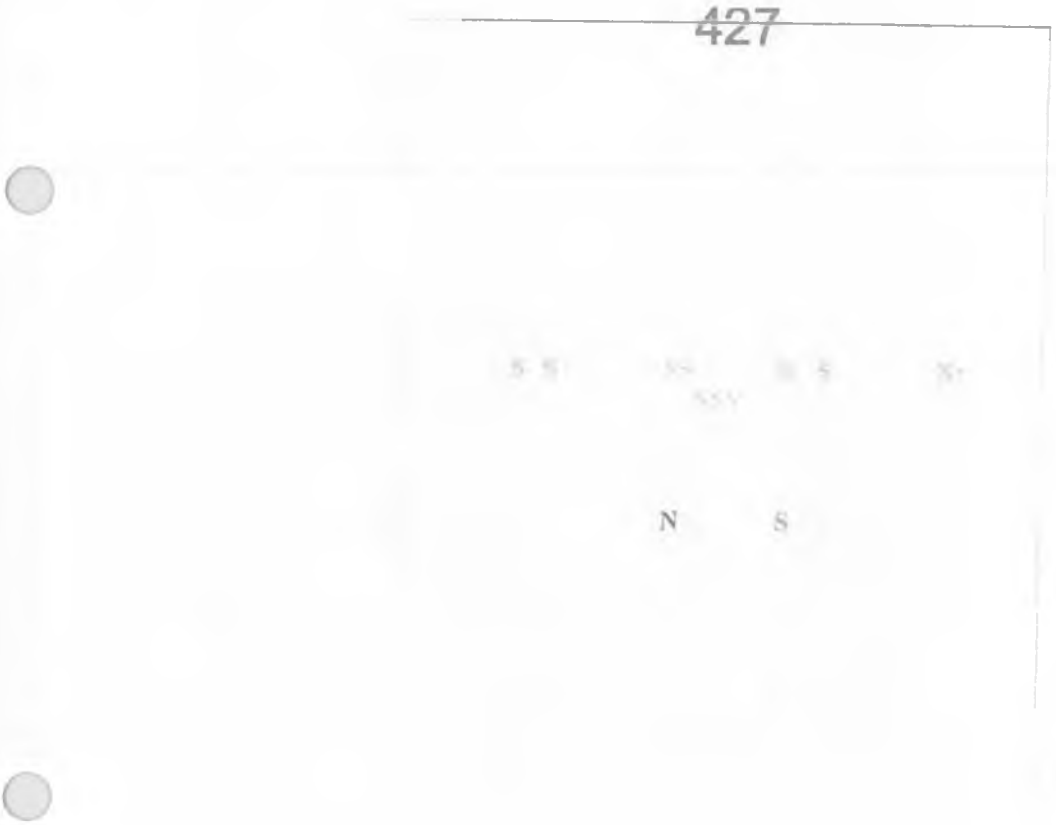

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organisation
January 1994, place unknown	Torture	Phillipus C Kloppers, AWB member JB06109/03 WR & AM4627/97	unnamed/unknown	SAP
Between Sept 1993 & Feb 1994, more than 20m explosive devices placed on railway tracks, power stations & black townships	Attempted murder	Victims unknown. number of people injured	Jan Cornelis Labuschagne AM3671/96 Daniel Wilhelm vd Watt AM3673/96 Johannes Jacobus Botes AM3672/96	AWB

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Toaster Gang (ANC members) Date unknown, Tembisa (roadblock manned by hostel residents)	Murder & attempted murder	12 minibus taxi passengers killed. Mtzulisi Mashobanet (5 years) & driver survived	3 men arrested (establish if prosecuted)	
12/4/1992 Umthambeka section	Murder & attempted murder	7 men killed & 6 seriously injured incl Duma Fakude JB02319/01ERTEM Anton Chauke Absolom Mayo Oupa Eave Cefane Mofatt Makaza Friedah Monama	21 members of Toaster Gang charged & charges were withdrawn, lack of evidence	

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December 1993, roadblock	Murder & attempted murder	4 black people killed incl. Teboho Makhuza JB05972/01G1SOW Theophilus More Gabriel Shabangu Simon Nkomboni 6 injured	Phillipus Cornelius Kloppers AM4627/97 Deon Martin AM4621/97 Andre F Visser AM7003/97 Petrus Matthews AM4624/97 Gerhardus J Diedericks AM6662/97 Frederick J Badenhorst AM7004/97 Carel H Meiring AM7002/97 Marthinus L vd Schyff AM5435/97 Implicated Japie Oelofse (matter heard)	AWB
November 1993 near Pofadder	Murder	Frikkie Witbooi	GJ vd Sandt	Right wing
September 1993 Potgietersrus	Assault	Tshamaano Robert Mahebeledzha	2 persons, names withheld	AWB
July 1993 Rustenburg	Murder	Rustenburg policeman	Gerald John van Dyk AM0113/96	AWB

12/7/1993 Zone 3 Sebokeng	Murder	4 ANC members	Victor Mthandeni Mthembu AM7107/96 AM6130/97 Implicated: Prince Gideon Zulu aka Vanana Zulu, KwaMadala hostel (orders)	IFP
1/7/1993 Carletonville	Kidnapping & murder	William Lesejego & another person	AML Fourie AM0361/96 Gert Jonker AM0484/96	AWB
22/3/1993 place unknown	Murder	unknown policeman	Moshuwa Isaiah Khotle AM3443/96	

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Khumalo Gang 15/1/1993 Thokoza	Murder & attempted murder	11 people killed incl. Sabeth Khumalo	Reverend Mbhekisini Khumalo (husband of deceased) convicted: Thami Zimu Thulani Mlaba (amnesty applicants) (Leader of Gang) Note: arrested twice for murder, attempted murder & illegal possession of firearms, and released on bail	Khumalo Gang alleged to be 'integrated to the hierarchy of the IFP' which was initiating and directing the execution of the political projects (See p 716, TRC report, Vol 3 para 692)
29/9/1991 Thokoza Khumalo Street	Murder	Sam Ntuli JB00389/01ERKWA	Thami Zimu & Thulani Mlaba (convicted & amnesty applicants) implicated: Gertrude Mzizi Albert Mlaba aka Mufulela Induna Msomi	IFP, Thokoza Khumalo Gang

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1992 Johannesburg Witbank	Murder	unknown person	V. Vosloo AM1003/96 Janse v Rensburg brothers	AWB
Union conflict: 28/9/1992 Escort Bacon Factory, Heidelberg	Murder & attempted murder	1 person killed & 13 people injured incl. Deborah Jokazi JB0347/01ERKWA	Note: amnesty applications re incident (IFP members)	
May 1992 Witbank	Murder	unidentified black man	brothers Janse van Rensburg (2)	AWB

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26/3/1992 near Nelspruit	Murder	Khona Khabela Tisetso Leballo JB00241/01GTSOW Masilo Mama Mxolisi Ntshaota Lawrence Nyalende	Eugene de Kock (convicted) AM0066/96 Rolf Dieter Gevers AM3752/96 Deon Gouws AM3759/96 JJ de Swardt AM3750/96 Ben Burger van Zyl AM7722/97 JHP Hanekom AM3886/96	SAP
24/1/1992 Sharpville	Murder	SAP member Peter Ransanyile	Simon Khakha S'dumo Ngubeni AM3128/96	ANC

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Train violence: 13/11/1992 East Rand 3/11/1992 East Rand 1/7/1991 Germiston-Katlehong line 25/6/1991 Kliptown train violence 13/9/1990 Benrose massacre July 1990 Johannesburg-Soweto line	Murder & attempted murder	Lazarus Shabangu JB00354/01ERKWA 6 people killed & 7 injured 11 people killed 7 people killed & 18 injured 26 people killed & 100 injured 1 person killed & approx 30 injured	Train squad: Khayo Sylvester Mvelase Shushe Joss Kiline (commander) Xola Frank 'Jimmy' Mbane Xolani Mguni AM3551/96 convicted Albert Msuseni Dlamini (convicted) AM1557/97 refused Wayne Hugh Swanepoel AM3727/96 Implicated: Mr Hadebe Selous Scouts, PTG 5 Reconaissance Regiment ID, Spoornet Security	Alleged: SADF & SAP links to violence dating back to 1988 Involvement of Vlakplaas, as well as link between it and hostel residents (Joe Mamasela & Xola Frank 'Jimmy' Mbane's statement in Thapelo Mbane's amnesty application file AM3785/96 & Wilhelm Bellingan's amnesty application file AM5283/97 Note: Evidence to Commission, Goldstone Commission implicates: Themba Khoza Musa Myeni Humphrey Ndlovu Mr Zondi
August 1991 Ventersdorp NP meeting	Murder & attempted murder	3 people killed & more than 50 injured	Amnesty applicant: Eugene Terre'Blanche	

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August 1991 Bophutatswana	Assault & torture	Itumeleng Isaac Mayovo JB00938/03NW	Officer Shuffle	
27/7/1991 Wesselton	Murder	Belesta Malinga JB03768/01MPPIT	unknown members of Black Cat gang & police Implicated: Napoleon Mkonza, Wesselton Mayor	SAP Black Cat Gang
May 1991, Tshing, near Ventersdorp	Assault	Simon Rabesi Phiri JB01567/03NW Maart Matlakala Phiri Judas Sithole Pauline Sithole Nkete Wlemina Mangwela	Eugene Terre'Blanche Piet 'Skiet' Rudolph	AWB

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14/3/1991 Daveyton	Murder & attempted murder	13 people killed & 29 injured 8 statements made to TRC: Samson Zolani Xakeka JB05056/01ERKWA David Sam JB00271/01ERKWA JB01641/03VT JB05380/03VT JB05031/03VT JB04623/03VT JB05224/03VT KZN/TIS/039/BL JB04929/03VT	unknown Judicial enquiry found police used excessive force. Justice B Donovan & referred to AG. declined to prosecute	SAP

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16/2/1991 Johannesburg	Murder	Bheki Mlangeni JB00195/016GTSOW	Eugene de Kock convicted AM0066/96 WA Nortje AM3764/96 ID 'Steve' Bosch AM3765/96 WR Bellingan AM5238/97 Kobus Klopper AM3762/96 JF Kok AM3812/96 J 'Kobus' Kok AM3811/96 Wahl du Toit (head, security police's technical division) AM3812/96 JJ de Swardt AM3750/96 Implicated: Brig. Nick Janse van Rensburg	SAP. SB Vlakplaas
February 1991 Belfast	Murder	George Nkomane	HJ Slippers AM1002/96 & 3 other persons	AWB

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Date unknown Penge mine	Murder (Explosives detonated)	Johannes Temba Mabotha askari	Willem W. Mentz AM2775/96 Sgt. Dawid J. Brits AM3745/96 Eugene de Kock AM0066/96 Col. Jan D. Potgieter AM5418/97	SAP.SB
Date & place unknown	Murder	SAP member Peter Ransanyile	Simon Khakha S'dumo Ngubeni AM3128/96	ANC
September 1990 Johannesburg	Murder	Johannes Masango	2 persons incl. Van Deventer AM2045/96	

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19/7/1990 Skurwebergpad, near Vlakplaas	Murder	Brian Ngqulunga (akari & testified at Harms Commission re Mxenge murder)	WR Bellingan AM5283/97 Pieter H Botha AM5458/97 Eugene de Kock AM0066/96 Capt Willem W Mentz AM2775/96 Willem A Nortje AM3764/96 Implicated: Simon Radebe Dave Baker	S.A.P. SB
26/3/1990 Vereeniging	Murder & attempted murder (Police shooting)	13 people killed & more than 400 injured	unknown police Recommend action by Judge Goldstone that police be prosecuted. no action was taken	SAP

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2 7 1989 railway lines at Mofolo, Midway & Kliptown	Murder	Mofolo 3. Ncebe who had a unit in Mofolo & 2 others	Lt Col Anton Pretorius AM4389/96 Moleke Peter "Frank" Lengene AM4033/96 Manuel Olifant AM4032/96 Sarel Petrus Nienaber AM4391/96 Capt. Daniel Johan Steenberg AM4374/96	
December 1988 Brakpan	Murder	Linah Masesi Mazibuko JB04588/01ERKWA	named CP member	
23/9/1988, bus terminus, Vanderbijlpark	Attempted murder (bomb explosion)	19 people incl William Henry Ryan JB06463/03WR	ANC amnesty applicants Sipho Nicodemus Mthembu AM6028/97 Tsehisi Edward Mokati AM6028/97	

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22/9/1988 'Why Not' nightclub, Hillbrow	Attempted murder (Bombing)	some people sustained injuries	Charles Zeelie W/O AJ v Heerden AM4134/96 PL Du Toit AM4131/96 GN Erasmus, then divisional commander of the Witwatersrand 4134/96	
1/9/1988 Khotso House JHB	Attempted murder	23 people injured	Adriaan Vlok (amnesty applicant) Col Eugene de Kock Gen. JV vd Merwe (amnesty applicant) Implicated President PW Botha	Members of Government & SAP. SB
23/8/1988 near Pondrift, Alldays	Murder	3 people killed: Mzikayise Mgzangxeni Mkhatshane Johannes Shangaan Mark Mkoto	unnamed farmer Note: I.O Barend vd Merwe	

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10/7/1988 Benoni Wimpy Bar	Murder & attempted murder	Injured Catharina & Tarina Janse v. Rensburg JB06049/01ERKAT Johanna CA Edwards JB06048/01ERKAT Illana Howe Died: Maryanne de Oliveira Neto Serrano JB01274/01ERKAT	Ernerst Phumizi Sigasa AM5300/97 Elfas Mabore Ndhlovu AM5301/97	ANC
2/7/1988 near gate at Ellis Park Stadium, JHB	Murder & attempted murder (Car bomb)	2 people killed: Linus Mare Clive Clucas JB06084/990VE 37 people injured incl. Christian Hagery EC1442/97ELN	Amnesty applications: Harold Mathsidid AM8007/97 Billy Algie Shoke AM8014/97	ANC/MK

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17/3/1988 Krugersdorp Magistrate's court adjacent to local police station	Murder & attempted murder (Car bomb)	3 people killed (2 SADF personnel & 1 civilian) 20 people injured	Amnesty applicants: Hein Grosskopf (convicted) Mohamed Ichbal Shaik AM7151/97 Aboobaker Ismail AM7109/97	ANC/MK Special Operations
Date unknown, 1988 Springs	Attempted murder	unknown person	Phumelele Masilela AM3146/96	PAC
1987/1988 Mamelodi East	Murder (Placed on a landmine)	'Source 406'	Maj 'Sakkie' Crafford AM5468/97 DJ Kruger AM5233/97	SAP.SB
Date unknown, 1987 5 km's north of Pienaar's River	Murder	Jeffrey Sibiya JB03063/01ERKAT	Capt. Paul Janse v Rensburg v Vuuren AM6528/97 Ioe Mamasela Capt. Jacques Hechter AM2776/96 Sarel du Plessis Crafford AM546/97 Brig. JH Cronje	

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30/11/1987 Hammanskraal Motasi house	Murder	Sgt. Motasi, Police College. Hammanskraal Ms Motasi	Col PJC Loots AM546_/97 Brig IH Cronje Capt Jacques Hechter AM2776/96 Paul v Vuuren AM6528/97 Joe Mamasela	SAP, SB

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10/7 1987 Breslau Rd. Alldays	Murder (ambush)	6 MK members incl: WT Alset JB04421/02PS LM Molot TR Mogashoa	Amnesty applicants: JH Kruger AM4147/96 LM Pretorius AM4366/96 Col. Willem vd Merwe AM4380/96 Sgt. Mathews Sehlwana AM3747/96 NS Coetsee AM4121/96 PA Dreyer AM4128/96 Jan Strydom AM4368/96 AJG Erwee AM4135/96 PTCJ Fourie AM4137/96 PPF Fuchs AM4138/96 FCS Swarts AM4512/96 JP vd Berg AM4367/96	SAP & SADF

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23/8/1987 Daveyton	Murder & Torture	Killed: Caiphus Nyoka JB00285/01ERKWA Tortured: Excellent Mthemba Exodus Nyakane Elson Mnyakeni	re murder: Marais Stander	SAP
July 1987, Wits Command	Murder & attempted murder	1 person killed & 68 military personnel and civilians injured	Amnesty applications: Heinrich J Grosskopf AM5917/97 Aboobaker Ismail AM7109/97 Joseph Mnisi AM4364/97 Colin Mike de Souza (Establish if docket with Paul Fick)	MK/ANC. Special Operations

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7/5/1987 Cosatu House JHB	Attempted murder	2 persons	Amnesty applications: Adriaan Vlok Gen JV vd Merwe Implicated: Brig Willem Schoon Head of C Section Gerrit Erasmus Witwatersrand Security branch divisional head Sgt Bosch head of Vlakplaas technical department	the then NP government & SAP, SB
6/5/1987 Bophutatswana	Murder	Joe Tsele, UDF activist	Brig. Jack Cronje AM2773/96 Capt. Jacques Hechter AM2776/96 Maj. Sarel 'Sakkie' Crafford AM5468/97 Joe Mamasela certain Mbatha	

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Date unknown Motatema police station	Severe assault	Stephen Moganedi JB05134/02NPPTB	De Kock Geld	Lebowa police
6/2/1987 Siyabuswa Murder & Robbery Unit, Moutse, KwaNdebele	Murder (Disappearance in custody)	George Shabangu JB02849/01MPMOU	W/O Eric Magagula Cst. SJ Kritzinger Sgt. A v Schalkwyk Sgt. Sam Mphelo (deceased) Sgt. Dumisani Mahlangu Sgt. Jacob Mthombeni (arresting officers) Note: s29 inquiry conducted & investigative report of TRC has been forwarded to AG for consideration See p 627	KwaNdebele police
January 1987 Alexandra	Murder	11/25 SADF soldiers	Mandla Michael Yende AM5648/97 Thamba Jack Phikwane AM6032/97	PAC
Date unknown 'Lictenburg Battle'	Attempted murder	unknown member of SAP	Louie Nkululeko Dlova AM6596/97	PAC
1986 Sibasa Police Station Venda	Torture	Luluno J Mulaudzi JB01374/02NPVEN	Neseman & Mganga	Venda police

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28/5 1986 Ndzundza royal kraal, KwaNdebele	Murder (police shooting) Kidnapping	2 unknown men 54 youths incl. Johannes Ramahlale	unknown unknown/unnamed Note: Johannes Ramahlala reported matter to police & camp raided (Need to establish if there were any prosecutions)	Imbokodo

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20/3/1986 Jouberton	Murder (disappearance in custody)	Ramatula Nicholas Thlapi JB01185/03NW JB01452/03NW	W/O Viljoen Sgt. Makiti Cst. Tseladimithwa Tshwaedi Majaja Mano (Arresting officers) Note: statement made to LHR by George Mbathu in 1993 Matter under police investigation	SAP
28/2/1986 Rooigrond Central Prison Bophutatswana	Torture & Assault	Samuel Galeboe Thwane JB000361/03NW	Capt. Molale Capt. Mojanaga 9 other unknown police	Bophutatswana police
January 1986 KwaNdebele	Attempted murder & kidnapping	Mr Abel Nkabinde JB02828/01MPWES	Sam & Joseph Zondo	
1/1/1986 Chief Mayise's house KwaNdebele	Murder	Chief Mayise	Mr Sipho Gumede Mr Maboy Zondo	Concerned citizens/ Leandra vigilantes known as Leandra vigilantes

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Early 1986 Atteridgeville, Oupa Masuku's home	Murder (bombing)	Ms Esther Masuku	Josephus DL Coetser AM3758/96 Hechter 1 black policeman	SAP. SB
June 1985 Duduza	Murder (necklace method)	Maki Skhosana JB00289/01ERKWA	unknown persons (Linked to 26/6/1985 incident. Victim suspected of being an informer & being linked to Joe Mamasela referred to as 'Mike')	

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26/6/1985 Duduza East Rand Operation Zero Zero (See vol. 3, p 269 & vol 2, p 628-631)	Murder & attempted murder	Cosas activists killed with modified grenades with a zero-timed delay mechanism: Hosea Lengosane Joseph Mazibuko John Mlangeni Samuel Lekatsa Humphrey Tshabalala Johannes Mazibuko Cedric Dladla 7 people seriously injured	Amnesty applicants: Gen J vd Merwe AM4157/96 (in charge of operation) Brig. Willem Schoon AM4396/96 Brig. Jack Cronje AM2773/96 Sgt. Daniel Nkala AM2460/96 Capt. Roelof Venter AM4382/96 Brig. JLM Delport AM4127/96 Francois Steenkamp AM4383/96 Col JF Kok AM3811/96 LC Prince AM4382/96 Andre Roos AM4392/96 Brig. WAL du Toit AM5184/97 (altered timing device) Maj. Gen. Joep Joubert AM3799/96	SAP, Vlakplaas SADF SA Govt Ministry of Law & Order

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Date unknown Sibasa police station, Venda	Severe assault	Samuel Radamba JB01385/02NPVEN	Venda police	
Date unknown Masisi police station, Venda	Torture	Mufhungo A Denga JB01414/02NPVEN	Venda police	
20/5/1983 Church Street, Pretoria	Murder & Attempted murder (car bomb)	21 people killed & 219 injured (11 of the dead were SADF employees, 2 others were MK operatives & remaining were casualties) see p 665, vol 3, para 511 & p 328, vol 2 para 15 for reference no's	3 amnesty applications: Aboobaker Ismail AM7109/97 Johannes Mnisi AM7096/97 Helena Pastoors AM7289/97	MK: Special Operations
8/6/1982 Bethanie	Murder	Bheki Sam Mchunu Henry Mavella Manyoni Nkosi	unknown business person former police officer	

15/2/1982 at a certain mining area	Murder & attempted murder	COSAS activists killed: Madikela Ntshingo Matabane Fanyana Nhlapo injured: Zandisile John Musi JB1909/03WR See also s 29 investigative hearing of Joe Mamasela	Christiaan Siebert Rorich AM501/97 detonated the bomb Jan Carel Coetzee AM4120/96 Abraham Grobbelaar AM4143/96 Ephraim Mfalapitsa AM3592/96	
5/2/1982 John Vorster Square, Johannesburg	Murder (death in custody)	Dr Neil Aggett JB00217/01GTSOW CT00410/FLA	William Charles Cecil Smith AM4569/97 re torture Paul Erasmus re illegal search into deceased's home AM3690/96	SAP.SB
5/1/1982 Venda	Assault & Torture	Pastor Ndangeni Petrus Phaswana JB01501/02NPVEN	Capt. Ramaligela Detective Managa	Venda Security Forces

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1981 near Komatipoort	Murder	Isaac Moema aka 'Ace Ramela' an askari	Dirk Coetzee AM0063/96 & other named operatives & superior officers, see amnesty application	SAP. SB
1981 near Komatipoort	Murder	Peter Dlamini KZN/NM/100/NQ an askari Vuyani Mavuso ANC operative	Dirk Coetzee Implicated: Brig. Willem Schoon Gen. Lothar Neethling	SAP. SB
November 1981, Venda	Torture	Pastor Simon Farisani	Ramaligela Managa Nesamari Rambuda	Venda Security Forces
10/5/1981 Bushbuckridge railway station	Murder	Robert Mokoena aka George Sello	Police Note: police statement made re incident	
December 1980. Venda	Assault & Torture	Mbengeni Jonah Ravele JB/01377/02NPVEN	Ramushwana Ramligela	Venda police

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22/11/1977 place unknown	Murder	Robert & Jean-Cora Smit. former government representative at the IMF in Washington & NP parliamentary candidate	Allegations: Jack Widdowson Roy Allen who were named in the 1992 Steyn Report Note: investigations into killings were conducted by members of the East Rand Murder & Robbery squad, alleged that they sought to cover up security force involvement No amnesty applications received	BOSS & SAP Special Task Team
27/10/1971 John Voster Square	Murder (death in custody)	Ahmed Timol JB173/03WR	Col Greyling Capt. Bean Sgt. Rodrigues W/O Cloete Sgt. FJ Ferreira Sgt. MC Pelser Sgt. DL Carter all named at inquest	SAP
28/2/1969 or 10/3/1969 Pretoria Central Prison	Murder (death in custody)	James Thabiso Lenkoe JB00092/01GTSOW	Interrogated by Maj. IJ Swanepoel	SAP

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Between 21/1/169 & Feb 1969. Silverton Police station	Murder	Nicodemus Kgoathe (died at HF Verwoerd Hospital) JB0013/03NWRUS Inquest held	Name mentioned Maj 'Roor Rus' Swanepoel	SAP
Between 25/2/1969 & 28/2/1969 Silverton Police station		Solomon Modipane (died at HF Verwoerd Hospital) No inquest held		
10/9/1969		Jacob Monnakgotla (charged under Terrorism Act & died night before appeared in court) Note: all involved in local disputes about chiefly powers		

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24/1/1964 Greys Building, JHB	Murder (Death in custody)	Suliman Saloojee JB01711/01ERKWA	interrogators: Capt. 'Rooi Rus' Swanepoel Maj. Brits Sgt. CJ van Zyl Cst. Vd Heever Lt. HC Muller Inquest: apportioned: no blame	SAP,SB Railway police

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organization
March 1994 Da Gama factory, East London	Murder	unnamed policeman	unnamed, amnesty applications	APLA
Date unknown, 1993 Fort Beaufort	Attempted murder (under police investigation)	Thamsanqa Grootboom EC2361/97ALB Felisizwe Lucky August LC0719/96 Mthetheli Mana LC2356/97ALB Rev Swelandile Kotsele	4 people arrested for possession of weapons. Unclear as to whether people were prosecuted for these cases	
8/11/1993 Umtata, Sigqibo Mpendulo's home (PAC)	Murder	5 unnamed youths, incl. 12 year old	unnamed	SADF

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21/5/1993 Umtata	Murder	Lindile Kula Nkosinathi Tuku Nathaniel Koto	Lungelwa Lupuwana charged AN6371/97 Ntobeko William Matyolo charged AM6078/97 Papama Mgudlwa AM6081/97 Implicated Major General Bantu Holomisa	TDF, Army Intelligence

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1/5/1993 Highgate hotel, East London	Murder (5) Attempted murder	Killed: Deric John Whitfields EC0101/96ELN Boyce Michael Wheeler EC0729/96ELN Injured: Neville Beling EC0167/96 Karl Andrew Weber EC0035/96ELN Doreen Rousseau EC0052/96ELN Nkosinathi Alfred Gontshi EC0196/96ELN	Augustine Mbambo AM2892/96 Dumisani Ncamazana AM2891/96 Note: Highgate hotel given to applicants as a target, see p 89 para 485	APLA

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25/3/1993 Tinis township, Fort Beaufort	Murder	Lata Camagu PASO chairperson at Thublacthu High School	unknown persons No arrests made Note: 3rd April 1993, ANC members named by PAC as being responsible for killing of PAC supporters, but no arrests made In addition, 10 ANC members arrested & tried for public violence & illegal possession of weapons (Need to establish if in connection with the above mentioned cases)	

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22/3/1993 Yellowwoods hotel. Fort Beaufort	Murder	Johan Jerling EC2359/97ALB	Vuyisile Madasi AM6077/97 Lungisa Ntintili AM6539/97 Nkopane Diaho Moneng AM6427/97 Implicated APLA high command for choosing the target incl. Letlapa Mphahlele	APLA
3/12/1992 Queenstown Spur Restaurant	Murder Attempted murder	I es Barnes EC0780/96PI /	unnamed	APL A

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28/11/1992 Golf Club, King William's Town	Murder(4) Attempted murder	4 people killed: Ian MacDonald Gillian & David Davis 17 injured incl. Beth Savage EC0051/96ELN Robert Sandford EC0078/96KWT	Tembelani Tandekile Xundu AM3840/97 Malusi Morrison AM5953/97 Thobela Mlambisa AM7596/97 Lungisa Ntintili AM6539/97 Implicated: Letlapa, Director of operations, case pending outcome	APLA
21/10/1992 Seymour, Ciskei	Murder	Sister Janet Mahonga Community leader & ANC Women's League activist (EL hearings)	2 unknown men Inquest: Members of the Ciskei police, charges withdrawn, lack of evidence	Ciskei Police
22/9/1992 Upper Gqumashe, Alice	Murder	Ndondiphela Masetu EC0481/96CCK	Zukile Mkhapela AM6438/96 Ludumo Matsi AM6439/96	ANC

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7/9/1992 Bisho	Murder (Bisho massacre)	30 people killed	Vakele Archbald Mkosana AM4458/96 Mzamile Thomas Gonya AM7882/97 case pending outcome	CDF
August 1992 Tendergate Hewu	Murder	Thembelizwe Dywashe EC0164/96CCK	Mr Lumko Nkolisela Mrola & other ADM members, arrested & released No case	ADM
Mid 1991 Johannesburg to Transkei	Kidnapping	Vulindlela Mbotoli	Rainer Maria Moringer AM0434/96	TDF MI
27/1/1991 between Stutterheim & King William's Town 28/1/1991 Gubevu village	Murder	Col. Onward Guzana, ex-CDF member Lt. Gen. Charles X Sebe	Lt. Col. Anton Niewoudt (amnesty applicant) Clive Brink (amnesty applicant) others, implicated, not applied for amnesty Note. civil case by Niewoudt vs Min of Defence, Pretoria High Court	SADF, Ciskei Intelligence Services/International Researchers

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22/11/1990 Umtata, Ncibe Military base & Transkei government buildings	Murder Attempted murder	3 TDF members 33 TDF members injured	17 people convicted, except amnesty applicants incl. Jan Anton Niewoudt AM3813/96 withdrawn Eugene de Kock AM0066/96 Daniel Lionel Snyman AM3766/96 Leon William John Flores Nicholaas Johannes Vermeulen AM4358/96 Willem Albertus Nortje AM3764/96 Marthinus David Ras jnr. AM5183/96 Sydwell Mzwamadoda Ntisana	TDF (17 dissendents) Vlakplaas SADF SADF & TDF

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22/11/1990 Umtata	Murder	Craig Duli	Following people arrested & appeared in court 1997- Maj. Kolekile Mangcotywa Lt Tobias Tgxola Maj. Advocate Sobhuwa Maj. Lungisa Fikeni Check amnesty applications	TDI
February 1988 Umtata	Murder	Lizo Macanda aka MK Gift aka Thembinkosi Gladman Mgibe	Transkei & South African Police admitted involvement in inquest. no one charged	Transkei Police. SAP
12/1/1988 Nqamakwe, Transkei	Kidnapping Attempted murder Murder	Sithembele Zokwe EC0018/96STK	Two Transkei police arrested & escaped	Transkei police
25/8/1987 KwaNobuhle Uitenhage	Murder	Luvuyo Mpambani	known to witness, Thando Gene Mpambani Ngwila (Uitenhage hearings)	AmaAfrika Municipal police
17/7/1987 Phakamisa Location East London	Murder	Andile Rweqana (East London Hearings)	unnamed members of the Ciskei security forces known to the deponent	Ciskei police Ciskei Defence Force

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17/7/1987 Phakamisa Location East London	Murder	Andile Rweqana (East London Hearings)	unnamed members of the Ciskei security forces known to the deponent	Ciskei police Ciskei Defence Force
3/7/1987 PE, Veeplaas township	Murder	Mattys Stols	8 people charged No conviction (2nd PE hearings)	unknown
January 1987 Ladybrand	Murder	4 ANC cell members incl Mbulelo Ngono EC0330/96PLZ EC0329/96STK EC0224/96UTA	Lesizi Michael Jantjie AM7109/97 Anthony Jagga AM7106/97 Colin Anthony Pakenham AM7163/97	SAP
29/7/1986 Veeplaas, Port Elizabeth	Murder Attempted murder	Nontsikelelo Dlanjwa Wendy Sizeka Ramathe	young man known to victim (Uitenhage hearings)	
27/7/1986 Grahamstown	Murder	Mick Fikile Mphehlo (EL hearings)	unknown persons No trial, but investigations	unknown
1/7/1986 KwaNobuhle Uitenhage	Torture & severe ill-treatment	Victoria Nondzuzu Makinana-Vena	certain Gerber, currently head of Crimestop, Uitenhage	SAP SB
January 1986 Duncan Village East London	Murder	Nofokile Dikana Zameka Dikana	2 men (charged, 1 died before the trial) No prosecution	

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27/6/1985 Olifantshoek pass, outside PE	Kidnapping & murder	Matthew Goniwe EC0080/96NWC Sparrow Mkhonto EC0029/96NWC Port Calata EC0028/96NWC Sicelo Mhlawuli EC0079/96NWC	Maj. Gen Nick Janse van Rensburg AM3919/96 Maj GJ Lotz AM3921/96 Lt. Col Eric Taylor AM3917/96 Col. Harold Snyman AM3918/96 Maj. Hermanus Barend Du Plessis AM4384/96 Eugene de Kock AM0066/96 Capt. JM 'Sakkie' van Zyl AM5637/97	SAP, SB & CCB

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11/5/1985 Ben Schoeman airport & Post Chalmers	Kidnapping & murder	PEBCO 3: Sipho Hashe EC0003/96PLZ Champion Galela EC0005/96PLZ Qaqawuli Godolozi EC0004/96PLZ	Maj. Herman Barend du Plessis AM4384/96 Maj. GJ Lotz AM3921/96 Capt. Gideon Niewoudt AM3920/96 W/O Johannes Koole AM3748/96	SAP.SB
exact date unknown, 1985 PE	Kidnapping Murder	Aubrey Jacobs Fulani (policeman)	unnamed but known to victim. Nokuzola Carol Anne Fulani (1st PE hearings)	unknown

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26/6/1981 Maseru Jeffreys Bay Komatipoort	Kidnapping Torture Murder	Sizwe Kondile EC0021/96SIK	Dirk Johannes Coetzee AM0063/96 Nicolaas Johannes Janse v Rensburg AM3919/96 Gerrit Nicholas Erasmus AM4134/96 Hermanus Barend du Plessis AM4384/96 Johannes Gottfried Raath AM4397/96	SAP SB, Vlakplaas Unit
1980 Sanlam Centre	Torture & Severe Assault & ill Treatment	Zubeida Jaffer, journalist gave substantial coverage to people killed in 1980 violence	Capt. du Plessis (assault) & others	SAP.SB
10/7/1978 Sanlam Building, PE	Murder (death in custody)	Lungile Tabalaza EC0002/96PLZ	Maj. PR de Jongh Lt. Verceuil Sgt. PJ Nel Cst. Mene Inquest held	SAP SB
5/8/1976 Kei Road Police station	Murder (death in custody)	Mapetla Mohapi EC0007/96PLZ	unknown	

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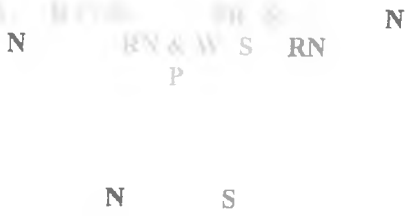

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Date & Place	Offense(s)	Victim(s)	Perpetrator(s)	Organisation

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11/12/1993 Heidelberg Tavern. Observatory	Murder	Jose Cerqueira Rolande Palmer CT00415 Lindy-Anne Fourie CT02703 Bernadette Langford CT00415	Humphrey L Gqomfa AM0949/96 granted Vuysile B Madasi AM6077/97 granted Theo T Mabusela AM5731/97 Nkosinathi M Siyolo AM6139/97 granted Richard M Dala AM6138/97 Monwabisi Jantjie Sibeko Maxeba Gave orders: Sichumiso Nonxuba Letlapa Mphahlele Bulelani Sipho Xuma	PAC/APLA

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27/8/1993 Beaufort West, shooting of Translux bus	Attempted murder	8 people injured	Thembinkosi Henge AM6137/97 Sichumiso Nonxuba	PAC/APLA

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25/7/1993 St. James Church, Kenilworth	Murder & attempted murder	11 people killed & 56 injured: Statements received Killed: Guy Cooper Javens CT00620 Richard Oliver O'Kill CT03029 Myrtle Joan Smith CT03029 Wesley Harker (13) Gerard Dennis Harker Denise Gordon CT01124 Marita Maria Ackerman CT02922 Oleg Karamijn Andrey Katyi Valuev Pavel	Convicted & granted amnesty: Gcinikaya Makoma AM0164/96 Mkhumbuzi AM6140/97 Mlambisa AM7596/97 Implicated & not charged: Mr Letlapa Mphahele, who applied for amnesty, but did not attend the amnesty hearing. Note: his amnesty application does not clearly state for which offence amnesty is sought Sichumiso Nonxuba	APLA/PAC

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		Valentin Varaska severely injured: Paul Williams CT00618 Martin Bagley		
25/5/1993 Kimberley Bophutatswana Consulate	Murder	Izakiel Mokone CT00141	Walter Smiles Commander: Lawrence Mbatha	NAC/MK
6/12/1992 Khayelitsha railway station	Murder & attempted murder	1 guard shot dead & another wounded	Andile Shicheka AM5939/97 cites others who were involved	PAC/APLA
25/10/1990	Murder & attempted murder	Mpumelelo Manityi Dyantyi CT03708 Melford Dyantyi	3 men incl. Michael Gubayo	Lingelethu West Council
22/2/1990 Gugulethu	Murder	Samuel Mzuga Baloi from Welkom KZN/ZJ/111/WE	Louis (deceased) & others (askaris) see Cst. Bambatha's affidavit, 1995 to Minister of Safety & Security (deceased)	SAP

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1989/1990 date & place unknown	Murder	7 people	people associated with the Lingelethu West town council see statements: Gwiliza CT01339 Gobingca CT08605 9 Lingelethu West town councillors arrested & charged for murder & 6 counts of attempted murder. Charges dropped 2 years later.	
23/7/1989 Athlone Magistrates Court behind public toilets	Murder	Coline Williams Robert Waterwitch. Ashley Kriel unit	Geoffrey Brown Aristedes Spannelis aka Shane Oliver aka Perry aka Ian	NIS. informant DCC. SADF. Western Province Command

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	Assault & Torture	Statements made by BMW members: Mohammed Fatied Ferhelst CT00666 Bradley Barrow CT013215 Abubaker 'Whitey' Williams CT00185 Colin de Souza CT00520 Fuad Hartzenberg CT01107 Ismael Damon CT00297 Hercules Benjamin Booysen CT00296 Brian Peter Barends CT00453 Sandra & Jacques Adonis CT01110	Unrest Investigation Unit members: Capt. Louis v Brakel Sgt. Ilmar Pikker Capt Strydom Sgt JA Todd	SAP

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		Cleoton Darryl Visagie CT00885		
October 1988 Culemborg	Severe assault	Robert Nana Maliti CT00133	Benzien (Establish if applied for amnesty for this incident)	SAP, SB Culemborg
27/9/1988 Gugulethu	Murder	Mthetheledi Gcina ANC operative	Lucky 'Agrippa' Madubula David Musimeke Inquest 27/8/1988	Askaris
5/7/1988 Gugulethu	Murder	Nkululeko 'Solly' Mutsi Anthony Fransch member of Bonteheuwel Military Wing CT00302 CT03204	Scociatti Sgt Roslee	SAP

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9/7/1987 Athlone. Kriel's home	Murder	Ashley Kriel CT00307 BMW activist	Benzien AM5314/96 amnesty granted Note: operational planning done. Athlone police station prior Inquest: no one criminally responsible	SAP.SB
15/3/1987 Faure Cape Town	Murder	Dubeni	W/O JH Nel Sgt. WR Bellingan Note: Inquest held	Western Cape Security Branch
14/3/1987 New Crossroads Cape Town	Murder	Pietersen	Members of the Unrest Unit Note: Inquest held	
Date unknown. 1987 Worcester	Assault & Torture	Group of security detainees: Xolile Dyabooi CT00232 Monwabisi Magoqi CT00772 Mary Ngemntu CT00404	W/O Lucas v Loggerenberg Note. numerous charges vs W/O v Loggerenberg. Sgt H MacDonald & Lt Gerrit Ntewoudt by detainees over several years No prosecution. AG declined to prosecute	SAP

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Emergency 1987, Gugulethu police station	Torture & Assault	William 'Keff' Thomas	Officer Nortie	SAP
September 1987	Attempted murder & severe ill-treatment	Bongani Jonas	David Matamele Musimeke (askari) Cst. Patrick Siyali AM7997/97 W/O Barnard	SAP, Riot Unit
14/3/1987 Nyanga Cape Town	Murder	Zola Michael 'Jabulani' Dubeni EC2653/97UTA MK operative	W/O JL Nel Sgt. WR Bellingan (see if amnesty applicant in this incident) Inquest held Note: TRC recommends further investigation p 455 TRC report Vol 3	SAP,SB & Vlakplaas
February 1987 Brackenfell & Bishop Lavis police station	Torture & Assault Attempted murder	Qasim Williams CT01109	Capt v Brakel Capt Strydom Sgt. Todd Colin de Souza (withdrew amnesty application)	SAP BMW

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12/6/1986 Transvaal Rd police station, Barkley West, Northern Cape	Assault	David Mabeka CT04407	police, charge laid by victim & victim threatened by perpetrators	SAP
9.10.11 June 1986, KTC	Murder & attempted murder	65 people killed incl. ITN cameraman, George De'Ath, died 10 June 1986 Statements made to TRC 10 statements re killings Also video camera footage. TRC offices	Witdoeke State endorsement as well WP JMC Development Board members, Ricky Schelhase & Graham Lawrence Local security forces incl. Brig. Strydom (Michael Bellingan's statement to TRC) Statement stating that the violence orchestrated by the police	Witdoeke State structures incl SAP
25/5/1986 Mitchellsplain	Murder	Moegsien Abrahams CT01123	Colin de Souza AM5377/97	Bonteheuwel military wing

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29/1/1985-1988 Kimberley police station	Assault Assault Torture Torture	Thembani Jacobs James (UDF member)	unknown sergeant CID offices, unknown Mr Gavin Toyman Hendrick Niewoudt & Capt vd Cloff	SAP
Date unknown Mosselbay	Torture (sexual) & assault	Zanele Zingxondo CT00860	incl. Capt vd Merwe	SAP
Date unknown Brackenfell police station 1986	Severe assault	Ebrahim Hercules CT01539	Sgt. Pikker Sgt. Todd	SAP Unrest Investigation Unit
Date unknown 1986 Zolani, Ashton	Attempted murder	Ntando Pringle Mrubata CT00130	certain Pani & others	Amasolomzi
Date unknown 1986 Zolani, Ashton	Severe assault	Sipho Sixishi CT00755	certain Matroos	SAP
Date unknown under state of emergency, 1986	Torture	Rodney Mtyobile CT04503	Mr Mochesane	SAP
Date unknown, 1986 Mosselbay	Assault & torture	Patrick Mzathi (14 years) CT06108	unknown policemen incl Sgt. Maritz	SAP
After May & June Witdoeke attacks, KTC	Severe assault	Hercules Benjamin Booysen CT00296	WO Barnard & others	SAP. Unrest Unit

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26/3/1986 near Crossroads	Murder & attempted murder (Trojan Horse operation)	killed Lennox Thabang Maphalane CT00706 Eric Heynes CT00824 Goodman Bongani Dastile Several injured	Listed some of individuals involved in inquest	

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25/5/1986 Crossroads informal prison	Kidnapping & murder	Kidnapped & killed: Vuyani Dyaboza CT00730 Lukhanyiso Finye CT00730 Kidnapped, young woman unnamed	Ngxobongwana arrested and released on bail on instruction of his senior, the then Divisional Criminal Investigations Officer unknown members of the Witdoeke (See Leonard Knipe's testimony at the KTC hearings)	Witdoeke
17-21/5/1986 Nyanga Bush, Nyanga Extension & Portland Cement	Murder & attempted murder	38 people killed many injured	Members of witdoeke Note: covert & official endorsement of & support of witdoeke. Documentary evidence links WP JMC, WP Command, SADF, Senior personnel at provincial level SSC Note: no arrests made	

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31/12 1985 Upington	Murder	Elliot Mbulelo Jonga CT01417/UP	Nicholas Makandile 'Oupa' Links AM5923	Municipal police
3/3/1986 George	Murder	Nkosinathi Hlazo Oudtshoorn activist	Capt. GP Marx & others	SAP
2/11/1985 Worcester	Murder	Cecil Roos Tamsanqua v Staden CT00132	Cst. Michael Phillip Luff inquest finding. Case reopened AM3814/96	SAP
21/9/1985 Worcester	Attempted murder	Andile Feni CT08402 & 2 others	policeman in Zwelithemba	SAP
21/12/1985 Phillipstown	Murder	Sophie Butele CT00513	Silingiso Tshemese	SAP
16/10/1985 Crossroads 'Trojan Horse' Operation	Murder	Goodman Mengxane Mali CT00723 Mabhoti Alfred Vetnam	Col. Pieter Janse v Rensburg (WP Riot squad Head) Cmdt. Salmon Pienaar (SADF)	SAP. Riot Unit
	Attempted murder	2 toddlers injured	Lt Douw Vermeulen (Commander of SARP) 10 unknown members of SARP	SADF SARP

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3/3/1986 corner of Gugulethu NY1 & NY111	Murder Gugulethu 7	Mandla Simon Mxinwa C10070 Zanisile Zenith Mjobo CT00116 Zola Alfred Swelani Godfrey Jabulani Miya CT00818 Christopher Piet CT00100 Themba Mlifi Zabonke John Konile CT00108 CT03054	Amnesty applicant & matter heard, establish finding Wilhelm Riaan 'Balletjies' Bellingan AM5283/97 Thapelo Mbelo AM3785/96 Xola Frank 'Jimmy' Mbane AM8066/97 Implicated: Joe Coetzer Gladstone Moss Eric 'Shakes' Maluleke Liebenberg Other police officers at the scene W/O Barnard W/O McMaster Maj. Johan Kleyn Dolf Odendaal Stephanus Brits Cpt. Charles Brazelle	SAP. SB Western Cape Vlakplaas, SB

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1977 Date unknown Caledon Square police station	Torture	Joseph Ndabeziña CT03031 Toto Mzwandile Ntsobi CT03097	Swarts & Greeff Spyker v Wyk	SAP SB
1/8/1977 Tygerberg hospital, Cape Town	Murder/Culpable homocide (attributed to assault & torture)	Elijah Loza, trade unionist & ANC activist died in Tygerberg hospital three weeks later after 65 days in detention	unknown Note: some names appear in HRV investigation file of interrogators	

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15/10/1985 Athlone 'Trojan Horse' Operation	Murder	Michael Cheslyn Miranda (11) CT00478 CT00472 Shaun Magmoed (16) CT00472 Jonathan Claasen CT00475	same as 16/10/1985	same as 16/10/1985
29/8/1985 Bellville South house, Bellville	Murder & attempted murder (Trojan Horse operation)	killed: Sarah van Wyk CT03201 4 women injured incl. Monica Daniels, arm amputated CT00151	Cst. E Villet W/O P Kruger Cpt. Ockert v Schalkwyk (orders)	SAP Riot Unit
1985 day of Pollsmoor march, Paarl	Murder	Adri Faas CT03207 CT00434	Lt Col WH Oosthuizen. used private firearm Witness: Capt. Clayton	SAP
22/1/1985 Beaufort West	Murder	Mandlenkosi William 'Tshaka' Kratshi CT00563 CT00570	Cst. De Villiers	SAP
1979 Transvaal Rd police station, Kimberley	Assault	Matthews Teme CT00650	Security police officers incl. Bennet Mochesane	SAP

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22/11/1993 Pongola	Murder	Michael Mcetywa KZN/IID/313/EM	Emmanuel Mavuso AM7921/92 Mdu Msibi IFP leadership Piet Retief Piet Retief SB members (implicated by Msibi, Pongola CR 120-11-93) see p. 285	IFP SAP SB
8/10/1993 Richmond	Murder	Zmokwakhe Sibongiseni Mfana Phungula (Richmond SDU commander) MLA Mhlongo	Magoda SDU members Killed by an informal 'people's court' CR41-10-93	SDU ANC
October 1993. Georgetown	Murder	Julius Mkhize (newly appointed chair of Richmond ANC branch) KZN/NNN/043/PM	SDU members (CR12-10-93)	
November 1992. Madadeni township. outside Newcastle	Murder	Prof. Hlalanathi Sibankulu KZN/MR/166/NC KZN/MDU/999/NC	KZP involvement (TRC investigation) Note: Evidence not conclusive. Further investigations?	

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organisation
14/2/1994 Crazy Beat Disco Club. Newcastle	Murder & Attempted murder	Gerbrecht van Wyk killed & several injured	convicted: Bongani Golden Malevu AM0293/96 Andile Shiceka AM5939/97 Walter Falibango Thanda AM5784/97 allegations made are that they were sent by their commanders. Need to establish names & whether applied for amnesty or not	PAC. APLA
29/12/1993 Richmond	Murder	Mnandi Phoswa	Bob Ndlovu & others	

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19/5/1992 Richards Bay	Murder	April Lahwe KZN/NG/006/EM (shop steward, union affiliated to COSATU & ANC member)	Gcina Mkhize also implicates: Major Langeni (orders) Mayor BB Biyela Romeo Mbuso Mbambo AM4598/97 Zweli Dlamini AM3685/96	IFP
March 1992 K Section. KwaMashu. Durban	Rape Assault	Doris Ngubane KZN/FS/226/DN	4 members of Amasinyora gang incl. deceased, Justice Nkwanyana (KZP member) Note: victim tried to lay charge at the KwaMashu police station, but policeman refused to take statement.	Linked to IFP

8/11/1992 Nqutu KwaZulu, homesteads under Chief Molefe's jurisdiction, North Coast	Murder	3 people, incl. Molefe's senior induna	group of unknown armed men 2 people arrested, incl. brother of 1 of deceased	unknown
27/10/1992 outside Ixopo	Murder Attempted murder	Reggie Hadebe KZN/SELF/135/DN ANC Natal Midlands Deputy Chairperson Shakes Cele John Jeffries	Bongani Sithole (see Luthuli's amnesty application) Richard Sibusiso 'Sosha' Mbhele AM4018/96 late Chief X Mkhize certain white man with "neat red moustache" 3 unnamed KZP members Local Self Protection Unit Commander	IFP
9/6/1992 Imbali, PMB	Murder	S'khumbuzo Mgwenya (Chair Imbali ANC branch)	Abdul Awethu & 2 others charges dropped, state witnesses did not want to testify (p.219)	IFP

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21/1/1991 Greytown	Murder	Goodwill Mbuso aka Neville Sikhakhane KZN/MR/011/DN	Amnesty applicants: Eugene de Kock convicted AM0066/96 Larry Hanton AM4076/96 JA Steyn AM453/97 Willie Nortje AM3746/96 ARC Taylor deceased AM4077/96 David "Dirwel" Brits AM3745/96 JJ 'Blackie' Swart AM3750/96 Not applied & implicated Mr Engelbrecht, commander of C Section	SAP SB incl Vlakplaas

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8/2/1992. PMB	Murder	S'khumbuzo Ngwenya (Mbatha) Chair, Imbali ANC branch & PACSA fieldworker	Arrested & charges dropped: Phikelele Ndlovu (Imbali mayor) Abdul Awethu (dep. Mayor) No prosecution	
17/11/1991 exact place unknown Natal Midlands	Murder	Rosemary Ngcobo (ANC member)	Nelson Shabangu (amnesty applicant) Riot Unit members Note: Riot unit members were charged and acquitted	SAP. Riot Unit
12/2/1991 Durnacol mines. Dannhauser	Murder (Clashes between Xhosas & Zulus)	Justice Masiba KZN/NNN/026/NC	other miners. unnamed Note: I/O in the matter was Sgt. Komandu No prosecution	

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14/7/1990 Durban	Murder	Mbuso Shabalala KZN/NNN/138/PS Charles Ndaba KZN/NN/076/DN (Involved in Operation Vula)	Amnesty applicants: HJP Botha AM453/97 Sam du Preez AM4130/96 CA vd Westhuizen AM4388/96 L Wasserman AM4508/96 KZN/NNN/138/PS	Durban Security Branch
25/3/1990 - 31/3/1990 lower Vulindlela 7. Edendale valleys, south of PMB	Murder Attempted murder			Inkatha

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9/10/1990 Duffs Road near KwaMashu & Innanda. attack on Putco bus	Murder & Attempted murder	2 unknown persons many others injured (numbers unknown)	Amnesty applicants: Eugene Marais AM0054/96 David Botha AM0057/96 Adriaan Smuts AM0056/96 KZN/SC/01-02	AWB
Date unknown. Umlazi. poisoning of water system by adding cyanide	unclear as to whether people were poisoned or not	unknown	Amnesty applicant Allan Nolte AM2501/96	IFP
7/8/1990 Lamontville. Durban	Murder	Austin Zwane KZN/NN/006/DN	4 KZP members (led by Siphiwe Mvuyane, deceased)	KZP
2/8/1990 Esikhawini	Murder	Dr Henry Vika Luthuli	Cst. Thembinkosi Dube see KZP investigation & inquest findings, 1996	SAP, Vlakplaas

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27/3/1990 Payiphini, Mpumuza	Murder (revenge attack)	1 person killed	unknown persons	UDF
9/3/1990 KwaMakhutha, Durban	Murder	Raphael & Winnie Mkhize	Cst. Patrick Mbambo Wellington Mncwango Mohande Whu Cyril Ngema Note: arrested, not clear if any prosecutions	KZP

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28/3/1990 Elandskop (upper Vulindlela) at Gezubuso, KwaShange & KwaMnyandu	Murder	35 people killed KwaShange 15 people killed (see footnote 15, p.261, Vol. 3, Ch. 3	David Ntombela Chief Shayabantu Zondi Induna Guvuza Khanyile Lolo Lombo & Other unknown armed persons special constables, see amnesty application of Philemon Madlala AM3432/96 Members of the Riot Unit. Fired on ANC without provocation, see William Harrington AM0173/96 Omision, incl. Cst Nelson Shabangu AM3676/96 No prosecution	IFP Special Constables
27/3/1990 Lower Edendale Valley	unclear if persons killed	residents, Lower Edendale Valley	unknown IFP members Nhlanhla Philemon Madlala AM3432/96	IFP special constables

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12/1988 Trust Feed Massacre. New Hanover	Murder & Attempted Murder	11 people killed, 2 people wounded (see p.198 & 199 of TRC report)	Implicated persons not charged & not applied for amnesty: Maj. Deon Terreblanche (deceased) David Ntombela Gabela Brig. Marx (then Head of CID in Natal) 2 unknown IFP members Cst. Willem de Wet Capt. Kritzinger Gen. Vd Westhuizen Col. Langenhoven Gen. Ronnie vd Westhuizen	SAP IFP

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6.1.1990 Mbava, Swayimane Wartburg area	Murder Note: 2 inquests held in 1991 & 1995	Vusi Ngcobo Bonowakhe Gasa KZN/HG/922/NY (UDF activists)	acquitted. Muzi Hlophe Peter Smith People below not prosecuted as Tim McNally declined Abraham Shoba, unknown person. Maj Joseph van Zyl (I.O., accessory) implicated in cover up. Robert Mzimela (secretary of Kwazulu Legislature) Z. Mkhize Maj Leonard Langeni	SAP KZP KwaZulu government officials, IFP
Mid-1989. KwaMashu	Murder	certain Jomo. UDF supporter	Bheki Mvubu & others arrested, but no court case	AmaSinyora
20/5/1989 Lindelani, Durban	Kidnapping & Assault	Sibusiso Nkabinde KZN/FS/130/DN	Thomas Tshabalala & others	IFP

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October 1988 Elandskop PMB	Murder	Phila Portia Ndwandwe aka MK Zandile KZN/nn/018/DN	Amnesty applicants: Lt. Sam du Preez AM4130/96 Sgt. Lawrence Wasserman AM4508/96 Col. Andy Taylor AM4077/96 deceased JA Steyn AM453/97 JA Vorster AM4390/96 HJP Botha AM453/97	Durban SB Members
30/7/1988 Sobantu PMB	Murder	Mxolisi Penwell Khumalo aka MK Mubhi No inquest	Sgt. Simon Makhaye Thulani Kleinbooi Zimu Mzolo	PMB & Greytown Security Branch

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November 1988. farm at Verulam	Kidnapping & Murder	Phumezo Nxiweni EC246/96WTK	Amnesty applicants: HJ Botha AM453/97 JA Steyn AM453/97 JA Vorster AM4390/96 Lt. Sam Du Preez AM4130/96 Col. ARC Taylor AM4077/96 deceased C vd Westhuizen AM4388/96 Sgt. LG Wasserman AM4508/96	SAP SB

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15/10/1987 Clermont 10/2/1988	Attempted Murder Murder KZN/MM/992/DN	Pearl Tshabalala (Vuka Tshabalala's Wife)	Jamile (orders) Daluxolo Luthuli (amnesty applicant) Msizi Hlophe AM1779/96 (granted amnesty) 4 Caprivi trainees incl. Alex Sosha Khumalo David Zweli Dlamini Note: Perps involved in 10/2/1988 incident? Need to establish	IFP
9/10/1987 KwaMncane. Zondi Store	Murder	Maqhikila Angelica Mkhize Petronella Mkhize	David Ntombela & 5 others Inquest, but no criminal case	IFP

18/1/1988 'Summertime' unit 1, South Mpumalanga	Murder Attempted Murder	9 people killed incl. Mfanafuthi Gasa Kinathi Mabhida Musa Khoza Thomas Mnewabe Thomas's brother certain 'Rolla' approx 200 people injured	Daluxolo Luthuli (orders) AM4075/96 Not applied for amnesty Phumlani Xolani Mshengu S'bu Bhengu Other Caprivi trainees Note: attack registered at Hammarsdale police station, CR184/01/88 No prosecution (p 226)	IFP
30/12/1987 Imbali,PMB	Murder Attempted Murder	10 people killed incl. Busisiwe Paulina Mbeje Many injured incl Bongiwe Mbeje, Simangaliso Mkhatshwa & Sibongile Mabuza	Amnesty applicants: Alex Sosha Khumalo AM4027/96 Daluxolo Luthuli AM4075/96 Zweli Dlamini AM3685/96	IFP

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9/5/1987 Clermont, Durban	Murder	Zazi Khuzwayo KZN/MM/997/DN	Jamile (orders) convicted of 2 counts of murder & 1 attempted murder Daluxolo Luthuli (amnesty applicant) Sbu Bhengu Hlakaniphile Jamile Msizi Hlophe (granted amnesty, 1996) Caprivi trainees: Phumlani Xolani Mshengu Alex Sosha Khumalo AM4027/96 Vela Mchunu	HP

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July 1987 Elandskop, Natal	Murder	Dion Charles Cele aka Mzimela	Amnesty applicants: Sgt. LG Wasserman AM4508/96 Col. Andy Taylor AM4077/96 HJP Botha AM453/97 JA Vorster AM4390/96 JJS Labuschagne AM5005/97 AE Verwey AM5018/97	SAP SB

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18 2 1987	Kidnapping & murder	Stanley Bhila KZN/NJ/004/DN	Amnesty applicants: Col. Andy Taylor (gave orders) AM4077/96 deceased Frank McCarter AM4063/96 Adrian Rosslee AM4378/96 Sgt. LG Wasserman AM4508/96 Izak Daniel Bosch AM3765/96	Durban Security Branch & Vlakplaas unit, SAP
Exact date unknown, 1987	Attempted murder	Hansford Shangase KZN/PMB/210/PM	Toti Zulu Wasela Awethu aka Sean Hoosen Awethu No prosecution	IFP KZP

April 1987 Clermont, Durban	Attempted Murder	Injured: Cornelius Sikhakane Johannes Sibongumusa Luthuli Note: perps instructed to kill them incl. Khayelihle Ndlovu Nkosinathi Sithole Themba Msimango (3 not injured)	Jamile (orders) convicted on 2 counts of murder & 1 attempted murder Msizi Hlophe AM1779/96, granted amnesty, 1996 Not convicted: 2 unknown persons Note: TRC report mentions that 2 caprivi trainees implicated in 1991 trial who absconded. Zweli Dlamini Vela Mchunu	IFP

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7 9/1986 Quarry Road. Durban	Murder	Blessing Mabaso Thabane Memela Percival Luvuyo Mghobozi Mbongeni Zondi	3 amnesty applications for defeating the ends of justice (role not furnished by applicants) JA Steyn AM453/97 LG Wasserman AM4508/96 MC Botha AM7560/97 KZN/NN/002/DN Note: inquest found police justified	SAP SB
May/June 1986 Chesterville	Murder	Chesterville 4: Russel Mngomezulu Muntuwenkosi Dlamini Russel Mthembu Sandile Khawula Note: inquest held	Amnesty applicants: Willie Nortje AM3764/96 Izak Daniel Bosch AM3765/96 Eugene de Kock AM0066/96	

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5/12/1986 Mphomphimeni near Howick, Midlands	Kidnapping Assault Murder Attempted murder	4 prominent MAWU members: Phineas Sibiya KZN/SW/001/PN (deceased) Micca Sibiya (deceased) Simon Ngubane KZN/NN/117/PM (deceased) Flomena Mnikathi KZN/NN/117/PM (survived)	Formal inquest (Howick Inquest 13/88) finding: 9 known persons responsible incl. Vela Mchunu, a Caprivi trainee (absconded from testifying at the inquest) No prosecution (p 239)	I. P KZP

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20/11/1981 Umlazi stadium Durban	Murder	Griffiths Mxenge	convicted & amnesty applicants: Dirk Coetzee Almond Nofomela David Tshikilange Joe Mamasela (state witness for TVL AG, not applied for amnesty) Brig. Vd Hoven (instructor) Willem Schoon (informed of planned operation) AM5006/97	Security Branch, Section C
April 1980 Jozini Northern Natal	Murder	Oupa Ronald Mndondo aka MK Scorpion	Gert Schoon AM5006/97 Schalk Visser AM5000/97 Donald Gold AM3686/96 Des Carr AM5008/97 Johan Martin van Zyl aka Sakkie AM5637/97	SAP,SB PMB

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Date & place unknown 1986	Attempted murder	Vusumzo Khambule KZN/NNN/290/PM	Dika Awetha No prosecution	IFP
September 1985 & 1988. Lindelani	Kidnapping & Assault	Victor Madele	Thomas Tshabalala Report made to police KZP & SAP, see p 216	IFP
8/8/1985 Umlazi Cinema, Umlazi, Durban (memorial service of Victoria Mxenge)	Murder Attempted murder	17 people killed 20 people killed	Winnington Sabelo (deceased) Thomas Tshabalala KZN/NNN/229/DN unknown IFP members SAP & SADF members, omission	IFP SADF SAP
13/5/1984 Mobil Oil Refinery	Murder	4 insurgents 3 bystanders	unknown Note. Aboobaker Ismail's amnesty application	ANC?
Date unknown	Murder	Philemon Khanyile	angry crowd members of the Riot Unit, incl. Frank Bennetts AM4059/96	A-Team (vigilante group)

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5/8/1977 Brighton Beach police station, Durban	Murder	Hoosen Haniajee Inquest (suicide)	Capt James Taylor Capt. Du toit see statement of Mohun Deva Gopal, made statement to TRC	SAP SB
1976 Island Rock Sudwana Bay	Torture	Joseph Nduli Cleopas Ndlovu	Col. ARC Taylor, deceased AM4077/96 & others	SAP SB Riot Unit

Date unknown. Elandskop	Kidnapping & murder	Bhekayena Raymond Mkhwanazi KZN/FS/121/DN	Amnesty applicants: Lt.Col. JA Vorster AM4390/96 Col. ARC Taylor Deceased AM4077/96 S. Du Preez AM4230/96 LG Wasserman AM4508/96	SAP,SB
8/1/1978 Bellair, Durban	Murder	Richard Turner KZN/KP/001/DN	Martin Dolincheck (denies it & implicates Phil Freeman, deceased) See S29 transcripts: Brig. Christiaan Earle Maj. Christoffel Groenewald Eugene de Kock & other documents possessed by TRC	BOSS (Bureau of State Security)

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PMG PARLIAMENTARY MONITORING GROUP

TRC matters Update (including payments to beneficiaries): DoJ&CD and NPA briefing (with Deputy Minister)

Justice and Constitutional Development

17 September 2024

Chairperson: Mr X Nqola (ANC)

Meeting Summary

Video

The Department of Justice and Constitutional (DoJ & CD) and the National Prosecuting Authority (NPA) updated the Committee on the progress of processing the 300 cases referred by the Truth and Reconciliation Commission (TRC).

The Committee heard that since Parliament approved reparations to TRC identified victims in the form of a once off R30 000 grant, of the 21 676 persons identified as victims, 17 428 have received payment. Thus far million has been spent on the interim individual grants and R497 798 78' has been spent on the final once off individual grants. Even though the Committee was pleased that many victims had received their grant allocation it questioned why the department had not yet paid grants to the remaining 4248 beneficiaries. It encouraged both the department and NPA to fast track the tracing of victims.

The Committee was pleased that 180 of the 477 remains of persons who disappeared in political circumstances between 1960 and 1994 have been exhumed, handed over to the families and reburied by the Missing P Task Team established by the NPA in 2010. However, the Committee wondered if the department was doing enough to commemorate these persons and others who suffered at the hands of the Apartheid regime and educate the public on the sacrifices they made for the liberation of the country.

While the Committee acknowledged the enormous complexity and difficulty associated with investigating and prosecuting TRC cases, it was concerned by the slow progress made in processing matters, which had del the families of those who suffered gross human rights violations obtaining some sort of closure.

In his opening remarks to the Committee, the Deputy Minister of Justice and Constitutional Development admitted that despite the significant amount of work done since the TRC submitted its report, the department not say that it has finalised all of the tasks, nor could it say that the progress has been made fast enough. A directive has since been given by the Ministry to the relevant officials in the department to resolve the matte speedily.

Some Committee Members believed that the starting point of the TRC's investigations should not have been 1960, as it excluded many others who suffered under the colonial and Apartheid regimes before then. Thes Members also argued that special courts should have been put in place to specifically adjudicate on these matters, considering the judicial system's backlogs and lack of human resources. These courts would be ad hoc given specified time periods to process all the cases.

The NPA told the Committee that a TRC component was established in 2021 to prioritise and drive progress on TRC matters in collaboration with the Hawks. The NPA recently applied for permanent posts to be create the component for prosecutors who will only focus on processing TRC cases. The Committee welcomed this as a positive step in the NPA finalising the matters by the 2026 deadline.

Meeting report

The Chairperson welcomed everyone to the meeting. Thereafter, he said the purpose of the meeting was for the Committee to receive a briefing from the department and NPA on the progress of the TRC-related. In t the Committee was also set to receive the legal opinion it requested from the Parliamentary Legal Service on the Protection of State Information Bill. However, he suggested that this item be postponed to another day. asked if his suggestion was in order.

Mr O Mathafa (ANC) said it was in order.

Adv B Mkhwebane (EFF) also said it was in order.

The Chairperson asked if any apologies were received.

Mr Vhonani Ramaano (Committee Secretary) mentioned that no apologies were received.

Adv Mkhwebane asked if the Committee support staff could begin drafting an action plan to combat the crisis of statutory rape of young girls in the country.

The Chairperson noted the suggestion and pointed out that the Speaker had tasked the relevant committees to draft separate action plans.

Afterwards, he invited the Deputy Minister (DM) to make his opening remarks.

Opening remarks by the Deputy Minister

Mr Andries Nel (Deputy Minister of Justice & CD) tabled apologies on behalf of the Minister and Director General (DG) of the department who are attending the BRICS (Brazil, Russia, India, China, South Africa) Ministers Justice meeting.

Thereafter, he said the department was aware that it had been entrusted with one of the most painful tasks arising out of some of the darkest chapters of the country's history, giving effect to the recommendations of TRC Commission as outlined in the Act and those of the TRC report.

Although it has been difficult, the department has gotten tremendous work done since the TRC submitted its report. In carrying out its work, the department always remained mindful of the fact that it is dealing with individuals who have experienced some of the most horrible forms of human rights abuses. These were the very same actions that led to Apartheid being declared as a crime against humanity. Even though there has progress, the department could not say that it has finalised the tasks, nor could it say that the progress has been made fast enough.

At this stage, the Ministry has indicated to the relevant department officials that the matters must be resolved speedily. It has committed to working with that team and other Cabinet colleagues who share responsibili parts of the work, in particular those that relate to individual and community reparations.

In some instances, the Ministry has not been as fast as it would have liked in processing those matters, much of which was due to the involvement of other departments, like Education, Health, Human Settlements an Social Development. The department is looking for ways to improve its coordination with these departments.

In its briefing, the NPA will communicate on the prosecution of Apartheid era crimes, the attempts being made to hold and bring to account those responsible for the perpetration of those horrible crimes, and also the work done by the Missing Persons Task Team (MPTT) in locating the remains of those cruelly murdered by the Apartheid regime. It will also elaborate on the work in Zambia and Zimbabwe to exhume and prepare the remains of liberation struggle veterans for repatriation back to the country.

Ms Kalayvani Pillay (Deputy Director General: Legislative Development and Law Reform at the DoJ & CD) told the Committee that the department's TRC Unit was focused on implementing the TRC recommendations. Th is working closely with the legislative development branch also in the department on developing the draft regulations for housing people identified as TRC victims and implementing the recommendations approved b Parliament.

The department has several issues to resolve before finalising the regulations. However, it has concluded several regulations related to the repatriation of the bodies of those killed outside of the country.

Briefing by the DoJ & CD on the progress made on TRC matters

Adv Shireen Said (Deputy Director General: Constitutional Development at the DoJ & CD) and Ms Lufuno Mmbadi (Senior Manager for the TRC Unit at the DoJ & CD) took the Committee through the presentation.

Adv Said began by indicating that Parliament approved reparations to TRC identified victims through a once off grant of R30 000, medical benefits and other forms of social assistance, symbols and monuments, rehabilitation and communities. Subsequently, regulations were put in place for the once off grant, exhumations, reburial or symbolic burial of deceased victims, reparation, basic education reparation, and higher edu assistance reparation.

Ms Mmbadi said the TRC identified 21 676 persons as victims, 17 428 of whom applied for and received the once off grant of R30 000. Thus far, R53 million has been spent on the interim individual grants, and R497 79 has been spent on the final once off individual grants.

After the regulations on exhumations were published in 2010, the NPA established an MPTT to conduct investigations into the 477 cases of persons who disappeared in political circumstances between 1960 and 1994 date, 180 exhumed remains have been handed over and reburied.

The department has not yet finalised the development of the draft regulations on housing, community rehabilitation and special health services for victims.

After the presentation, the Chairperson invited the National Director of Public Prosecutions (NDPP) to provide an overview of the NPA's presentation.

Overview by the NDPP on the NPA's presentation

Adv Shamila Batohi (NDPP) stated that the NPA has, for the past few years, tried to bring a level of justice and accountability about the atrocities committed during the Apartheid years and to help many families begin road to healing. Even though it has been a difficult and challenging process, the NPA was pleased to see significant progress made in dealing with the unspeakable acts and crimes of gross human rights violations com under a veil of secrecy during the Apartheid era.

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The NPA has adopted a multi-pronged approach, including prosecutions and inquests to bring justice and accountability. In cases where there is new evidence, the NPA has re-opened the inquests, where inquests hav been held, the Authority has recommended that they be to the Minister.

The final aspect of bringing about accountability and justice for the families has been carried out by the MPTT, which has made significant strides in tracing, locating and returning the remains of many the activists and victims who died or disappeared in mysterious political circumstances between 1960 and 1994.

The Authority has been working very closely with the Hawks, and it established a dedicated capacity in 2021 to prioritise the TRC matters. The teams adopt a very hands-on approach to the investigations, which is bear fruit.

There have been two key projects. The Gallows exhumation project seeks to recover the remains of political prisoners who were hanged at the Gallows and hand them to their families. The second project is the exile repatriation project currently underway in Zimbabwe and Zambia. This project focuses on the exhumation and repatriation of the remains of many exiles.

Even where all leads are exhausted, and the Authority cannot prosecute, open an inquest or recover remains, it tries to provide some degree of closure to the families by informing them that it tried to explore all ave n ensure justice and accountability, she said.

Briefing by the NPA on the progress made on TRC matters

Adv Rodney de Kock (Deputy National Director of Public Prosecutions: National Prosecutions) and Ms Madeleine Fullard (Head: Missing Persons Task Team at the NPA) took the Committee through the presentation.

Adv de Kock mentioned that a TRC component was established in the NPA in 2021 to prioritise and drive progress on TRC matters in collaboration with the Directorate for Priority Crime Investigation (DPCI/Hawks). Sin September 2021, 104 new investigations emerging from the TRC have been reopened, with 126 cases currently under investigation. Due to the slow progress in processing matters, the NPA and Hawks have increased joint accountability sessions. In addition, the NPA hired contract prosecutors dedicated solely to TRC matters.

Families led by the Apartheid Era Victims Family Group (AVFG) approached the NPA to engage with prosecutors and investigative officers to support their progress in establishing trust. Following these engagements, th NDPP issued a directive that prosecutors should actively engage with families and keep them updated on the progress of matters.

Some challenges in processing matters are the destruction of files and documents as part of a deliberate policy to conceal information and the fact that many of the witnesses/accused/suspects are either very old or deceased.

Ms Fullard said the TRC recommended that a task team be established in the NPA to continue to trace the fate and whereabouts of those who disappeared in political circumstances and to recover their remains wher possible. Up to this point, the MPTT has recovered the remains of 180 individuals inside the country.

The MPTT has two projects that focus on groups that faced specific forms of political repression and deaths: The Gallows Exhumation Project and the Exile Repatriation Project. The gallows exhumation project aims to recover and return the remains of political prisoners who were sentenced to death and executed on the gallows between 1960 and 1990. Only the remains of 9 hanged political prisoners need to be recovered. Where, exile repatriation project aims to exhume, prepare and repatriate the remains of those who died in exile back into the country.

Adv Batohi mentioned that the NPA appointed Adv Ntsebeza, Senior Counsel (SC), in October 2022 to review whether the measures it has adopted to deal with TRC matters are adequate, in line with the remarks of th Gauteng High Court full bench in the 2019 Rodriguez judgement. By appointing Adv Ntsebeza SC to review and assess the internal measures objectively, the NPA submitted itself to external scrutiny. This move also se a public reaffirmation of the NPA's commitment to upholding its constitutional mandate by prosecuting without fear, favour or prejudice and doing whatever it can to ensure that those responsible for the atrocities du the Apartheid era are held to account.

Adv Ntsebeza, SC, submitted his report in June 2023, which is available on the NPA's website. A copy was shared with the previous chairperson of the Committee and the former Minister of Justice & CD. The report fou the measures adopted and implemented by the NPA to deal with TRC matters—namely, the structure and the checks and balances used—are largely adequate. The report further found that the NPA has abided by th recommendations.

The Chairperson opened the floor for discussion.

Discussion

Adv G Breytenbach (DA) acknowledged the enormous complexity and difficulty associated with investigating and prosecuting TRC cases, and she thanked the MPTT for the work it has done so far.

After that, she posed a series of questions, such as whether the Priority Crimes Litigation Unit (PCLU) had made any progress in the prosecution of TRC matters between 2003 and 2017, what the cause of delay was in prosecuting the TRC matters between that period; whether any consequences had been taken against those in the PCLU for failure to prosecute any of the cases; what the challenges were in accessing classified inform why they were there in the first place, and how the Committee could assist in resolving them; what the prospects were of assigning judges on an urgent basis to the matters, and what arrangements were in place to a to the serious lack of capacity on the bench.

She said time is the greatest enemy of these matters, as the accused individuals and potential witnesses may die, or witnesses' abilities to recollect events may diminish with age. Nevertheless, she was hopeful that pr would be made, as the matters appeared to be micromanaged.

In her second set of questions, she asked for comment on whether the self-imposed deadline to finalise the matters by 2026 and whether there was political interference between 2003 and 2017, what had been done renew the contracts of the prosecutors prosecuting TRC matters, which are set to expire this year; on whether the NPA has followed the court recommendations to improve the availability of evidence, and if not, why; the reasons for the recent postponement of the Cradock Four matter until next year, what the factors leading to the postponement were, and whether they could have been dealt with by the NPA before the hearing o September 2024.

The long postponements of cases did not assist anyone and only served to traumatise the families involved further. While she noted the NPA's statements that it had engaged members of the Cradock 4 families, she s that in her engagements with them, they indicated that the Authority was not engaging with them during the sessions but instead providing briefs.

Mr T Tshotetsi (ANC) congratulated the NPA for having successfully overturned the judgements of the court, which wrongly found that, in some cases, the cause of death was suicide and not murder. He asked if the NI planned to conduct judicial inquiries that sought to overturn other incorrect court judgements and, if so, what the total number was.

The presentations indicated that 477 matters had been handed over to the MPTT, and he wondered how many of them had still not been finalised. The inquest on Boikie Tlapi was particularly interesting to him, whos family asked the Committee to ask the NPA whether it was looking into his disappearance. He also asked whether the NPA kept the families informed on the status of the matters.

To him, it seemed that private prosecutions were finalised much more speedily than those prosecuted by the NPA – as was the case with the Ahmed Timol case – and he asked if his view was correct and, if so, what th reasons were for this difference. Due to the high costs, not all families can access private prosecutions.

In addition, he asked if there were still political prisoners in the country.

Mr D Klopper (DA) felt that little was being done to process the matters given the repeated postponements of cases since the first TRC report was submitted to Former President Nelson Mandela. All the families wante closure; they had to wait sometime to get that. Furthermore, the longer it took to finalise the matters, the higher the likelihood of witnesses either dying or forgetting some of the details in the cases, preventing victim their loved ones from obtaining justice. Nevertheless, he applauded the MPTT for its commitment to complete its work in one year and encouraged the NPA to follow its lead.

Afterwards, he asked what consequences would be implemented if the 2026 deadline was not met, how many projects related to the new community rehabilitation approach had been rolled out, how they would be f and monitored, and who would be responsible for their monitoring; whether the NPA and its provincial Directors of Public Prosecutions (DPP) had partnered with the State Security Agency (SSA) to investigate TRC mat and for a progress update on inquests involving Dr Hoosen Haffejee and Imam Haron. In Dr Haffejee's case, the court recommended that the NPA consider instituting criminal charges. In the case of Imam Haron, the ordered that certain individuals involved in his death be referred to the Western Cape DPP and that the medical practitioners be referred to the medical council.

Mr Mathafa acknowledged the good work being done by the department and NPA on these matters. He was also pleased by the DM's admission that the pace of administering reparations has been slow due to the lac regulations. He advised that the department should look into what other issues may have contributed to the slow progress to prevent further delays. Moreover, he proposed that the Ministry consider asking the Presi establish an inter-ministerial committee to better coordinate the DoJ & CD and the departments it is working with on the TRC matters.

The presentations clearly showed the good work done by the TRC to reveal the true nature of the Apartheid system's cruelty and move the country towards forgiveness and reconciliation. However, it appeared that or people on the street did not have the same appreciation. As such, he asked if the department had thought of initiatives to educate South Africans, especially the younger generation, on the TRC's work and the history apartheid.

Many reports suggest that crimes similar to those committed during Apartheid were now being perpetrated by private individuals, like the incident in Limpopo where two black women were killed and fed to pigs. Such *crimes illustrated the slow progress in bringing about national reconciliation. He asked the department if it has thought about implementing programmes aimed at fostering national reconciliation – such as an o rg oin* national dialogue – and the promotion of healing amongst communities that were divided as a result of Apartheid. The findings of the TRC could be the starting point in communicating these efforts to society.

He then posed several questions, including why there was a difference in the cases formally communicated to the NPA by the TRC requiring prosecution against the 126 cases currently under investigation, if any psychosocial support had been provided to victims if any plans were in place to honour victims; what impact the lack of resources has had on the finalisation of cases; how the expenditure line items on the repatriatio would be funded and what mechanisms were in place to ensure they are accounted for; whether the department has a tracking mechanism to monitor and report on the progress of cases, and if so, whether timeline in place for reporting, whether the NPA had implemented the recommendations from Adv Ntsebeza's report that were related to the Rodrigues judgement, and how far it was in doing so, which stakeholders were unif the NPA to its accountability sessions, and if the department also conducted accountability sessions.

He encouraged the NPA to continue its good progress in its accountability sessions with the Hawks.

Ms N Motaung (ANC) acknowledged why the NPA delayed some of its investigations. She asked the department how it dealt with cases where the accused is over 80 years of age and in cases where witnesses are afra unwilling to testify.

Mr S Nomvalo (MK) mentioned that there has been a disruption in the evidence regarding some TRC matters. Many families have lost hope due to the delays, while many perpetrators have still not faced the highest pu their misconduct. The question that should be asked, he said, is how to reinstate confidence in the people who still want justice. In his view, the TRC should have looked into atrocities committed before 1960 so that al victims who suffered were accounted for. In addition, he argued that special courts to adjudicate specifically on these matters should have been established, considering the backlogs and lack of human resources in traditional courts. These courts would be ad-hoc in nature and would be given specified time periods to process all the cases.

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Clear timeframes had to be established and communicated to the victims' families so that they would not begin to lose confidence in the NPA's ability to finalise the matters.

He asked for clarity on whether the department had finished building houses for the victims in need or had only identified the beneficiaries for this project.

To fast-track the tracing of victims, the department had to partner with the South African Police Services (SAPS). Together, they could place registers in police stations for victims to make themselves known. He asked v equipment was used to trace down victims and whether it was effective.

Adv Mkhwebane asked questions on what measures were in place to assist the communities who lived in the former KwaNdebele homeland and were terrorised by a vigilante group called Imbokodo in 1986; whether department worked with non-governmental organisations (NGO) like Khulumani Support Group (KSG); how often the department and NPA communicated with victims; the details of Section 10 of the Witness Protectic the role the Committee can play in the fast-tracking of these matters; the number of individuals in the MPTT who can speak the country's multiple official languages; whether the contracts of the prosecutors assigned matters would be renewed; how far the department was in finalising the payment of grants to the remaining 4248 victims; why the NPA's presentation only highlighted 126 cases under investigation identified perpetra when the TRC report identified 300 perpetrators; why the NPA had only prioritised 126 cases, what criteria was used, and for the Committee to be provided a spreadsheet on each of the cases; and why the NPA could access all of the TRC's records, given that the department was the custodian of them.

Parliament had a duty to ensure that the NPA had access to all records so that all matters could be dealt with speedily.

Ms Pillay explained how the line items are accounted for. The department has a ring-fenced allocation called the President's Fund, which is made of money donated for the TRC reparations. The money is accounted fo has its own audited financial statements.

Regarding the mechanisms used to trace victims, she said the department's constitutional development legislation branch is working on developing policies and finalising regulations, with deadlines set for the latter. F instance, the housing regulations must be signed off before the end of this financial year.

She added that the department is awaiting further information on the community rehabilitation programme.

Adv Said explained that the constitutional development unit comprised three chief directors dealing with constitutional implementation, social justice and participatory democracy, international mutual legal assistance extraditions. The constitutional values inform the work of the third branch of human rights, equality, good governance, and accountability. All matters relating to community healing, promoting social cohesion, toleran non-discrimination fall under the constitutional implementation unit.

The interface between all the units was significant in the attempts to look into crimes committed in Apartheid, as well as addressing issues of discrimination, inequalities and tolerance. The social justice chief directora drafted a national action plan for racism, intolerance, and xenophobia, which is based on the World Conference on Racism Conference's recommendations. The plan has a rapid response mechanism, highlights the in of intolerance in the country, and is made up of external stakeholders – including Chapter 9 institutions – and meets regularly.

The department also has a project that seeks to legally empower communities. Many have been found to be legally illiterate due to the historical actions of the Apartheid government regarding their constitutional and human rights. Community advice officers around the country have been supported in spreading awareness of these rights, and the department hopes to intensify these efforts in the next five years.

The conference on human rights held earlier this year looked at the mechanisms put in place by government departments to protect the constitutional rights of citizens. One recommendation that came up repeatedly the need to improve the attitude and mechanisms used to resolve discrimination-related disputes. After going through many cases adjudicated by the equality courts, the department noted that communities could no identify when they were being discriminated against.

The department is considering how best to work with communities to promote social cohesion, whether through awareness and engagement programmes or dialogues. These programmes will complement the annua court competition the department currently holds in collaboration with the Department of Basic Education in high schools, where students can engage with constitutional-related issues and better understand their rig

A series of dialogues have been held this month as part of the department's programmes in the build-up to Heritage Day, with others planned for November. She said the discussions in these dialogues will assist the department in developing its indicators.

Ms Mmbadi indicated that the President's fund will fund the community reparation projects. The regulations will clarify how the projects will be managed and who will be responsible for doing so.

On whether psychosocial support is given to victims, she outlined that the regulations make provisions for psychosocial support. Before the exhumation and handing over of bodies, the department requests the Depa of Social Development (DSD) to provide the families with psychosocial support.

Regarding whether the department has honoured the victims, she stated that this function belonged to the Department of Sports, Arts and Culture (DSAC), not the DoJ & CD. The DSAC does so through the changing of names and the creation of new monuments. The repatriation programme intends to restore the human dignity that the different TRC-identified victims lost as a result of the gross human rights violations committed u the Apartheid government.

She confirmed that the department had identified the beneficiaries for the housing project.

Regarding the questions related to the payment of the individual grants of R30 000, she mentioned that the remaining beneficiaries referred to those who decided not to receive the individual grant. Some beneficiarie unaware of the grants as they did not expect to be paid for their contribution to the country's liberation, while others could not be traced. Nevertheless, the Promotion of National Unity and Reconciliation Act allowed who had yet to receive their grant to apply for them at any time.

On the questions related to the community rehabilitation programme, she explained that the department can only rehabilitate 18 of the 128 identified communities due to limited funds. Only 3 or 4 communities have rehabilitated, and work will only begin on the remaining 14 or 15 once the regulations have been published.

She confirmed whether the department is working with the KSG and whether it collaborates with the group, especially when it conducts community outreach programmes on the education reparations it offers. During Khulumani Galela Campaign, representatives from the KSG could engage with the former Minister of Justice and the current DG. One of the issues they raised during the engagement was that the TRC followed a close approach, meaning that those not identified were not entitled to reparations. After the engagement, the previous Ministry requested those who the TRC unit had identified to receive reparations to submit their names that the department could verify if they had received them. The department found that those who submitted their names had received their reparations.

The TRC defined a victim as a person who had suffered gross human rights violations in the past. All people not defined as such by the TRC fell outside of the department's mandate.

Regarding the proposal to expand the TRC mandate to include crimes committed before 1960, she said it was for Parliament to decide whether the TRC process should be reopened and broadened to include victims v may have suffered from atrocities before 1960.

On how often the department communicated with victims or their families, she indicated that the department readily communicates with victims and their loved ones, mainly through WhatsApp, direct phone calls and outreach programmes.

Adv Batohi, on the delays in processing the matters, said the NPA has acknowledged publicly that there have been unacceptable delays in providing accountability and justice for victims and survivors of atrocities com during the Apartheid era. Despite the challenge, the Authority is trying its best to get the cases moving, but it has struggled as not much was done before 2018 – which raised serious questions.

Adv Ntsebeza was appointed by the NPA to review the structures and effectiveness of its TRC component, following the findings in the 2019 Rodrigues Judgement that there was political interference in the work of the prosecutions and related matters between 2003 and 2007, she outlined.

In his report, Adv Ntsebeza indicated that he did not have sufficient time to look into the matter and recommended a commission of inquiry. In the course of the Rodriguez case, Adv Pikoli and other members of the N deposed to affidavits, which spoke to what they referred to as interference in the work of the NPA in its ability to investigate and prosecute matters properly. The NPA is doing what it can to ensure no further delays, notwithstanding the challenges.

When asked why private prosecutions were finalised more speedily than ones done by the state, she assumed that the question referred to private legal representations as opposed to private prosecutions, as she wa aware of any inquest being privately prosecuted. When she took office, legal representatives of families and NGOs placed much pressure on the NPA to open inquests on issues.

The NPA's approach has been to assist all families that cannot afford legal representation. One way it has done so is by asking that a joint inquest be held, as was seen in the Dipale and Haffejee cases. As those cases h bigger public profile, an impression was created that they were being prioritised over others.

Regarding whether the contracts of the contract prosecutors would be extended, she said that even though the contracts can only be for 12 months, the NPA was granted an exception to appoint contract prosecutors deal specifically with TRC matters for three years. The NPA recently applied for the new posts to be permanent as it anticipated that the processing of these cases may take longer than expected. The prosecutors can b absorbed after the TRC matters are resolved. The department has yet to give an outcome regarding the application.

Ms Fullard, on how many of the 447 matters involving individuals reported missing in the TRC report had been finalised, highlighted that the 180 individuals whose remains have been recovered were not on that list b the list did not include victims who arose out of the amnesty process, like Pebco 3 and the Mamelodi 10. The fact that the amnesty cases are not reflected on the list has more to do with the timing of the release of the report.

Some people on the list of the 447 relate to larger cases, like the case of Richard Lentsela whose family reported him missing to the TRC. Through its work, the MPTT established that he had been shot dead along with other uMkhonto we Sizwe cadres near the border of Botswana. Their remains were recovered in a small village near Rustenburg and were riddled with bullets. The bodies of any individual found to have been killed in same incident as someone identified on the TRC list must be recovered.

Regarding Boikie Tlhapi, she explained that the MPTT dealt with two types of cases. One is clandestine/covert abductions and disappearances. In those instances, the fate and whereabouts of the missing person or de are known only to a small group of perpetrators. The only cases in that category where it has managed to recover remains are cases where the perpetrators applied for amnesty, as was done in the cases of the Mame and Pebco 3 – the MPTT would not have been able to locate the burned remains of the Pebco 3 without the amnesty application which revealed that they had been abducted and taken to Cradock.

In those clandestine/covert abductions, the MPTT's capacity to recover remains depends on the availability of information from amnesty applications. There was no such application in the case of Boikie Tlhapi.

The second category of cases the MPTT deals with are ones where people were killed in the public domain in a skirmish or an incident that was not clandestine. A lot of the remains recovered have been of combatants inside the country in clashes with the police.

On what is being done to memorialise TRC victims, she said the MPTT tries to ensure that the names of TRC victims, and those still alive, appear on the Wall of Remembrance at Freedom Park in the City of Tshwane. Pc prisoners executed on the gallows are memorialised at the Gallows Museum at Kgosi Mampuru Prison, which she believes is one of the most outstanding museums worldwide and needed more publicity.

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As part of its exile repatriation project, the MPTT has met with the South African Local Government Association to discuss the possibility of municipalities memorialising deceased exiles whose bodies have been repatr by renaming streets and public buildings.

On who the MPTT has partnered to trace the remains, she indicated that the MPTT works with the SAPS and Department of Health, both of which house forensic pathology facilities, mortuary books, and registers, all c which are fundamental to identifying unidentified bodies that have been brought to the mortuary at a particular time. In addition, the MPTT works with the municipalities, especially their cemetery departments and th Department of Home Affairs.

The MPTT also uses residual security police documents found in the national archives, like the security police photo album, which contains 7,000 photographs and information about people in exile.

She mentioned that the MPTT incorporates different spiritual, religious, and cultural practices in its work to communicate with families across language and cultural differences. The team is multilingual and can engag different communities.

Adv de Kock pointed out that the DPPs are responsible for the operational management of the TRC cases.

Regarding the total number of inquests underway, he said the NPA has 25 inquests at various stages of preparation, which are either on the court rolls or have been requested to be reopened. The hearing of an inque depends on the availability of judges, which will be checked by the NPA's head office in collaboration with the DPP of a particular jurisdiction.

In response to the question of whether special courts are needed, he pointed out that the majority of the inquests will be dealt with in the high courts, so each gets the necessary attention.

On why private prosecutions were done more speedily than public ones, he underlined that there were 0 prosecuted TRC matters, as the mandate to deal with these matters rests with the state, which the NPA repres all criminal proceedings. Furthermore, all the matters fall within the mandate of the investigative authorities (the Hawks) and the prosecuting authority. The NPA does work with private practitioners and held a meetin them in January of this year. Where family members of victims choose to be represented by private legal practitioners, the NPA will offer to assist.

Regarding the concerns raised around the timelines, he said there are common themes throughout the presentation: one, the identification of all the cases that need critical attention; two, that there must be account in terms of both the investigation and prosecution of the matters; three, that there is accountability in terms of monitoring and evaluation which happens monthly; and four, that in each of the cases, an action plan is developed with specific timelines. Thus, the NPA is confident that the measures put in place will do justice to all of the work that has to be done, and it will adhere strictly to the timeframes.

While the work is ongoing, the NPA could not provide a fixed timeline for resolving the matters as new cases are added from time to time, he explained.

On whether the contracts of the prosecutors of TRC cases in the NPA would be renewed, he mentioned that the prosecutors would be permanently appointed. Even if the prosecutors are promoted from their positior can still be retained to complete cases worked on in the TRC. The NPA has asked for an extension of the contracts and to hire additional prosecutors for the contract. The latter will depend on the creation of the perm capacity requested.

On witness protection, he highlighted that the presentation reflects the NPA's plan to host a 2-day workshop on 07 November, with all the relevant officials involved in TRC work expected to be present. A strategy will b developed to address concerns regarding witness protection at the workshop. The NPA does have an internal witness protection unit where many witnesses are held under witness protection.

Regarding whether the scope of the inquests should extend before 1960, he explained that Parliament decided to set the period from 1960 to 1994. The TRC did not specify the total number of referrals. The NPA has g through all the volumes of information provided by the TRC work to identify which matters the TRC did not make any finding on amnesty and where outstanding investigations were required. He stressed that there wa list of 300 cases of perpetrators referred to the NPA.

The current total number of matters dealt with by the NPA since 2021 is 156, with 126 currently under investigation.

On the NPA's ability to engage with victims of different language groups, he indicated that 8 of the 10 DPPs are multilingual. The NPA personnel are in line with the country's equity profile and demographics.

He asked the Eastern Cape DPP to answer the question on the Cradock 4 inquest.

Adv Barry Madolo (DPP, Eastern Cape Division of the NPA) stated that the inquest was postponed after an agreement was reached between all the parties involved before the hearing on 02 September until 02 June 20 This agreement was reached after a delay in fees paid to counsel representing former SAPS and SSA officials and a request made by a member of the Goniwe family for the state to pay his legal representation.

Adv de Kock, on the classified information, mentioned that this was flagged as a practical challenge and no assistance was needed from the Committee. Classified pieces of information have, from time to time, been declassified by the relevant department in collaboration with the SSA. A meeting has been set up between the NPA and SSA from 02 to 03 October to address the outstanding issues.

Touching on the comments related to the Ntsebeza report recommendations, he highlighted some of the key recommendations: the continuation of the accountability sessions; the TRC component must play a critical the investigation of the matters in collaboration with the SAPS, which is being done; improved the alignment of the work of the MPTT and TRC component (the NPA has closed the gaps that existed between the two); ti sharing of information between the MPTT and the NPA's investigative team, which has been followed up on; SAPS legal representation for accused appearing in courts (the NPA has addressed a letter to the National Commissioner of SAPS and it believes that the matter has been resolved); the payment of SAPS expert witness fees, which has been resolved; data management in all the TRC investigations and prosecutions (the NPA working on a system to upload the progress of each matter).

Adv Batohi reminded the Committee that Adv Ntsebeza's report found that the processes, structures, and systems put in place were largely adequate. She thanked the Committee for acknowledging the complexity an difficulties of these issues and for offering to assist where it could.

Deputy Minister Nel said he had a few brief points to make. First, he thanked the Committee for the constructive engagement on the topic. The questions demonstrated a Parliament at work and a Parliament fulfilling oversight obligations.

Two, he thanked the department and NPA for their work so far.

Three, he told the Committee that the former DM of Justice, Mr John Jeffery is listed by the TRC as a victim of gross human rights violations, having narrowly escaped with his life in an ambush in KwaZulu-Natal during t height of the violence, but he declined to accept reparations.

Fourth, he indicated that Members raised fundamental policy matters that would be taken to the Minister. The Ministry undertook to engage further with the Committee on issues like the proposal to expand the scop before 1960, the closed list, the establishment of special courts, the alleged political interference in the prosecution process – which he claimed not to be aware of or been a part of – and how to ensure issues of racism sexism as experienced in Apartheid never rear their head again. The national plan of action against racism and related intolerance and the forthcoming national dialogue will be an appropriate platform to discuss the he felt.

He felt the need for tighter coordination and collaboration between the relevant departments and authorities working on these cases was clear. The department will explore the proposal of an Inter-Ministerial commit

Five, he said international cooperation between the MPTT and other countries like Argentina – which had a similar history of individuals being kidnapped, tortured and killed – highlighted the essence of what internati olidarity was all about.

Adv Mkhwebane asked the department to submit a spreadsheet of all the cases it is dealing with and a report on what happened to the alleged vigilante group Imbokodo, which operated in KwaNdebele.

To her, the department and NPA had forgotten about the 2026 deadline and were not showing enough initiative in processing the matters. Nevertheless, she acknowledged the efforts made to create permanent struc

The Chairperson asked that these questions be answered in writing.

Adv Batohi assured the Committee that the NPA would provide the information.

The Chairperson thanked the department and NPA for their engagement and expressed his satisfaction that the department still fulfilled its obligations without the Minister and DG.

He said the committee will monitor the progress of the matters and play a supportive role, where it can, to ensure that the 2026 deadline is met. Government departments needed more collaboration to carry out the exhumation and repatriation programme.

He announced that a meeting had been scheduled for Friday, including the relevant committee secretaries, to begin discussions on the action plan to combat statutory rape.

The meeting was adjourned.

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SOUTH AFRICAN POLICE SERVICE 538 SUID-AFRIKAANSE POLISIEDIENS

PA17

Reference	25/7/12/1(2141)
Enquiries	Lt. Colonel S. Iyer
Telephone	012-3931717
Fax number	012-3932617
E-mail	iyersarojadevi@saps.gov.za

NATIONAL DEPUTY INFORMATION OFFICER
SOUTH AFRICAN POLICE SERVICE
PRIVATE BAG X94
PRETORIA

0001

3 OCTOBER 2016

Mr James Ekron
SAHA

Dear Sir

DECISION ON REQUEST FOR ACCESS TO A RECORD: **GENERAL IZAK JOHANNES ENGELBRECHT**
(Section 25 of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000))

If the request has been granted, proceed at A.
If the request is granted, but deferred, proceed at B
If a record cannot be found or does not exist, proceed at C.
If the request is refused, proceed at D.
If the request has in part been granted, and in part been refused, A and D must been completed.
If the Service refuses to confirm or deny the existence of the record, proceed at E.

Your request for access to a record was considered and the following decision has been taken:

A. **Request for access to the record is granted**

Indicate below whether access to the record is granted in full or only in part
If access to the record is only granted in part, complete D below and state the reason for the partial refusal and the section of the Act relied upon to refuse access to a particular part of the record.

You have been granted full* / partial* access to the record. Before access will however be allowed, an access fee/ reproduction fee * may be payable. This fee is determined by the form in which access is granted. (See below)
* *Delete which is not applicable*

If you believe that you qualify for exemption from the payment of the prescribed fee, submit your reasons together with this Notice to the deputy information officer whose particulars appear above. The deputy information officer will inform you whether you qualify for exemption from paying the relevant fee or not.

The access fee or reproduction fee payable is .....The fee may be paid at your nearest police station or financial office of the South African Police Service (take this form with you when making such payment), or make an electronic payment into the South African Police Service bank account of which the bank details are: **ABSA Bank, Pretoria, Branch Code 632005, Account Number: 4054522787, Cheque Account** (the reference number on the top right side of this form must be used as the relevant reference number). The receipt that you receive must be submitted to the deputy information officer concerned as proof that you have paid the relevant fee. Only after the deputy information officer has received the receipt, your request will be granted.

Form of Access to record

Mark the appropriate box with an "X" to indicate the form in which the record will be provided to the requester
If access to the record cannot be provided in the manner in which it was requested, complete below.

As you requested, the record will be provided to you, in the manner marked with an "X" below.

X	copy of written or printed record (A4-pages)		copy of A4-page on computer or in electronic or machine readable
	copy of video cassette		transcription of video cassette
	copy of audio cassette		transcription of audio cassettes
	copy of photographs		copy of stiffy
	copy of compact disk		

It is not practically possible to give you access to the record in the form that you requested. Access will however be provided

in the following manner:_____

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The representations that you have made on why access to the requested record should not be deferred, were considered* / no representations were received from you* and it was decided that access to the record will not be granted before the publication or submission of the record. Access to the record will be granted on _____ / / 20 _____.

DD MM YEAR

* *Delete which is not applicable*

C. The record requested cannot be found or does not exist

	Mark with "X"
The record that you requested, cannot be found.	X
The record that you requested, does not exist.	

In view of the above, it is therefore impossible to grant access to the record that you requested. Attached hereto you will find an affidavit or statement on affirmation, giving full account of all the steps taken to find the record, or to determine whether the record exists, or not. If the record is found after you have received this Notice, your request will be considered and you will be informed of the outcome of your request for access.

D. Request for access is refused

The reason(s) for refusal and the section of the Act which provides for such refusal, must be stated below
If access to a record is partially granted, this section must be completed concerning the part of the record to which access is refused.

Your request for access to a record has been refused. The section relied upon for the refusal is indicated in the table below:

Section of the Act relied upon		Mark with "X"
Sec 34:	Record may infringe the privacy of a third party who is a natural person	
Sec 35:	Request relates to certain records of the South African Revenue Service	
Sec 36:	Record may relates to commercial information of third party	
Sec 37:	Record relates to confidential information, and protection of certain other confidential information, of a third party	
Sec 38:	Record may endanger the safety of individuals and cause damage to property	
Sec 39:	Record relates to police dockets in bail proceedings, and may prejudice law enforcement and legal proceedings	
Sec 40:	Request relates to records that are privileged from production in legal proceedings	
Sec 41:	Request may cause prejudice to the defence, security or international relations of Republic	
Sec 42:	Request may cause prejudice to the economic interests and financial welfare of the Republic and commercial activities of the South African Police Service	
Sec 43:	Request relates to research information of a third party and, research information of the South African Police Service	
Sec 44:	Request may cause prejudice to the effective functioning of the South African Police Service	
Sec 45:	The work involved in processing the request would substantially and unreasonably divert the resources of the Service*, or the request is manifestly frivolous or vexatious* ***(* delete which is not applicable)***	

E. Refusal to confirm or deny the existence of the record

The South African Police Service refuses, in terms of section 39(3) of the Act, to confirm or deny the existence of the record that was requested, for the following reason:

Protection of bail proceedings: section 39(1)(a)		Protection of law enforcement: section 39(1)(b)	

Note to all requesters:
You may, within 60 days, lodge an internal appeal against the access fee payable, the form or manner in which the record will be made available, or against the refusal of the request, whichever is applicable to your request. If you want to lodge an appeal, you must complete a Notice of Internal Appeal-form. A Notice of Internal Appeal-form may be obtained from any police station. Such Notice must be submitted to the office of the deputy information officer mentioned above. Within 180 days after being informed of the outcome of an internal appeal, you are entitled to lodge an application to court for appropriate relief.

Kind regards

S. IYER
LIEUTENANT COLONEL

Signature

LT COLONEL S. IYER
Name and rank of deputy information officer

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Sarojadevi IYER
States under oath in English,

I am an Indian female with identity number 660224 0084 084. I reside at 96 Vink Street, Pretoria West, Pretoria. I am a Lieutenant Colonel in the South African Police Service with force number 0622550-1. I am stationed at the Office of the National Deputy Information Officer, Head Office, Pretoria

I am one of the Information Officers and serve under the command of the National Deputy Information Officer Colonel Amelda Crooks. On 17 August 2016, I received a file with file reference number 25/7/12/1(2141) from my commander for further intervention. It contained a request for access to records from Mr James Ekron of the South African History Archives. The request was for access to records relating to charges brought against a General Izak Johannes Engelbrecht between 1 January 1990 to 31 December 2005.

On 18 August 2016 I forwarded the request via E-Mail to the relevant line Managers via the Divisional Deputy Information Officers ie Colonel Kobus Smit at our Division Detectives Services and Captain Makgoba Mokgadi at Division Crime Intelligence.

On 22 August I received an e-mail response from Colonel Kobus Smit which contained a response from Major General Johnson of Division Detective Services. Major General Johnson stated that his office has no knowledge or records of any investigations against General Izak Johannes Engelbrecht. He also requested that my office forward this request for information to the head of the DPCI. On 23 August 2016, I forwarded the request to Warrant Officer Mushi Ntlhodi who is the Deputy Information Officer at DPCI.

On 9 September 2016, I received an e-mail response from Warrant Officer Mushi Ntlhodi. He stated that he searched through every record at DPCI and no records relating to General Engelbrecgt could be found. He also stated that even senior Managers at DPCI do not have any knowledge of the General. On 30 September 2016, I received an e-mail response from Captain Makgoba Mokgadi of Division Crime Intelligence. She stated that she received feedback from their Multi-Dimensional Section Covert Intelligence stating that they do not have any records relating to General Engelbrecht or cases against him.

I know and understand the contents of this statement.
I have no objections to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

Iyer
.....
S. IYER

I certify that the above statement was taken by me and that the deponent has acknowledged that she knows and understands the contents of this statement.
This statement was sworn to before me and the deponent's signature was placed thereon in my presence.

At.....PRETORIA.....on.....3 October 2016 .....at.....09:30.....

W.E. CAROLISEN
CAPTAIN
KAPTEIN
.....
SIGNATURE: COMMISSIONER OF OATHS

WINNIFRED ELSA CAROLISEN.....
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

SAPS .Office of the National Deputy Information Officer : Wachthuis Building : Pretorious Street Pretoria .....
BUSINESS ADDRESS/STREET ADDRESS

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PRIORITY CRIMES LITIGATION UNIT (PCLU)

1. INTRODUCTION

The Priority Crimes Litigation Unit (PCLU) was created by Presidential proclamation[1] on 23 March 2003 and is located in the office of the National Director of Public Prosecutions. This unit has no investigative capacity and is reliant on SAPS and the DSO in this regard.

Mandate:
To manage and direct investigations and prosecutions relating to the following matters:

- ***Criminal prosecutions arising from the Rome Statute***; [Implementation of the Rome Statute of the International Criminal Court Act, Act No 27 0f 2002] This relates to the serious crimes of:
  - ***a.*** Genocide,
  - ***b.*** Crimes against humanity and
  - ***c.*** War crimes.

- ***Crimes against the State, including national and international terrorism***; [Inter alia prosecutions under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No 33 of 2004 - the POCDATARA Act]

- Contraventions of:
  - ***The Regulation of Foreign Military Assistance Act***; [Act No 15 of 1998]
  - ***Non-Proliferation of Weapons of Mass Destruction A***ct (nuclear, chemical and biological warfare proliferation); [Act No 87 of 1993]
  - ***The National Conventional Arms Control Act***; [Act No 41 of 2002]
  - **The Nuclear Energy Act** [Act No 46 of 1999]
  - **The Intelligence Services Act** [Act No 65 of 2002]

- Matters emanating from the **TRC process**:
  - Prosecutions
  - Missing persons

- Any other priority crimes as determined by the National Director.

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[1] Cf attached copy of Presidential Mandate.
http://www.npa.gov.za/UploadedFiles/About_PCLU_signedoff.doc

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2. FOCUS AREAS

The unit's focus areas are:

(i) NUCLEAR NON-PROLIFERATION

(ii) NON-PROLIFERATION OF CHEMICAL AND BIOLOGICAL WARFARE AGENTS

The PCLU instituted a prosecution for this category of offence. The matter was finalized with a plea of guilty and a fine of R100 000 was imposed on the corporate entity prosecuted. Further dockets relating to controlled chemicals of Crest and Amla were decided by this Unit.

(iii) FOREIGN MILITARY ASSISTANCE

- In response to the arrest of South African citizens in Zimbabwe and Equatorial Guinea, the PCLU managed and directed an investigation into the involvement of other role players. This led to the arrest of three South African citizens and a UK citizen (Mark Thatcher). All four pleaded guilty in terms of section 105A of the Criminal Procedure Act.

- Following the release of the South African citizens detained in Zimbabwe in connection with the *coup* in Equatorial Guinea, eleven of them were arrested in South Africa and charged with contravention of section 3(b) of the Regulation of Foreign Military Assistance Act, No 15 of 1988. Two of the said accused pleaded guilty and were sentenced. The trial of the remaining nine accused is due to proceed in February 2007. It is anticipated that the outstanding prosecutions relating to the Equatorial Guinea attempted *coup d'etat* will be finalized in 2007.

- A matter of concern to Government was the participation of South African citizens acting as security guards in the conflict in Iraq. A number of enquiries conducted by SAPS were evaluated by the PCLU, but it was found that such conduct did not fall within the ambit of the existing FMA legislation. The PCLU prepared a detailed opinion recommending an amendment of the Act, which was submitted to all relevant role players.

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- Government accepted the need to amend the Foreign Military Assistance legislation in order to take effective action in Iraq. A revised Act was placed before the Defence Portfolio Committee. However, the Minister of Defence recognized that the Act still contained several shortcomings.

- It is hoped that the revised legislation will shortly come into effect, since the PCLU would like to address Government's concerns relating to the number of South Africans performing security services in Iraq.

(iv) NATIONAL AND INTERNATIONAL TERRORISM

The PCLU closely interacted with State departments having an interest in such affairs. In several matters, the PCLU furnished opinions to SAPS, NIA and DFA. Although no prosecutions arose from such interventions, the PCLU's involvement meant that the matters were properly attended to.

(v) STATUTE OF ROME

A number of enquiries were carried out at the request of the International Criminal Court and a complaint relating to the seizure of farms in Zimbabwe was investigated. No prosecutions arising from the Statute of Rome were instituted.

(vi) CONVENTIONAL ARMS

- After a lengthy trial in the Regional Court, Germiston, a former employee of an arms manufacturer was acquitted on charges of supplying his company's technology to a foreign state's military structure. The charges related to highly technical contraventions of the Armscor Act, the Protection of Information Act, the Copyright Act and theft. The court found that the instrumentation that was built, did not comply with a specific military standard (as required by the Act) and that the accused did not have the required knowledge of unlawfulness relating to these specialized legislation.

- A number of complex and intricate dockets pertaining to alleged irregularities committed at Armscor and the Directorate of Conventional Arms Control Committee were submitted to the unit for decision. A number of these matters are under investigation.

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(vii) MATTERS IMPACTING ON STATE SECURITY

- The PCLU offers opinions and other advice to various State departments on matters impacting on State security and other sensitive matters. The PCLU also addressed a standing committee of the United Nations' Security Council as far as the country's capacity to prosecute international terrorism.

(viii) TRC PROSECUTIONS

- The PCLU conducted an audit of around 300 cases which had been submitted by the DSO, DPP's and SAPS in 1999 in terms of a direction by the then NDPP. 167 of these cases were finalized on the basis that no prosecutions could be instituted.

- As a result of various representations received, the PCLU has identified five cases, which potentially can be prosecuted, as well as approximately 10 other cases warranting investigation. The following steps must be taken:

  (i) The representatives of the State departments which are required to assist the PCLU in the execution of its duties must be identified and involve themselves in the process;

  (ii) The issue of the investigations must be resolved with SAPS and the DSO and thereafter the necessary investigations completed;

  (iii) The close involvement of the process by Justice is necessary in cases where prosecutions are instituted where amnesty was refused, since the applicants may take the validity of the refusal to grant amnesty on review to the High Court;

3. MISSING PERSONS

Due to the fact that the President had in 2003 directed the NDPP to give attention to the cases of some 500 persons who had been reported missing by the TRC, a small Task Team was established to evaluate the TRC report and to identify cases for investigation. Approximately 150 cases were identified for immediate investigation.

- Investigations and Exhumations

  Investigations commenced into 150 missing persons that were identified as priority cases in an audit, with the aim of obtaining (a) information as to the fate of the missing person and (b) locating, exhuming and identifying human remains where possible.

  Thus far the burial sites of thirty-two persons were located and these human remains were exhumed. Forensic analysis was conducted and identities confirmed in twelve cases. The remaining twenty are still undergoing DNA testing.

- Handover of remains and reburials

  Five identified remains were handed to the affected families at a special national ceremony in July 2005 at Freedom Park. Reburials have taken place in all of these cases, with these families receiving assistance from the Department of Justice and Constitutional Development towards reburial costs. Further handovers will take place during 2006.

- Memorialisation

  A key component of the work on Missing Persons is ensuring the necessary connection with existing structures engaged in memorialisation processes. Liaison with structures such as the South African Heritage Resource Agency (SAHRA), Freedom Park, and the SANDF was established to address matters such as tombstones for those exhumed and reburied. The outcome of Missing Persons investigations will be closely coordinated with other related bodies working on memorialisation, monuments and tombstones.

- International expertise

  A partnership was built with the Argentine Forensic Anthropology Team (EAAF), the world leaders in this work, in order to ensure that missing persons' work in South Africa is in line with best international practices as developed by *inter alia* the UN and International Committee of the Red Cross (ICRC) in such human rights cases.

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- Local capacity building

  Local South African experts and several post-graduate students in the fields of archaeology, anthropology and anatomy were also drawn into the work on a collaborative basis with the Argentine team, building local capacity.

- DNA analysis

  A partnership was established with the Human Identification Laboratory (HID) at the University of the Western Cape (UWC) for DNA analysis work. This lab is developing specialization in "ancient DNA" work, which works with difficult cases of old and damaged bone material, as is the norm in missing persons' exhumations. The development of the capacity to conduct mitochondrial DNA tests (as opposed to only nuclear DNA tests) will be an important contribution to capacity building in Africa.

- Partnerships with civil society

  The Missing Persons Task Team developed excellent working relationships with civil society groups and NGO's working in the field of missing persons and disappearances, including the Center for the Study of Violence and Reconciliation (CSVR) and Khulumani Support Group (KSG).

- Namibia

  After the November 2005 discoveries of mass graves in Namibia, the Namibian President requested the assistance of South African expertise. The Missing Persons Task Team sent a delegation to review the situation and make recommendations accordingly. The Namibian authorities warmly received the delegation's report and recommendations. The report included the offer of assistance to Namibia in the form of establishing a national co-ordination structure, as well as research, investigation and DNA analysis support. As a key role player in the past Namibian conflict, South Africa has a particular historical responsibility in this regard.

  Assistance to the Namibian authorities will form a key component of the work of the Missing Persons Task Team in future. This will take the form of research, investigation and co-ordination assistance, pending the approval of the relevant South African government structures.

- Cases outside the South African borders

  While thus far investigations and exhumations have focused on cases inside South Africa's borders, groundwork will be laid for the examining of cases of South African persons missing outside the countries borders.

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- Integration with the new TRC Unit established in the Department of Justice and Constitutional Development

  As these missing persons investigations are the result of the TRC's recommendations, the Missing Persons' Task Team serves on the Steering committee of this new TRC Unit.

- Co-operation with other Government Departments

  Missing Persons investigations require the co-operation of other Departments such as Home Affairs, Foreign Affairs and Health. Protocols with these Departments will be required via the Minister of Justice and Constitutional Development. In particular, the initial collaboration with certain SAPS investigations will be strengthened and formalized.

The PCLU strives to maintain a high standard of efficiency in dealing with complex matters emanating from its mandate and which impact on the Rome Statute and State security.

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Presentation to Portfolio Committee on Justice and Constitutional Development

Progress on TRC Cases

National Prosecuting Authority
South Africa

17 September 2024

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Noteworthy Developments

FIRST CONVICTION WITH EVIDENCE POST 2021

KZN – 8 November 2023

STATE versus Wesley Matiri Madonsela

GUILTY = MURDER

SENTENCE = Ten Years Imprisonment

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Noteworthy Developments (cont.)

Name of the Matter- Finalised with a decision	30 matters finalised
Re-opened inquest of Mr Ernest Dipale	Original court finding of suicide by hanging overturned.
Re-opened inquest of Dr Hoosen Mia Haffejee	Original finding of suicide by hanging overturned.
Re-opened inquest of Mr Abdullah Haron	Original finding of death resulting from a fall downstairs, overturned.
Inquest: Mr Zama Sokhulu	Proceedings finalised, matter referred to NPA for decision.
Re-opened inquest of Dr Neil Aggett	Original finding of suicide by handing overturned.

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Noteworthy Developments (cont.)

Name of the Matter on the Criminal Court Roll	Date of hearing
S v Mfalapitsa and another (COSAS Four)	20 November 2024-Trial
S v Coetzee and another (Ms Simelane)	14-18 October 2024 for further evidence in the s 77(3) application.
S v Marais and three others (Mr Nyoka)	Trial date-August 2024
S v Botha and others	12 November 2024-State attorney-legal representation
S v Botha and others	12 November 2024-State attorney-legal representation
S v Schoon and others	7 November 2024-state attorney-legal representation

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Noteworthy Inquests

Name of the Matter	
Cradock Four	Inquest-re-opened-2-20 June 2025-challenge with legal representation
Chief Albert Luthuli	Inquest re-opened-awaiting appointment of judge
Mr Griffiths Mxenge	Inquest re-opened-awaiting appointment of judge
Dr Rick Turner	Inquest to be held-Judge to be appointed
Highgate Hotel	Inquest to be held-27 January to 7 February 2025
Mr Booi Mantyi	Re-opened inquest-Judge to be appointed
Mr Moss Morudi	Inquest to be held-Judge to be appointed
Northcrest Five	Inquest to be held-Judge to be appointed

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Noteworthy Inquests (cont.)

Name of the Matter	
Mr Oupa Ronald Madondo	Inquest proceedings underway-5 and 6 November 2024
Mr Mthunsi Vlemeseni Njakazi	Inquest proceedings underway-August 2024
Messrs Nzuza and Ramotlo	Inquest to be held-shortage of capacity
Mr Vusumuzi Meshack Msani	Inquest to be held-shortage of capacity
Mr Vusumuzi Mbatha	**Inquest to be held-shortage of capacity**
Mr Tutu Shezi	Inquest to be held-shortage of capacity
Messrs Charles Ndaba and Mbuso Shabalala	Inquest to be held-shortage of capacity

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Noteworthy Inquests (cont.)

Name of the Matter	
Mr Bhekani Sibusiso Mbokazi	Inquest to be held
INDICTMENTS	
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OPINION

CHILE'S 'PINOCHET CASES' AT 25: AN ONGOING SEA CHANGE

CATH COLLINS FOR JUSTICE INFO

It is 25 years since former Chilean dictator Augusto Pinochet was arrested in London on October 16, 1998. This was a defining moment in the development of international justice. It was also a defining moment for Chile's justice system. Professor Cath Collins highlights a part of the story that is less known: how Pinochet's arrest triggered a slow but profound change in the will and capacity of domestic courts to respond to victims' long quest for justice. Perhaps more now than ever.

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Demonstrators in Chile in August the arrest of Augusto Pinochet in October 1998. 25 years later, the Chilean justice system is more active than ever in the pursuit of the truth, justice and reparation for victims of the dictatorship. © AFP via Getty Images

The year 2024 marked the 50th anniversary of Chile's violent military coup, which ushered in 17 years of harsh dictatorship and cast a shadow over the hopes and dreams of a thriving democratic socialist experiment. The year also marks a quarter of a century since Pinochet's cases at home and abroad galvanised Chile's previously dormant national courts. These began to either embrace justice or resile from it, with impunity for the former dictator and his henchmen. Perhaps surprisingly, the story is...

Two and a half decades on, Chile's rather quiet, yet cumulative experience of prosecuting atrocity crimes before domestic courts delivers more attention than it is often afforded. In perfect, and above all slow, as subsequent justice has been since 1998 Chile's courts have resolved hundreds of cases of dictatorship era killings, disappearances, and torture, and sent dozens of perpetrators to jail. They have also begun – more recently – to grapple with sexual violence, and claim-making spurred by historical convictions of political prisoners, and the duty to comply with Inter-American Court jurisprudence. In so doing, they demonstrate the perhaps underplayed potential of domestic justice systems as a transitional justice venue. Chile's judges are today grappling not only with matters of innocence and guilt, but also with pertinent questions in the areas of truth, reparations and guarantees of non-repetition.

As far as redressing criminal justice is concerned, as of July 2023, Chile's Supreme Court had handed down verdicts in more than 530 cases for human rights crimes against humanity. Another 1,000 cases were still under investigation or awaiting resolution before lower courts. 284 former regime agents were in prison for their crimes, with dozens more – by this year's end – escaping justice only through the biological attrition provided by death. Some of the investigations, pleadings, these developments stretch right back to January 1998 – when the first criminal complaints against former dictator Augusto Pinochet were brought by victims and relatives associations.

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A slideshow of our correspondents' meeting in Geneva in November 2023

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A RECORD NUMBER OF CONVICTIONS IN THE PAST YEAR

Pinochet's arrest in the United Kingdom on October 16 1998 on an international arrest warrant requested by Spain turned the trickle of justice activity into a flood. Many cases have rumbled on ever since, but this year – no doubt with the approaching anniversary in mind – the Supreme Court has acted more decisively than before to shepherd investigations through the system at a less glacial pace. A record 67 Supreme Court criminal case verdicts have been handed down in the past 12 months. They include the largest single set of convictions ever ratified – 59 former secret police agents sentenced to jail terms at one go – and the culmination of some cases with a high international profile. In August 2024 seven former military officers were imprisoned for their part in the 1973 torture and murder of iconic folk singer Victor Jara. One of those responsible, now stripped of his acquired US citizenship, was arrested in Florida in early October as a prelude to deportation.

The road to justice has not been easy, with early obstacles including excessively lenient sentencing and a reluctance to allow cases involving survivors to go ahead. Defendants' strategies have evolved from invoking amnesty to flatly denying involvement to delaying tactics that allow perpetrators to plead age-related infirmities or benefits. Today, however, the proportion of dead or disappeared victims for whom a case has been successfully concluded is at just over 34% and rising, while new cases are being generated all the time. Many are triggered by women survivors' determined to force greater acknowledgment of the sexual violence to which they were subjected as political prisoners. Judges for their part have learnt to disapply amnesty and statutes of limitation on crimes against humanity. They have digested the Rome Statute – the founding treaty of the International Criminal Court (ICC) – and other aspects of modern international criminal justice doctrine, and invoke these to supplement the deficiencies of the domestic criminal code. Specialised detective police and forensic personnel designated to work these cases have gone on to deploy their new skills in other areas of rights protection. The criminal responsibility of corporate actors, or at least of civilians, is beginning to be addressed through prosecution of business owners who denounced union leaders or doctors brought in by the secret police to administer torture.

TURNING COURTS INTO A VENUE FOR REPARATIONS

Today, however, the real novelty in the use of the courts lies in the diversification of the legal recourse being used. Civil rather than criminal justice is the fastest-growing area of activity, with hundreds of civil claims brought in recent times by relatives of survivors. Some are placed as part of a criminal investigation, others as standalone actions against the State. Over time, this use of civil law accrued advantages over the diminishing returns obtained from criminal prosecution of (now elderly, individual) perpetrators. It better points out the systemic, structural nature of the harms, requiring State responsibility.

Along the way, Chile's courts have become perhaps uniquely progressive in declaring civil suits entirely compatible with receipt of administrative reparations – meaning relatives and survivors are eligible for both – and in waiving statutes of limitation and other legal obstacles for civil as well as criminal proceedings. This in effect turns the courts into a venue for reparations, something that international criminal justice has always struggled to offer. The ICC [illegible] and remains hobbled.

"DE-PINOCHETISATION" IN TIMES OF RISING RIGHT-WING APOLOGIA

The courts have also become a place where the right to truth and guarantees of non-repetition are exercised. A growing wave of denialism has been partly combated through Supreme Court injunctions. A recent one ordered a far-right parliamentarian to retract and remove a slanderous social media post; others have obliged mainstream media outlets to publish front-page retractions of official propaganda lies that they obediently gave voice to during the regime.

Survivors wanting to bring civil claims or to have their kidnappers and torturers prosecuted have also resorted to the courts to challenge secrecy provisions around truth commission archives. They won, first, the right to declassify their own case records, and then, the promise of legislation that will make the whole archive accessible to investigative magistrates. Via the Inter-American Court of Human Rights survivors also won the right to have their various long-ago convictions for treason or terror offences imposed by military courts finally dissolved and expunged from the record by the Supreme Court. One survivor, now a human rights lawyer, has brought repeated injunctions to de-Pinochetise public space, forcing the removal of a statue to a [illegible] member and the expunging from military training textbooks of homage to him, and to notorious secret police chief Manuel Contreras.

In a country beset, like many of its neighbours, by a rising tide of right-wing apologists for the authoritarian past, the courts are not a simple or sufficient answer to the challenges of changing hearts and minds. They are, however, persisting a belated but heartening and creditable role in producing and upholding judicial truths that underwrite the transitional justice agenda across its multiple dimensions.

RECOMMENDED READING

CATH COLLINS

Cath Collins is Professor of Transitional Justice at Ulster University, Northern Ireland and Director of the Transitional Justice Observatory of the Universidad Diego Portales, Santiago de Chile, where she was previously Associate Professor of Politics. The Observatorio maps current justice, truth and memory developments in Chile over the Pinochet-era dictatorship and most recently has been supporting and monitoring the launch of the country's first National Search Plan for the Disappeared. Prof. Collins' recent academic publications include 'Pinochet's Accomplices: perpetration, complicity and institutional culpability' with Francisco Pinatos and Francisco Ugas, in Bird et al. (2023), 'Perpetration and Complicity Under Nazism and Beyond' (London: Bloomsbury), 'An Innovative Response to Disappearances: Non-Judicial Search for the Disappeared in Asia and Latin America' (2022, ed. GIJTR/DPLF) and a background paper to the recent update of the UN Secretary-General's Guidelines on Transitional Justice, launched October 2023.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We walked among their ranks saying that none among them should predicate a better future for themselves on the basis of the impoverishment of those who had prospered at their expense. We said to them that on the day of liberation, there would be no looting. There would be celebrations and no chaos.
We said that as the majority, we had a responsibility to make our day of liberation an unforgettable moment of joy, with none condemned to remember it forever as a day of bitter tears.

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

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

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

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

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

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

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

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

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

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

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

The poet, Mongane Wally Serote teaches us: 'to every birth its blood'. And so, today we acknowledge the pain that attended the struggle to give birth to the new life that South Africa has started to enjoy.

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In this era of increased geopolitical tension, we dare celebrate as South Africans that we found home-grown solutions that set us on a course of reconstruction and development, nation-building, reconciliation and peace among ourselves.

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

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

"...the Constitution of the Republic of South Africa, 1993 provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race , class, belief or sex;
"...the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society;
"...it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;
"...the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation".

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

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

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

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

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

It had to help us to promote understanding and avoid vengeance, to extend reparation to those who had been harmed and discourage retaliation, to rely on the spirit of ubuntu as a deterrent against victimisation.
The TRC has done its work as was required. As stipulated in the TRC Act, we are here to make various recommendations to our national parliament, arising out of the work of the TRC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This reality cannot be avoided.

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

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

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

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

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

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themselves to employment in criminal activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What we have identified today, arising out of the report of the TRC, forms part of the panoply of programmes that define the first steps in a journey that has truly begun. South African society is changing for the better. The tide has turned and the people's contract for a better tomorrow is taking shape.
The goals we defined for ourselves a decade ago, as we adopted the Interim Constitution, to pursue national unity, to secure peace and the well-being of all South African citizens, to achieve national reconciliation and the reconstruction of our society, have not fully been realised, despite the progress we have made.

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

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

We have to ask ourselves and honestly answer simple questions.
Have we succeeded to create a non-racial society! The answer to this question is no!
Have we succeeded to build a non-sexist society! The answer to that question is no!
Have we succeeded to eradicate poverty! Once more the answer to that question is no!
Have we succeeded fully to address the needs of the most vulnerable in our society, the children, the youth, people with disabilities and the elderly! Once again the answer to this question is no!

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

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

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

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

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

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

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

Thank you.

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Office of the National Director of Public Prosecutions

The National Prosecuting Authority of South Africa
Igunya Jikelele Lobetshutshisi boMzantsi Afrika
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25 February 2004

A/INV/5/03/TRC

Imtiaz Cajee
P O Box 1888
GARSFONTEIN EAST
0060

Dear Sir

INVESTIGATION INTO TIMOL CASE

I acknowledge receipt of your fax of 18 February 2004 and have to inform you hat the case is registered under the above reference number. Last year investigations were conducted into the allegations that former security branch officer Rodrigues head confessed to his daughter who in turn informed IVOR POWELL.

The investigations produced negative results. I confirm that you furnish me with the following documents:

i) Extract Bizos' book
ii) Article Powell
iii) TRC transcripts
iv) INPUT Detainee
v) Photographs

The testimony of a detainee who was held out of the window was not included.

I would be grateful if you would furnish me with a copy of it as well as any other relevant material, which you may have. The case will again be considered the light thereof.

Kind regards

RC MACADAM
DEPUTY HEAD: PCLU

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REPORT
AMNESTY TASK TEAM

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REPORT: AMNESTY TASK TEAM

1. Background

1.1 A Director-General's Forum, under the chairpersonship of the Director-General: Justice and Constitutional Development on 23 February 2004, appointed a Task Team to consider and report on the following:

"1. Consideration of the nature of the 'arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation' that the NPA and intelligence agencies may come up with in assisting persons who divulge information relating to offences committed during the conflicts of the past.

2. Consideration of a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past.

3. Bearing the above-mentioned in mind, whether legislative enactments are required.".

1.2 The Task Team comprises the following members:

Deon Rudman (Chairperson):		Department of Justice and Constitutional Development
Yvonne Mabule	:	National Intelligence Agency
Vincent Mogotloane	:	National Intelligence Agency
Gerhard Nel		National Prosecuting Authority
Lungisa Dyosi		National Prosecuting Authority
Ray Lalla	:	South African Police Service
Joy Rathebe		Department of Defence

1.3 The Task Team was requested to submit its report to the Director-General's Forum by close of business on 1 March 2004. The Task Team met for the first time on 26 February 2004 and again on 1 March

2004. Commissioner Ray Lalla could unfortunately not attend the first meeting. He did, however, submit his proposals to the Task Team for its consideration.

2. Terms of reference

2.1 At the outset the Task Team discussed its terms of reference in detail. It came to the conclusion that it had to perform its task within the framework laid down by the President in his statement to the National Houses of Parliament and the Nation on the occasion of the Tabling of the Report of the Truth and Reconciliation Commission on 15 April 2003. The President provided the following guidelines:

(a) There shall be no general amnesty, because it would fly in the face of the TRC process and detract from the principle of accountability which is vital, not only in dealing with the past, but also in the creation of a new ethos within our society.

(b) Yet we also have to deal with the reality that many of the participants in the conflicts of the past did not take part in the TRC process. Among these are—

- individuals who were misled by their leadership to treat the process with disdain;
- others who calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel;
- others who expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases, which did not happen.

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

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

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

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

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

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

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

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

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

2.2 Paragraph 1 of the Task Team's terms of reference relates directly to the abovementioned framework determined by the President. Paragraphs 2 and 3 were added to the Task Team's terms of reference in order to enable it to pursue alternative routes in order to address the concerns expressed by the President should the Task Team deem it necessary.

3. Discussion

3.1 In its deliberations the Task Team also took cognisance of the following factors:

(a) In terms of section 179(1) and (2) of the Constitution the National Prosecuting Authority (NPA) is an independent constitutional institution and the National Director of Public Prosecutions (NDPP) has full discretion on whether a particular

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prosecution should or should not be instituted. The Task Team's recommendations should therefore be consistent with this constitutional requirement.

(b) Any recommendations relating to the granting or refusing of amnesty should be in line with the TRC process which was constitutionally entrenched as a trade-off between the individual's right to seek justice in a court of law, on the one hand, and the imperatives of reconciliation and reparation, on the other.

3.2 Ad paragraph 1 of terms of reference

3.2.1 In order to give effect to the "arrangements" contemplated in the President's statement as reflected in paragraph 1 of the Task Team's terms of reference, it is recommended that a Departmental Task Team be appointed comprising members of the following Departments or institutions:

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

3.2.2 The functions of the proposed Task Team should be the following:

(a) Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard

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(b) To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—

(i) the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;

(ii) the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision.

(c) To—

- receive information or representations from victims, perpetrators, legal representatives or any other person or institution regarding any specific matter;
- gather intelligence information;
- investigate the matter;
- consult victims.

(d) To consider the following factors when carrying out its mandate:

(i) The general criteria governing a decision to prosecute as determined by the NDPP in the Policy Manual attached hereto as Annexure "A".

(ii) The following specific criteria:

- Whether the alleged offence is associated with a political objective committed in the course of the conflicts of the past.

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- Whether a prosecution can be instituted on the strength of adequate evidence.
- Whether the case, geographically and politically, reflects the aims and objectives set out in the Promotion of National Unity and Reconciliation, 1995(Act 34 of 1995), and is not in conflict with the requirements of objectivity in prosecutions specified in the Constitution.
- Whether the offence in question is serious.
- Whether the ill health of or other humanitarian consideration relating to the accused may justify the non-prosecution of the case.
- Whether the prosecution will lead to the traumatisation of victims and conflicts in areas where reconciliation has already taken place.
- The degree of co-operation on the part of the alleged offender.
- The credibility of the alleged offender.
- The alleged offender's sensitivity to the need for restitution.
- The alleged offender's further endeavours to expose possible further clandestine operations during the past years of conflict.
- The degree of remorse shown by the alleged offender and his or her attitude towards reconciliation
- The degree of indoctrination to which the alleged offender was subjected.
- The extent to which the alleged offender carried out instructions or perceived instructions.
- The disclosure of organisations/individuals, if any, under whose instructions the alleged offender operated.

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- The alleged offender's role during the TRC process – co-operation, full disclosure and assisting the process in general (if relevant).
- Renunciation of violence and willingness to abide by the Constitution on the part of the alleged offender.
- Whether the alleged offender fully disclosed the alleged offences.
- The views of the NPA.
- If the accused is in custody, the views of the presiding judge or magistrate.
- Any other criteria for deciding whether a political offence was committed as set out in the TRC Act.
- Any further criteria, which the Task Team might deem necessary.

(e) To consider—

(i) the provisions of section 105A of the Criminal Procedure Act, 1977(Act 51 of 1977), relating to plea and sentence agreements and the directives issued by the NDPP in terms of section 105A(11) of the said Act;

(ii) the provisions of sections 7 of the Criminal Procedure Act relating to the issuing of a *nolle prosequi* certificate and the right of a private person to institute criminal proceedings in terms of the section 8 of the said Act;

(iii) the provisions of section 18 of the Criminal Procedure Act relating to the lapsing of the right to institute a prosecution for any offence after the expiration of a period of 20 years from the time when the offence was committed, other than the offences of murder; treason committed when the Republic is in a state of war; robbery, if aggravating circumstances were present; kidnapping; child stealing; rape; or the crime of genocide, crimes

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against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002;

(iv) the possibility of diversion in the case of juvenile offenders;

(v) possible arrangements settling the matter out of court;

(vi) the provisions of section 204(2) of the Criminal Procedure Act relating to the discharge of the alleged offender from prosecution for the alleged offence if such offender testified as a state witness and answered all questions frankly and honestly.

3.2.3 If the above proposals are acceptable, it is recommended that the President announces the proposed process and invites full participation by those who may benefit from the process.

3.2.4 The Task Team realises that the proposed process will have the following shortcomings/concerns:

(a) A possible negation of the constitutional rights of victims, the public at large and alleged offenders.

(b) The possibility of the institution of private prosecutions.

(c) The absence of any guarantee that alleged offenders will not be prosecuted. This might mean that they will be reluctant to approach the Task Team and make full disclosure. The concerns relating to persons who have disappeared, the arms caches that have not yet been discovered and the Kwazulu-Natal problem will not be solved.

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(d) Public perception regarding the participation in a further amnesty process by the security services as the public may regard them as perpetrators in the conflicts of the past.

3.3 Ad paragraph 2 of terms of reference

3.3.1 The Task Team is of the view that the only way to address the above concerns adequately would be to provide for a further amnesty process similar to that of the TRC process. This possibility elicited much debate within the Task Team. On the one hand, there were those who rejected this possibility out of hand. They argued that such a process would undermine and discredit the TRC process, further undermine the reconciliation process and not necessarily achieve the desired objectives. They argued that there is no reason why offenders who previously refused to participate in the TRC process will now all of a sudden decide otherwise. Some members of the Task Team, however, placed emphasis on the need to create a further effective opportunity for full disclosure in order to address the concerns referred to in paragraph 3.2.4(c) above. They argued that a substantial number of those individuals who were in the past misled by their leadership and others who expected their political leadership to provide the overall context against which they could present their cases, may make use of a further amnesty process.

3.3.2 In the light of the views expressed by the President regarding a further amnesty process, the Task Team decided not to make a recommendation in this regard and to leave this decision in the hands of Government. Should Government, however, decide to proceed with such a further process, a draft Indemnity Bill is attached as Annexure "B" for consideration.

3.4 Ad paragraph 3 of terms of reference

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The recommendations under paragraph 1 of the terms of reference do not require any legislation. Should Government, however, decide on a further amnesty process as discussed in paragraph 3.3, legislation will be required since the mechanisms and procedures of the TRC Act have run their course and can no longer be applied. If it is decided to follow the latter route, an amendment of the Constitution is also proposed in order to enable such legislation being adopted and to pass muster in the Constitutional Court.

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IN THE HIGH COURT OF SOUTH AFRICA

(Transvaal Provincial Division)

Case Number: 32709/07

In the matter between:

NKADIMENG, THEMBISILE PHUMELELE	First Applicant
GONIWE, NYAMEKA	Second Applicant
MHLAULI, NOMBUYISELO NOLITA	Third Applicant
MKHONTO, SINDISWA ELIZABETH	Fourth Applicant
CALATA, NOMONDE	Fifth Applicant
KHULUMANI SUPPORT GROUP	Sixth Applicant
CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION (AN ASSOCIATION NOT FOR GAIN INCORPORATED UNDER SECTION 21 OF THE COMPANIES ACT 61 OF 1973)	Seventh Applicant
INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (AN ASSOCIATION NOT FOR GAIN INCORPORATED UNDER SECTION 21 OF THE COMPANIES ACT 61 OF 1973)	Eighth Applicant

and

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THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	First Respondent
THE MINISTER OF JUSTICE	Second Respondent
ERIC ALEXANDER TAYLOR	Third Respondent
GERHARDUS JOHANNES LOTZ	Fourth Respondent
JOHAN MARTIN VAN ZYL	Fifth Respondent
HERMANUS BAREND DU PLESSIS	Sixth Respondent
WILLEM HELM COETZEE	Seventh Respondent
ANTON PRETORIUS	Eighth Respondent
FREDERICK BARNARD MONG	Ninth Respondent
MSEBENZI TIMOTHY RADEBE	Tenth Respondent

AFFIDAVIT

I, the undersigned,

DESMOND MPILO TUTU

do hereby make oath and state:

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1. I was formerly the Chairperson of the Truth and Reconciliation Commission ("the TRC" or "the Commission") constituted in terms of the Promotion of National Unity and Reconciliation Act 34 of 1995 ("the Act" or "the TRC Act"). Between 1986 and 1996 I was the Anglican Archbishop of Cape Town. I was the General Secretary of the South African Council of Churches between 1978 and 1985.

2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are, to the best of my knowledge and belief, both true and correct.

3. I have read the affidavit of Alexander Lionel Boraine deposed to in this matter on 6 November 2007 and confirm that: -

3.1 the contents thereof are true and correct insofar as they relate to the objects, purpose, operation and findings of the TRC and its report; and

3.2 I agree with the submissions and views contained therein in relation to the effect of the amendments to the national prosecution policy that are challenged in this litigation.

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4. In particular, I confirm that it is my view that:

4.1 The amendments to the prosecution policy represent a betrayal of all those who participated in good faith in the TRC process. They completely undermine the very basis of the TRC which provided a truth for amnesty formula for a specific and limited time period.

4.2 The amended policy will stand as a betrayal of victims who have been waiting for the prosecutions of those who failed to apply for amnesty or who were denied amnesty. The failure of the State to act against perpetrators of the past has added considerably to the trauma of victims. The affording of a further and open-ended special dispensation to perpetrators to permit them to escape justice adds insult to the injuries endured by victims.

4.3 The amended policy is a betrayal of those perpetrators who came forward in good faith to apply for amnesty during the operation of the TRC. Above all, it stands as a betrayal of all South Africans who embraced the spirit of truth and reconciliation in order to move beyond the bitterness of the past.

4.4 The amended policy is wholly inconsistent with the spirit and purpose of South Africa's constitutional and statutory design in

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dealing with crimes of the past. In 2007 there is no place for the TRC's amnesty criteria in South Africa's prosecution policy.

_____

DEPONENT

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at JOHANNESBURG on this the 23RD day of NOVEMBER 2007, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

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COMMISSIONER OF OATHS

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Office of the National Director of Public Prosecutions

The National Prosecuting Authority of South Africa
Igunya Jikelele Labatshutshisi baMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

31 January 2013

Ms TP Nkadimeng
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Dear Ms Nkadimeng

REQUEST FOR THE HOLDING OF A FORMAL INQUEST IN TERMS OF SECTION 5 OF THE INQUESTS ACT 58 OF 1959 IN RESPECT OF THE KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)

1. I acknowledge receipt of your letter, dated 29 January 2013 and at the outset express my extreme sympathy for the suffering you and your family have experienced due to the unresolved disappearance of your sister. The purpose of my communicating with you is to explain fully all the relevant facts relating to your sister's disappearance so as to allay your criticisms levelled at the PCLU. Your case has and will continue to receive diligent attention by the NPA. As will be explained hereunder, it is not possible to hold an inquest prior to the conclusion of the outstanding investigations, which must be conducted by the DPCI.

2. Although your sister disappeared in September 1983, the first information identifying suspects was only received by SAPS in 1996.

3. When the TRC was established, SAPS elected to put on hold all investigations where amnesty application had been lodged. Your sister's matter was one such case.

4. The judgment of the Amnesty Committee was only released in May 2001.

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5. When the PCLU was established in 2003, the National Director referred all TRC cases to it.

6. It is correct that the TRC cases were temporarily put on hold pending the formulation of guidelines. This was because it was deemed important that special considerations applied to these cases.

7. Your application to have the provisions (which you state constituted a second amnesty process) set aside, resulted in the Court declaring the whole guidelines unconstitutional, including the mechanisms creating structures for the investigation of such cases.

8. When the President established the Ginwala Commission, SAPS declined to further investigate the matters, pending the conclusion of the Commission. One of the matters falling within the terms of reference of the Commission was the manner in which TRC cases were dealt with by the NPA.

9. The dissolution of the DSO, the establishment of the DPCI and the redefining of the mandate of the detective service did unfortunately hamper efforts to have your case investigated.

10. In early 2010, Adv Macadam was appointed by the Acting National Director to take over all the matters and to liaise directly with the DPCI, following an agreement reached between the NPA and General Dramat.

11. I enclose a copy of Adv Macadam's letter of 25 March 2010, addressed to the Unit Commander of the DPCI, who had been mandated to investigate TRC cases. As emerges from the letter, Adv Macadam did specifically request that the issue of prosecuting Detective Inspector Radebe be investigated. As is also clear from the letter, the NPA at that stage merely had a duplicate docket and it was obviously essential that the original docket and other evidence be located.

12. Captain Masegela was appointed to investigate the matter and in late 2010 submitted a docket to Adv Macadam. I enclose a copy of a letter, dated 27 October 2010, written by Adv Macadam to Captain Masegela, requesting an extensive number of all-embracing investigations. Yet again, the role of Detective Inspector Radebe was emphasised. As is evident from the investigations requested, your sister's case had obviously not been fully investigated, either by the TRC or by SAPS. It is also clear that it would not be possible to quickly finalise the investigation, because of the issues required to be canvassed.

13. It is correct that the PCLU declined to institute a prosecution on the Customary International Law crime of torture and on a

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charge of attempting to defeat the ends of justice. The two letters, written by Adv Macadam, however demonstrate that the request that consideration be given to the prosecution of Detective Inspector Radebe, was acceded to.

14. It is the view of John Dugard, one of the world's leading experts in the field of International Law, that international crimes require domestic legislation before they can become enforceable in South Africa. The Constitutional Court, in the *Wouter Basson* matter, also specifically refrained from directing that he be charged for Geneva Convention crimes and in fact limited his potential prosecution only to offences under the Riotous Assemblies Act. The domestic Rome Statute, which criminalises certain international crimes, specifically prohibits prosecutions for such offences committed prior to the enactment of the Statute. The Torture Convention Bill also makes no provision for retrospective criminalisation. The PCLU's decision not to institute a prosecution on a charge of torture was correct. Only a charge of assault with intent to do grievous bodily harm could have been considered, but such crime had prescribed in 2003.

15. The person who alleged that he had been influenced to change his version was deceased even prior to the amnesty hearing. The tape recordings were lost while in police custody. There could therefore be no basis for a prosecution and in addition, charges of defeating the ends of justice would have prescribed in 2006.

16. The docket was not submitted to the PCLU in July 2011 under cover of a report, let alone one as required in terms of Section 4 of the Inquests Act. In fact, the docket was re-submitted with a substantial number of the original investigations not having been conducted and no evidence establishing that your sister was murdered.

Report referred to in the letter

→ Whole of above in the 2010 letter

17. Rather than requesting that the outstanding investigations be conducted at that stage, Adv Macadam explored a number of other options, aimed at trying to establish that your sister was in fact murdered by the Security Branch:

17.1 In a statement, dated May 2011, the original investigating officer indicated that he had been instructed to hand over the docket to Captain Holmes so that it could be part of an investigation against General Engelbrecht. The original docket when located contained no statements taken by Captain Holmes and it was established that he had passed away many years previously. A perusal of the D'Oliveira material failed to reveal any record of investigations conducted by him into your sister's case. It was established that an investigation into General Engelbrecht was conducted, but that the Director of

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Public Prosecutions: Pretoria declined to prosecute and the National Director concurred with this decision. That investigation contained no evidence referring to your sister's disappearance and murder.

17.2 A matter completely overlooked by both the TRC and SAPS was the claim by three of the suspects that bombings of two power stations and a railway line and the arrest of Justice Ngidi confirmed their version. After an extensive search, the dockets relating to the bombings were located and in fact found to contain evidence which would have been materially relevant at the time of the amnesty application. It was however further established that a separate committee of the TRC granted the persons involved in the bombings amnesty. The docket relating to Justice Ngidi could not be located; however, other evidence was obtained which indicated that he was arrested at a different time as alleged by the suspects.

17.3 The discovery of this additional evidence led Adv Macadam to conclude that your sister may have been in fact murdered on the farm. He requested the Missing Persons' Task Team (MPTT) to look into the possibility of conducting an exhumation. A senior international forensic anthropologist however advised that an exploration of the farm should only take place in spring before the summer re-growth of vegetation, but when the ground was again moist after spring rains.

17.4 As an interim measure, the MPTT commenced inspecting mortuary records with the aim of locating cases which matched the description of your sister. This has led to a process of retrieving various inquest records relating to unidentified persons. Once all the records have been obtained, they will be placed before Adv Macadam in order for him to decide whether any of them relate to your sister.

17.5 Although the exploration of the farm was conducted in October 2012, the report from the MPTT was only made available on 25 January 2013. This was because the MPTT explored every possible option which could lead to the identification of the burial site. All these options however were too of no avail and the MPTT has concluded that no exhumation is feasible in the absence of clear evidence as to a specific burial site.

18. The docket was only resubmitted to the PCLU late last week, again containing no further statements, save for the report of the MPTT. The allegation that Ms Fullard advised you to approach the suspects is disputed by her. In any event, I would not

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"fully investigated case"

authorise any such conduct, as this would not be conducive to the interests of justice.

19. The docket has been carefully perused by Adv Macadam and a Senior State Advocate and is in the process of being re-submitted to the investigating officer with an instruction that all outstanding investigations be concluded without further delay.

20. Only after the matter has fully been investigated can Adv Macadam, in consultation with the relevant Directors of Public Prosecutions, make a properly informed recommendation as to whether a prosecution can be instituted or not. The decision rests with me.

21. The placing of the existing statements before a Magistrate would not serve any useful purpose, because the Magistrate would be constrained not to hold an inquest until the matter has been properly investigated

22. Insofar as you request that the inquest be held in the High Court is concerned, the Inquests Act requires that the Minister approach the Judge President of the relevant division to appoint a Judge. I cannot request the Minister to exercise these powers in the absence of a fully investigated case.

23. As the evidence currently stands, there is confusion as to where your sister was last seen alive and consequently Section 6(3) of the Inquests Act may apply, which requires that the Minister appoint a specially designated Magistrate. This provision also could not be invoked in the absence of a fully investigated case.

24. Insofar as you also request the appointment of a special prosecutor in consultation with your family, I am of the view that this would impede on the independence of the NPA, because in certain cases, the Courts have set aside appointments of prosecutors where there is a connection to the complainant.

25. I trust that the above reassures you that the matter is receiving proper attention. You will be informed when the matter has been investigated and a decision taken. In the event of the decision being taken to hold an inquest, the various provisions of the Inquests Act will be invoked to ensure that it will be a formal one.

Yours sincerely

DR MS RAMAITE SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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APPENDIX A

PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994

A. INTRODUCTION

1. In his statement to the National Houses of Parliament and the Nation, on 15 April 2003, President Thabo Mbeki, among others, gave Government's response to the final report of the Truth and Reconciliation Commission (TRC). The essential features of the response for the purpose of this new policy, are the following:

   (a) It was recognized that not all persons who qualified for amnesty availed themselves of the TRC process, for a variety of reasons, ranging from incorrect advice (legally or politically) or undue influence to a deliberate rejection of the process.

   (b) A continuation of the amnesty process of the TRC cannot be considered as this would constitute an infringement of the Constitution, especially as it would amount to a suspension of victims' rights and would fly in the face of the objectives of the TRC process. The question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.

   (c) As part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearthing the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.

   (d) Therefore, persons who had committed crimes, before 11 May 1994, which emanate from conflicts of the past, could enter into agreements with the prosecuting authority in accordance with existing legislation. This was stated in the context of the recognition of the need to gain a full understanding of the networks which operated at the relevant time since, in certain instances, these networks still operated and posed a threat to current security. Particular reference was made to un-recovered arms caches.

2. In view of the above, prosecuting policy, directives and guidelines are required to reflect and attach due weight to the following:

   (a) The Human Rights culture which underscores the Constitution and the status accorded to victims in terms of the TRC and other legislation.

   (b) The constitutional right to life.
   (c) The non-prescriptivity of the crime of murder.

   (d) The recognition that the process of transformation to democracy recognized the need to create a mechanism where persons who had committed politically motivated crimes, linked to the conflicts of the past, could receive indemnity or amnesty from prosecution.

   (e) The *dicta* of the Constitutional Court justifying the constitutionality of the above process, inter alia, on the basis that it did not absolutely deprive victims of the right to prosecution in cases where amnesty had been refused. (See ***Azanian Peoples Organisation v The President of the RSA, 1996 (8) BCLR 1015 CC***).

   (f) The recommendation by the TRC that the NPA should consider prosecutions for persons who failed to apply for amnesty or who were refused amnesty.

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(g) Government's response to the final Report of the TRC as set out in paragraphs 1(a) to (d) above.

(h) The *dicta* of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid. (See ***The State v Wouter Basson CCT 30/03.)***.

(i) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).

(j) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.

(k) The existing prosecuting policy and general directives or guidelines issued by the National Director of Public Prosecutions (NDPP) to assist prosecutors in arriving at a decision to prosecute or not.

(l) The terms and conditions under which the Amnesty Committee of the TRC could consider applications for amnesty and the criteria for granting of amnesty for gross violation of human rights.

3. Government did not intend to mandate the NDPP to, under the auspice of his or her own office, perpetuate the TRC amnesty process. The existing legislation and normal process referred to by the President, include the following:

(a) Section 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which provides that a person who is guilty of criminal conduct may testify on behalf of the State against his or her co-conspirators and if the Court trying the matter finds that he or she testified in a satisfactory manner, grant him or her indemnity from prosecution.

(b) Section 105A of the Criminal Procedure Act, 1977, which makes provision for a person who has committed a criminal offence to enter into a mutually acceptable guilty plea and sentence agreement with the NPA.

(c) Section 179(5) of the Constitution in terms of which the NDPP, among others—

(i) must determine, in consultation with the Minister and after consultation with the Directors of Public Prosecutions, prosecution policy to be observed in the prosecution process;

(ii) must issue policy directives to be observed in the prosecution process; and

(iii) may review a decision to prosecute or not to prosecute.

(d) The above process would not indemnify such a person from private prosecution or civil liability.

4. The NPA has a general discretion not to prosecute in cases where a *prima facie* case has been established and where it is of the view that such a prosecution would not be in the public interest. The factors to be considered include the following:

(a) The fact that the victim does not desire prosecution.

(b) The severity of the crime in question.

(c) The strength of the case.

(d) The cost of the prosecution weighed against the sentence likely to be imposed.

(e) The interests of the community and the public interest.

In the event of the NPA declining to prosecute in such an instance, such a person is not protected against a private prosecution.

5. Therefore, following Government's response, and the equality provisions in our Constitution and the equality legislation, and taking into account the above factors regarding the handling of cases arising from conflicts of the past, which were committed prior to 11 May 1994, it is important to deal with these matters on a rational, uniform, effective and reconciliatory basis in terms of specifically defined prosecutorial policies, directives and guidelines.

B. PROCEDURAL ARRANGEMENTS WHICH MUST BE ADHERED TO IN THE PROSECUTION PROCESS IN RESPECT OF CRIMES ARISING FROM CONFLICTS OF THE PAST

The following procedure must be strictly adhered to in respect of persons wanting to make representations to the NDPP, and in respect of those cases already received by the Office of the NDPP, relating to alleged offences arising from conflicts of the past and which were committed before 11 May 1994:

1. A person who faces possible prosecution and who wishes to enter into arrangements with the NPA, as contemplated in paragraph A1 above (the Applicant), must submit a written sworn affidavit or solemn affirmation to the NDPP containing such representations.

2. The NDPP must confirm receipt of the affidavit or affirmation and may request further particulars by way of a written sworn affidavit or solemn affirmation from the Applicant. The Applicant may also *mero moto* submit a further written sworn affidavit or solemn affirmation to the NDPP containing representations.

3. All such representations must contain a full disclosure of all the facts, factors or circumstances surrounding the commission of the alleged offence, including all information which may uncover any network, person or thing, which posed a threat to our security at any stage or may pose a threat to our current security.

4. The Priority Crimes Litigation Unit (PCLU) in the Office of the NDPP shall be responsible for overseeing investigations and instituting prosecutions in all such matters.

5. The regional Directors of Public Prosecutions must refer all prosecutions arising from the conflicts of the past, which were committed before 11 May 1994, and with which they are or may be seized, immediately to the Office of the NDPP.

6. The PCLU shall be assisted in the execution of its duties by a senior designated official from the following State departments or other components of the NPA:

   (a) The National Intelligence Agency.

   (b) The Detective Division of the South African Police Service.

   (c) The Department of Justice & Constitutional Development.

   (d) The Directorate of Special Operations.

7. The NDPP must approve all decisions to continue an investigation or prosecution or not, or to prosecute or not to prosecute.

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8. The NDPP must also be consulted in respect of and approve any offer to a perpetrator relating to the bestowing of the status of a section 204 witness and all section 105A plea and sentence agreements.

9. The NDPP may obtain the views of any private or public person or institution, our intelligence agencies and the Commissioner of the South African Police Service, and must obtain the views of any victims, as far as is reasonably possible, before arriving at a decision.

10. A decision of the NDPP not to prosecute and the reasons for that decision must be made public.

11. In accordance with section 179 (6) of the Constitution, the NDPP must inform the Minister for Justice & Constitutional Development of all decisions taken or intended to be taken in respect of this prosecuting policy relating to conflicts of the past.

12. The NDPP may make public statements on any matter arising from this policy relating to conflicts of the past, where such statements are necessary in the interests of good governance and transparency, but only after informing the Minister for Justice and Constitutional Development thereof.

13. The institution of any prosecution in terms of this policy relating to conflicts of the past would not deprive the accused from making further representations to the NDPP requesting the NDPP to withdraw the charges against him or her. These representations would be considered according to the NPA prosecuting policy, directives, guidelines and established practice. The victims must, as far as reasonably possible, be consulted in any such further process and be informed, should the accused's representations be successful.

14. The NDPP may provide for any additional procedures.

15. All state agencies, in particular those dealing with the prosecution of alleged offenders and those responsible for the investigation of offences, must be requested not to use any information obtained from an alleged accused person during this process in any subsequent criminal trial against such a person. Whatever the response of such agencies may be to this request, the NPA records that its policy in this regard is not to make use of such information at any stage of the prosecuting process, especially not to present it in evidence in any subsequent criminal trial against such person.

C. CRITERIA GOVERNING THE DECISION TO PROSECUTE OR NOT TO PROSECUTE IN CASES RELATING TO CONFLICTS OF THE PAST

Apart from the general criteria set out in paragraph 4 of the Prosecuting Policy of the NPA, the following criteria are determined for the prosecution of cases arising from conflicts of the past:

1. The alleged offence must have been committed on or before 11 May 1994.

2. Whether a prosecution can be instituted on the strength of adequate evidence after applying the general criteria set out in paragraph 4 of the said Prosecuting Policy of the NPA.

3. If the answers to paragraphs 1 and 2 above are in the affirmative, then the further criteria in paragraphs (a) to (j) hereunder, must, **in a balanced** way, be applied by the NDPP before reaching a decision whether to prosecute or not:

   (a) Whether the alleged offender has made a full disclosure of all relevant facts, factors or circumstances to the alleged act, omission or offence.

   (b) Whether the alleged act, omission or offence is an act associated with a political objective committed in the course of conflicts of the past. In reaching a decision in this regard the following factors must be considered:

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(i) The motive of the person who committed the act, commission or offence.

(ii) The object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals.

(iii) Whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, agent or a supporter.

(iv) The relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued, but does not include any act, omission or offence committed—

(aa) for personal gain; or

(bb) out of personal malice, ill-will or spite, directed against the victim of the act or offence committed.

(c) The degree of co-operation on the part of the alleged offender, including the alleged offenders endeavours to expose—

(i) the truth of the conflicts of the past, including the location of the remains of victims; or

(ii) possible clandestine operations during the past years of conflict, including exposure of networks that operated or are operating against the people, especially if such networks still pose a real or latent danger against our democracy.

(d) The personal circumstances of the alleged offender, in particular—

(i) whether the ill-health of or other humanitarian consideration relating to the alleged offender may justify the non-prosecution of the case;

(ii) the credibility of the alleged offender;

(iii) the alleged offender's sensitivity to the need for restitution;

(iv) the degree of remorse shown by the alleged offender and his or her attitude towards reconciliation;

(v) renunciation of violence and willingness to abide by the Constitution on the part of the alleged offender; and

(vi) the degree of indoctrination to which the alleged offender was subjected.

(e) Whether the offence in question is serious.

(f) The extent to which the prosecution or non-prosecution of the alleged offender may contribute, facilitate or undermine our national project of nation-building through transformation, reconciliation, development and reconstruction within and of our society.

(g) Whether the prosecution may lead to the further or renewed traumatisation of victims and conflicts in areas where reconciliation has already taken place.

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(h) If relevant, the alleged offender's role during the TRC process, namely, in respect of co-operation, full disclosure and assisting the process in general.

(i) Consideration of any views obtained for purposes of reaching a decision.

(j) Any further criteria, which might be deemed necessary by the prosecuting authority for reaching a decision.

http://www.pmg.org.za/docs/2005/060117advnel.doc

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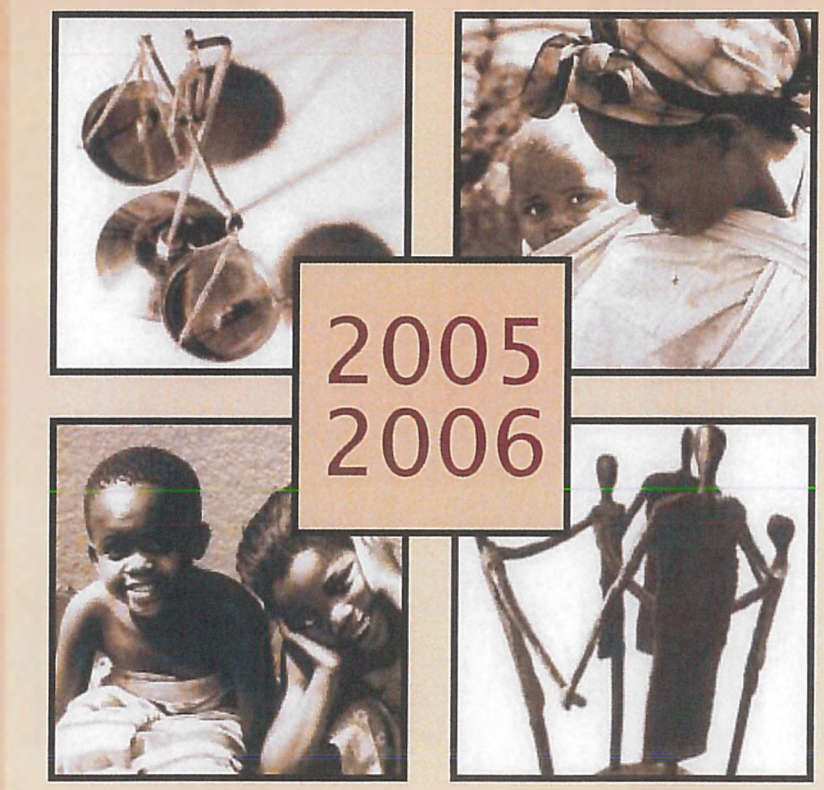
Annual Report

National Prosecuting Authority



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Adv Vusumzi Patrick Pikoli
National Director of Public Prosecutions

"The objective of this drive, themed "Prosecutors without boundaries", is to strengthen co-operation to deal more effectively with trans-national crime"

The National Director and his delegation attended the Heads of Prosecuting Authorities Conference (HOPAC) during September 2005, where a paper was delivered on the Legal Liability of Prosecutors. This bi-annual conference was an ideal opportunity for Heads of Prosecuting Authorities to meet and share information on the running of their respective Prosecuting Services as well as to consider ways to ensure more effective co-operation in dealing with trans-national organised crime.

The National Director and a delegation of two senior members of the National Prosecution Service (NPS), attended the Second World Summit of Attorneys-General, Prosecutors-General and Chief Prosecutors in Dohar, Qatar in November 2005, where a paper was also delivered on behalf of South Africa. This gave the National Director and his delegation an opportunity to engage with their counterparts on matters of mutual concern, as well as to share best practice and experiences.

The National Director also hosted a meeting with a senior member of the International Criminal Court (ICC). This meeting dealt with the relationship between the NPA, South Africa and the ICC. A request has been made to send Prosecutors to the ICC to develop skills to prosecute crimes of human rights abuses. This issue is currently being dealt with.

Guidelines for the prosecution of cases arising from conflicts of the past and which were committed before 11 May 1994

In his statement to the National Houses of Parliament and the Nation on 15 April 2003 the President, among others, gave Government's response to the final Report of the Truth and Reconciliation Commission (TRC) regarding the handling of cases arising from conflicts of the past which were committed prior to 11 May 1994.

The essential features are the following:

- It was recognised that not all persons availed themselves of the TRC process for a variety of reasons ranging from undue influence to a deliberate rejection of the process.
- A continuation of the amnesty process cannot be considered as this would constitute a suspension of victims' rights and would fly in the face of the TRC process. The question as to the prosecution or not of persons who did not take part in the TRC process, is left in the hands of the prosecuting authority, as is normal practice.
- As part of the normal process and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearth the truth and who wish to enter into agreements that are standard in the normal execution of justice and are accommodated in our legislation.
- Following Government's response to the final Report of the TRC, and because it is important for the prosecuting authority to deal with these matters on a uniform basis in terms of specifically defined criteria, the National Director, with the concurrence of the Minister for Justice and Constitutional Development and after consultation with the various Directors of Public Prosecutions issued prosecution policy and policy directives in terms of section 179(5)(a) and (b) of the Constitution regarding the handling of such cases arising from conflicts of the past. This prosecution policy and policy directives, which must be observed in the prosecution process, were tabled in Parliament towards the end of 2005 and came into operation on 1 December 2005. During January and February 2006 the NPA briefed the Portfolio Committee on Justice and Constitutional Development and the Committee on Security and Constitutional Affairs of the National Council of Provinces regarding the contents of these directives. I am sad to report, as at the time of writing this report, that not much has been achieved in this regard despite all the attempts that have been made in taking this matter forward.

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NSSD: REPORT To Portfolio Committee: By Dr Silas Ramaite SC

- SCCU – ADV SC JORDAAN SC
- WPU – D ADAM
- SOCA – ADV T MAJOKWENI
- PCLU – ADV AR ACKERMANN SC

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PRIORITY CRIMES LITIGATION UNIT

ADV ANTON ACKERMANN SC

HEAD: PCLU

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PERFORMANCE AGAINST TARGETS: 2004 / 2005

1. TRC Prosecutions

- Audit of 300 cases on hand in NPA structures.
- Closure of 167 cases. No grounds for prosecution.
- Prosecutions instituted in *S v Terre'blanche, S v Blani and S v Nieuwoudt & 2 Others*.
- Further prosecutions put on hold in November 2004 pending the formulation of guidelines.
- Assistance provided to reconvene Motherwell amnesty hearing.
- Constitutional Court grants State leave to appeal in *S v Wouter Basson*.

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PERFORMANCE AGAINST TARGETS: 2005 / 2006

1. TRC Prosecutions

- Failure to finalise guidelines results in no further prosecutions being instituted.
- Late 2005 Constitutional Court sets aside TPD and SCA rulings in respect of jurisdiction for conspiracies for external crimes in *S v Wouter Basson*.

2. Missing Persons

- Remains of 23 victims located and exhumed. Forensic analysis in progress to confirm identities.
- Official hand-over of remains of five victims at special national ceremony.
- Financial assistance provided to families.
- Liaison with stakeholders *re* memorialisation.
- Partnership with Argentine forensic anthropology team.

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Response to media reports about the South African Human Rights Commission's findings on presidential pardons

5 January 2007

The Ministry of Justice and Constitutional Development would like to respond to the media reports about the findings of the South African Human Rights Commission (SAHRC) in relation to Inkatha Freedom Party's (IFP) complaint about the processing of presidential pardons for alleged political prisoners.

Firstly, we would like to point that Minister Mabandla has as yet not received any official report with regards to its deliberations, findings, and basis of the findings from the SAHRC. What the Minister has received is a letter from a Legal Practitioner at the SAHRC advising her of the findings. We have requested the report, and it is only after its receipt that the Minister will be in a position to respond fully.

Minister Mabandla has on numerous occasions indicated that this is one of the most difficult and sensitive post Truth and Reconciliation Commission (TRC) matters. It is for this reason that from the beginning she has fully liaised with all the political parties and other interested parties in an attempt bring final closure to this matter. In response to Parliamentary questions and to the SA Commission request for information, Minister Mabandla indicated that the matter of presidential pardons for prisoners, who allege that their offences were politically motivated, is a complex matter that has no legal precedent and therefore one that requires a political solution. Some of the complexities that the Minister referred to in her response to a question on this matter are:

1. Some of the applicants failed to utilise the TRC processes that were available to them because their political parties did not support the TRC
2. Some of the applicants plead ignorance to the TRC processes
3. Offences that some of the applicants are alleged to have committed took place after the cut off date for TRC amnesty applications

It is because of these complexities their political nature and sensitivities that the Minister deemed it fit to solicit the collective wisdom of Cabinet in dealing with the matter, and not incompetence of any sort.

For more information, please contact:
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Issued by: Ministry of Justice and Constitutional Development
5 January 2007

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VPP 2

MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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Adv Vusi Pikoli
National Director of Public Prosecutions
Private Bag X752
PRETORIA
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6 February 2007

Dear Adv Pikoli

RE: TRC MATTERS

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

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

I trust that you find the above in order.

With warm regards

MRS B S MABANDLA
MINISTER

NATIONAL DIRECTOR
9/2/07
NATIONAL PROSECUTING AUTHORITY

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VPP 3

news24 archives
Breaking News First

Cops up for apartheid crimes

2007-02-07 07:15

Jan-Jan Joubert and Willem Jordaan

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

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

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

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

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

Address to the nation

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

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

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

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

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

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

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

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

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

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

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

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

He did not want to comment on any particulars.

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

The victim has a say

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

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

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

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

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

Beeld

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

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

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to—

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

(b) inform the Minister about the problems the NPA is experiencing in the implementation of this policy and guidelines; and

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(b) propose a way forward.

2. BACKGROUND INFORMATION

2.1 Background relating to initial proposals

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

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

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

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

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

"(a) *Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard.*

(b) *To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—*

(i) *the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;*

(ii) *the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision.*". (Emphasis added)

2.2 Background relating to Amended Prosecution Policy

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

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

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

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

3. IMPORTANT FEATURES OF AMENDED PROSECUTION POLICY

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

(a) The Amended Prosecution Policy emanates from and is based on the statement of President Thabo Mbeki to the National Houses of Parliament and the Nation, on 15 April 2003, when he gave Government's response to the final report of the Truth and Reconciliation Commission (TRC).

(b) The President, among others, stated that the question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.[2]

(c) The President further stated that as part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearth the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.[3]

(d) It is important to note that the President made it clear that—

[1] Attached hereto as Annexure "A".
[2] See paragraph A.1(b) of Appendix A to Amended Prosecution Policy.
[3] See paragraph A.1(c) and (d) of Appendix A.

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(i) the decision to be taken by the NPA (whether to prosecute or not) should be in accordance with the normal legal process;

(ii) in order to reach a well-considered decision, the NPA should work together with the Intelligence Agencies, which include the NIA and the SAPS;

(iii) the agreements entered into between the NPA and those persons who are prepared to unearth the truth of the conflicts of the past, should be in accordance with standard and normal execution of justice;

(iv) such agreements should be in accordance with the NPA's prosecution mandate; and

(v) such agreements should be in accordance with existing legislation.

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

(a) The *dicta* of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid, (See *The State v Wouter Basson CCT 30/03.*).[4]

(b) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).

(c) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.

(d) The existing prosecuting policy and general directives or guidelines issued by the National Director to assist prosecutors in arriving at a decision to prosecute or not.

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

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

(a) the Priority Crimes Litigation Unit (PCLU) in the Office of the National Director shall be responsible for overseeing investigations and instituting prosecutions in all such matters;

(b) the PCLU "shall be assisted in the execution of its duties" by a senior designated official from the following State departments or other components of the NPA:

(i) The National Intelligence Agency.

(ii) The Detective Division of the South African Police Service.

(iii) The Department of Justice & Constitutional Development.

(iv) The Directorate of Special Operations.

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

(a) the decision whether to prosecute or not vests in the prosecuting authority and in terms of the Amended Prosecution Policy, in particular, the National Director;

(b) such decision must be exercised in accordance with the Constitution and existing legislation;

(c) the abovementioned State Departments only have a role to play insofar as they must assist the NPA in the investigation process and the gathering of information so as to assist the NPA in reaching a well-considered decision whether to prosecute or not.

4. PROBLEMS RELATING TO IMPLEMENTATION OF AMENDED PROSECUTION POLICY

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

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

4.2 During the middle of 2006, a meeting was held at the Office of the Presidency to attend to the abovementioned problems. The National Commissioner, the National Director, the Directors-General of Justice and NIA, and Mr Jafta of the Presidency, attended this meeting. It was agreed that a Working Committee should be established. This recommendation was taken to the Ministers in the Cluster. At a subsequent meeting attended by the Minister for Safety and Security, the Minister of Social Development and Minister Thoko Didiza (as Acting Minister for Justice and Constitutional Development), it was agreed that such Working Committee (now referred to as a Task Team), should be established to assist the NPA.

4.3 Following the above agreement, the National Director called a meeting at the Office of the NPA. The Heads of Department as well as representatives of all relevant State Departments to serve on the Task Team were invited. All Departments were represented at this meeting. At this meeting—

(a) the terms of reference of the Task Team were explained and agreed to;

(b) it was agreed that Dr Silas Ramaite (Deputy National Director of Public Prosecutions) would chair the meetings of the Task Team.

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

4.4.1 Subsequently, on 6 December 2006, the Office of the PCLU received the e-mail marked "B" from Dr PC Jacobs of the SAPS. Furthermore, the National Director received letters from the National Commissioner and the Director-General: NIA, dated 6 February 2007 and 8 February 2007, respectively. (Attached hereto as Annexures "C" and "D", respectively)

4.4.2 According to Dr Jacobs, his understanding is that the Task Team must submit a final recommendation to a Committee of Directors-General in respect of each case. He also points out that the National Commissioner is of the view that this procedure should be followed in respect of each investigation that has been finalised. However, he does not elaborate on the role of the Committee of Directors-General.

4.4.3 In his letter dated 6 February 2007, the National Commissioner points out that he has been briefed regarding the meeting of the "Task Team set up in terms of the Cabinet guidelines on the outstanding Truth and Reconciliation Commission (TRC) matters". According to the National Commissioner his understanding is that the officials designated on the Task Team "will provide recommendations to the Directors-General who will, as a collective, advise the National Prosecuting Authority as the decision maker of prosecutions". The Director-General: NIA

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

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

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

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

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

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

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

5. CONCLUSION AND WAY FORWARD

5.1 There is clearly a misunderstanding regarding the role of the Task Team and the role of the relevant State Departments referred to in the Amended Prosecution Policy. In accordance with the approved Amended Prosecution Policy[5], the NPA is of the view that the duty of the Task Team or the relevant State Departments is to assist the NPA "In the execution of its duties". However, nothing prevents such a Task Team or Departments (whether individually or collectively) to make recommendations to the National Director, provided that the National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a Task Team or relevant Department. Such a procedure would be unconstitutional.

[5] See paragraph B.6 of Appendix A.

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

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

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

16.02.2007

Adv VP Pikoli
National Director of
Public Prosecutions

Ms BS Mabandla, MP
Minister for Justice and
Constitutional Development

PMG PARLIAMENTARY MONITORING GROUP

Special Investigations Unit, Asset Forfeiture Unit, Priority Crimes Litigation Unit Witness Protection Unit, Directorate of Spec

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Justice and Correctional Services

03 May 2007

Meeting Summary

A summary of this committee meeting is not yet available

Meeting report

JUSTICE AND CONSTITUTIONAL DEVELOPMENT CONSTITUTIONAL COMMITTEE
3 May 2007
SPECIAL INVESTIGATIONS UNIT, ASSET FORFEITURE UNIT, PRIORITY CRIMES LITIGATION UNIT WITNESS PROTECTION UNIT, DIRECTORATE OF SPECIAL OPERATIONS: ANNUAL REPORTS & BUDGETS

Chairperson: Ms F Chohan-Khota (ANC)

Documents handed out:
Special Investigations Unit presentation
Seizing Criminal Assets to fight Crime: Asset Forfeiture Unit presentation
Priority Crimes Litigation Unit Report
Witness Protection Unit Report
Directorate of Special Operations Report (handed out 2 May)
Directorate of Special Operations presentation
Specialised Commercial Crime Unit presentation
Specialised Commercial Crime Unit

Audio Recording of the Meeting

SUMMARY
Various units of the National Prosecuting Authority briefed the Committee on their work in 2006 /2007

The Special Investigations Unit worked with departments to assist them in implementing better systems to deal effectively with the threats of corruption. The staff and project profiles were tabled and explained. Projects involving Departments of Social Development, Transport, Housing, Correctional Services and the Special Pensions Fund were detailed. Achievements included savings of R231 million, prevention of future losses of R1.8 billion, and cash recovery of R14 million. A completely clean audit report was achieved. It had excellent relationships with other departments and investigators. Challenges included the need for legislative amendments to deal with litigation, streal the proclamation process and coping with rapid growth.

The Asset Forfeiture Unit had largely exceeded its targets. It had placed R760 million under restraint. The Criminal Assets Recovery Account had received payments of about R120 million. Most of the funding was used to fight cr but other payouts assisted victims of crime. The Unit had obtained 34 judgements and several important principles had been affirmed. Some of the urgent matters were tabled and explained. Because the Unit did not do its own investigations or prosecutions it was vital to establish good relationships.
Questions by members related to the profile of the units, the vacancy rates, how money seized would be used, the reactive nature of the Units' work, the need to establish shelters for domestic violence in Northern Cape, the curr situation in regard to Special Pensions, disciplinary hearings against public servants committing fraud, and the need to keep the focus of departments funding the Special Investigations Unit.

The Priority Crimes Litigation Unit described its scope and function. The work of the Missing Persons Task Team was outlined. Prosecutions involving nuclear non proliferation, chemical and biological non proliferation and merce activities were tabled and explained. Challenges included the need for adequate and skilled staff, better office space and the need to address delays in Truth and Reconciliation Hearing prosecutions. Security issues were also cr

The Witness Protection Unit had a supplementary mandate to transform, redesign and modernise and set standards in relation to protection of witnesses and enhancement of criminal justice. It hoped to enhance confidence in th criminal justice system and the programme and to achieve effective administration and financial management, and an integrated law enforcement approach. Protection should be effective as a tool in combating crime. The achievements and performance for the current cycle were tabled. No witnesses were threatened, harmed or assassinated in the past six years and there had been only 3% voluntary walk-offs. The cycle time had dropped. There 90% conviction rate for the accused. It currently handled 229 witnesses and 268 related persons.

Questions were asked on the delays in prosecuting the Truth and Reconciliation (TRC) matters, the cost of protecting witnesses, whether the Units own staff were protected, the reasons why there would not be prosecutions in th Rashid matter, destruction of documents relating to disappearances, the reasons for voluntary walk-offs from the protection programme and the role played by South Africa internationally.

The Directorate of Special Operations (Scorpions) targeted criminals who organised and profited from crime. It used a multi disciplinary and success driven approach. Its key activities and impacts were tabled. The conviction rat above 80%. The value of assets placed under restraint was R550 million. R50 million had been directed to the victims of organised crime. Drugs valued at over R1 billion had been seized over the last year. Explanations and upd were given on some of the major cases being handled. Cybercrime and drug trafficking posed the largest threats. A dedicated administration was set up in October 2006. Challenges included the need to increase effectiveness in investigating and prosecuting organised crime, the need to work on creating jurisprudence on the Prevention of Organised Crime Act, and also to create law around the Monitoring Act. There was a need to match job demand wit expertise and to fill 825 posts in the financial year. The Directorate was currently standardising best practice and would be writing a practice manual, investigating appointing Internal Counsel, setting research-based measuremer indicators and establishing a training academy.

The Committee expressed its concerns with the insinuations that the Directorate was unable to prosecute senior politicians, which undermined the integrity of the Directorate, and enquired as to any undue pressure. Further conc were expressed at the focus on high profile cases, stressing the need also to prioritise low profile cases. Clarification was sought on single line jurisdiction, treatment of victims of crime, developments in the LeisureNet and Kebb matters, and in the Criminal Laws (Sexual Offences) Amendment Bill and Child Justice Bill.

MINUTES
Special Investigations Unit (SIU) Briefing
Mr Willie Hofmeyr, Head, Special Investigations Unit, outlined the mandate and functions of the SIU, which was set up to investigate corruption and maladministration, not necessarily involving criminal offences. The primary purp was to enable the State to recover money lost because of unlawful action. It was important both to address any direct financial loss, and to amend the systems to prevent future losses. SIU was increasingly involved in working w departments to assist them in implementing better systems. Dealing effectively with corruption was vital for departments, which faced combined threats of fraud, corruption and maladministration extending across several differen areas. This varied from opportunistic corruption or more organised exploitation of systemic gaps. Often the problems were detected only when there was an escalating loss. This was further compounded by the large number of c role players.

Effective steps to dealing with corruption therefore required integrated solutions, including forensic investigations, litigation, systemic improvements and removing corrupt officials. The SIU mandate allowed for integrated forensic solutions but it would also use other institutions.

One of the key challenges was to build sufficient capacity to deal with fraud, corruption and maladministration. There was still outsourcing to the private sector, but there was increased recognition that SIU could ensure effective, and delivered value for money. This was reflected in a significant increase in the budget from National Treasury (NT). The budget for the current year stood at R139.7 million. An important driver had been the money received fro departments who paid the SIU to conduct the investigations, and this was currently budgeted for R84.2 million. During the following three years the trend would be reversed as SIU should not become too dependent on this fundi budget would rise to R270 million by 2009/10.

The focus of the SIU had been to increase the number of people available to deal with investigations, and staff currently stood at 550. SIU had also expanded to have an effective national presence, other than in Northern Cape a North West Province.

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Mr Falek Davids, Deputy Head, SIU, presented the project profile of the SIU, noting that it had expanded significantly. Many investigations commenced on request of a particular department and across a broad range of frauduler activity. The investigations ranged from isolated and focused fraud to widespread systemic fraud. Provincial departments would also ask SIU to deal with corruption matters. At present there were 88 investigations ongoing, rangi one that could take only a few months to a major investigation involving 200 investigators that could take three years or more. There were 14 proclaimed investigations, which would require accessing of special powers. Forty we regionally based. They involved 19 departments.

Service level agreements had recently been completed with the North West Province, in terms of which a steering committee would be established to screen all forensic investigations. This was a model finding favour also in othe provinces.

Mr Davids then tabled a number of the projects. The investigation into the Department of Social Development was still the largest investigation, having commenced in 2005. SIU had recommended that over 21 000 public servant were receiving grants illegally, should be removed from the grant system. Around 60 000 irregular beneficiaries had been identified and a further 500 000 might require audit. Cash recoveries amounted to R26 million, actual savi R213 million, and preventative savings to R1.8 billion. 4 677 disciplinary hearings were prepared, and 2 215 of the 2 675 prosecutions had resulted in convictions.
The investigations had raised awareness of the problem, and this in turn led to strong deterrence. It was important that SIU had been able to identify systemic gaps and the Department had been quick to correct them.

SIU was also investigating the Department of Transport. Over 30 000 non-compliant licences had been identified. 55 Driving Licence Testing Centres (DLTCs) had been audited. A number of forged foreign conversions had also l identified. Challenges included systems and process gaps at the driving licence centres, accessing information on foreign licenses and the cumbersome process of cancellations.

The Special Pensions Fund investigation focused on unlawful payment of special pensions to disentitled beneficiaries and the conduct of some board members that may have contributed to the problem. SIU was currently auditir beneficiaries. Challenges here included lack of compliance with the provisions of the Special Pensions Act, political sensitivity and concerns over integrity of officials.

The ongoing investigation into the Department of Correctional Services had focused in the past on medical aid. The current focus was on procurement matters, pharmacy procurement and asset management. Seventeen matters cumulative value of around R1.1 billion were being investigated. SIU had achieved recovery of R6.9 million in one matter, five criminal referrals for collusion, and thirteen systemic recommendations had been made. SIU still requ new and wider proclamation over the investigation. Procurement was time consuming and complex and access to information was difficult.

SIU was also focusing on subsidy fraud in the Department of Housing. The Minister had asked for expansion into a national investigation. The focus areas would include abuse of the housing subsidy system, the non-delivery on contracts, conveyancing fraud and conduct by officials. The Department of Housing was funding 50 staff to investigate and SIU was funding 21 staff.

Mr Davids tabled and highlighted some of the high level achievements. The savings had been R231 million, and prevention of future loss amounted to R1.8 billion. Cash recoveries were at R14 million. The target for 2007/08 was billion.

Mr Davids was pleased to announce that SIU had achieved a completely clean Auditor General's report, and a strong management chain assured the objectives. The Organisational Development process had started late in 2006 project profile had expanded significantly, so it was important to build a unit more responsive to the different forensic challenges. Implementation of the targets would commence in June.

Mr Hofmeyr detailed the overall challenges. SIU had achieved rapid growth and had taken responsibility to ensure that all matters, although perhaps not strictly in the mandate, were taken forward. It had been successful in achie good relationships with the National Prosecuting Authority (NPA) and the South African Police Service (SAPS). The SIU might require some assistance from this Committee with the Special Pensions Investigation as there were p sensitivities, and Mr Hofmeyr asked that any problems and complaints to be referred back to the SIU. Because of the huge scale of the Social Grants Investigation around R1 million social grants might be removed. There had be need to make some tough decisions and there were difficulties in recovering the cash from those who had received grants illegally. The process of recovery took substantial time and resources, and so SIU had had to make their rather to get people off the payment system, and only then to try to recover the cash.

SIU would be needing legislative amendments to deal with litigation issues. The proclamation process was still cumbersome and time consuming, and it could take six months to acquire a signed proclamation. The requirements Premier to sign a letter of consent for provincial investigations gave rise to many delays. SIU was investigating other possibilities.

Mr Hofmeyr concluded that SIU had had a good year and had achieved good successes while coping with the challenges of rapid growth. It had managed to lay the foundation for a more effective and larger SIU in future.

Asset Forfeiture Unit (AFU) Briefing
Mr Willie Hofmeyr, Head, AFU, stated that the Asset Forfeiture Unit had two overall objectives; to increase the volume of cases, and to do test cases and create legal precedents that allowed for the effective use of the law. It was important to get binding appeal court judgments to determine what the law meant.

The AFU had exceeded its targets over the last couple of years. In the last year it had taken on 253 new cases, and had completed 243 cases. Monetary seizures in this year resulted in R760 million being placed under restraint. value of completed cases was slightly below target. Targets had not been met to pay funds into the Criminal Assets Recovery Account (CARA), largely due to the application for leave to appeal in the Schalk matter.

One of the most important ongoing matters was the David King case, where the scale of litigation was huge, involving England, Wales, Guernsey and South Africa. Mr King had publicly declared his intention to drag out the case next ten years, and perhaps a mechanism needed to be found to try to get litigation ancillary to the criminal trial to be heard in the same forum. There did not seem to be an easy answer to the delays under the current system. Fi important matters were the Delport matter, involving Revenue Services and customs fraud of about R350 million, where R80 million had been placed under restraint, the largest figure so far in the AFU's history. The Schalk case ongoing.

The Criminal Assets Recovery Account (CARA) had received payments of about R120 million, and around R47 million could be paid out in the year. Most of the funds were used to fight crime, but other payouts assisted victims c crime.

In terms of developing the law, AFU had obtained 31 judgments in the High Court, which probably reflected the fact that the law was becoming more settled. There were two Constitutional Court judgments and four in the Supren Court of Appeal 81% of the cases had been successful. Mr Hofmeyr clarified that the litigation often went to ancillary issues. Overall the success rate in Supreme Court of Appeal was 67%. About 203 judgments had been given t There had been a significant change of attitude in the courts in the last four years and AFU had won far more cases, as the law became more settled and more effective. Both the Constitutional Court and the Supreme Court of A had affirmed several important principles.

The important judgments in the last year were tabled and the main principles established in each case were explained. There was still no definition of organised crime, and the Mohunram case might still cause difficulties. Other principles had been more clearly established.

Mr Hofmeyr noted that the SIU did not do its own investigations or prosecutions and it was therefore key to establish good relationships with other bodies. Around 90% of cases, representing about 30% of cases, emanated from and about 8%, representing 67% of value, from the Department of Special Operations (DSO/Scorpions). Other investigations had emanated from SARS, direct referrals from prosecutors in the National Prosecution Service (NPS Reserve Bank, Marine and Coastal Management and the Financial Intelligence Centre.

Challenges included the need to expand capacity sufficiently to deal with all the cases currently in court.
The budget would need to be expanded almost eight-fold.

Discussion
Mr L Joubert (DA) commented that the report was encouraging. He asked about the profile of the SIU.

Mr Hofmeyr said that vacancies were a problem, but not so much as in other units of the National Prosecuting Authority because departments would pay for funding of investigations. Finding the right skills was a challenge. Abou of staff were investigators and others included lawyers, accountants and analysts. SIU tried not to recruit too much from other law enforcement agencies. There was an ambitious training programme that would be training 120 tra SIU had managed to find a mechanism to speed up the process of recruitment, although this was still time consuming.

The Chairperson pointed out that one of SIU's focus areas was to train people in other departments and she asked for further details on this.

Mr Hofmeyr confirmed that SIU would, during the course of investigation, be able to isolate lack of systems and skills. Part of Operation Consolidate was to work with dysfunctional municipalities to train their staff and ensure that could do the jobs properly.

Mr Joubert asked for an explanation on how the money would be used in asset seizure, as in the last year R345 million had been seized but only about R20 million had gone to CARA.

Mr Hofmeyr explained that assets were first frozen, and then later forfeited. Many of the large cases were heavily litigated for years. About 1 100 cases had been initiated and about 800 finalised, but R700 million were assets fro year, which may only be forfeited years down the line. Around 550 million had been acquired. The court could order direct payments to victims, and the balance would then go to CARA. Around R120 million had been paid over to this year. Other money was in the pipeline but there were processes still to be followed before that would end up in CARA.

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Imam G Solomon (ANC) congratulated the Unit on its successes. He noted that the future savings were also past losses to the Government. He noted that many matters had only reached SIU when the corruption and fraud was entrenched, so that there had already been significant losses. He asked whether SIU was allowed to monitor or have spot checks over certain programmes where there was potential for large-scale corruption.

Mr Hofmeyr agreed that there were often huge losses in the past and SIU tried to help with them. Its role at the moment was mainly reactive. Where there were cooperation agreements with Departments, a more proactive role c played and it was possible to see where high risk areas lay. It had also spoken pro-actively to certain departments where SIU had a sense that there was a problem but it could not force departments to agree. The monitoring role more for the Auditor General (AG) to undertake. SIU was interested in firming up the relationship between AG, the Standing Committee on Public Accounts (SCOPA) and other law enforcement bodies.

Imam Solomon commented that there were no shelters for domestic violence in the Northern Cape.

Mr Hofmeyr noted that Thutuzela centres were budgeted for in the next few years in these areas.

Mr J Sibanyone (ANC) asked whether the loopholes in the Department of Transport had yet been closed.

Mr Davids replied that in four key areas there were constraints to service delivery, involving insufficient skills, resources and infrastructure problems, and methods and procedures creating a blockage in the system. SIU had recommended that minimum requirements should be established at 55 centres, and those centres not complying should be reviewed and their licence to operate reassessed. Some of the DLTCs would be investigated in the next months. The MEC for Transport in Western Cape was keen to pilot a process to look at blockages and change the processes. This would be a useful pilot to assess over the next few months.

Mr Hofmeyr added that the National Department of Transport could make guidelines but did not have operational control as provinces or municipalities ran the centres. The National Department could only close centres down as ultimate sanction, but had no capacity to enforce best practice.

Mr Sibanyone asked for an indication of the current situation in relation to special pensions. He asked whether the delays that had given rise to complaints were linked to the comments on the frauds.

Mr Hofmeyr said that the Board was currently being very cautious. 8 000 applications were submitted in December, just before the cut off date, and although these might have been legitimate claims that had somehow not been k In the last ten years, there were suspicions that many could be fraudulent. It was known that criminal syndicates were in possession of party stamps to endorse the applications. This was not directly the issue of SIU, but Special Pensions had asked for help with the initial screening.

Mr Davids added that because of the strict criteria many of the applications had not initially complied but SIU was not necessarily aware of widespread delays. He mentioned that there was provision under Section 7 that an appli previously turned down could be re-submitted if new evidence came to light. However, in resubmissions it frequently happened that the new evidence differed radically from that supporting the original request. Since the Special Pensions could involve one off cash payments of up to R1 million rand, the Special Pensions administration was cautious that all information must be thoroughly verified.

Mr L Landers (ANC) referred to the people who had fraudulently received benefits being removed from the system, as asked whether they were also removed from office as public servants. He asked if the SIU was satisfied with outcome of the disciplinary hearings. He felt it was undesirable to have public servants who had been convicted of fraud to be permitted still to stay in office and earn salaries, or to be re-employed as public servants in other partments.

Mr Hofmeyr said that departments were assisted with the disciplinary enquiry and investigators from the SIU could give evidence, and had also provided help in training presiding officers. However the Bargaining Council agreem required the departments to do the prosecution themselves, and not to import prosecutors or presiding officers. Removing incorrect grants and payments from the systems was of concern to many departments. Social grants wer major issue and the numbers were huge. Around 20 000 civil servants could face civil proceedings. Mr Hofmeyr stressed that not all cases involved fraud. Many people had initially been entitled to a grant but subsequently becar employed, and may not have been aware that they should have been removed from the system. There were a number of grey areas. The scale of the problems and the need to establish uniform principles had slowed the investi

The Chairperson noted that government was committed to fighting corruption and the presence of the SIU in itself was an important element of its success. The real success would be when correct systems were in pace when SI completed its work in departments. She suggested that during the next report it would be useful for SIU to highlight exiting policies, to note what had been monitored over the last few years, and to state whether it had found recu of the same issues, or development of other matters.

The Chairperson expressed her concern that pre investigations should maintain the same elements of cooperation. It was important not to undermine the good relationships and profile of the SIU.

The Chairperson also noted that SIU had stated that it relied on project funding from departments, and would like to reduce that reliance. She commented that the fact of departments putting money or resources into investigation an indication that they were committed to taking matters seriously, and commented that if they were not to pay there was a danger that they might lose focus and commitment. She hoped that discussions with Treasury would be in mind. Finally she congratulated the SIU on its completely clean Auditor General's report.

Priority Crimes Litigation Unit (PCLU) Briefing
Dr Silas Ramaite, Deputy National Director of Public Prosecutions, NPA reported that the PCLU was established in 2003 by Presidential Proclamation. It was not an investigative unit but relied for its investigations on SAPS and I gave guidance to investigators in the drafting of legal processes. Its cases were very complex and would not succeed without a multi disciplinary approach. It was actively involved with numerous stakeholders and mutual legal assistance and extradition. It engaged in proposing legislative amendments, conducted legal research and furnished legal opinions and provided assistance to directors of public prosecutions. The Missing Persons Task Team wa established to investigate disappearances between the 1960s and 1996. It was aligned with the Ministry of Justice's Truth and Reconciliation Commission (TRC) unit. Its strategic focus areas were investigative capacity, prosecut efficiency, engagement with stakeholders and research and training. It was intended to be a short-term process.

The prosecutions relating to nuclear non-proliferation, and chemical and biological non-proliferation were tabled and explained. Further cases involved mercenary activities. The Unit had also attended a conference on counter te in Namibia. Assistance had been provided to the Czech Republic relating to international arms smuggling, and another involving export of military vehicles to conflict regions in Africa. Matters investigated under the Statute of Ro were tabled and explained. Other matters involved civil litigation, and assistance to a foreign law enforcement agency on human trafficking. Research had been done and opinions had been given to the Director of Public Prosecu and there had been follow up on the TRC prosecutions. A number of exhumations had been carried out.

Major challenges included the need for adequate staff to attend to all cases, inadequate office space, and delays with TRC prosecutions. The PCLU was a small unit consisting of around six advocates. Staff challenges included eaching away of highly experienced prosecutors. Security issues were critical. Challenges still existed in respect to missing persons outside South Africa, and some cases had not been referred to the TRC. The Unit was operat ffectively, however, within the budgetary constraints, and was able to given attention to its work and to prioritise where necessary.

Witness Protection Unit (WPU) Briefing
Dr Silas Ramaite, Deputy National Director, Public Prosecutions reported that the Witness Protection Unit was mandated to act under the Witness Protection Act. Its supplementary mandate was to transform, redesign and mode and set standards in relation to protection of witnesses and enhancement of criminal justice.

The detailed role of the WPU was tabled but not discussed. Dr Ramaite reported that the strategic direction was to transform, redesign and modernise witness protection. Weaknesses in the past that led to endangering of witnes had been corrected. The Unit planned to enhance confidence in the criminal justice system and the programme and to achieve effective administration and financial management, and an integrated law enforcement approach. T protection should be effective as a tool in combating crime. It also sought to reduce witness grievances, to reduce the numbers of witnesses leaving the programme, and to reduce the cycle times. The achievements and perform for the current cycle were tabled. There had been increased confidence in witness protection, and it was clear that witness protection had ensured the successful arrest, prosecution and conviction of a number of accused person WPU was setting the best world standards in the redesigning process and was acclaimed for its operating model as well as its forms.

Dr Ramaite noted that no witnesses were threatened, harmed or assassinated in the past six years. There had been significant reduction of grievances and there had been only 3% voluntary walk-offs. The cycle time had droppe two years due to phasing in of the After-care and resettlement strategy. There was a 90% conviction rate for those accused.

WPU had achieved clean audit reports over the past five years from the AG. Its protection was acknowledged as an effective tool and assistance had been given to a number of other African countries. There was a close relation with the International Criminal Court. WPU had a high level of training in cooperation with Justice College, and played a major role in developing international best practice guidelines. Advanced training on Witness Protection wa offered by Free State University.

The total number of persons on the programme was 229 witnesses and 268 related persons. The challenges were included in the presentation slides, but were not discussed.

Discussion
Mr Joubert asked what was causing the delay in prosecutions of the TRC and when these might be finalised.

Adv Anton Ackermann, Special Director: NPA, replied that in October 1998 the TRC had recommended prosecutions. A Human Rights division was established in the NPA to evaluate the cases and to prosecute. When the DSO created in January 2001 the Human Rights Division was disbanded, and its work was transferred to the DSO. Adv Ackermann, when joining the NPA, was given a mandate in March 2003 to declare priority crimes. All 400 TRC prosecutions had been immediately declared as priority crimes. In April 2003 the President had stated that there would be no further amnesty processes, and ruled that prosecutions would be instituted and that a number of agen

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must assist in the prosecutions. Adv Ackermann personally declined to prosecute 92 cases. Sixteen were identified for investigation and potential prosecution. On 9 November 2004 Adv Ackermann was stopped when trying to a three security policemen and charge them with poisoning of identified people. Dr Ramaite had instructed him not to proceed with the arrest, but rather to formulate guidelines how prosecutions should be conducted. This formulat took two years. In early 2006 the guidelines were approved. They did not make provision for a committee, but stated that in the execution of the prosecution duties other agencies must assist. A Task Team was established, and a number of meetings were held. Adv Ackermann commented that it was unfortunate that to date no meaningful results had been achieved from these meetings. The Annual Report of 2006 also noted on page 4 that not much had achieved, despite all the attempts to take this matter forward. He maintained that the PCLU was not the cause of the delays and he suggested that perhaps the National Director of Public Prosecutions should comment further.

Adv Vusi Pikoli, National Director of Public Prosecutions, added that this was a politically sensitive issue. The legal processes must solve the problem. Whenever there was an attempt to charge members of the former Police Ser there was political intervention, and effectively the NPA was being held to ransom by the former generals. On the other side the families of the victims were pressing for prosecution. The guidelines were not universally accepted a some NGOs, including Legal Resources Centre, wished to challenge the constitutionality of the guidelines. There were ongoing discussions as to how best to proceed. The President, in addressing parliament, indicated clearly th matters would be dealt with, and so this was an ongoing matter.

The Chairperson stated that she was aware of some efforts from the Department of Justice. She asked that Adv Pikoli provide the Committee with a full report on the events to date in writing, so that the Committee could try to as this clearly went beyond just the one case cited by Adv. Ackermann. It was undesirable that these problems should still be delaying matters.

Mr Joubert asked about the cost of protecting witnesses.

Mr Dawood Adam, Head, Witness Protection Unit, commented that witness protection was expensive. Each programme must be measured on its own merits and circumstances and different factors would impact. The cost of one witness being protected over a year had amounted to R145 000. The cost of protecting the Boeremag witnessas, without taking accommodation into account, had been in excess of R5 million. Factors taken into consideration co include salary replacement. Another case had required protection for 23 witnesses, involving accommodation in three safe houses.

Imam Solomon noted that the security seemed to focus only on the witnesses being protected and asked if protection was also given to officials of the NPA who were responsible for this Unit.

Mr Adam replied that unfortunately South Africa was not yet geared to protection of officials. International best practice and guidelines had suggested that corporate identity documents should be provided. Security was a challeng certain matters were under discussion to ensure that the covert status of the unit was maintained.

Mr Landers asked why the DPP had declined to prosecute in the Kalji Rashid matter.

Adv Ackermann responded that this was because the full High Court bench had ruled that the deportation was legal. He had studied the documents carefully and the matter had been discussed with the International Criminal Co including the implications of the Rome Statute. This was not necessarily done in every deportation matter, but now that the Court had ruled on the matter it was closed.

Mr Landers asked which departments had been problematic in assisting with the prosecution of TRC cases. He also commented that destruction of documents by SAPS, Municipalities, magistrates' courts and municipalities in re missing persons should be sanctioned.

dv Ackermann responded that all inquest dockets were to be destroyed after a certain time, and the destruction was following this principle. However, there had been a circular issued in 1994 to try to halt the destruction of evid

The Chairperson asked for specific information on problematic cases to be forwarded to the Committee, so that it could try to assist.

Adv C Johnson (ANC) asked why the voluntary walk-offs were happening and what was being done to prevent them.

Imam Solomon noted that the witnesses would be from diverse cultural and social backgrounds, and this made it important for the Unit to take cognisance of their special circumstances. He asked if the walk-offs had arisen as a of the difficulties in culture.

Mr Adam responded that around 80% of witnesses related to protection under section 204. Some had come into the programme but had changed their mind after giving statements, and disappeared. Some of the walk offs result individuals being traumatised by and not able to cope with removal from all support services. He agreed that there were diversity and cultural issues but every attempt was made to try to keep the witnesses in the programme. Wi the witnesses failed to keep to the terms of the programme, the appropriate steps were taken.

Adv Johnson asked if support was being given to TRC victims and families in going though the prosecutions.

Mr Adam replied that various NGOs were assisting with support to families.

Adv Johnson asked for what was happening in Rwanda.

Adv Ackermann replied that he had written an opinion on the matter and had expressed the view that it was not possible to prosecute in South Africa.

Imam Solomon noted that the achievements listed included cooperation to Netherlands, Germany and United Kingdom. He asked for specifics of what assistance was given.

Dr Ramaite said that South Africa had been instrumental in drafting guidelines, and stated that Europol relied on South Africa to assist in Africa in terms of legislation, operational models and training standards. South Africa was developing the PCLU to keep pace with the metamorphosis of organised crime, and would continuously monitor this. It had given support to Kenya, Mozambique, Angola and Namibia, and would be addressing them on how to e establish a unit.

The Chairperson asked that all investigations pending must be concluded expeditiously, which would be in the best interests of all concerned.

Directorate of Special Operations (DSO / Scorpions): Briefing

dvocate Leonard McCarthy, Head, Scorpions, stated that this had been a year of averages, balance and learning. The DSO was intended to target criminals who organised and profited from crime. It used a multi disciplinary an uccess driven approach to deal with cases more effectively. The strategy was to mark down the impact of, and to drive up the disruptive effect on organised crime.

The key activities and impacts were tabled. Adv McCarthy noted that the conviction rate was above 80%. The value of assets placed under restraint was R550 million, and there were 41 cases, from which R64 million was destin CARA. DSO had directed R50 million to the victims of organised crime. Drugs valued at over R1 billion had been seized over the last year. A comparative performance analysis was given over the last three years. Although the n of investigations had dropped, the conviction rate had been firm and assets under restraint had risen. 20% of cases finalised involved plea-bargaining, about 20% were medium-rated and the rest were massive cases. That must borne in mind when measuring the statistics. The Fidentia case should not have been allowed to happen; it showed a lack of checks and balances in the system. The Schaik and Yengeni appeals were major successes as they endorsed the strategy of the investigations.

In relation to the travel fraud, 37 of the 40 Members of Parliament had pleaded guilty. One charge had been withdrawn for humanitarian reasons and the other two were facing charges in the Regional Court. Adv McCarthy stated there had been rumours of involvement of 250 people, but the lists referred to only outlined the transactions used as part of the bigger investigations and did not pinpoint the transactions. There had been complaints by some tha Executive had been given a clean bill of health. Thorough investigations had been done and insufficient evidence was available to warrant prosecutions. He asked that the prosecutors now be given a proper chance to do their w

Adv McCarthy detailed some of the matters currently being handled by DSO. Mr Rautenbach was a fugitive of justice. The DSO was ready to prosecute on numerous charges and had applied for his extradition. The NDLC invest had shown how an intricate web of corruption involving seven countries could be created. This matter was still to be decided. In the Shaik cases none of the benefits or loans were reflected in local or foreign tax or disclosure rec and this was important as around the world prosecuting authorities were focusing more on disclosure records. In the Yield case, the prosecutors had been asked to write a report on how they had worked with mutual legal assista and to detail the excellent cooperation. The drug cases illustrated that the major drug dealers were outside South Africa, and that drug trafficking was the biggest organised crime threat in South Africa and around the world. Cybe was another huge threat, as evidenced by the recent scam targeting bank customers, which resulted in around 25% of all bank clients being persuaded to give their details to an international syndicate. The challenge for law enforcement was to use technology to trace the physical location of criminals. The DSO had managed to give measurable results. Details were also given in brief of the Kebble matter.

Adv McCarthy noted that several national and international partnerships and agreements were also in place. It was impossible for DSO to make impact unless it had sound relations with international agencies. The internal busin was tabled. There were currently 475 staff, of which 121 were unfunded until last year. 142 positions were created on 20 November, and the challenge would now lie in filling those positions. 825 positions should be filled by the e the financial year. Details were given of the gender and racial breakdown.

A dedicated administration for DSO was set up on 26 October 2006. Treasury had approved a separate bank account and estimate of national expenditure for DSO funds. The main spending drivers were compensation, goods a services and capital assets. 30% of the goods and services budget was spent on professional services, which basically involved forensic companies and lawyers. This was rather high but necessary in light of the capacity constra 40 staff had been lost during the course of the last year, and 36 new staff appointed, and the turnover of 8% was well within the norms.

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Challenges included the need to increase effectiveness in investigating and prosecuting organised crime the need to work on creating jurisprudence on the Prevention of Organised Crime Act, and also to create law around the Monitoring Act Not enough had yet been done to maximise international assistance A major challenge would lie in matching job demand with expertise Some of the solutions proposed included standardisation of best practice a writing a practice manual DSO would like to set up its own internal Counsel capacity Agent evidence drug smuggling racketeering and trials had been successfully worked on in the last year DSO hoped to be able to set resea based impact measurement indicators Adv McCarthy noted that the decision by Cabinet was in the process of implementation and he hoped that there would be a single line of command and the jurisdictional sanctity of Chapte should be retained The new posts would be filled and DSO would be establishing a training academy

Discussion

Mr Joubert asked out why DSO had chosen the name Red Cross for the drug-finding operation

Adv McCarthy replied that there was no special significance to the name Red Cross and investigators would often deliberately choose a name that was totally unrelated to the subject matter to preserve confidentiality This partic name came about as DSO wanted the people involved in drug trafficking to feel the effects of their actions

Adv Johnson referred to the newly created 146 posts and asked if these posts added to the civil litigation establishment

Mr Adnan Mopp Regional Head DSO replied that the civil litigation would be accommodated under the 142 posts and also under the 158 posts especially earmarked for this purpose

Mr Joubert was curious as to how Mr Kebble had operated and achieved what he had done before the investigations

Mr Mopp replied that the trial results were still awaited He noted that so far three main points could thus far be isolated the use of false brokerage notes how boardroom corruption could be constructed and lastly the lack of due diligence in certain areas of the corporate world in South Africa He added that a workshop audit had revealed tremendous vigour and positive attitude in the DSO which was clearly maturing well

Imam Solomon asked the DSO to further explain the meaning of the single line of jurisdiction

Mr Mopp replied that he did not want to pre-empt the position but presently the operational decisions were taken under one line of command This was a model that the world was adopting so the view in the DSO was supporting model

Imam Solomon noted that the mandate of the DSO appeared to target the high profile cases He did not agree with this approach since this implied that the problems of people in the communities were being marginalised He sa there were significant problems with gangs in townships

The Chairperson agreed that gangs in townships were not receiving sufficient profile or attention She was of the opinion that these should be prioritised as this would enable politicians to discuss the issues in an effort to better li all people Most importantly this would show that the institutions created by government were not only for high profile issues but also for those in the street

Adv McCarthy replied that DSO realised that in the Western Cape it had not yet come to grips with the management of organized crime but it had established and was trying to work in clusters that complemented the work being DSO did acknowledge that it had neglected a certain segment of the market and would address the gap He further said that the point Mr Solomon had raised was taken to heart This was work in progress and the next time DSC appeared before the Committee it should have some progress regarding the lower level offences

Imam Solomon asked if DSO policy towards victims of crimes matched the SIU policy of funding organisations that gave victim support

Mr Mopp replied that DSO did not fund organisations but would instead get an order for compensation under section 300 of the Criminal Procedure Act, and the money went to the victims

The Chairperson remarked that she was aware that there was an appeal pending in the LeisureNet issue and asked for details

Adv McCarthy replied that this matter was not finalised He could confirm that application had been made for leave to appeal which had been granted and the appeal would proceed on both conviction and sentence However th judge in the court a quo was still charged with an enquiry from the original matter The DSO would consider its position and was currently preparing on questions of law which it would request the Supreme Court to resolve Inclu money laundering charges as well as the sentencing issues

Mr Mopp added that the legal and operational grounds indicated that DSO would be perfectly entitled to call for an increase in the sentence

The Chairperson remarked that she was well aware of the comments about the Travelgate incident but expressed her disquiet at the insinuations that those high up in the ANC echelons were immune to prosecution and would n pursued She asked DSO whether the Directorate or any of the prosecutors were facing any pressure She remarked that this was an ideal forum to air any grievances or note anything untoward as the Committee would not prot party if DSO was unable to prosecute it would greatly undermine the integrity of the DSO which it had painstakingly worked to achieve

Adv McCarthy replied it would be useful to have an independent observer to write up how DSO functioned He said that the idea that he could influence all 500 people in the department was entirely ludicrous There had been no pressure applied He had allocated some of the best people on the Travelgate case and he himself had applied extra effort to it because of its great sensitivity as it involved members of the executive He added that he had appl twenty years of legal experience and had himself interviewed some of executive members in terms of the Section 28 of the NPA Act Parliament at first was squeamish but in the end was co-operative to the extent that he had b informed that in most countries in Europe this type of matter would never have been allowed to proceed to this advanced stage The tenacious personalities of the team the time and money invested meant that NPA would not s short of prosecuting a high level person simply because pressure had been exerted on the NPA Anyone making insinuations that there was further evidence or that certain people were being protected must bring this evidence forward The matter would proceed in court and he hoped that no delaying tactics would be used in the trial process

Adv Pikoli added that soon after his own appointment he realised the importance of the integrity of the DSO and how even small media stories could attack this integrity One story implied that Adv Pikoli was discussing the Jaco matter with the President and had been seen in whispered consultation with him On that very day Adv Pikoli was in fact en route to Chile The NPA would not be influenced by anyone and any members irrespective of their statu the ruling party or any party would be dealt with according to the law

The Chairperson remarked that the Committee's function was to hold the NPA accountable and where information was not satisfactory the Committee would levy criticism with a view to building and guiding NPA All Members ha keen interest in the issues being discussed The Committee wished it could interface with the units more

Adv Pikoli asked about the progress of the Criminal Laws (Sexual Offences) Amendment Bill which was of particular importance since the current definition of rape was problematic

The Chairperson replied that the Committee had prioritised this Bill but there had been a problem in relation to tagging which was currently under review The South African Law Reform Commission was working on legalising prostitution and there was evidence that there was a direct link between trafficking and prostitution She was not impressed by the substantial funding to organisations who should propose how to legalise sex workers without ma link already to the trafficking issue The models applied by other countries in legalizing sex workers could prove extremely useful tools and this would allow the funding to be used for other related issues

Adv Pikoli asked on the progress of the Child Justice Bill

The Chairperson replied that the problem with this Bill lay in implementation There was lack of capacity in terms of the social workers needed The Department of Justice did not have a problem but the Departments of Correctio Services and Social Development were facing resource problems She emphasised that it was not desirable to have a piece of legislation passed if it could not be implemented practically

The meeting was adjourned

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IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO:

In the matter between:

THE STATE

and

1. JOHANNES VELDE VAN DER MERWE

an adult male South African citizen

2. ADRIAAN JOHANNES VLOK

an adult male South African citizen

3. CHRISTOFFEL LODEWIKUS SMITH

an adult male South African citizen

4. GERT JACOBUS LOUIS HOSEA OTTO

an adult male South African citizen AND

5. HERMANUS JOHANNES VAN STADEN

an adult male South African citizen

(hereafter referred to as the accused)

PLEA AND SENTENCING AGREEMENT IN TERMS OF SECTION 105A OF ACT 51 OF 1977 (AS AMENDED)

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THE PLEA AGREEMENT:

A. PARTIES TO THE AGREEMENT:

1. The State is the National Prosecuting Authority of South Africa and represents the complainant.

2. There are five accused, namely:

JOHANNES VELDE VAN DER MERWE

ADRIAAN JOHANNES VLOK

CHRISTOFFEL LODEWIKUS SMITH

GERT JACOBUS LOUIS HOSEA OTTO and

HERMANUS JOHANNES VAN STADEN;

B. AUTHORISATION:

3. The prosecutor who represents the Prosecuting Authority in this matter is **Adv AR Ackermann SC,** a Special Director in the Priority Crimes Litigation Unit in the Office of the National Prosecuting Authority, who is duly authorised to enter into this plea agreement on behalf of the State. The relevant authorisation is attached as **Annexure A.**

C. LEGAL REPRESENTATION:

4. At all times during the plea negotiations and these proceedings, the accused have been represented by **Adv Johann Engelbrecht SC** and **Jan Wagener**, of Attorneys Wagener Muller, 833 Church Street, Pretoria, 0001.

D. THE INVESTIGATING OFFICER:

5. The investigating officer was consulted regarding this plea agreement and has indicated that he has no objection to the pleas of guilty as set out in the agreement, or to the proposed sentences.

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E. THE COMPLAINANT'S ATTITUDE WITH REGARD TO THE PLEA AGREEMENT:

6. The complainant, the **Reverend Frank Chikane**, has been consulted and has indicated that:

6.1 He does not harbour a grudge against the accused.

6.2 It is extremely important for him to have the true facts surrounding the attempt on his life disclosed.

6.3 He is satisfied with the plea agreement and does not wish to make any further representations in connection with the matter.

F. THE RIGHTS OF THE ACCUSED:

7. Prior to entering into the plea agreement, the accused were duly informed about their constitutional rights..

8. They have been fully informed regarding the rebuttable presumption that they are innocent until guilt has been proved beyond reasonable doubt.

9. They were informed of their right to remain silent.

10. They were also fully informed of their right not to offer self-incriminating testimony.

11. The accused are fully aware of the fact that the Honourable Court is not bound by this plea agreement.

G. THE CHARGES:

12. The accused are charged with the following offences:

COUNT 1: ATTEMPTED MURDER

IN THAT on or about **23 April 1989** and at or in the vicinity of **the then Jan Smuts Airport** in the district of **Kempton Park,** the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the **Reverend Frank Chikane,** an adult male person, by way of **administering a poison, to wit Paraoxon, to his clothing.**

ALTERNATIVE CHARGE TO COUNT 1: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956

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IN THAT the accused, together with **Wouter Basson**, **André Immelman** and **persons unknown to the State, during April 1989** and at or near **Roodeplaat Research Laboratory and/or Pretoria** in the district of **Pretoria,** unlawfully and intentionally conspired to commit the crime of **murder** against the **Reverend Frank Chikane,** and / or to assist in the commission of this offence and / or to further the commission of the offence.

COUNT 2: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956

IN THAT the accused, **Wouter Basson**, **André Immelman** and **persons unknown to the State, during 1989** and at or near **Roodeplaat Research Laboratory, Security Branch Headquarters** in the district of **Pretoria and/or other locations unknown to the State,** unlawfully and intentionally conspired to commit the crime of **murder** of **persons unknown to the State** and / or to assist with the commission of such murders and / or to further the commission of such murders.

H. THE PLEA OF THE ACCUSED:

13. The parties to this plea agreement have concurred on the following:

13.1 That all the accused plead guilty to **Count 1,** as set out in the indictment:

COUNT 1: ATTEMPTED MURDER

IN THAT on or about **23 April 1989** and at or in the vicinity of **the then Jan Smuts Airport** in the district of **Kempton Park,** the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the **Reverend Frank Chikane,** an adult male person, by way of **administering a poison, to wit Paraoxon, to his clothing.**

13.2 That the State will withdraw **Count 2** against all the accused.

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1. FACTUAL SUMMARY OF EVENTS:

(i) BACKGROUND:

(For the sole and exclusive purpose of this agreement, the accused admit the contents of paragraphs 14 to 23 as set out hereunder, although at the time the relevant offence referred to in **Count 1** was committed, they had no knowledge whatsoever thereof.)

14. During the period 1982 – 1992, the South African Defence Force ran a Top Secret project, namely Project Coast. The primary objective of this project was to develop a defensive and limited offensive chemical and biological warfare capacity.

15. Dr Wouter Basson was the project officer.

16. Due to the sensitivity of the project, front companies were used to conduct research as well as to manufacture and procure substances.

17. The front company Delta G Scientific (Pty) Ltd (hereafter referred to as "Delta G") was responsible for research and manufacture of chemical substances for the project.

18. Roodeplaat Research Laboratory (Pry) Ltd (hereafter referred to as "Roodeplaat") conducted research in the biological sphere and to a lesser extent, also carried out chemical research.

19. Dr A Immelman was a scientist employed as the head of toxicological research at Roodeplaat.

20. Around the mid-1980s, Dr Basson instructed Dr Immelman to, *inter alia*, carry out research on the use of toxic substances against individuals, methods of application and the traceability of such substances following administration. These toxic substances (including Paraoxon) were manufactured at Roodeplaat and some of them were handed over to Dr Basson.

21. In approximately 1987, Dr Basson ordered Dr Immelman to meet clandestinely with representatives of other branches of the Security Forces and to supply them with whatever substances they needed.

22. As a result of this instruction, Dr Immelman had various clandestine meetings with members of the various Security Force components. During these meetings, the needs of particular components were discussed and toxic substances were in fact later supplied to them.

23. In order to keep a record of the toxic substances that were handed over to these outsiders, Dr Immelman maintained a list (attached to the indictment

as **Annexure "A"**) indicating the date of delivery, the name of the substance and the volume / quantity supplied.

(ii) THE ACCUSED:

24. During the period January 1986 to September 1988, accused No 1 was the commanding officer of the SA Police Special Branch. In October 1988, he was promoted to Deputy Commissioner of Police.

25. General Sebastiaan Smit succeeded him as commander of the Security Police and thereafter, accused No 1 had no further involvement with the project.

26. During the period December 1986 to August 1991, accused No 2 was the Minister of Law and Order in the Republic of South Africa.

27. During the period relevant to the indictment, accused 3 to 5 served as police officers attached to the Security Branch.

(iii) THE VICTIM:

28. The Reverend Frank Chikane was an outspoken opponent of apartheid and the policies of the then lawfully elected government. He was, *inter alia*, the secretary-general of the South African Council of Churches and the vice president of the United Democratic Front. It was the stated policy of the latter organisation to propagate and support countrywide unrest and violence for the direct purpose of rendering the country ungovernable.

29. During April / May 1989, Reverend Chikane was planning to visit various foreign countries with a view to propagating the imposition of economic sanctions against South Africa.

30. The first leg of his trip was a visit to South West Africa, now Namibia. He travelled by air from the former Jan Smuts Airport to Windhoek.

31. After dressing on 24 April 1989 in some of the clothes that had been packed in his suitcase, the Reverend Chikane took ill. He was admitted to a hospital in Namibia, but later the same day, he was transported back to South Africa as a matter of urgency and re-hospitalised on arrival.

32. His condition improved and he was discharged from hospital. He then flew to the USA, both to recuperate and to keep a number of scheduled appointments. Additional clothing was packed in his suitcase, which had arrived from Namibia in the interim.

33. In the United States, Reverend Chikane again fell ill after wearing clothing taken from his suitcase. Again, after being hospitalised, his condition improved. This pattern was repeated twice more.

34. During his third hospitalisation in the USA, extensive medical tests were carried out on Reverend Chikane. P-Nitrophenol was found in his urine and this, together with specific symptoms and other test results, indicated organophosphate poisoning. P-Nitrophenol is a rapidly biodegradable metabolite of Parathion, of which Paraoxon is the active ingredient.

(Iv) THE CRIME:

35. During the 1980s, various individuals / organisations were actively involved in efforts to abolish apartheid in South Africa and/or overthrow the government of the day by violent means. Methods used included the promotion of economic sanctions against and the international isolation of South Africa, as well as direct propagation of civil disobedience in order to render the country ungovernable.

36. During 1987, at a meeting arranged by the South African Defence Force, accused No 1 took cognisance of an order to act against high profile members of the anti-apartheid liberation struggle in order to neutralise their influence. He also took note that, in extreme cases and only as a last resort, consideration could be given to killing them.

37. A list containing the names of persons identified in terms of this order was handed to senior members of the security establishment, including accused No 1. Reverend Chikane's name was among those on this list.

38. The execution of the above-mentioned order was discussed by accused No 1 and No 2.

39. Accused No 1 and No 2 then decided that a special unit should be set up within the Security Branch for the purpose of carrying out this order.

40. Accused No 4 and No 5 were attached to this special unit at all relevant times and from January 1989, accused No 3 served as the commander of the unit.

41. After General Smit assumed command of the Security Branch, he was informed about the objectives of the special unit.

42. Acting on the orders of General Smit, accused No 3 made contact with Dr Basson and requested him to assist the special unit in acquiring substances that could be applied against the enemy. Dr Basson arranged for contact to be made with Dr Immelman.

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43. A number of clandestine meetings took place thereafter between Dr Immelman and accused No 3, 4 and 5. At these meetings, these three accused discussed the details of substances that could be used against the enemy. In respect of Reverend Chikane, a substance that would specifically lead to his death was required. Dr Immelman identified a certain substance for this purpose and explained that it should be applied to close-fitting clothing items, such as a shirt collar and/or underpants. The toxic substance, which was subsequently identified as Paraoxon, was supplied to them by Dr Immelman.

44. Paraoxon is a lethal toxic substance.

45. On 4 April 1989, Dr Immelman delivered the Paraoxon to the accused, as reflected in **Annexure "A" of the Indictment.**

46. Reverend Chikane was due to depart for Windhoek from Jan Smuts Airport on 23 April 1989.

47. On the evening of 23 April 1989, accused No 3 and No 4 were at the airport and Reverend Chikane's suitcase was intercepted. They then applied the Paraoxon supplied to them by Dr Immelman, to the contents of Reverend Chikane's suitcase.

48. The poisoning of Reverend Chikane's clothing resulted in the series of events set out in paragraphs 31-34.

49. The order to kill Reverend Chikane was issued by General Smit to accused No 3 in terms of an order conveyed to accused No 1 and No 2. The accused acted in pursuance of a common purpose to murder Reverend Chikane. At all relevant times, the accused acted unlawfully and with the necessary intent.

AGREEMENT REGARDING A JUST SENTENCE:

J. AGGRAVATING CIRCUMSTANCES:

50. The administration of poison in order to secretly eliminate opponents is an egregious, reprehensible and universally abhorrent act.

51. Accused No 1 was the Deputy Chief of the Republic of South Africa's Police at the time of commission of this crime.

52. Accused No 2 was a prominent political leader and member of the ruling party of the day.

53. Reverend Chikane was a religious leader.

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54. The motive for the planned murder of Reverend Chikane was to prevent him from lobbying abroad for economic sanctions against South Africa and to deprive him of his role in promoting internal résistance against the government..

55. The **Promotion of National Unity and Reconciliation Act, No 34 of 1995,** made provision for persons who were guilty of committing gross human rights violations for political purposes, to apply for amnesty.

56. On several occasions, accused No 1 and 2 availed themselves of this right and testified before the Truth and Reconciliation Committee, each time under oath

57. The accused did not apply for amnesty in respect of the charge to which they have now pleaded guilty.

58. On 10 July 1997, accused No 1 testified before the TRC that he was not aware of the existence of a so-called "internal hit list" that was circulated within the security community.

59. Acts of reconciliation towards Reverend Chikane by accused No 2 took place only after the National Prosecuting Authority had indicated that it had a *prima facie* case against accused No 3, 4 and 5 in respect of the poisoning of Reverend Chikane.

60. During the trial of Dr Wouter Basson, who was charged, *inter alia,* with the poisoning of Reverend Chikane, the accused, and in particular accused No 2, remained silent about their role in the attempted murder and avoided any suggestion of attempted reconciliation.

61. During the prosecution of Dr Basson, accused No 3, 4 and 5 were approached on several occasions by members of the prosecution team with a view to giving evidence as State witnesses. They were offered indemnity from prosecution in terms of Section 204 of Act 51 of 1977 in this regard. The accused consistently refused to offer their cooperation and persisted in furnishing the State with a false version of events. The accused offered instead to cooperate with Dr Basson's legal defence team.

62. After conclusion of Dr Basson's trial, Reverend Chikane wrote to accused No 3, 4 and 5 several times, pleading with them to reconcile with him. The accused consistently ignored all his requests.

K. MITIGATING CIRCUMSTANCES:

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63. None of the accused has any previous convictions. Their respective ages are 71 (accused No 1), 70 (accused No 2), 69 accused No 3), 60 (accused No 4) and 63 (accused No 5).

64. The accused are all married.

65. The accused have all pleaded guilty.

66. Disposal of this case in terms of Section 105A of Act 51 of 1977 saves both the court and the State the cost and inconvenience of a protracted trial.

67. The accused have assisted the State by pleading guilty, in so far as it would otherwise have been difficult for the State to prove its case, since the State is not in possession of any evidence regarding the involvement of accused No 1 and No 2 and has been able to establish their role only as the result of their cooperation. In addition, accused No 3 and No 4 came forward to disclose their roles.

68. The accused have shown remorse for their deeds and have undertaken to act as State witnesses in the event of a prosecution being instituted against General Sebastiaan Smit.

69. Accused No 2 publicly washed Reverend Chikane's feet as a gesture of reconciliation. This act of contrition must be seen against the background that it was performed voluntarily by accused No 2.

70. The sincere remorse of accused No 2 in regard to past deeds is further illustrated by his act of reconciliation towards the mothers of 9 of the 10 Nietverdiend victims killed by the Security Forces, despite the fact that accused No 2 had no knowledge of this operation at the time and nor was it sanctioned by him.

71. At all relevant times, the accused were acting by virtue of their official positions and posts, in defence of the lawfully elected government of the day, to which they had sworn an oath of allegiance.

72. The offence was committed during a period of intense conflict and division between the various communities and structures in South Africa. On the one hand, the ANC and other anti-apartheid organisations that wished to overthrow the government by violent means, had thrown everything into the struggle to achieve their objectives. All members and spheres of society were drawn into the struggle in order to foment resistance in a variety of forms. On the other hand, the then lawfully elected government, in turn, used all the methods and powers at its disposal. The Security Forces, and in particular the SA Police, played a key role in combating the onslaught. Amid the violence raging countrywide as well as in Namibia, the SA Police were increasingly required to act against trained military operatives, which had a significant influence on normal policing. At times,

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they were forced to sacrifice the principle of minimum force and, amid the violence and bloodletting, the distinction between lawful and unlawful action became blurred.

73. At the time of commission of the offence outlined in Count 1, accused No 1 was no longer head of the Security Police and was also no longer involved in the project.

74. Neither accused No 1 nor No 2 had knowledge of the specific attempt on Reverend Chikane's life. Notwithstanding the fact that accused No 2 had made it clear that he wished to be informed in advance if consideration was being given to killing a specific individual, he was not informed in this particular case.

75. Accused No 3 and No 4 were subordinates who acted in terms of a direct order issued by the Security Branch chief, General Smit.

76. The original project aimed at neutralising the influence of high profile members of the anti-apartheid liberation struggle, was not initiated by the accused, but by the SA Defence Force, which itself was acting on higher authority.

77. As secretary-general of the South African Council of Churches and vice president of the United Democratic Front, Reverend Chikane played a key role in fomenting resistance to the former government. The United Democratic Front succeeded in mobilising the masses countrywide, resulting in widespread unrest and violence.

78. In the run-up to the TRC process, accused No 1 did everything possible to encourage members and former members of the SA Police to participate in the process. When the incident involving Reverend Chikane came to his notice, he held discussions with former chiefs and generals of the SA Defence Force in an attempt to persuade them to take part in the process as well. Because members of the defence force were involved in the incident, any attempt to seek amnesty would necessarily have been unsuccessful without their cooperation. The military generals were of the opinion, however, that the **Promotion of National Unity and Reconciliation Act, No 34 of 1995**, contained one-sided provisions that rendered the process unacceptable to them.

79. After conclusion of the TRC process, accused No 1 and No 2 did everything they could to promote creation of a further process that could address shortcomings exposed by the TRC process. Following the decision to prosecute accused No 3, 4 and 5, accused No 1 and No 2 also held discussions with Reverend Chikane with a view to the institution of such a process. He showed empathy for the problems with which accused No 1 and No 2 were wrestling.

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80. With the formulation of the National Prosecuting Authority's prosecutorial guidelines entitled "*Prosecuting policy and directives relating to the prosecution of offences emanating from conflicts of the past and which were committed on or before 11 May 1994*" (see **Annexure "B")**, a process was created that offered built-in protection for individuals who wished to make use of it, and the accused lost no time in coming forward and making full disclosure regarding this incident, which they had not been able to do in response to the letters from Reverend Chikane referred to in paragraph 62 above.

L. SENTENCE AGREEMENT:

81. In the light of the circumstances set out above, agreement has been reached on the following as appropriate sentences in respect of count 1:

Accused No 1 and No 2:

Each of the accused is sentenced as follows:

> "**10 (ten)** years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

Accused No 3, 4 and 5:

Each accused is sentenced as follows:

> "**5** (five) years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

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SIGNED AT **PRETORIA** ON THIS DAY OF JUNE 2007.

AR ACKERMANN SC
Director of Public Prosecutions
Priority Crime Litigation Unit.

1. JOHANNES VELDE VAN DER MERWE

2. ADRIAAN JOHANNES VLOK

3. CHRISTOFFEL LODEWIKUS SMITH

4. GERT JACOBUS LOUIS HOSEA OTTO

5. HERMANUS JOHANNES VAN STADEN

JAN WAGENER
ATTORNEY FOR THE ACCUSED
WAGENER MULLER
833 CHURCH STREET
ARCADIA, PRETORIA
TEL: (012) 342-3525
DOCEX 321 PRETORIA
REF: JW0423

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VPP 4-

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

Sonja CarstensPretoria

Die polisie het nog niks gedoen om meer bewyse en getuienis te kry vir die moontlike vervolging van 37 destydse leiers van die ANC aan wie amnestie vir apartheidsmisdade geweier is nie.
Rapport het die afgelope week uit onberispelike bronne verneem die polisiedossiere wat twee afgetrede polisielede vroeër saamgestel het, is al jare toegesluit by die hoofkantoor van die polisie se speurdienste. Die bronne se name word op versoek verswyg weens die sensitiewe poste wat hulle beklee.
Volgens die bronne is geen verdere ondersoekwerk na die inligting in die dossiere gedoen nie.
Die dossiere is vroeër verwyder uit 'n kluis in die kantore van die direkteur van openbare vervolgings (DOV) in Pretoria waar adv. Paul Fick, SC, hoof van die vervolgingspan wat die vermeende Boeremagiede aankla, die hoof was van 'n span wat verder ondersoek ingestel het met die oog op moontlike vervolging.
Die nasionale vervolgingsgesag (NV) het die ondersoeke jare gelede weggeneem van Fick. Hy wou die afgelope week glad nie op vrae reageer nie.
Rapport verneem sedert dit uit Fick se kantoor verwyder is, is dit toevertrou aan 'n span by die NV wat dit verder moes ondersoek, maar wat weinig aan die ondersoeke gedoen het.
Hierna is adv. Anton Ackermann, SC, in Junie 2003 aangestel as hoof van 'n eenheid wat onder meer misdade teen die staat moes ondersoek. Ackermann was die aanklaer in die Vlok-Van der Merwe-verhoor.
Genl. Johan van der Merwe, voormalige polisiehoof, het Vrydag gesê "oorgenoeg getuienis" bestaan teen die ANC-leierskorps oor hul betrokkenheid by die landmynontploffing in 1995 waarin verskeie lede van die Van Eck- en De Necker-gesin gesterf het.
In Junie 2004 het mnr. Sipho Ngwema, destydse woordvoerder van die NV, gesê nie een van die 37 leiers, onder wie pres. Thabo Mbeki, mnr. Jacob Zuma, komm. Jackie Selebi, polisiehoof, mnr. Linda Mti, vorige kommissaris van korrektiewe dienste, en min. Essop Pahad kan vervolg word nie omdat "daar eenvoudig nie genoeg getuienis is om 'n klagstaat op te stel nie".
Ngwema het destyds gesê die NV weet nie wie het wát gedoen of wie die opdragte gegee het nie. "Indien die NV dit met die getuienis tot sy beskikking sou doen, is dit net so goed die vervolger besluit oudpres. PW Botha of oudpres. FW de Klerk moet teregstaan weens voorvalle in die apartheidsjare waarvoor niemand anders verantwoordelikheid aanvaar het nie," was Ngwema se woorde.
Mnr. Dirk van Eck het reeds aangedui hy is gereed om 'n klag in te dien teen ANC-leiers wat nie amnestie ontvang het nie vir die aanval wat meer as die helfte van sy gesin uitgewis het.
Die politieke omstredenheid oor vervolgings vir misdade uit die verlede sal uitbrei as die NV 'n vervolging instel teen genl. Basie Smit, 'n voormalige hoof van die polisie se speur- en veiligheidstak. Een van die klousules in Vlok en Van der Merwe se pleitooreenkoms dwing hulle om in 'n moontlike verhoor teen Smit te getuig.
Rapport verneem Ackermann het vroeër skriftelik opdrag gegee dat die polisie nog getuienis in die ondersoeke na die ANC-leiers moet versamel met die oog op moontlike vervolging. Maar die afgelope week het die polisie geweier om te sê of die opdrag nagekom is en wat die vordering daarmee is.
Dir. Sally de Beer, Selebi se woordvoerder, het navrae na dir. Phutl Setati, woordvoerder van nasionale speurdiens, verwys.
"Die polisie wil sy kommentaar oor die saak voorbehou," het Setati gesê.

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scarstenss@rapport.co.za
) Vlok en Van der Merwe vra Mbeki en De Klerk om in te gryp – bl. 14

Google translate:

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

The police have done nothing to get more evidence and testimony for the possible prosecution of 37 former leaders of the ANC who amnesty for apartheid crimes were refused.
Report this week from impeccable sources learned that the police dockets that two retired police officers have made earlier, for years locked up at the headquarters of the police's detective services.
The sources' names are withheld at the request because of the sensitive positions that they hold.
According to the sources, no further investigation into the information taken in the case files.
The dossiers were earlier removed from a safe in the office of the Director of Public Prosecutions (DPP) in Pretoria Advocate. Paul Fick, SC, head of the prosecution team who accuse the alleged Boer force members, the head of a team that further investigation instituted with a view to possible prosecution.
The National Prosecuting Authority (NPA) has taken the examinations years ago Fick. He wanted the past week did not respond at all to questions.
Butchery since it was removed from Fick's office, it was entrusted to a team at the NA that it had investigated further, but that did little to investigations.
After this, Adv. Anton Ackermann, SC, was appointed in June 2003 as head of a unit that had investigated include crimes against the state. Ackermann was the prosecutor in the Vlok Van der Merwe trial.
Gen. Johan van der Merwe, a former police chief, said Friday "ample evidence" exists against the ANC leadership over their involvement in the landmine explosion in 1995 in which several members of the Van Eck- and the Necker family died.
In June 2004, Mr. Sipho Ngwema former spokesperson of the NPA, said none of the 37 leaders, including President. Thabo Mbeki, Mr. Jacob Zuma, Comm. Jackie Selebi, the police chief, Mr. Linda Mti, former commissioner of correctional services, and more. Essop Pahad can be prosecuted because "there is simply not enough evidence for an indictment to prepare,".
Ngwema said then that the NPA do not know who has what or who did not give the orders.
"If the SA would do this with the evidence at its disposal, it is as well the prosecutor decides former president. PW Botha or former president. FW de Klerk arraigned because of incidents in the apartheid years for which no one has accepted responsibility, "was Ngwema's words.
Mr. Dirk van Eck has indicated he is ready to file a complaint against ANC leaders not yet received amnesty for the attack that wiped out more than half of his family.
The political controversy over prosecutions for crimes of the past will expand as the NPA a prosecution against Gen. Institute. Basie Smit, a former head of the police detective and security branch. One of the clauses of Vlok and Van der Merwe's plea agreement forcing them into a possible trial to testify against Smith.
Butchery Ackermann had earlier instructed in writing that the police have evidence in the investigation of the ANC leaders have gathered with a view to possible prosecution. But last week, the police refused to say whether the assignment is carried out and the progress it.
Dir. Sally de Beer, Selebi's spokesperson, referred questions to Dir. Phuti RAF spokesman national detective refers.
"The police want his comments on the case reserved," the RAF said.
scarstenss@rapport.co.za
) Vlok and Van der Merwe asked Mbeki and De Klerk to intervene - p. 14

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VPP5 213

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

National Prosecuting Authority on Rapport article on A Ackermann

21 Aug 2007

Response to article in rapport
21 August 2007

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

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

Contact person:
Tlali Tlali
Cell: 082 333 3880

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28-AUG-2007 16:48 FROM DEPRT OF JUSTICE TO 0128849329 P.01/2

VPP6

MINISTRY
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA
Private Bag X 276, Pretoria, 0001, Tel (012) 315 1111, Fax (012) 341 1740
Private Bag X 115, Cape Town, 8000, Tel (021) 467 1703, Fax (021) 467 1703

Our ref: 2/3/1
Enq: Adv. M Sibiya/ane

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

Dear Adv Pikoli

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

1. I refer to the discussions in the above meeting of 23 August 2007.

2. You will recall that both you and the National Commissioner, Mr. J 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

28/8/07

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VPP7

Ref: NDPP/kp

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

29 August 2007

Dear Minister

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

1. I refer to your fax of 28 August 2007.

2. I refer to the meeting of the sub-committee of 23 August 2007, which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the sub-committee members.

3. I confirm that I stand by what I said about the National Commissioner of Police and the South African Police Service (SAPS).

4. I confirm and repeat the following:

4.1 That I have instructed that an investigation be carried out in respect of the forgery of the memo by Adv. Ackermann SC.

4.2 As borne by the attached annexure and the numerous communications to the Minister, there is no investigation by the NPA or any of its officials against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police. I give the

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

5. While I am not certain as to what the meaning of paragraph 4 of your letter is, it is, however, clear that my account of the position as it relates to the NPA's handling of the post TRC matters has been completely ignored.

6. Arising from allegations made by two police officers, as well as a threat by a lawyer representing former Security Branch members who were facing prosecution, my predecessor had the material relating to the ANC leadership perused and satisfied himself that there was no basis for the leadership to be investigated. He also briefed your predecessor, as well as members of the Office of the Presidency to this effect. In my presence and in my capacity as the then Director General of the Department of Justice & Constitutional Development, all the police dockets stored at the Office of the Director of Prosecutions: Pretoria were handed over to the police. These events all took place in early and mid-2004. I confirm as well that the Minister was made aware of all these facts as far back as December 2004 and I am surprised that this issue is now resurfacing.

7. In view of all that is transpiring now, I request an urgent meeting with the Minister, my Deputies and myself. Further, I request an opportunity to appear before the National Security Council to give a true account of this issue.

Kind regards

Adv. VP Pikoli
National Director of Public Prosecutions
Date:

V.P.

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REPORT OF THE ENQUIRY INTO THE FITNESS OF ADVOCATE VP PIKOLI TO HOLD THE OFFICE OF NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

NOVEMBER 2008

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POST - TRC CASES

209 The Government complains that Adv Pikoli's handling of the post-Truth and Reconciliation Commission (TRC) cases did not show the sensitivity to the victims and an appreciation of the public interest issues that are mandated by the Prosecution Policy. It is alleged that the NPA concluded plea bargains with Mr Van der Merwe and others (the Vlok matter) without discussing them with the task team or informing the Minister, *"notwithstanding potential impact on national security"*.

210 The evidence tendered in this regard was that of the DG: Presidency who testified about being poisoned by the security operatives of the apartheid regime. In substance the DG: Presidency expressed his outrage about the way in which the plea and sentence agreements were concluded with the former Minister Vlok and the other co-accused. The complaint is that the DG: Presidency expected that that process should have as its purpose the revealing of "the whole truth" about the clandestine poisoning and how the institutions of state were used to stifle resistance against the repressive and racist regime of the past

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order. However the prosecutorial guidelines do not provide for revealing the 'whole truth' as a requirement for prosecuting these cases.

211 The law relating to the plea and sentence agreements and the prosecution policy regarding the post-TRC matters does not have as its object revealing "the whole truth". What the law provides for is that the victims of the offence for which a plea and sentence agreement is to be concluded must be consulted by the prosecuting authority. On the evidence, the DG: Presidency was indeed consulted before the plea and sentence agreements were concluded. There were concerns articulated by the DG: Presidency about the nature of the consultation but for the purposes of this report it is unnecessary to deal with those save to say that he found the demeanour of the prosecutor insensitive to his plight as a victim in that case. This complaint also touches very closely on the constitutional guarantee of independence of the NPA to prosecute or not to prosecute, and to do so without fear, favour or prejudice.

212 Adv Pikoli says that the role of the inter-departmental task team was to provide information and advise the NPA, and that the NPA retained

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responsibility for all prosecutorial decisions. He further states that he kept the Minister fully briefed of progress with the post-TRC matters, and wrote to the Minister requesting her assistance in clarifying the role of the task team. He did not receive any response from the Minister to this request. He states that despite representations from Vlok and Van der Merwe, he refused to grant them immunity from prosecution and proceeded to charge them. The prosecution resulted in a plea and sentence agreement with the accused.

213 Moreover Government has not pursued this complaint. In closing argument before the enquiry it was stated on behalf of Government that: *"The TRC and Khampepe we have not gone into. We have not pursued the TRC complaint and the Khampepe complaint"*. As a result it is my considered opinion that Government has not made out a case that Adv Pikoli is not fit for office by reason of this complaint.

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Justice • Freedom • Security

National Prosecuting Authority

Annual Report 2008/09

NATIONAL PROSECUTING AUTHORITY
South Africa

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Challenges Experienced

The TRC Guidelines were declared unconstitutional and invalid by the North Gauteng Provincial Division of the High Court. A decision to appeal the judgment will be made early in 2009. A further delay in the prosecution of cases emanating from the TRC process is therefore inevitable.

The Cape High Court declared the search and seizure warrants executed by the SAPS in its first official terrorism investigation in terms of Protection of the Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA) unlawful. Leave to appeal has been granted. Should the appeal be dismissed, the evidence obtained as result of the execution of the search and seizure warrants would be inadmissible and would negatively affect a decision to prosecute.

In so far as the MPTT is concerned, DNA testing has been placed on hold pending the finalisation of the donor funding to the DNA lab and the resolution of certain staffing matters. This will delay the finalisation of certain cases.

The issue of the quality of police investigations is on an ongoing basis taken up with senior police management with the aim of improving the turnaround time of such investigations. The investigations are dealt with in terms of Prosecution Guided Investigations (PGI) principles to try and bridge shortcomings.

Forecast

The PCLU will continue to focus on all the investigations which are currently in progress with the aim of being able to make properly informed timely decisions on them. The PCLU will continue to maintain and develop the existing stakeholder relationships and focus on addressing blockages. The MPTT plans to check the missing person's cases against SAPS Criminal Records, as well to as undertake a number of exhumations during the non-rainy winter months.

Lc NGI

T Mbeki: Joint Sitting of Parliament to Report on Processing of Presidential Pardons

Address by President of South Africa, Thabo Mbeki to the Joint Sitting of Parliament to Report on the Processing of some Presidential Pardons

Cape Town
21 November 2007

Madam Speaker and Deputy Speaker of the National Assembly
Chairperson and Deputy Chairperson of the National Council of Provinces
Leaders of our political parties
Honourable Ministers, Deputy Ministers and Premiers
Honourable members
Distinguished guests
Ladies and gentlemen

I would like to thank the presiding officers of both Houses of Parliament for acceding to my request to make this short address to this joint sitting so as to make a particular announcement that I hope will contribute to our continuing efforts towards national reconciliation and nation building.

It is indeed an indication of the deep scars inflicted by our painful past that thirteen years after the attainment of our freedom we still have to grapple with matters of persons who committed offences that might be categorised as political, creating the possibility that we can be accused of having political prisoners.

This day, the 21st of November, holds some special and tragic memories for a number of families in our country, especially those of Mamelodi in the Tshwane Metropolitan City. On this day in 1985, a protest demonstration of thousands of local residents was brutally ended by police bullets and teargas, leaving 13 people dead and many others maimed for life.

We would like to assure the families who were so tragically affected that as they remember their loved ones, the government and people of South Africa stand together with them. Our abiding prayer is that as we engage in various programmes to heal our nation, our efforts will also assuage the pain of those

families, throughout our country and region, which lost some of their kith and kin as a result of apartheid repression and aggression.

Yesterday, one of our daily newspapers, the Johannesburg Star, carried a chilling story of how four suspected African National Congress (ANC) guerrillas were abducted in July 1987 by the then Northern Transvaal Security Branch. The Security Police first took two of these suspects, Andrew Makupe and Jackson Maake to a farm in Pienaars River. After beating them for hours, the apartheid police unit made Makupe to phone his friend, Harold Sefolo, pretending he wanted to see him.

They then picked up Sefolo and finding it difficult to extract information from him, they wired Makupe to a portable generator and electrocuted him in front of Sefolo. They did the same to Maake and told Sefolo that he was also going to be electrocuted. He asked to make a final request and his torturers agreed. He then gave a short speech and sang Nkosi Sikelel' iAfrica. When he finished, he too was electrocuted to death.

The fourth victim, Justice Mbizana, was arrested and taken to a farm in Hammanskraal where he was tortured and bludgeoned to death. The police then tried to destroy the bodies of the deceased with explosives, to ensure that the stories, the fate and identity of those who had been murdered would never be known.

However, the critical work that the Truth and Reconciliation Commission (TRC) did ensured that the nation got to know what happened to these and many others who died so that we can enjoy the freedom for which we pride ourselves today. Further, the sterling work of the Missing Persons Task Team of the National Prosecuting Authority found the remains of the patriots featured in the story in the Star in a grave in Winterveldt outside Tshwane and through Deoxyribonucleic Acid Analysis (DNA) tests, was able to identify the deceased.

As far as we know, their families and indeed the families of the many who died in similarly horrible circumstances have not asked for vengeance, but have insisted on a process of healing. They have not asked for retribution. Rather they have requested that all of us should sustain the memory of the heroes and heroines in everything we do.

Accordingly, when we speak of our continuing efforts towards national reconciliation and nation building, and when we take additional steps in this

direction, as we are doing today, we do so with the memory of all these martyrs fresh in our minds.

Honourable members,

Conscious of the horrors that were done to perpetuate white minority rule, many have hailed South Africa's relatively smooth and peaceful transition as one of the most outstanding achievements among modern political transitions.

While our freedom and democracy represent the most profound and indestructible reparation for all the people of South Africa, we recognised that individuals and communities affected by specific acts of gross human rights violations deserved and deserve specific attention.

We also all agreed that those who perpetrated acts of gross human rights violation needed to come clean, to admit to their actions and apologise to those who had been harmed. We also recognised that some of the acts perpetrated by certain individuals were politically motivated and thus needed to be taken into consideration by the Truth and Reconciliation Commission's amnesty process.

The Post-amble of South Africa's Interim Constitution placed emphasis on reconciliation and the reconstruction of a post-conflict South African society.

It said: "In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date which shall be a date after 8 October 1990 and before 6 December 1993 providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed".

This Post-amble set the stage for the adoption of the Promotion of National Unity and Reconciliation Act, (TRC Act) 1995. Among other things, the TRC Act created the political and moral climate for the consolidation of our democracy and fostering a culture of human rights.

It provided for the establishment of the Truth and Reconciliation Commission (TRC), with the specific purpose of promoting national unity, reconciliation

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and healing, in a spirit of forgiveness, compassion and understanding.

Undoubtedly, the TRC was an important process which, while confronting our ugly past, sought to help us to advance beyond the very conflicts and divisions that had brought pain and suffering among many of our compatriots.

The final act of the Commission as it concluded its important work was to make recommendations to the President in respect of reparations to the victims of gross human rights violations.

Honourable members,

The drafters of the Interim Constitution also saw amnesty as an essential element of the quest to advance reconciliation and national unity. The amnesty process of the TRC was therefore a massive undertaking in terms of building bridges across the great divides caused by racial conflict and repression.

The cut-off date, relating to offences that could be considered by the TRC's Amnesty Committee, was initially set by the Post-amble of our Interim Constitution to be before the 6th of December 1993.

However, following requests from various political formations, especially those organisations whose members were incarcerated for offences committed just before the 1994 elections, and because of our relentless pursuit of the objective of national reconciliation, we all agreed to an extension of the cut-off date to 10 May 1994, the day of the inauguration of the new, democratically-elected President of the Republic.

While this new date served to accommodate the concerns of various individuals, members and supporters of various political organisations and thus further promoted national reconciliation in the run-up to our country's first ever democratic elections in 1994, this date did not take into consideration that political violence in this country, especially in certain areas such as KwaZulu-Natal, persisted well beyond that cut-off date.

Therefore, once the TRC had finished its business, we still had a number of issues, such as the question of amnesty for many South Africans who had not participated in the TRC process for a number of reasons, which had to be finalised. It thus became clear that the so-called "unfinished business" of the TRC would have to be finished in one way or another.

When I was privileged to address a Joint Sitting such as this one, on 15

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April 2003, tabling the Final Report of the Truth and Reconciliation Committee, I referred to one element of this "unfinished business". I said:

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

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

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

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

To facilitate this process, the authorised Ministerial Committee has since this statement was made, developed the required guidelines to assist the National Directorate of Public Prosecutions to do its work.

This means that those who committed offences of the kind that was considered by the TRC Amnesty Committee, who did not apply for amnesty and have not been convicted for any offences they may have committed, are free to approach the National Director of Public Prosecutions and engage in the processes we have described.

Honourable members,

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For some time since the year 2000, government has been seized of the challenge to bring to a close the vexing matter of those prisoners serving sentences for what might be considered to be politically motivated crimes of the kind that fell within the brief of the Amnesty Committee of the TRC. In dealing with the challenges I have outlined, we have had to proceed with care, sensitive to the legacy of the TRC.

With regard to these matters, it is important that our actions do not, in any way, undermine or suggest that any attempt is being made to undermine the TRC process and its outcomes.

From as early as the year 2000, after the mechanisms put in place by the TRC Act had fulfilled their statutory mandates, we have with ever-increasing regularity received requests for pardon from various political parties, organisations and individuals, in respect of individuals who have been sentenced by our courts for serious offences, both before and after the 10 May 1994 TRC cut-off date, allegedly in furtherance of political objectives or aims, arising out of conflicts of the past.

Currently, government is in possession of at least 1062 applications for presidential pardons by people who have been found guilty of offences which were allegedly committed with a political motive, arising from the conflicts of the past.

Honourable members,

In the last few years, both prior to the commencement of the new constitutional dispensation and thereafter, amnesty and indemnity laws were enacted and utilised to extinguish criminal (and in some instances civil) liability, and/or expunge criminal convictions and criminal records of persons who committed offences with a political objective, during the conflicts of the past.

The lifespan of all these pieces of legislation, namely the Indemnity Act (Act 35 of 1990), the Further Indemnity Act (Act 15 of 1992) and the last being the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995)(the TRC Act), have expired and can no longer be utilised.

We have also considered other statutory provisions, such as Section 82 and other measures in the Correctional Services Act, 1998 (Act 111 of 1998), and those in the Criminal Procedure Act, 1977 (Act 51 of 1977). I have not found

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any of the existing measures suitable to deal with the specific matters at hand, to which I have referred, in a flexible, decisive and speedy manner.

As a way forward and in the interest of nation-building, national reconciliation and the further enhancement of national cohesion, and in order to make a further break with matters which arise from the conflicts of the past, consideration has therefore been given to the use of the Presidential pardon to deal with this "unfinished business."

As the honourable members know, our Constitution says that the President is responsible for "pardoning or reprieving offenders and remitting any fines, penalties or forfeitures." (Article 84(2) (j).)

The Honourable members will also remember the 1997 ruling of the Constitutional Court in the matter of the President of the Republic of South Africa v Hugo. The Court said:

"Pardoning a sentenced person is not a private act of grace in the sense that the pardoning power in a monarchy may be. It is recognition in the Interim Constitution that a power should be granted to the President to determine when, in his view; the public welfare will be better served by granting a remission of sentence or some other form of pardon."

The Constitutional Court also said, "No prisoner has a right to be pardoned, to be reprieved or to have a sentence remitted. The Interim Constitution places such matters within the power of the President."

I believe that the sum total of all this is that the President has an obligation to consider all requests made to him or her to pardon or reprieve offenders and remit any fines, penalties or forfeitures.

At the same time, having thus applied his or her mind, the President is under no obligation to accede to the requests made to him or her, provided that she or he proceeds in a rational manner.

I requested the convening of this Joint Sitting to inform the honourable members of Parliament that, considering what the nation sought to achieve through the TRC process, I have decided to institute a special process to assist me as I discharge my constitutional obligation to consider the requests for pardon from people who have already been convicted for offences they claim belong among the category of offences that were considered by the TRC Amnesty Committee.

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This process will cover the requests for pardon of those people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC.

Further to entrench the practice the nation has sought to cultivate, of acting in unity as it addresses the crimes of the past, I would like the political parties represented in our Parliament to assist me properly to discharge my constitutional responsibility to consider the requests made to the President to pardon those who have been convicted in the context of the circumstances I have mentioned.

I therefore take this opportunity to request the political parties represented in this Parliament each to appoint a representative who would serve on a Reference Group that would consider each of the requests for pardon which the President would refer to the group, and then make its considered recommendations to the President.

Needless to say, this will not in any way subtract from the obligation placed by the Constitution on the President, and described by the Constitutional Court, for the President to grant pardons, etc. In other words, the constitutional task to grant pardons and so on will remain with the President.

However, the President would seriously take into account the recommendations made by the Reference Group, respecting the effort the nation has made to unite behind the objective of responding to the conflicts of the past, in the interest of promoting the critical objectives of national reconciliation and nation-building.

The process we are proposing will be of limited duration. It will have to be strictly managed in terms of the mechanisms and procedures which are to be put in place to ensure that the requests for pardon for the category of persons we have mentioned are dealt with in an open and transparent manner, uniformly and in strict compliance with predetermined procedures and criteria.

In this regard, among other things, we will have to act in a manner that respects the observation made in 1996 by the Constitutional Court in the matter of The Azanian People's Organisation (AZAPO) et al versus The President of the Republic of South Africa et al. I refer here to the following determination made by the Court:

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"The amnesty contemplated is not a blanket amnesty against criminal prosecution for all and sundry, granted automatically as a uniform act of compulsory statutory amnesia. It is specifically authorised for the purpose of effecting a constructive transition towards a democratic order. It is only available where there is a full disclosure of all facts to the Amnesty Committee and where it is clear that the particular transgression was perpetrated during the prescribed period and with a political objective committed in the course of the conflicts of the past. That objective has to be evaluated having regard to the careful criteria listed in Section 20(3) of the Act, including the very important relationship which the act perpetrated bears in proportion to the object pursued."

Honourable members,

During a three-month "window of opportunity", covering the period 15 January to 15 April 2008, persons who were convicted for offences they believe were of the nature of the offences considered by the TRC during the period up to 16 June 1999, will have the opportunity to apply for a Presidential pardon in the prescribed manner, if they have not already done so.

Applicants who were convicted for involvement in any offence of a sexual nature, or any act of a domestic violence nature, or any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992, which relates to the manufacture and supply of scheduled substances, the use and possession of drugs and dealing in drugs, will not qualify for consideration.

In order to ensure that we do not undermine the work of the TRC, applicants who had applied to the Amnesty Committee established under the TRC Act and whose application for amnesty was refused, will not be considered for this Presidential pardon process.

The President will make his decision whether to refuse or grant pardon on each application placed before him, on an individual basis.

Further, the President will, with regard to each application placed before him:

* seriously consider the recommendations made to him by the Reference Group;
* form an independent opinion on the basis of the facts/information placed before him, to arrive at a decision whether to grant or refuse pardon;

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and,

* in so doing, the President:

* will be guided by the principles and values which underpin the Constitution, including the principles and objectives of nation-building and national reconciliation; and,

* uphold and be guided by the principles, criteria and spirit that inspired and underpinned the process of the Truth and Reconciliation Commission, especially as they relate to the amnesty process.

The Presidency and the Department of Justice and Constitutional Development will announce further details about this process.

These will include a description of the support mechanisms we will need to support the Reference Group, specific Terms of Reference for this Group, and the time frames for the completion of its work, which, obviously, will in part be determined by the number of applications for pardon that would be received during the "window of opportunity" we have mentioned.

I trust that all the political parties represented in our Parliament will respond positively to our invitation and request to them to appoint a representative to serve on the Reference Group. Such representatives need not be members of Parliament. And naturally, there is also no obligation on any political party to agree to be represented on the Reference Group.

Perhaps only as a matter of detail, I request that those parties ready and willing to serve in the Reference Group should communicate the names and details of their nominees to the Director General in the Presidency, the Rev Frank Chikane, by 10 December 2007.

This will enable us to constitute the Reference Group without unnecessary delay and give us the possibility to consult it about all relevant matters, prior to the opening of the "window of opportunity" on 15 January 2008.

As I said earlier, all of us have a responsibility to help our country to advance further away from the conflicts of the past, to work together for a shared future that is free of violence, free of bitterness, free of prejudice, free of the albatross of the past â a future of harmony, of respect for the Constitution and the law, of peace and prosperity for all our citizens.

When I had the privilege to address the 15 April 2003 Joint Sitting of our Houses of Parliament to which I have referred, I said:

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

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

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

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

Once more, let me express my sincere thanks to you, the elected representatives of our people, for convening in this Joint Sitting of the Houses of Parliament to enable the President of the Republic communicate to you, honourable members, the decisions I have taken to deal with a matter that is of great concern to all of us as South Africans, who, I trust, are indeed moved by a new and common patriotism.

Once again, as the late Nkosi Albert Luthuli, Africa's first Nobel Peace Prize laureate once said in different circumstances, we continue to knock at the door of all our compatriots, humbly requesting that we act in concert to pursue what must clearly be a shared and noble goal.

Finally, let me wish all the honourable members and our guests a peaceful and Merry Christmas and Happy New Year, as well as a well-deserved rest during the period between the adjournment of Parliament this week, and the opening of its next session early in 2008.

I thank you for your attention.

Issued by: The Presidency
21 November 2007

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https://web.archive.org/web/20080922001900/http://www.info.gov.za:80/speeches/2008/08011615151001.htm

Commencement of Presidential pardons period

16 January 2008

The Presidency wishes to announce the beginning of the period of applications for Presidential pardons for alleged political offences in accordance with President Thabo Mbeki's announcement in Parliament on 21 November 2007.

Prospective applicants have a three-month period from 15 January to 15 April 2008 to apply for pardons.

The Multi-Party Reference Group, which will consider applications for pardons and make recommendations to the President, will meet for the first time at the Union Buildings later this week.

As announced by the President, only those people who were convicted for political offences committed before 16 June 1999, will be considered for amnesty. On the other hand, people who have been convicted for sexual offences, domestic violence and any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992, or those whose applications for amnesty were refused by the Truth and Reconciliation Commission's Amnesty Committee do not qualify for amnesty.

For background information, please read President Mbeki's November 21, 2007 speech in Parliament on the Presidency website. The link for the speech is stated below:
http://www.thepresidency.gov.za/show.asp?type=sp&include=president/sp/2007/sp11211540.htm

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16 January 2008
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PRIORITY CRIMES LITIGATION UNIT (PCLU)

2007-2008

REPORT TO JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

ADV ANTON ACKERMANN SC
HEAD: PCLU

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Performance Continued …

- TERRORISM

  – **Assistance to foreign country**
  Request for mutual legal assistance executed

  – **DFA Counter Terrorism Group**
  The unit participated in meetings of Multidisciplinary Governmental Task Team which is responsible for ensuring compliance with the UN resolutions relating to terrorism

- TRC PROSECUTIONS

  Only partial success was achieved due to intervening factors beyond the control of the unit.

  – ***S v Vlok & 4 Others***
    - Accused were convicted after a protracted plea bargaining process;
    - 16 Cases have been identified for investigation and possible prosecution

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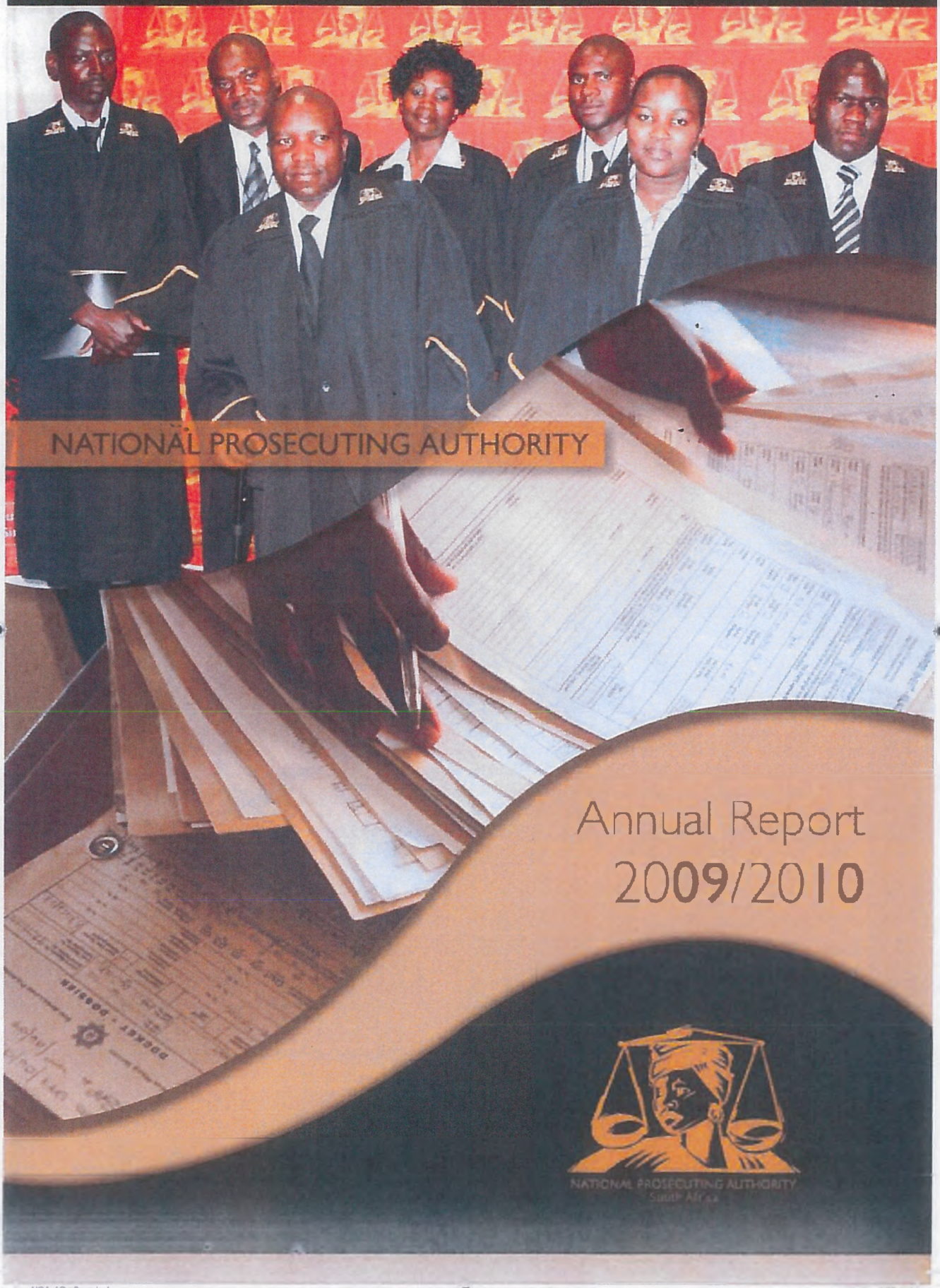

NATIONAL PROSECUTING AUTHORITY

Annual Report 2009/2010

NATIONAL PROSECUTING AUTHORITY
South Africa

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The MPTT also provided training to members of the Kenya Truth, Justice and Reconciliation Commission, Kenyan NGOs and Kenyan victim organisations in Nairobi. A brief workshop was also held for visiting members of Ugandan judiciary and NGOs engaged in transitional justice studies, and members of Burundi civil society organisations.

Challenges Experienced

The absence of a formalised relationship with the DPCI in respect to matters which fall within the mandate of both the DPCI and the PCLU remains a challenge.

For the MPTT the ongoing destruction of documentation by government departments such as the SAPS and the magistrates' courts and the difficulties in tackling cases of persons who disappeared in exile hampers progress in finalising matters. New requests from families with legitimate cases of political disappearances have also increased the MPTT's responsibilities.

TRC cases: The PCLU is required to advise the NDPP in making decisions whether or not to prosecute in cases arising from the TRC process. Matters need to be fully investigated before any final prosecution decision can be made. Since 2003 the NPA has struggled to secure the necessary cooperation in this regard. With the establishment of the DPCI, the responsibility for such investigations was transferred to this unit. The PCLU had to recommence its negotiations de novo. Currently, the DPCI has indicated that it will conduct the necessary investigations, but only after the conclusion of the 2010 FIFA World Cup, due to the fact that it has a number of special responsibilities in connection with this event.

Forecast

The PCLU will continue to focus on current investigations with the aim of being able to make properly informed and timeous decisions and will maintain and develop the existing stakeholder relationships with the aim of enhancing efficiency. It can be predicted that the workload will increase during the World Cup. The MPTT will strive to finalise existing projects, exhumations and investigations.

Annual Report of the National Prosecuting Authority 2009/10

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PMG PARLIAMENTARY MONITORING GROUP

National Director of Public Prosecutions on NPA Strategic Plan 2010

This premium content has been made freely available

Justice and Correctional Services

12 April 2010

Chairperson: Mr J Jeffery (ANC)

Meeting Summary

Noting that the National Prosecuting Authority received its mandate from the Constitution, the National Director of Public Prosecutions provided an hour long presentation on the strategic goals and plans of its four programmes and the role of the provincial Directors of Public Prosecutions. The National Director of Public Prosecutions exercised oversight duties over the Directors of Public Prosecutions. He presented an organogram of the NPA and spoke about specialised Directors of Public Prosecutions dealing with public interest litigation, complex commercial crime, organised crime, asset forfeiture, sexual offences and priority crimes litigation. The main challenge facing the National Prosecuting Authority was increasing the current rate of finalised cases as well as convictions. In light of the new Child Justice Act, the National Prosecuting Authority would try to increase the number of diversion programmes which was a challenge. The Thuthuzela Care Centres was donor funded and the challenge was that there was no funding from Treasury and this impacted on their sustainability.

The Committee expressed concern over the recent spate of news articles about the restructuring of the National Prosecuting Authority. Members were of the opinion that the restructuring constituted demotions. The concern about the future of the units headed by Adv Ackerman, Adv Jordaan and Adv Majokweni. The National Director of Public Prosecutions' intrusive role in a number of recent high profile cases was questioned as Members felt that there were elements of unlawfulness in his conduct. The National Director replied to questions about when new offices would be set up in Limpopo and Mpumalanga, post TRC prosecutions, the Hlongwane matter, the Terreblanche and Boeremag cases, the sustainability of the Thuthuzela Care Centres, the conviction rate, the repair of the Innes Chambers, the arms deal investigation and after hour bail applications.

Meeting report

National Prosecuting Authority (NPA) Strategic Plan and Budget presentation

Advocate Menzi Simelane, National Director of Public Prosecutions (NDPP) noted that Section 179(2) of the Constitution empowered the NPA to carry out its functions. Section 5 of the NPA Act established the office of the NDPP. The NDPP was not a Director General. The NPA had special directors responsible for portfolios such as sexual offences, community affairs, priority crimes, special commercial crimes and litigation. The NPA Act provided for a special seat for the NPA in each of the High Courts. The provincial Directors of Public Prosecutions (DPP) could prosecute crimes without the permission or knowledge of the NDPP. The NPA would try to ensure that the legislative framework was fully complied with. The NDPP would exercise oversight duties over the provincial DPPs.

Adv Simelane continued that the NPA was not a separate department but part of the Department of Justice and Constitutional Development. The NDPP had capacity to deal with public interest litigation, complex commercial crime, sexual offences and priority crimes litigation. Specialised DPPs focused on the following areas: general prosecutions, specialised prosecutions, complex commercial crime, organised crime, asset forfeiture and corporate governance. The Justice, Crime Prevention and Security (*JCPS*) priorities for the NPA were addressing overall levels of crime, combating corruption and managing the perception of crime among the population. The key strategic goals were excellent governance and delivery. The key measurable objectives of the NPA were to reduce the number of case backlogs, combat corruption by successfully convicting 100 people and confiscate their assets to the value of at least R5 million, establish additional Thuthuzela Care Centres (TCC) this year from 20 to 45 and increase the value of freezing orders. Donors funded the TCCs and the challenge here was that there was no funding from Treasury and this impacted on their sustainability.

There were four programmes: Public Prosecutions, Witness Relocation, Asset Forfeiture and Support Services and the plans and objectives of each of these were outlined. The aim of the NPA was to prosecute speedily and efficiently. Stakeholder relationships were important to the NPA – this included the police who were their immediate partners. The NPA would try to divert as many cases involving children as possible. This would then mean that there had to be an increase in the number of diversion programmes and this was a challenge.

The main challenge facing the NPA and the Committee as public representatives was increasing the current rate of finalised cases as well as convictions. The conviction rate in sexual offences was lower than other crimes. The reason for this was that sexual offences cases were difficult.

The Chairperson interrupted and informed Adv Simelane that time was limited and the presentation had already gone beyond an hour.

Adv Simelane continued that sexual offences cases were difficult because of the evidentiary burden. The vacancy rate was high within the NPA but the human resource department was being engaged with on this matter. Transformation of the NPA was vital. This was however not only related to gender and racial demographics. It was also about process change.

Discussion

The Chairperson said that the presentation was such that one could not understand what the elements of the programmes were.

Mr G Ndabandaba (ANC) asked how the NPA reconciled the fact that virtually every crime had an element of being organised.

Ms M Smuts (DA) said that she was not happy to vote R2.5 billion to be granted to the NPA on the basis of what had just been presented. The Authority had been radically reorganised. The new organogram looked like a game of snakes and ladders where the senior officials would slither down the to the bottom rungs of the ladders. The disappearance of the entire administrative section was not a matter that one could be happy about. The entire layer of special directors had disappeared and this included Adv Ackerman's Priority Crimes Litigation Unit, the Specialised Commercial Crimes Unit and the Sexual Offences and other units. The NPA Act stipulated that "The Office of the NDPP should include special directors". It seemed as if the special directors had been retained within the Office of the NDPP but with the function of spotting trends and building stakeholder relations. Did this mean that they would be having lunch and reading newspapers. What was the justification for this? Furthermore what of the employment rights of these individuals who seem to have been demoted?

The Chairperson interrupted and asked where Ms Smuts got the concept "demoted" from considering what had been presented.

Ms Smuts responded that she got it from the fact that Adv Ackerman, Adv Jordaan and Adv Majokweni did not really have jobs anymore and had been in the Office of the NDPP. A series of prosecutors had recently discovered that they had been reassigned to Magistrates Courts when they had been running whole courts or regions. Could there be a comment on the matter of Adv Simelane's instruction to the prosecutor in the case of Mr Maarohanye to not oppose bail – as this was unlawful. Further, what was the legal basis for stopping the forfeiture proceedings in the case of Mr Fana Hlongwane? Were politics involved in both instances?

The Chairperson asked for the indulgence of the Committee. The Committee had a strategic plan in front of it, the essential purpose of the meeting was to ask if the NPA was presenting what it would undertake to achieve based on the programmes put before the Committee. Could what the NPA presented be effectively monitored? The Committee was advised to avoid issues of who appointed whom. This could potentially undermine the separation of powers. In front of the Committee was a strategic plan that would be the basis of the Committee's decision on the budget vote. The Committee was strongly advised to stick to this issue. If there were controversial issues they could be dealt with at any time through a summons of the NPA.

Mr S Swart (ACDP) differed with the Chairperson and suggested that the Committee should consider controversial issues, as this was an opportune moment. The questions raised by Ms Smuts were valid and supported. The demotions raised concerns because they affected the operation of the criminal justice sector. It was pleasing to note that the demotions had been reversed. There were impacts that had to be considered when performing the oversight function and the NPA was at the forefront of the fight against crime and these were issues that had to be engaged. What was the explanation on the Hlongwane matter? The number of serious crimes that were recorded by the police were 2 098 000 and yet the target was 324 000. This meant that only 15% of serious crime cases came before courts and there was only a 10% conviction rate. This could not be acceptable and the blame was not just on the NPA to shoulder alone. The conviction rate of the NPA was good but somewhere along the line there were a lot of issues that came into play. If one looked at the budget in terms of the NPA was getting less money. The Committee had to look at this more closely.

Mr J Jeffery (ANC) asked if the NPA was going to wait for the Superior Courts Act to be promulgated or would it commence with setting up a Limpopo public prosecutions unit. It was good to note that there were some for diversion regarding the Child Justice Act. However it was not the intention of the Act that every case should be diverted. The intention of the Act was to try and keep children out of jail. There was a lot of confusion in media about the Child Justice Act and what its implications would be in the Terreblanche murder case. The prosecutor and Mr Baloyi were quoted as saying that the criminal capacity of one of the accused was an outstanding issue that would still be dealt with. This was not in the Act: according to the Act there was no criminal capacity under the age of ten; from ten to fourteen years the state had to prove criminal capacity and 14 upwards capacity was assumed.

Mr Jeffery commented that the NPA wanted to increase the number of Thuthuzela Care Centres yet there was no money for them and according to the Annual Report the numbers had gone down, could there be more clarity on this please. The vacancy rate had gone down from 24% to 16% and this was quite an improvement but if one had to consider this more objectively then 16% was still too high. Could this figure be reduced and was the new target? Would there still be focus on crimes post the Truth and Reconciliation Commission (TRC) where individuals did not appeal for amnesty or applied and did not receive it. What was the NPA going to do about human trafficking during the World Cup and the uncertainty around the understanding of the law in that area? There had been a protocol amongst the different government departments during the last election; there going to be any review on this protocol before the elections next year?

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Mr J Sibanyoni (ANC) asked if after hours bail applications happened only in the cities or throughout the country, and were there prosecutors who attended these bail hearings? What was the security arrangement for prosecutors who attended applications for bail after hours especially when the prosecutor lived far away from where the application would be heard. Special courts would be set up to handle matters after hours durir World Cup, what had been done to anticipate the higher number of cases that would arise during the World Cup? How far was the Boeremag case and was it nearing its conclusion? To what extent was the Child Justice applicable in the Terreblanche case for the accused minor?

Ms N Michael (DA) asked what was going to be done about the witness protection of victims of human trafficking. What was going to be done to improve safe houses for whistle blowers? What plans were in place to re case backlogs, as they were unacceptably high? How was the NPA moving forward with the computerisation of the legal system as a whole? The plans for the FIFA World Cup were a concern as it was unclear what role NPA would play? Where exactly were internships for prosecutors being advertised. Was the NPA going to universities for instance? Was the NPA's mentoring programme internal or external?

The Chairperson said that Parliament was now empowered to be able to amend the budget, for the Committee to exercise this power it all depended on how focused it was going to be on what had been presented be The Committee was free to deal with whatever it wanted to deal with but from a Chairperson's perspective the duty was to ensure that the strategic plan was dealt with.

Adv Simelane responded that some questions were on cases that were sub judice and would therefore not be answered. The DPPs, NDPP and the Deputy Directors of Public Prosecutions (DDPP) were the only officers could institute prosecutions. Anybody else could institute prosecutions if they were delegated. The special directors remained in their positions.

The Chairperson interrupted and asked if this was what the Committee wanted to engage in? The discussion now was on who must work where within the NPA and not the strategic plan

Adv Simelane continued that special directors were appointed in terms of a proclamation by the President. Their mandate was also defined in the proclamation. This was why they were special DPPs. The functions of t DPPs were specifically defined and included advising the NDPP. The special DPPs were different from the provincial DPPs. No official had been demoted and this was a misunderstanding.

The Chairperson interrupted and said that the Committee had to deal with the NPA's programmes and not matters that should normally be dealt with in the Commission for Conciliation Mediation and Arbitration.

Ms Smuts asked for an explanation concerning the instruction for Mr Lamprecht, as it seemed to be unlawful.

The Chairperson asked Ms Smuts what seemed to be unlawful.

Ms Smuts replied that it was the issue of not opposing bail as per the NDPP's instruction to Mr Lamprecht through a senior.

The Chairperson said that this was a policy issue and thus it had to be answered.

Adv Simelane said every prosecutor in the NPA carried out his or her functions under the control and direction of the NDPP. The NDPP had specific legislative authority to intervene where there were grounds for inter it was important to understand that there would be a lot of interventions in many cases. The law would inform all interventions. It was not proper to say that the role of the NDPP would be not get involved in cases. Th NDPP would get involved in the detail of cases, as it was an important thing to do in order to ensure that things went according to plan. All individual prosecutorial decisions would be respected. The Hlongwane matte b judice; it was still an ongoing matter.

Ms Smuts asked if it had been abandoned.

Mr Swart asked what the NDPP meant when he said it was still ongoing.

Adv Simelane responded that the whole matter was in the hands of the police. The arms deal matter had been in the NPA and had been investigated by the Directorate of Special Operations (DSO). The disbandment c DSO meant that all investigations were transferred to the Directorate for Priority Crimes Investigation (DPCI). The matter of the Liechtenstein investigation and the frozen funds was a small part of the broader investig in South Africa. The Sunday Times newspaper was incorrect in saying that the frozen funds amounted to R200 million, the correct figure was about R5 million. It was assumed that the matter was dropped, this was not The preservation order that had been applied for, had been satisfied and it was the view of the NDPP that there was no need to carry on with it.

Mr Silas Ramaite, Deputy National Director of Public Prosecutions, said that the Committee must trust the NPA when it said a matter was sub judice. The NPA would not in any way attempt to mislead the Committee.

Ms Smuts asked for a response on the administrative section.

Adv Simelane replied that the NPA was still working on the ensuring that the accountability framework was still there. The NPA needed administrative support and therefore they would always be there.

Adv Simelane continued responding to the questions and addressed case figures. The figure of 324 000 related to matters where the prosecution had decided to take the matter to court. It was correct to say that ther many other cases that never got as far as being presented in court. Sometimes it was clear that a crime had been committed but on the strength of the evidence gathered it would transpire that a conviction would not secured and the matter would not be prosecuted. The matter would then be referred to the police for them to carry on investigating. The figure for withdrawn cases referred to such instances. The budget decrease w follow through to what was affecting every government department over a three-year cycle.

Mr Swart interrupted and said that if during the middle of the year the NPA would provide information concerning an increase in the budget then the Committee would be able to "batter" on their behalf for that increa

Adv Simelane continued saying that the NPA had sent senior officials to the Limpopo area. The NPA would also send personnel at Deputy level and hopefully they would not argue that they were being demoted. Mr Ba was misquoted and he had not dealt with the issue of capacity it was in fact the defence in the Terreblanche case. The Thuthuzela Care Centres had not been reduced, they would increase and in addition to donor fun funds from the NPA would be used. The final figures for the vacancy rate were still due to be concluded. The figure would change once all currently outstanding appointments had been made. The Priority Crimes Litig Unit (PCLU) was still working on a number of post TRC cases. The figure was eight cases. The NPA was using other relevant legislation to prosecute human trafficking offences. There had been no discussions yet on the protocols but this might be revised closer to the elections. There was a roster for prosecutors to be on duty for after hours bail. The NPA was faced with the normal security challenges. There was however security pe stationed at the courts over a 24-hour period. There was a specific programme that was driven by the NPA that focused on FIFA, it had been budgeted for and there were courts set aside for the tournament. The Boer case was ongoing and the state had closed its case a year ago. Witnesses under the protection programme were in safe houses. The national office dealt with backlogs, there were additional staff on contract that assis this matter. The national office also dealt with Information Technology (IT) integration especially at court level. The programme for this was a priority. The NPA ran a programme to recruit prosecutors. Adverts were pl e newspapers and individuals such as graduates applied. The organised crime components in the presentation referred to organised syndicates such as cash in transit gangs. It was acceptable to say that almost all c re 'organised' in the sense that they were planned.

Ms L Adams (COPE) asked if the NDPP had forbidden prosecutors to speak to the media and what was the ratio of prosecutors per court? Where would the line be drawn between the NDPP's oversight role in cases an interference with the prosecutor's own discretion in a case? On what basis would the NDPP decide to get involved in a particular case? When would the Committee receive the report on the Innes Chambers?

Mr Jeffery felt that the question on regional jurisdiction was not fully answered. Was an office being set up in Polokwane and what was the jurisdiction in the North West province? What was happening with the sexual offences courts?

Ms Smuts asked if the prosecutorial guidelines had been challenged as they had been deemed to be unconstitutional?

The Chairperson said that the process of interrogating the strategic plan was an ongoing one. It was difficult to ascertain what measurable objectives were set out in the document. The structure of the document was consistent as there were targets for certain programmes but not for others.

Adv Simelane said no prosecutor was banned from talking to the media, the NPA only insisted that prosecutors had to get sign off from their DPPs before doing so. The NDPP had the power to review and the NDPP or changed / altered a decision if an individual approached him/her and requested a review. Where there were inter-house discussions, the prosecutor always had the final decision. It had been decided that there would standalone courts for sexual offences cases only as judges did not want to adjudicate the same matter. The issue of jurisdictions was one which was affected by provincial boundaries, which were not consistent with t administrative boundaries.

The Chairperson asked what the NPA would be doing with the funds that it would receive for the next three months?

Adv Simelane said that there were no cases that the NPA was currently prosecuting regarding post TRC matters. The reason being that the dockets were still with the police for investigation. It would be difficult for the Committee to expect the same kind of objectives from the NPA as with other departments due to the nature of its work. The NPA would never be able to give an actual target for number of cases prosecuted as the conclusion of one case depended on multiple factors. The NPA was still awaiting assistance from the Department of Public Works about office space so that there could be an office in Polokwane and Nelspruit. The off were available and ready to move but there was no allocated office space. The ratio of prosecutors per court was 1 and a half.

Dr Khotso DeWee, Acting CEO of the NPA, said that the Innes Chamber report had been submitted to the Committee. The NPA approached the Department of Justice and Constitutional Development to take over the I Chamber on the basis that the NPA did not have the R220 million needed to refurbish the building.

The Committee Secretary added that an incomplete report on the matter had been submitted last year. The matter was followed up later in the year and the Committee was told that there were still some outstanding

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with the Department of Public Works. The department was going to make some follow ups and submit a full report. this was the report being referred to

The Chairperson differed with Adv Simelane on the point of targets and said that where money was paid, there had to be things that were achievable. It cannot be said that since it was the NPA, there would be a hope things would change one day. The point was that there had to be a commitment to some target

Mr Jeffery was not happy with the response on regional jurisdiction. The South Gauteng jurisdiction was easy to set up. 16 years had passed and there was still no office for Limpopo and Mpumalanga. why?

Adv Simelane responded that the first thing that would be a necessity would be office accommodation. The prosecutors and officials were already there and ready to move but they did not have space to move into. Th Minister and the Judges President still had to decide how the jurisdictional boundaries would be framed. The NPA could then come back to the Committee with a timetable

The meeting was adjourned

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AFFIDAVIT

I, the undersigned,

RAYMOND CHRISTOPHER MACADAM

do hereby make oath and state that:

1 I am an adult male of full legal capacity, serving as a Special Director of Public Prosecutions in the Priority Crimes Litigation Unit (PCLU) in the office of the National Director of Public Prosecutions (NDPP).

2 I have been requested to make a statement regarding the disappearance of the **CRADOCK 4** police docket, which is a Truth and Reconciliation Commission (TRC) case, from the Offices of the National Prosecuting Authority (NPA).

3 In 2013 I was a Deputy-Director in the PCLU. Advocate Abrahams was then Acting as the Head of the unit. Adv Jiba was Acting as the NDPP. Ms J Lepinka was acting as the ANDPP's Manager.

4 On 26 April 2013 Ms Lepinka wrote to Adv Abrahams, asking for information relating to the case. On 22 May 2013 Adv Abrahams replied to her.

5 There was no reply from the ANDPP in response to Adv Abrahams. At a certain stage, however, I was requested to handover the docket as it had been called for by the Office of the ANDPP. I complied with the request. At this moment in time, I cannot recall who made the request.

6 I reported that a response from the ANDPP was awaited. In October 2013 Mr Nxasana was appointed as the NDPP and Adv Jiba moved from being the ANDPP to, firstly, the Head: NPS (National Prosecution Service), and thereafter, Head: LAD (Legal Administration Department).

7 Mr Nxasana removed me from my normal duties so as to focus on foreign bribery cases with which I continued until December 2015.

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8 On my return to my normal duties, I was allocated a number of terrorism matters and did not deal further with TRC cases. At a certain stage Adv Pretorius SC, who was then acting as the Head of the PCLU, enquired about the docket and I informed him that it had been uplifted from our Office.

9 In April 2019 I became the Acting Head of the PCLU and was advised that the docket had not been located. Adv Mzinyathi, who was then acting as the Head: NPS, informed me that a proper search had been conducted, but that the docket could not be located. At that stage, Adv Jiba had had her employment with the NPA terminated by the President and Ms Lepinka had been suspended, due to being charged with removing an NPA computer from the Office. It served no purpose at that stage to try and locate the docket.

10 The docket comprised of an investigation against General Hankel as well as extracts from the **CRADOCK 4** formal inquest and TRC amnesty hearing. Copies of the Hankel investigation were available as were key documents relating to the inquest and amnesty hearing. Further material relating to the inquest was available at Rhodes' University and at Archives in King Williams Town. The TRC material was available either on the Department of Justice website or at the State Archives.

11 I therefore gave the material in my possession to the investigating officer, Colonel Makua, and advised him to reconstruct the docket. A decision was, however, taken to refer the case to investigators in the Eastern Cape. I was able to locate considerable additional material relevant to the case, which was provided to those investigators.

12 I do not have evidence at my disposal to suggest that the docket was stolen. All the material contained in the docket was easily re-obtainable.

RC MACADAM

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at **PRETORIA** on this the 26th day of May 2021, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

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Capt

Kaekemoer.

COMMISSIONER OF OATHS

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FULL NAMES: Jaco Conraad Kaekemoer.
ADDRESS: 215 Visagie St. Coal Piet Jaubert Building, Pta CBD.
CAPACITY: Capt.
DRC: Crimes Against the State.
SAPS.

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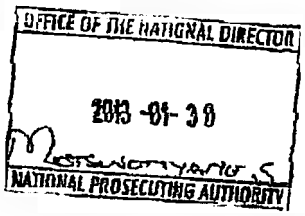

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29 January 2013

The Acting National Director of Public Prosecutions
National Prosecuting Authority
Private Bag X752
Pretoria
0001

Fax: (012) 845 6337 BY HAND

Dear Dr Silas Ramaite,

REQUEST FOR THE HOLDING OF A FORMAL INQUEST IN TERMS OF SECTION 5 OF THE INQUESTS ACT 58 OF 1959 IN RESPECT OF THE KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)

I am the sister of Nokuthula Aurelia Simelane ("Nokuthula"). My identity number is 730210 0329 088. On behalf of my family, I seek the holding of a formal inquest in terms of Act 58 of 1959 in respect of the circumstances surrounding the murder and other offences perpetrated by members of the former South African Police Security Branch against Nokuthula.

Background

Nokuthula was the first child of Ernestina and the late Matthews Simelane. She was a member of Umkhonto we Sizwe (MK), the military wing of the African National Congress (ANC). My sister was a student at the University of Swaziland in the early 1980s. During this time, she acted as a go-between for the ANC and exiled leaders in

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Swaziland. In September 1983 shortly after completing her university studies, and whilst on an MK mission to South Africa, she was kidnapped by the Security Branch from the Carlton Centre in Johannesburg. She was then brutally tortured over a period of several weeks and then disappeared.

Most of the policemen who kidnapped and tortured her and then caused her disappearance applied to the TRC for amnesty. They received amnesty for her kidnapping even though they were found to have been untruthful about their treatment of my sister.[1] The senior officers were denied amnesty for her vicious assault. None of the police officers applied for amnesty for the murder of Nokuthula. The senior police officers, in whose presence she was last seen, have refused to disclose the whereabouts of the remains of Nokuthula. To this day her remains have not been found for a burial with dignity.

My family and I have constantly searched for the truth about what happened to my sister. Shortly after her disappearance we spoke with ANC members. We enquired at the South Africa / Swaziland border whether she had crossed into South Africa, but there was no record of her. We even made inquiries in neighbouring countries such as Botswana. Nokhuthula's disappearance was reported to the police, both in Swaziland and, subsequently, in South Africa.

All these efforts proved fruitless until early 1996 when the Sowetan newspaper published a story about Nokuthula's disappearance. The newspaper article appeared to finally spur the police into action. A police investigation under case number CAS1469/02/1996 was opened under the auspices of the Priority Crimes Unit based at John Vorster Square (now Johannesburg Central Police Station). The investigating officer was Captain Leask. During July 1998 one of the senior officers was warned of his rights in terms of section 35 of the Constitution in respect of the "murder" of Nokuthula Simelane. He declined to make a statement.

[1] Decision (AC/2001/185) of the Amnesty Committee of the Truth and Reconciliation Commission.

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We raised her disappearance with the TRC. We have pleaded with prosecutors to take the case forward. I have even appointed private detectives. A documentary was made and screened on TV ("Betrayal", 2006). A statue was erected in her memory in Bethal. However we are still without answers.

We know from the TRC hearings that my sister suffered terribly at the hands of the South African security branch. We know that she refused to collaborate with the forces of Apartheid. For this she paid the ultimate price. My father died in 2001, without knowing what happened to his daughter. I refuse to give up the search for the truth and justice.

Attempts to seek justice

I have met police officers as well as prosecutors from the Priority Crimes Litigation Unit (PCLU) of the National Prosecuting Authority (NPA) on a few occasions. On each occasion various excuses were provided as to why this case could not go forward.

Initially the PCLU advised that there was sufficient evidence to proceed against certain of the officers on charges of assault to do grievous bodily harm in respect of the physical torture of Nokuthula. However, they advised us that they were prevented from proceeding with assault prosecutions as the right to prosecute such offences had prescribed by virtue of section 18 of the Criminal Procedure Act 51 of 1977.

The PCLU also advised that their hands were, in any event, tied by an effective moratorium against the prosecution of the so-called political cases of the past. They were not permitted to proceed until a standardized policy had been put in place to deal with such cases. Towards the end of 2005 the Prosecution Policy was duly amended. It provided for an effective back-door amnesty for those responsible for so-called political crimes and who had not previously applied for amnesty. Together with the wives of the Cradock 4 I applied to court to have this policy set aside as unconstitutional. The Pretoria High Court struck down the policy in the case of *Nkadimeng & Others v The National Director of Public Prosecutions & Others* (TPD

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case no 32709/07). In this matter the NPA had argued that the amended policy survived constitutional scrutiny as families could still bring private prosecutions in matters where the NDPP declined to prosecute. The court rejected this contention stating that it was the primary responsibility of the NPA to prosecute. The NPA was denied leave to appeal.

Following the striking down of the amendments to the prosecution policy I was advised that the PCLU was still unable to take this matter forward because they lacked police detectives to carry out the necessary investigations.

During the course of 2006 one of my legal representatives presented the PCLU with a legal opinion in which it was concluded that the physical and mental abuse perpetrated against Nokhutiyula constituted the international crime of torture. Torture was, by 1983, a prohibited and unlawful act in terms of customary international law. South Africa was obliged to investigate and prosecute transgressions of customary international law as well as violations of the Geneva Conventions. While the PCLU did not dispute the conclusions of this opinion they did not take the matter forward.

My legal representatives also proposed that those suspects who did not apply for amnesty be prosecuted for kidnapping. I am advised that kidnapping is listed as one of the exceptions to the 20 year prescription rule in section 18 of Act 51 of 1977. Notwithstanding that there was no legal impediment to the preferring of such charges this proposal was rejected. My legal representatives also proposed that charges of defeating the ends of justice be brought against two of the senior officers for intimidating a junior officer into making a false statement and for attempting to coach a witness into making a false statement. The PCLU declined to pursue such charges.

Other excuses include an apparent lack of evidence. In particular it has been claimed that none of the evidence that was led before the Truth and Reconciliation Commission (TRC) may be used in subsequent legal proceedings. I am advised that this view is without merit. It is based on an erroneous reading of section 31 of the Promotion of

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National Unity and Reconciliation Act 34 of 1995 which, in any event, was not invoked in these particular proceedings before the TRC.

The need for a formal inquest

This matter is now urgent. Nearly 30 years has passed since Nokuthula's disappearance. Some 17 years has lapsed since the more recent police docket was opened. My mother is now elderly and sickly. Witnesses are also getting old. Some have died in suspicious circumstances.

The PCLU had previously suggested that an inquest be held in this matter. At that time my family and I preferred to see a prosecution taking place. Indeed we have been trying to launch a private prosecution, but we have been unable to raise sufficient funds to pay the security for costs, which we are advised will be a substantial sum of money. In the circumstances we now wish to have formal inquest held as speedily as possible.

If the authorities were going to prosecute this matter such prosecution would have taken place many years ago. This case has dragged on for way too long, and such delay has undermined the prospects for justice and played into the hands of the perpetrators. With every day that goes by without action being taken, the interests of justice are severely eroded. Moreover, and most regrettably, we have lost complete faith in the PCLU to run a successful prosecution.

Last week I met with the investigating officer, Captain Masehela. He advised me that he submitted his report to Advocate Chris Macadam at the PCLU during July 2011. In this report he proposed that this matter be dealt with in an inquest. I assume that this report was submitted in compliance with section 4 of the Inquest Act. I then spoke with Advocate Macadam who advised me to approach Madeleine Fullard, the Head of the Missing Persons Task Team at the National Prosecuting Authority of South Africa.

I met with Ms Fullard who advised that her Task Team had not been able to locate the remains of Nokuthula. She suggested that I approach the suspects and offer not to

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prosecute them if they disclose the location of Nokuthula's remains. I have discussed this suggestion with my family and we have decided not to do a deal with the suspects. The suspects have had more than ample time to come forward and disclose the whereabouts of the remains. They have chosen rather to cause me and my family untold pain and anguish by maintaining a wall of lies and deceit.

Please advise me per return whether the statements and relevant documents have been submitted to a magistrate or judicial officer in terms of section 5 of the Inquest Act. If not, please advise why not. If the documents have been submitted, please advise which magistrate or judicial officer is dealing with this matter. I am advised that I am entitled to be given reasonable notice of the holding of an inquest in terms of section 7 of the Inquest Act. I further request that steps be taken to ensure that the inquest is a formal public inquest which includes the giving of oral evidence. Given the sensitivities of this matter I request that this inquest be held in the High Court of South Africa.

Should you at any point choose to institute criminal proceedings in this matter I request that you appoint a special prosecutor to lead the prosecution, in consultation with me and my family.

I accordingly ask that you treat this request with great urgency and advise me at your earliest convenience.

Yours sincerely,

T P NKADIMENG

Copy to: Advocate Chris Macadam, Priority Crimes Litigation Unit

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MANDATE OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

REFERENCE

G/SO 217/1/South Africa

24 July 2014

Dear Mr. William Kerfoot,

I have the honour to write to you on behalf of the Working Group on Enforced or Involuntary Disappearances, which held its 103rd session from 7 to 16 May 2014, in Geneva, Switzerland. I would like to refer to the reported disappearance in South Africa which your organisation submitted regarding **Ms. Nokulthula Aurelia Simelane (case No. 10004285)**.

The Working Group considered this case and transmitted it to the Government of South Africa in 13 June 2014. In transmitting this case, the Chair-Rapporteur of the Working Group expressed his hope that appropriate investigations would be carried out in order to clarify the fate and whereabouts of the disappeared person and to protect her rights. Any information received from the Government of South Africa concerning this case will be transmitted to you in due course. I wish to emphasize that, in view of the purely humanitarian character of the Working Group's action, any information given to you on this matter is exclusively destined for the relatives of the disappeared person.

I would like to take this opportunity to inform you that the Working Group shall hold its 104th session in Geneva from 15 to 19 September 2014. The Working Group would be grateful if any written information which your organisation wishes to submit for the Working Group's consideration at its 104th session could be received by 22 August 2014. I would like to bring to your attention that, however, information may be submitted at any time of the year and it will be reviewed by the Working Group during its forthcoming sessions as soon as it can be processed.

In conformity with its usual practice, the Working Group receives representatives of interested organizations and families of the persons reported disappeared during its sessions. Should your organisation wish to request a meeting with the experts of the Working Group at the 104th session, please contact the Secretariat at the United Nations Office of the High Commissioner for Human Rights in Geneva (tel: 0041 (0)22 917 9286; fax: 0041 (0)22 917 9006; e-mail: wgeid@ohchr.org) by 22 August 2014, to

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Mr. William Kerfoot
The Legal Resource Centre
3rd floor Greenmarket Place, 54 Shortmarket Street, Cape Town 8001, South Africa
Tel.: 2721 481 3000. Fax: 272121 423 0935
william@lrc.org.za

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schedule an appointment or for any additional information. Please note that unfortunately the Working Group will not be able to provide any financial assistance.

Ariel Dulitzky
Chair-Rapporteur
Working Group on Enforced
or Involuntary Disappearances

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IN THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA,

PRETORIA

In the matter between: **Case No.: 2018/76755**

JOAO RODRIGUES **APPLICANT**

And

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **FIRST RESPONDENT**

MINISTER OF JUSTICE **SECOND RESPONDENT**

MINISTER OF POLICE **THIRD RESPONDENT**

IMITIAZ AHMED CAJEE **FOURTH RESPONDENT**

FIRST RESPONDENT'S SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

JACOBUS PETRUS PRETORIUS

do hereby make oath and state as set out below.

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1 INTRODUCTION

1.1 I am an adult and I am employed by the National Prosecuting Authority, herein represented by the first respondent. I have already deposed to the first respondent's answering affidavit and remain duly authorized to place the evidence contained herein before the Court on behalf of the first respondent.

1.2 Unless the context indicates otherwise, the contents of this supplementary answering affidavit fall within my knowledge and they are true and correct. In some respects, my knowledge of the contents hereof is derived from the documents to which I also refer herein. I believe that the contents of such documents are true and correct when regard is had to the source of such documents.

1.3 The purpose of this supplementary answering affidavit is to deal with the contents of the fourth respondent's answering affidavit and supplementary affidavit.

1.4 I have considered the fourth respondent's answering affidavit and I reply thereto below to the extent that it is necessary to show that the first respondent is not responsible for the delays in prosecuting the applicant and that the delays complained of do not justify the relief which the applicant seeks.

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1.5 I have also considered the contents of the fourth respondent's supplementary affidavit in which is attached an uncertified transcript of what purports to be an interview conducted with a radio station. This supplementary affidavit is irrelevant and serves no purpose in these proceedings and was filed with an intention to paint the National Prosecuting Authority and the South African Police in a negative light. I do not admit the authenticity of the transcript attached to this supplementary affidavit and I am not going to respond thereto.

2 THE DELAYS

2.1 The fourth respondent filed an answering affidavit to oppose the relief which the applicant seeks in this application. This affidavit, however, reads like a supporting affidavit intended to boost the applicant's case and I have no doubt that the applicant will rely on it to support his case.

2.2 In such answering affidavit, the fourth respondent also seeks to tell the Court what caused the delays in instituting the criminal proceedings which are sought to be stayed permanently by the applicant. The only issue which the first respondent takes with the fourth respondent's approach is that he seeks to blame the National Prosecuting Authority and the first respondent for such delays.

2.3 I strongly deny that the first respondent is responsible for the delays upon which the fourth respondent seeks to rely. Even on the evidence upon

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which the fourth respondent relies, it is clear that the prosecution was delayed as a result of political interference by others.

2.4 Even if it may be found that the first respondent is responsible for the delays, which I deny, the delays and the first respondent's conduct is not of such a nature that it justifies the permanent stay of the criminal proceedings when regard is had to the following:

2.4.1 the nature of the criminal offence with which the applicant is charged;

2.4.2 the circumstances under which Mr. Timol died;

2.4.3 the fact that the fourth respondent himself says that the National Prosecuting Authority was subjected to severe political pressure not to take urgent steps to prosecute people such as the applicant;

2.4.4 the fact that the interests of justice require the Court to refuse the permanent stay sought by the applicant; and

2.4.5 the fact that the National Prosecuting Authority and its Priority Crimes Litigation Unit which was responsible for the prosecution of TRC matters since 2003 always wanted to have these cases investigated and prosecuted.

2.5 It is not entirely clear from the fourth respondent's answering affidavit as to what he seeks to achieve by blaming the first respondent when on the

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other hand, he says that the first respondent was prevented from prosecuting by political office bearers.

2.6 Mr. Timol died in October 1971. An inquest which was conducted thereafter did not result in any criminal prosecution.

2.7 In paragraph 82 of his answering affidavit, the fourth respondent seems to accept that the circumstances around Mr. Timol's murder were covered up by the then government of the Republic of South Africa between 1971 and 1994 and that this cover up "*naturally explains*" the inaction during that period.

2.8 It is surprising that the fourth respondent does not take issue with the people responsible for the cover-up and does not seek any punishment against them. He, however, seeks to lobby for an inquiry to be conducted in relation to certain officials of the first respondent, which officials he accepts were subjected to severe political constraints and interference. It would appear from his answering affidavit that this is indeed his sole motive of seeking to blame the first respondent for the delays in prosecuting the applicant even though at the end he says that the delays in prosecuting the applicant do not justify the granting of the permanent stay relief which the applicant seeks in this application.

2.9 It is common cause that Mr. Timol's murder was politically motivated and it is for this reason a political crime. The fourth respondent also describes it

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as such in paragraph 84 of his answering affidavit. It is also common cause that Mr. Timol's murder is not the only political crime for which the perpetrators have not been prosecuted.

2.10 When regard is had to the nature of the crime, it should not be surprising that the government of the day may have taken steps to find a political solution to the political murders which were perpetrated by agents of the pre-1994 government. It is irrelevant as to what one calls such steps. The fourth respondent calls them political interference with the National Prosecuting Authority. He describes the position as follows in paragraph 84 of his answering affidavit:

> "*84 In the post-TRC period the NPA and its officials dealing with my uncle's case, as well as other so-called political crimes from the past, became subjected to severe political constraints. Such pressures served to shape the approach or policy of the NPA and the SAPS in relation to the so-called political cases (also referred to as the "TRC cases"). Indeed, it is my submission that such political pressure made it extremely difficult, if not impossible, for them to carry out their responsibilities under law. This in turn rendered their conduct, in relation to Timol's case and other so-called political cases, questionable, if not unlawful. It also explains the inordinate delay in re-opening the inquest into my uncle's death and, now, prosecuting the accused.*" (Own emphasis).

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2.11 The first respondent does not deny that the executive branch of the State took what one can describe as political steps to manage the conduct of criminal investigations and possible prosecution of the perpetrators of the political murders such as that of Mr. Timol. When regard is had to what advocates Pikoli, Ackermann and Macadam say in their affidavits confirming political interference with the first respondent's prosecutorial decision-making processes, it is clear that it is in fact not the first respondent who stalled the investigations and prosecution of cases such as the present. For this reason, no purpose would be served by throwing stones at the first respondent.

2.12 When regard is had to what the fourth respondent says in paragraph 84, the only conclusion to arrive at is that the delay in prosecuting the applicant was not as a result of the first respondent's own doing or its malice – it was as a result of the political interference and the "*severe political constraints*" to which the first respondent was subjected.

2.13 The fourth respondent relies on certain incidents which he says constitute evidence of political interference. None of these incidents were created by the first respondent. On the fourth respondent's own version, "*the NPA and its officials dealing with my uncle's case ... became subjected to severe political constraints ...*" There is no doubt that the National Prosecuting Authority and its officials could not have subjected themselves to the "*severe political constraints*" referred to by the fourth respondent.

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2.14 It is necessary for me to comment on each of the instances upon which the fourth respondent relies to demonstrate that the first respondent is not the author thereof.

The secret *government report*

2.15 This is a report of the Amnesty Task Team. This task team was appointed by the Director-General's forum on 23 February 2004. The Director-General's forum was not created by the first respondent. It was chaired by the Director-General of the Department of Justice and Constitutional Development. This Director-General must have chaired this forum on the instructions of his superiors. The National Prosecuting Authority was represented thereat by Gerhard Nel and Lungisa Dyosi who were not members of the National Prosecuting Authority's Priority Crimes Litigation Unit responsible for the prosecution of cases such as the present.

2.15.1 The task team was required to consider and report on, amongst others, the following:

> "2. *Consideration of a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past.*"

2.15.2 The report clearly indicates that the democratic government, at its highest level, intended to give people such as the applicant, who did

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not participate in the TRC process, another opportunity to apply for amnesty. For this reason, the task team considered that it had to "*perform its task within the framework laid down by the President in his statement to the National Houses of Parliament and the Nation on the occasion of the tabling of the report of the Truth and Reconciliation Commission on 15 April 2003.*"

2.15.3 The report further states that the President provided, amongst others, the following guidelines:

"*(a) There shall be no general amnesty, because it would fly in the face of the TRC process and detract from the principle of accountability which is vital, not only in dealing with the past, but also in the creation of a new ethos within our society.*

(b) Yet we also have to deal with the reality that many of the participants in the conflicts of the past did not take part in the TRC process" (Own emphasis).

2.15.4 Paragraph 3.3 of the report shows that consideration was given to establishing "*a further amnesty process similar to that of the TRC process.*" This, however, was rejected by the task team with the following provision:

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"*3.3.2 In the light of the views expressed by the President regarding a further amnesty process, the Task Team decided not to make a recommendation in this regard and to leave this decision in the hands of Government. Should Government, however, decide to proceed with such a further process, a draft indemnity Bill is attached as Annexure "B" for consideration.*"

2.16 It is clear from the report upon which the fourth respondent relies that:

2.16.1 The functions of the aforesaid task team were not determined by the first respondent.

2.16.2 The government, through the President at the time expressed its willingness to establish a second amnesty process similar to that of the TRC clearly in order to give people such as the applicant an opportunity to fully disclose their participation "*during the conflicts of the past.*"

2.16.3 To the extent that the work of the Amnesty Task Team contributed to a delay in the applicant's prosecution, the blame for that does not find a place to sit in front of the first respondent's door steps. In the premises, the report of the Amnesty Task Team upon which the fourth respondent seeks to rely does not in any way establish any wrongdoing on the part of the first respondent.

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2.16.4 At best, the government of the Republic of South Africa could be criticized for having entertained the thought of establishing another amnesty process similar to that of the TRC process – but that is as far as that criticism can go. There is absolutely no evidence placed before the Court to suggest that the entertainment of such a thought was malicious and not at all in the interests of justice and the interests of the community as a whole. The time taken entertaining that thought and giving effect to it clearly contributed to the delay in prosecuting the applicant – but that was not the first respondent's doing.

The affidavit of Adv. Vusi Pikoli

2.17 The fourth respondent says that the contents of the affidavit of Adv. Pikoli constitutes evidence of some of the "*various steps aimed at ensuring political control over prosecutorial decisions dealing with the TRC cases.*"

2.18 Pikoli was appointed as the National Director of Public Prosecutions on 1 February 2005. This is the highest position within the National Prosecuting Authority. Prior to that, he was the Director-General of the Department of Justice and Constitutional Development. His affidavit, however, does not say much about the role he played on the Amnesty Task Team. It also does not say anything about the origin of the task team and why it was necessary to set it up.

2.19 In paragraph 85.2 of his answering affidavit, the fourth respondent says that Pikoli's affidavit "*sets out how the independence of his office was seriously compromised*" and "*how he was subjected to withering pressure from political forces, including the then Minister of Justice, Mrs. BS Mabandla, and the then Commissioner of the SAPS, the late Jackie Selebi, to abandon the TRC cases*."

2.20 I must say upfront that I do not dispute the contents of Pikoli's affidavit upon which the fourth respondent relies. The contents of such affidavit, however, do not constitute a basis to grant the permanent stay which the applicant seeks in this application and further show that the first respondent did not abandon the intention to prosecute people such as the applicant.

2.21 It is important that I highlight some of the contents of Pikoli's affidavit which clearly indicate that the first respondent and its officials were indeed, as alleged by the fourth respondent, subjected to severe political constraints as a result of which, on the fourth respondent's version, it was "*extremely difficult, if not impossible, for them to carry out their responsibilities under law*."

2.21.1 In paragraph 8 of his affidavit, Pikoli says that:

> "*8. As a result of my decision to authorize the prosecution of a former commissioner of police on corruption charges I was suspended from duty by the then President, Mr. T Mbeki on 23*

September 2007. I also have reason to believe that my decision to pursue prosecutions of apartheid-era perpetrators who had not applied for amnesty or had been denied amnesty by the truth and reconciliation commission ... contributed to the decision of President Mbeki to suspend me..." (Own emphasis).

2.21.2 It is clear from the above quoted paragraph 8 of Pikoli's affidavit that he did take a "*decision to pursue prosecutions of apartheid-era perpetrators who had not applied for amnesty or had been denied amnesty*" by the Truth and Reconciliation Commission. Pikoli suspects that this decision also influenced President Mbeki to suspend him. Accordingly, not only was there political interference in the work of the highest office of the National Prosecuting Authority, but there was also action taken against the highest office of the National Prosecuting Authority for taking prosecutorial decisions.

2.21.3 In paragraph 14 of his affidavit, Pikoli says the following:

"*14. ... I confirm that there was political interference that effectively barred or delayed the investigation and possible prosecution of the cases recommended for prosecution by the TRC, ...*" (Own emphasis).

2.21.4 Pikoli also deals with what is referred to therein as the TRC cases. He says that decisions to prosecute certain members of the Security

Branch of the South African Police Service were taken by then Acting National Director of Public Prosecutions. After such decisions were taken, it was decided that the matters would be "*held over pending the development of the guidelines to deal with the TRC cases that were to be incorporated into the Prosecution Policy*"

2.21.5 The contents of paragraph 33 of Pikoli's affidavit reveals what could have been the motivation against prosecuting people such as the applicant at the time. Therein, Pikoli suggests that the prosecution of "*cases like the Chikane matter could open the door to prosecutions of ANC members*" and that such prosecution could then "*give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.*"

2.21.6 In paragraph 52 of his affidavit, Pikoli refers to a memorandum which he wrote to the then Minister of Justice complaining about political interference in the work of the first respondent. Therein, Pikoli says that:

"*52. In this memorandum I concluded that there had been improper interference in relation to the TRC caces and that I had been obstructed from taking them forward. I complained that such interference impinged upon my conscience and my oath of office. I indicated that I was unable to deal with these cases in*

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terms of the normal legal processes and sought guidance on the way forward." (Own emphasis).

2.21.7 The contents of the above quoted paragraph, which the fourth respondent accepts as true and correct and reflective of the correct legal position, clearly indicates that the highest office of the National Prosecuting Authority had reached a point where it "*was unable to deal with these cases in terms of the normal legal processes*" and deemed it necessary to seek "*guidance on the way forward.*" According to Pikoli, such guidance was never received. In paragraph 54 of his affidavit, Pikoli concludes that:

"*The failure or refusal of the Minister to respond to my memorandum suggested to me that she preferred for the deadlock between the NPA and the SAPS, NIA and DoJ to remain in place.*"

2.21.8 In paragraph 60 of his affidavit, Pikoli again gives light to the reluctance from the political level to prosecute cases such as the present. Therein, he says that there was a "*fear of opening the door to prosecutions of ANC members, including government officials.*"

2.22 All that is contained in Pikoli's affidavit, upon which the fourth respondent relies to create an impression that the first respondent is responsible for the delays, clearly indicates that the highest office of the National Prosecuting

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Authority was subjected to political interference and political pressure not to prosecute cases such as the applicant's case.

2.23 There is nothing in Pikoli's affidavit that could be interpreted to suggest that the first respondent was remiss or negligent in handling what is referred to in Pikoli's affidavit as the TRC cases, which include the applicant's case.

2.24 In the premises, on the fourth respondent's version, the delays in prosecuting the applicant were occasioned by political interference and political pressure and not by the first respondent itself. In the premises, there is no room to blame the first respondent for the delays or to use the delays to justify the permanent stay of prosecution.

The affidavit of Adv. Anton Ackermann

2.25 The affidavit of Adv. Anton Ackermann does not take the matter any further.

2.26 In his affidavit, Ackermann confirms that cases such as the prosecution of the applicant were not prosecuted due to political pressure and political interference as stated in Pikoli's affidavit.

2.27 I do not deny what Ackermann says in his affidavit but I do state that the contents of Ackermann's affidavit do not justify the granting of the permanent stay of prosecution which the applicant seeks in this application.

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2.28 The contents of both Pikoli and Ackermann's affidavits give this Court an opportunity to reaffirm the constitutional independence of the National Prosecuting Authority of this country and send a clear message that political office bearers should stop interfering with prosecutorial decisions unless otherwise authorized to do so by law.

2.29 What one sees in Pikoli and Ackermann's affidavits is that the political interference and political pressure brought to bear upon the highest office of the National Prosecuting Authority was far from being authorized by law. This being the case, there can be no rational basis to use such unlawful political interference and political pressure to justify the permanent stay of criminal prosecution which the applicant seeks in this application.

2.30 I agree with what the fourth respondent says in paragraph 88 of his answering affidavit that the manipulation of the criminal justice system to protect individuals from criminal prosecution serves an ulterior and illegal purpose and that it constitutes bad faith, it is irrational, it interferes with the independence of the National Prosecuting Authority and amounts to a gross subversion of the rule of law. This, however, does not justify the granting of the permanent stay of criminal prosecution which the applicant seeks in this application.

2.31 It is important that I again highlight that the fourth respondent does not say that the "*manipulation of the criminal justice system to protect individuals from prosecution*" was perpetrated by the first respondent and its officials.

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Insofar as it is not the fourth respondent's version that the manipulation of the criminal justice system was perpetrated by the first respondent and its officials, there can be no basis to use that against the first respondent to justify the granting of the relief which the applicant seeks in this application.

2.32 The relief which the applicant seeks in this application is so drastic that it cannot be granted simply on the basis of the manipulation of the criminal justice system or by what the fourth respondent says amounts to political interference or severe political constraints.

2.33 In the light of the contents of Pikoli and Ackermann's affidavits and the correspondence attached thereto, there can be no merit in the fourth respondent's suggestion in paragraph 97 of his answering affidavit that "*the SAPS and the NPA colluded with political forces to ensure the deliberate suppression of the bulk of apartheid-era cases.*" It is important to draw the Court's attention to the fact that the fourth respondent does not even tell the Court as to when this alleged collusion with political forces occurred. The fourth respondent is called upon to produce evidence of this alleged collusion or to formally withdraw such allegation.

2.34 In any event, the suggestion that the SAPS colluded with the National Prosecuting Authority is completely inconsistent with the contents of Pikoli and Ackermann's affidavits. The two affidavits clearly tell the Court as to why cases such as the applicant's case were not immediately prosecuted

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and they do not include the alleged collusion between the SAPS and the National Prosecuting Authority.

2.35 It is not correct that the National Prosecuting Authority has decided to shield "*itself from embarrassment as well as violations of its obligations and duties under the Constitution*" as alleged in paragraph 142.3 of the fourth respondent's answering affidavit. The correct position is simply that the applicant did not in his founding affidavit call upon the first respondent to deal with the issues which the fourth respondent somehow suggests the first respondent ought to have dealt with in answering the applicant's founding affidavit. It is the fourth respondent which has now raised the issues which I have now answered in this supplementary answering affidavit.

2.36 In paragraph 142.1 of his answering affidavit, the fourth respondent contends that "*the period leading up to the decision to institute criminal proceedings cannot be ignored.*" There is no legal basis for this. The fourth respondent contends, in paragraph 142.3, that "*what transpired during this time-period must be explained by the NPA.*" I deny this. The applicant, however, does not rely on this point.

2.36.1 In support of the above contention, the fourth respondent seeks to rely on paragraph 3(C) of the Prosecution Policy.

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2.36.2 Paragraph 3 of the Prosecution Policy deals with the role of a prosecutor. Paragraph 3(C) deals with prosecution in the public interest and seeks to provide guidance to prosecutorial decision-making process in relation to prosecution of cases in the public interest.

2.36.3 In relevant parts, paragraph 3(C) of the Prosecution Policy upon which the fourth respondent relies for his contention that the first respondent must provide an explanation for the time period leading up to the institution of criminal charges against the applicant provides that when a prosecutor considers whether or not it will be in the public interest to prosecute, the prosecutor must consider all relevant factors including, amongst others, whether there has been an unreasonably long delay between the date when the crime was committed, the date on which the prosecution was instituted and the trial date, taking into account the complexity of the offence and the role of the accused person in the delay.

2.36.4 It is important that I draw to the Court's attention the fact that the very same paragraph states that:

"*The relevance of these factors and the weight to be attached to them will depend upon the particular circumstances of each case.*"

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2.36.5 At all material times relevant to this case, the first respondent has always been aware of the long period of time which has passed between the date when the crime was committed and the date on which criminal proceedings were instituted against the applicant. For this reason, it cannot be suggested that the first respondent did not take into account the delay between the date on which the crime was committed and the date on which criminal proceedings were instituted against the applicant.

2.36.6 When regard is had to the nature and seriousness of the offence; the manner in which Mr. Timol was killed; the pain which Mr. Timol must have suffered; and the fact that the applicant has not admitted guilt and has not shown repentance the delay between the date on which the crime was committed and the date on which the prosecution was instituted justify the dismissal of this application. All of these factors, together with the fact that the delay in prosecuting the applicant was not deliberately caused by the first respondent, it is not in the interests of justice to grant the permanent stay relief which the applicant seeks in this application.

2.37 I deny the fourth respondent's insinuation in paragraph 142.6 that Chris Macadam did not act properly when the investigation of this matter was entrusted to him. In this regard, I attach hereto as **SA1,** Chris Macadam's affidavit in which he sets out in detail, and supported by documentary

evidence, his role during the relevant periods in the investigation of this matter.

2.38 When regard is had to the contents of Chris Macadam's affidavit, it is clear that he did all he could under the political environment which prevailed at the time which, as the fourth respondent himself has indicated in his answering affidavit, was clearly not in favour of prosecuting cases such as the present. For this reason, the insinuation against Chris Macadam is wholly misplaced. [Chris Macadam's affidavit attached hereto as SA1 is the very same affidavit referred to in my main answering affidavit but was not attached thereto].

2.39 In the light of the interest which the fourth respondent has shown in Macadam, it is necessary that I draw the court's attention, and indeed the fourth respondent's attention to some of the contents of Macadam's affidavit and the annexures thereto.

2.40 Macadam is a senior advocate of this court and has, since 2003 served as the Senior Deputy Director of Public Prosecutions in the National Prosecuting Authorities Priority Crimes Litigation Unit. This unit has always been located within the office of the National Director of Public Prosecutions.

2.41 In paragraph 12 of his affidavit, Macadam says that the then National Director of Public Prosecutions took a decision, shortly after the

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establishment of the Priority Crimes Litigation Unit, that such unit "*should take over the TRC cases which had not been finalized either by the DPP or by the defunct TRC unit.*" This is a clear indication that right from the beginning, the National Prosecuting Authority intended to investigate and prosecute cases such as the present.

2.42 In paragraphs 15 and 17, Macadam indicates that Mr Timol's case was identified as one which required further investigation and this is confirmed in annexure RCM2 to his affidavit.

2.43 In an internal memorandum dated 15 July 2003 Advocate Ledwaba of the then Directorate of Special Operations (then known as The Scorpions) which was mandated to investigate cases such as the present advised Macadam and others, amongst others, as follows:

"(i) TRC Cases

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used."

2.44 Pursuant to Ledwaba's aforesaid decision, Macadam and Ackermann did the right thing by commencing engagement with the SAPS after which

Commissioner J F De Beer of the SAPS addressed a letter dated 26 September 2003 to Ackerman in, amongst others, the following terms:

"As agreed at our meeting, I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations (DSO).

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking ...

In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seemed to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

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If the President indicates that the South African Police Service should be involved in the investigations, the instruction should be obtained in writing Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues." (Own emphasis).

2.45 The above-quoted letter clearly signaled the beginning of difficulties in investigating and prosecuting cases such as the present. In order to avoid delays and being entangled in bureaucracy, Macadam and Ackermann attempted to persuade Ledwaba to reconsider his decision not to investigate cases such as the present. Their frustrations are well documented in annexure RCM5 attached Macadam's affidavit – being an internal memorandum dated 11 November 2003. Therein, they set out their frustrations and concluded as follows:

"2. *As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted. There are certain cases which could have been prosecuted which have prescribed. There is both national and international pressure to institute prosecutions (eg. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability*

of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the bona fides of the National Prosecuting Authority into serious [disrepute] and do irreparable damage.

Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in terms of section 28(1)(b). This chapter in our country's history must be closed without further delay."

2.46 Despite Ackermann and Macadam's pleas, the then Directorate for Special Operations did not appoint investigators as requested and cases such as the present were not further investigated. To make matters worse, in 2004, Macadam was assigned a case which required his full-time attention until late 2007 and was then not involved in the investigation and possible prosecution of TRC cases.

2.47 No serious investigation of cases such as the present took place and the reasons for this are clearly apparent from Macadam's affidavit. In paragraph 40 of his affidavit, Macadam says that he requested the Directorate for Priority Crimes Investigations to re-open the investigation of Mr Timol's case.

2.48 After having done all of the above, Macadam was informed by Advocate Johnson, the then head of the Priority Crimes Litigation Unit *"that we should not continue to work with TRC cases as they were going to be removed from the PCLU."* (Own emphasis).

2.49 Attached to Macadam's affidavit as RCM16 is a letter dated 8 February 2007 from then Minister of Justice Ms Mabandla to then National Director of Public Prosecutions, Pikoli. In this letter, the then Minister expressed her concern that she read media articles suggesting that the National Prosecuting Authority was going ahead with prosecutions of cases such as the present. The then Minister said, amongst others, the following:

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

2.50 The contents of the then Minister's letter clearly indicates that government at the highest level was of the view that the first respondent knew that cases such as the present were not going to be investigated and prosecuted. In addition, the letter also suggests that Pikoli had advised the Minister that *"the NPA will not be going ahead with the prosecutions."*

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2.51 In a memorandum dated 15 February 2007 from Pikoli to then Minister of Justice, Pikoli, amongst others, expressed his frustrations arising from political interference with the National Prosecuting Authority's prosecutorial decision-making processes. The upshot of Pikoli's frustrations is set out in paragraph 5.2 of this memorandum, wherein he said:

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

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

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

2.52 Insofar as this particular matter is concerned, the political position about the prosecution of cases such as the present did not change until the re-opening of the inquest into the death of Mr Timol. As we now know, the matter was investigated after the 2017 inquest judgment was released and the first respondent then took a decision to prosecute the applicant herein.

2.53 When regard is had to the contents of Macadam's affidavit, there can be no rational basis to suggest that he acted in a cavalier and uncaring manner. The facts set out in his affidavit, confirmed by way of a confirmatory affidavit by Pikoli, clearly indicate that the political interference with the first respondent's prosecutorial decision-making processes did not only start in 2007 when Pikoli was suspended from his position as National Director of Public Prosecutions for what he says, amongst others, deciding to prosecute cases such as the present.

2.54 It is important to draw the court's special attention to paragraph 5.4 of Pikoli's memorandum to the Minister quoted above. Therein, and based on the prevailing political environment at the time, Pikoli took the view that *"these TRC matters"* could not be proceeded with *"in accordance with the 'normal legal processes' and 'prosecuting mandate'"* of the National Prosecuting Authority. Having taken this view, Pikoli then called for the Government to provide direction as far as the investigations and prosecutions of the TRC matters was concerned. Pikoli correctly called for this direction from the State *"in view of the fact that the NPA prosecutes on behalf of the State."* When regard is had to Pikoli's, Ackermann's, and

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Macadam's affidavits, it is clear why Pikoli called for this direction from the State – simply because the State had clearly expressed its reluctance to prosecute cases such as the present and its desire to establish a second amnesty process for people such as the applicant.

2.55 The above being the case, this court cannot perpetuate the injustice to which Mr Timol was subjected by granting an order in terms of which the applicant's prosecution is stayed permanently. Mr Timol was subjected to injustice by the apartheid government and its security agents and cannot again be subjected to injustice by this government, for which he died.

I now turn to respond to some of the paragraphs of the fourth respondent's answering affidavit in which negative and incorrect statements are made about the first respondent.

3 AD PARAGRAPHS 64 AND 65

Ad paragraph 64

3.1 I deny that the National Prosecuting Authority acted in a cavalier and uncaring manner.

3.2 The fourth respondent's suggestion that the approach of the National Prosecuting Authority was cavalier and uncaring is not supported by any admissible evidence placed before the Court. Such a suggestion can easily

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be disposed of by reference to the contents of Macadam's affidavit to which I have referred above.

Ad paragraph 65

3.3 The contents of paragraph 65.1 do not justify the criticism levelled against the first respondent. This is so due to the fact that the Amnesty Task Team referred to therein was not created by the first respondent. As I have demonstrated above, the Amnesty Task Team was created by the government, in particular, by the highest level of government. Rightly or wrongly, the Amnesty Task Team was clearly created to find ways to give people such as the applicant herein an opportunity to apply for amnesty in respect of their participation in what is referred to in the Amnesty Task Team's report as "*conflicts of the past.*"

3.4 The contents of paragraph 65.2 are not entirely correct. It is not correct that the amendment to the prosecution policy was intended "*to facilitate impunity for apartheid-era criminals.*" A simple reading of the report of the Amnesty Task Team clearly shows that it was not the intention of government to grant people such as the applicant blanket amnesty. There were stringent requirements with which they had to comply.

3.5 Pikoli's affidavit shows that it is not correct that government intended "*to facilitate impunity for apartheid-era criminals*" where he refers to instances where he refused to accept representations not to prosecute people such as

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the applicant. The people referred to in Pikoli's affidavit, whose representations not to be prosecuted he refused, would have been granted amnesty easily if government's intention was indeed "*to facilitate impunity for apartheid-era criminals*" as suggested in paragraph 65.2.

3.6 The contents of paragraph 65.3 are not in dispute and do not justify the relief which the applicant seeks in this application and clearly show that it was former President Mbeki who "*introduced a political pardons program to further accommodate perpetrators*" and not the first respondent.

3.7 The contents of paragraph 65.4 are not in dispute.

3.8 The contents of paragraph 65.5 must necessarily bring an end to any criticism levelled against the first respondent by the fourth respondent. In paragraph 65.5, the fourth respondent says that the "*NPA officials were instructed and cajoled by cabinet ministers and the then Commissioner of the SAPS to stop all work on the TRC cases*" which cases included the case of Mr. Timol. On this version, there could not have been collusion between the police and the National Prosecuting Authority.

4 AD PARAGRAPHS 82 TO 94

Ad paragraph 82

4.1 The cover-up of political crimes referred to in paragraph 82 which the fourth respondent says it "*naturally explains the inaction between 1971 and*

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1994" is not different from the political interference which resulted in cases such as the present not being prosecuted immediately. For this reason, there is no basis to blame the first respondent and the National Prosecuting Authority for the delays in prosecuting this case.

Ad paragraph 83

4.2 There is no basis to suspect that the first respondent did not explain the delay as a result of an ulterior or improper motive. The position is simply that the applicant did not in his founding affidavit make out a case which required an explanation for the delay in the manner in which the fourth respondent has done in his answering affidavit.

4.3 It is clear from the applicant's founding affidavit that the applicant did not have much information on the basis of which he could criticize and blame the first respondent for the delays in the manner done by the fourth respondent in his answering affidavit. In fact, the fourth respondent's answering affidavit reads like a supporting affidavit on behalf of the applicant.

Ad paragraph 84

4.4 I have already dealt with the contents of paragraph 84 elsewhere above in this supplementary answering affidavit.

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Ad paragraph 85

4.5 I have already dealt with the contents of paragraph 85 elsewhere above in this supplementary answering affidavit.

Ad paragraph 86

4.6 The statements and conclusions attributed to Pikoli and Ackermann in paragraph 86 are not in dispute.

Ad paragraph 87

4.7 I fail to understand the purpose of the contents of paragraph 87 because the fourth respondent is fully aware that the first respondent herein did not oppose the application referred to therein. Insofar as the first respondent did not oppose the application referred to in paragraph 87, it was not necessary for it to file an answering affidavit. The applicant's legal representatives are clearly aware of this.

4.8 The contents of paragraph 87 are clearly intended to create unnecessary sensation and negative atmosphere against the first respondent and the SAPS because a false impression is created that they were supposed to file answering affidavits but neglected to do so (even though they did not oppose the application).

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4.9 The alleged "*considerable publicity that the case attracted*" did not on its own justify the filing of answering affidavits in circumstances where the first respondent and the SAPS decided not to oppose the application in issue.

Ad paragraph 88

4.10 I have already dealt with the contents of paragraph 88 elsewhere above in this supplementary answering affidavit.

Ad paragraph 89

4.11 I draw the Court's attention to the fourth respondent's conclusion that "*the real reason for the delay in investigating and prosecuting apartheid-era perpetrators like Rodrigues in the democratic-era*" is the "*manipulation of the criminal justice system to protect individuals from prosecution*" referred to in paragraph 88 and the political interference with the independence of the National Prosecuting Authority – none of which was done by the first respondent. On the fourth respondent's own version, it is the first respondent who was politically interfered with.

Ad paragraph 90

4.12 I admit that the unlawful interference with the first respondent's duties and the manipulation of the criminal justice system referred to in the fourth respondent's answering affidavit is not sufficient to justify the granting of a

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permanent stay of the prosecution instituted against the applicant. There is no reason why the fourth respondent relies on the unlawful interference with the first respondent only to say it does not justify the relief sought.

Ad paragraph 91

4.13 The contents of paragraph 91 are admitted.

Ad paragraphs 92 and 93

4.14 The contents of paragraphs 92 and 93 are not in dispute.

4.15 It is not in the interests of justice to grant the relief which the applicant seeks on the basis of what the fourth respondent says was an unlawful manipulation of the criminal justice system and unlawful political interference with the first respondent's prosecutorial decision-making processes.

Ad paragraph 94

4.16 In paragraph 94 of his answering affidavit, the fourth respondent seeks to suggest that the National Prosecuting Authority and the South African Police Service are not doing anything about the possible prosecution of cases such as the present. I deny this.

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4.17 The cases to which the fourth respondent refers are 9 deaths cases and 11 cases relating to the murder, kidnapping and torture of political activists. These cases include the so-called Cradock 4 and Pebco 3 murders and were placed before the Directorate for Priority Crimes Investigations and the National Prosecuting Authority in January 2018. I deny that "*absolutely no progress has been made in any of these 20 cases.*"

4.17.1 One of the above cases relates to the death of Hoosen Haffejee. In this case, the second respondent has approved the re-opening of the inquest into this death and the fourth respondent is fully aware that this matter is under investigation as it is apparent from the letter attached hereto as **SA2**.

4.17.2 Since the aforesaid cases where allocated to the Directorate for Priority Crimes Investigations and the National Prosecuting Authority, all the required support and resources have been provided to investigate and to then prosecute these matters.

4.17.3 A task team of 15 police officers has been constituted and each case has been allocated at least two investigators. This task team consists of members of the Crimes Against the State unit of the South African Police Service.

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4.17.4 Progress meetings have been held on these cases and the fourth respondent and the fourth respondent's investigator, Frank Dutton have attended some of these meetings.

4.17.5 I am also aware that the fourth respondent's investigator, Frank Dutton, has interacted with Captain Chantelle Simpson of the South African Police Service on these matters and the fourth respondent must be fully aware of such interactions but creates a wrong impression that nothing has been done. This wrong impression is deliberately created in order to portray the National Prosecuting Authority and the South African Police Service in a negative light – which does not serve any purpose in proceedings such as the present.

4.17.6 I deny that two former members of the old South African Police's Security Branch were appointed "*to lead these investigations*." It serves no purpose for the fourth respondent to accuse the South African Police Service and the National Prosecuting Authority and their officials without producing any evidence to support such accusation.

4.18 For the reasons stated above, the contents of paragraph 94 do not advance the fourth respondent's case, they are in any event irrelevant and ought to be rejected.

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5 AD PARAGRAPHS 97 TO 99

Ad paragraph 97

5.1 I deny that the SAPS and the National Prosecuting Authority colluded with political forces to ensure the deliberate suppression of apartheid-era cases.

5.2 The fourth respondent's suggestion that the SAPS and the National Prosecuting Authority *colluded with political forces* is not supported by any admissible evidence placed before the Court. Of importance, this suggestion is inconsistent with some of the evidence upon which the fourth respondent relies which the fourth respondent himself has placed before the Court.

5.3 Elsewhere in his answering affidavit, the fourth respondent makes it clear that there was political interference and political pressure brought to bear upon the National Prosecuting Authority. This being the case, one fails to understand as to on what factual basis the fourth respondent can begin to speculate, let alone suggest, that the National Prosecuting Authority "*colluded with political forces.*" Such a suggestion, if accepted, would mean that Pikoli and Ackerman on whose affidavits the applicant heavily relies, are guilty of the collusion referred to in paragraph 97.

Ad paragraph 98

5.4 I do not deny that the National Prosecuting Authority was subjected to political interference and political pressure not to immediately prosecute cases such as the present. Incidentally, this also happened during the time that Pikoli was the National Director of Public Prosecutions.

Ad paragraphs 99 and 100

5.5 The contents of paragraph 99 are not in dispute.

5.6 The contents of paragraph 100 are not in dispute.

6 AD PARAGRAPHS 140 TO 148

Ad paragraph 141

6.1 The contents of paragraph 141 do not take the matter any further.

6.2 In paragraph 141 of his answering affidavit, the fourth respondent is responding to paragraphs 1.1 to 2.2.4 of the first respondent's answering affidavit to the applicant's founding affidavit. There is no basis to criticize the first respondent because the applicant's founding affidavit did not call the first respondent to provide an explanation for what the fourth respondent refers to as "*the near total inaction of the NPA.*"

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Ad paragraph 142

6.3 I have already dealt with the contents of paragraph 142 elsewhere above in this supplementary answering affidavit.

Ad paragraph 143

6.4 The contents of paragraph 143 clearly reveal the fourth respondent's motive in painting the first respondent in a negative light. The motive is to obtain answers to the criticism levelled against the first respondent which the fourth respondent would then use to call "*for an inquiry into those prosecutors and police who failed in their duties to uphold the rule of law.*" This is clearly wrong.

6.5 The contents of the affidavits filed in this application for purposes of opposing the relief which the applicant seeks in this application were clearly not intended to defend the first respondent and "*those prosecutors and police*" who allegedly failed in their duties to uphold the rule of law. For this reason, it would be wrong to create an impression that such affidavits also constitute a defence against an allegation that "*those prosecutors and police*" failed in their duties to uphold the rule of law.

6.6 For the avoidance of any doubt, I expressly state that the purpose of this affidavit and the other affidavits filed on behalf of the first respondent in this application are not intended to be an answer and shall not be used as an

answer to the unfounded allegation that "*those prosecutors and police*" have failed in their duties to uphold the rule of law.

Ad paragraph 144

6.7 The contents of paragraph 144 do not require a further response from the first respondent.

Ad paragraph 145

6.8 The contents of paragraph 145 do not justify the relief which the applicant seeks in this application and it is not clear to me as to why the fourth respondent chose to include them in his answering affidavit, the purpose of which is, so I thought, to oppose the relief which the applicant seeks.

Ad paragraph 146

6.9 The affidavit of the investigating officer, Captain FN Mathipa is attached herewith as **SA3 (i)** and the unopposed bail application as **SA 3 (ii)**.

Ad paragraph 147

6.10 The contents of paragraph 147 do not require a further response from the first respondent other than to state that the fourth respondent himself has already told the Court of the reasons why this case was not investigated and prosecuted earlier than now. It accordingly does not serve a purpose to repeat the same contentions differently.

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Ad paragraph 148

6.11 The affidavit of Macadam referred to in my main answering affidavit is the one now attached hereto as SA1.

6.12 I stand by what is stated in my main answering affidavit.

6.13 In conclusion, I state that the contents of the fourth respondent's answering affidavit do not justify any of the criticism levelled against the third respondent and the National Prosecuting Authority and also do not justify the granting of the permanent stay of prosecution relief which is sought by the applicant in this application.

6.14 In the premises, I persist that the application for a permanent stay of the criminal prosecution instituted against the applicant ought to be dismissed with costs including the costs consequent upon the employment of two counsel.

WHEREFORE, I pray that it may please the Court to dismiss the application with costs including the costs consequent upon the employment of two counsel.

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I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 4th day of February 2019, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.

Ally S. Murray Captain

COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

OFFICE:

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FW de Klerk FOUNDATION

THE NPA'S DECISION TO PROSECUTE 'APARTHEID ERA' CRIMES

FW de Klerk Foundation Editorial

On 27 June the NPA welcomed the judgement of the Supreme Court of Appeal to dismiss the stay of prosecution application of 82-year-old Joao Rodrigues. Rodrigues had been charged with the murder of Ahmed Timol, an SACP activist, in October 1971. It added that the judgement aligned with its commitment - and the commitment of the Hawks - to prosecute perpetrators of apartheid era crimes - where there was sufficient evidence.

The NPA announced that it was expanding its capacity to deal with the 53 cases that it had already identified. It was setting up a specialist unit to deal exclusively with apartheid era prosecutions and would be appointing former prosecutors and 34 detectives for this purpose.

All of this ignores entirely the fact that amnesty was, from the outset, a *sine qua non* for the negotiations between the ANC and the National Party government. The NP government originally proposed that the Norgaard principles should be used to determine who should reasonably be granted indemnity or amnesty. The principles had been successfully applied in Namibia and allowed amnesty for all those who had committed offences in the pursuit of political objectives - unless they had made use of egregious or disproportionate violence. However, the NP government was forced to abandon the Norgaard principles as the ANC's price for returning to negotiations after 26 September 1992. The ANC demanded the release of all its cadres who were still in prison and insisted that political motive should be the only requirement.

The NP government adopted the Further Indemnity Act in November 1992 in terms of which the only substantive requirement for indemnity was political motive. 1 477 people were subsequently released from prison - the vast majority of whom were members of the ANC and allied organisations - and many of whom had been convicted for "necklace murders" and other egregious crimes.

One of the greatest failures of the NP's negotiators was their inability to conclude a comprehensive amnesty agreement before the 1994 elections. However, the final paragraphs of the 1993 Constitution stated peremptorily that "amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past' (emphasis added).

Nevertheless, the 1995 Promotion of National Unity and Reconciliation Act circumvented the clear intention of the interim Constitution and set conditions for amnesty that were far more onerous than those that the ANC had insisted on with regard to the release of its own supporters in terms of the Further Indemnity Act of 1992. The Act set a much higher standard for amnesty than political motive by requiring applicants to "make full disclosure of all the relevant facts relating to acts associated with a political objective" and to "comply with additional requirements set out in the Act." It was then up to the TRC's Amnesty Committee to decide whether or not the applicants had made a full disclosure. It was on this basis that the Committee refused amnesty to Janus Walusz and Clive Derby-Lewis for the assassination of Chris Hani - which, although reprehensible, had indisputably been a political act.

Because of an informal agreement between the ANC leadership and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid era crimes. However, in June 2019, in another matter affecting Rodrigues, the Gauteng High Court instructed the National Director of Public Prosecutions, Adv Shamila Batoyhi, to enquire whether improper influence had been brought to bear on the NPA in suspending apartheid era prosecutions.

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The result would appear to be the NPA's recently announced decision to proceed with the prosecutions. However, when it embarks on this course the NPA should give very careful consideration to the constitutional requirement that "everyone is equal before the law and has the right to equal protection and benefit of the law."

It would accordingly be unacceptable to apply one standard to "apartheid era crimes' and another to crimes perpetrated by anti-government organisations. And yet there is not the slightest indication in the NPA's statement that it has any intention whatsoever to prosecute the latter. This is despite the fact is that the vast majority of the approximately 22 000 people who were killed in political violence between 1984 and 1994 died in the conflict between the ANC and the IFP or as a result of the actions of other anti-government organisations.

The struggle has been meticulously documented in Anthea Jeffery's "People's War" - in which she exposes the ANC's campaign to eliminate its revolutionary competitors. Crimes committed by the ANC and other anti-government organisations included the assassinations of more than 400 IFP leaders and the necklace killings of more than 560 people. They also included the killing of 53 IFP protesters outside the ANC's headquarters at Shell House on 28 March 1994. Little or nothing has been done to investigate these killings or to bring those responsible to account. Yet each of these deaths also left grieving families searching for closure.

The NPA should also recall that amnesty was not granted to 27 senior ANC leaders - many who are still alive - who had applied unsuccessfully to the TRC for collective amnesty and who were in overall command of the ANC's revolutionary activities.

If the NPA chooses to prosecute only those from the anti-revolutionary side it will be in clear breach of its constitutional obligation to exercise its functions 'without fear, favour or prejudice.' If it does not act in a scrupulously even-handed manner, it will be difficult to avoid the perception that the trials that would ensue would be political trials.

The question arises why the NPA is so intent on pursuing a course of action that is likely to polarize even further our deeply divide society? Why is it committing so many of its limited resources to raking over crimes that occurred more than 27 years ago - instead of the prosecuting the rampant corruption that is tearing the country apart - or trying to bring to justice the killers of the 21 325 people who were murdered last year (i.e., almost the same number as those who were killed in the political struggle between 1984 - 1994)?

One-sided prosecutions would be irreconcilable with the 1993 Constitution's call for 'understanding but not for vengeance'; reparation but not for retaliation;' and 'ubuntu but not victimisation'.

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NATIONAL 28 JULY 2021

A renewed commitment to TRC cases

By Tyman Smith

Justice delayed: A poster outside the Central Methodist Church in Johannesburg calls on people to share their stories at the Truth and Reconciliation Commission. (Photograph by Gallo Images/ Rodger Bosch)

When the Supreme Court of Appeal dismissed former security police administrative clerk João Rodrigues' attempt to obtain a stay of prosecution for his involvement in the 1971 murder of Ahmed Timol on 21 June, it led to a flurry of activity in the usually stagnant waters of apartheid-era justice.

It also led to various groups representing the interests of families of apartheid victims making heated accusations against former president FW de Klerk.

Rodrigues predictably made submissions to the Constitutional Court in a final bid to never stand trial for his involvement in Timol's death and its subsequent cover-up by the security police.

But the National Prosecuting Authority (NPA) and the Directorate for Priority Crime Investigation (Hawks) released a rare statement on 25 June, the anniversary of the 1985 murders of the Cradock Four, addressing several issues related to Truth and Reconciliation Commission (TRC) cases.

In it, national director of public prosecutions (NDPP) Shamila Batohi and Hawks head Lieutenant General Godfrey Lebeya welcomed the appeal court's decision and pledged to "move ahead to prosecute Rodrigues and other perpetrators of apartheid-era crimes, where there is sufficient evidence, and where prosecutions have not taken place for various reasons".

Batohi has been transferring TRC cases to the directors of public prosecutions "in the regions where the crimes were committed, with support from a national office capacity". This approach has "increased the number of prosecutors available to handle these complex cases" and TRC cases under investigation have jumped from four to 53 in the past year, she said.

To bolster investigative capacity, the NPA "is in the process of setting up a specialist unit to deal exclusively with these matters, and will be appointing former experienced prosecutors in offices which require additional capacity", it said. The Hawks have also "embarked on the process to establish a dedicated team by a recruitment drive to re-enlist a number of competent and highly skilled former police officials with a wealth of knowledge in the detective environment".

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investigation in the past three months. The Hawks envisage concluding these investigations by the end of 2021.

The NPA and the Hawks cautioned that "the apartheid atrocities under consideration date back to the early 1960s. The health condition and circumstances of the witnesses and suspects, and nature of available evidence, further complicate the investigation and prosecution of these cases. The challenge in investigating these cases cannot be underestimated."

"Time is not on our side," said Batohi. "We have a small window to address this. Loved ones need to see justice being done, and justice will not be served until we act decisively against those that the NPA was once powerless to hold to account."

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Wary and sceptical

The allegations of political interference by high-ranking officials in the Thabo Mbeki regime in the prosecution of TRC cases are much reported. But the NPA's statement reveals little about how it plans to deal with those alleged to have helped deny justice to victims' families for almost two decades. "This is a complex and complicated matter and the NDPP has been engaging with the minister of justice to determine the most effective course of action," is all the statement says.

The Foundation for Human Rights (FHR) and the Apartheid Era Victims' Family Group (AVFG) welcomed the statement but are wary of some aspects of Batohi's approach.

The first is her strategy of sending cases for investigation to regional directors of public prosecutions to investigate. The FHR warned on 28 June that the NPA's "decentralisation policy ... has proven disastrous by causing delays in investigations and prosecutions ... because inter aliathe responsibility to make decisions ... has been shifted around to different offices without clarity as to who has the ultimate authority to make decisions". The FHR has suggested that the NPA's new capacity should fall "under a special director appointed by the president, with the sole responsibility to oversee and manage the TRC cases".

The second relates to the former police officers "as the families of apartheid-era victims are rather sceptical of the appointment of 34 supposedly experienced detectives", said the AVFG. "Based on our past experience with the Hawks, we demand a transparent process for the appointment of these investigators. The public is entitled to know the identities and history of candidates, in particular, whether any of them are or were previously involved in apartheid-related structures."

Contentious phrase

The FW de Klerk Foundation published an editorial on 5 July in response to the NPA and Hawks announcement. It rehashes what led to the amnesty process adopted by the TRC and says the ANC used the Further Indemnity Act of 1992 to ensure the release of 1 477 of its cadres, many of whom "had been convicted for 'necklace murders' and other egregious crimes" under the sole condition that their actions had been politically motivated.

The editorial further bemoans that "one of the greatest failures of the NP [National Party] negotiators was their inability to conclude a comprehensive amnesty agreement before the 1994 elections". It also says that the 1995 Promotion of National Unity and Reconciliation Act, which laid the foundations for setting up the TRC, "set conditions that were far more onerous than those the ANC had insisted on with regard to the release of its own supporters [in 1992]".

Members of the ANC give testimony in Cape Town about human rights abuses committed during apartheid. (Photograph by Gallo Images / Oryx Media Archive)

It then proffers that "because of an informal agreement between the ANC and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid era crimes".

Some view this sentence to reveal that De Klerk has knowledge of this "informal agreement", long rumoured but never backed up by evidence, between the new guard and the old.

Good Party secretary general Brett Herron said De Klerk's reference to the agreement "confirms one of South Africa's most disgraceful secrets" and that it "further confirms that the NPA was captured long before the term 'state capture' rose to the prominence it has, and that the ANC had accomplices in the genesis of our current capture pandemic, the party of apartheid led by De Klerk". Herron described the editorial as "a thinly veiled threat to the NPA to stay in its lane or the ANC will face consequences". He added that "what the De Klerk Foundation really wants is for the terms of its informal amnesty deal with the ANC to be upheld by the NPA".

Disingenuous ending

FW de Klerk Foundation chairperson David Steward was at pains to point out that "FW de Klerk is the emeritus chair ... [and] is not involved in the day-to-day management of the foundation, or in the production of its articles and editorials".

Steward also claimed that the reference to an "informal agreement" was not based on any information that De Klerk had offered to the writers. Rather, it was a perhaps poorly worded interpretation of a paragraph from the judgment the high court handed down in the Rodrigues matter in 2019. The paragraph reads: "All investigations into TRC cases and other crimes of the past were stopped as a result of an executive decision taken at a high level that purported to interfere with the NPA's prosecutorial decision-making."

Steward emphasised that the "foundation was simply referring to the reference from the

The editorial ends disingenuously and with little regard for the long struggle for justice and answers by victims' families. It asks why the NPA is "so intent on pursuing a course of action that is likely to polarise even further our deeply divided society" and questions the NPA committing its "limited resources" to "crimes that occurred more than 27 years ago" rather than recent corruption and murders.

There have been repeated calls since the end of the TRC process in 2003 for De Klerk to be called to account for his alleged involvement in apartheid-era crimes. He has come under fire for statements made last year in which he refused to recognise apartheid as a crime against humanity.

But Steward said the foundation is "not at all" concerned that the NPA announcement will have implications for a prosecution of De Klerk. Rather, he said, the reasoning behind the publication of the editorial is to remind the NPA that if it "does indeed decide to prosecute 'apartheid-era crimes', it must investigate and prosecute crimes committed by all sides for which amnesty was not requested or obtained".

Potential precedent

While the storm around the editorial raged, Rodrigues' lawyer, Ben Minnaar, petitioned the Constitutional Court to overrule the appeal court's decision. He claimed it infringes on Rodrigues' constitutional right to a fair trial.

Minnaar wants the court to deal with the factors that caused the 47-year delay between Timol's death and the NPA charging his client in 2018. He said the appeal court only considered the political interference between 2003 and 2017.

Minnaar also wants more detail about that political interference to be made available to his client, and reiterated Rodrigues' deteriorating health.

The families view Rodrigues' Constitutional Court appeal as the last, desperate attempt of a man who has questions to answer. They have also pointed out that his appeal will mean further expense for taxpayers.

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other perpetrators waiting to follow in his footsteps. A ruling by the court could go some way to revealing necessary further details of political interference, while calling those alleged to have facilitated it to account once and for all.

It would also demonstrate a commitment to finally fulfilling the promises made in the Constitution that those who did not apply for or were not granted amnesty by the TRC will ultimately have to face the consequences of their actions, whether they're a lowly former security police administrative clerk or the former occupant of the highest office in the country.

This article was first published by *New Frame*.

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PMG PARLIAMENTARY MONITORING GROUP

Cradock Four matter & Resignation of NPA Investigating Directorate Head: Ministry & NPA briefing

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Justice and Constitutional Development

08 December 2021

Chairperson: Mr G Magwanishe (ANC)

Meeting Summary

Video

In a virtual meeting, the Committee met with the Ministry of Justice and Correctional Services and the National Prosecuting Authority (NPA) to be briefed on the resignation of Adv Hermione Cronje, Head: Investigating Directorate (ID), and the reasons for the NPA missing the deadline for issuing a prosecutorial decision on the Cradock Four matter.

The Minister said the challenges faced by the NPA and the ID were immense, but not insurmountable. The Ministry had supported the ID in its engagements with National Treasury and the Department of Public Service and Administration in terms of office accommodation and personnel. The Directorate for Priority Crime Investigation had appointed 34 investigators to deal exclusively with the Truth and Reconciliation Commission cases.

Members asked for details on the challenges faced by the ID and what was being done to address them. Why had there been delays in acquiring a new building for the ID? Was the ID functioning optimally, as almost three years had passed without any progress having been made? Was there any truth to claims of a secret agreement during the end of apartheid negotiations, and if there was, whether it hampered the prosecution of Truth and Reconciliation Commission cases.

The NPA said that Adv Cronje's reasons for resigning, which derived from a variety of factors which would not be disclosed, were understood, and that her resignation did not leave the NPA and the ID in a crisis, but rather that the ID was well-poised for the future. The ID had over 120 staff and the number would hopefully be increased to 200 by the end of 2022.The annual budget of the ID was approximately R107 m, which was expected to grow to R180m in 2022. The ID had begun onboarding resources from the State Capture Commission to manage the process of submitting the report to the President. The Deputy National Director of Public Prosecutions: Asset Forfeiture Unit would support Adv Cronje and her senior managers during the transition process. The NPA would simultaneously begin the process of searching for a new Head of the ID in close consultation with Minister Lamola. The appointment process would be rigorous, and there would be no leadership gap during the transition phase.

The NPA said its commitment to make a prosecutorial decision in the Cradock Four case by 2 December 2021 had been dependent on investigations being completed. When it became clear that the deadline would not be met, a letter was sent on 1 December to indicate this. Unfortunately the letter did not reach the lawyers.

Members asked about institutional issues which had put the NPA in a precarious position. The salary discrepancies between senior prosecutors and other members were raised, as well as why so many positions had yet to be permanently filled. Members requested timelines to be provided on the resolution of the Cradock Four matter, and for tangible progress to be presented on other Truth and Reconcillation Commission cases. Members asked for reasons for Adv Cronje's resignation and an explanation of the claims of interpersonal tension and other conflicts mentioned by Adv Cronje in her previous Committee briefing. Did the NPA have a long-term plan for the ID? Members asked for an update on the progress in migrating resources and equipment for the digital forensic laboratory from the Zondo Commission.

Meeting report

The Chairperson welcomed everyone to the meeting. He said that Mr Ronald Lamola, Minister of Justice and Correctional Services, had asked to be released after making his presentation in order to attend a Cabinet meeting. He explained that the Committee had requested a briefing on two issues, the first of which was the resignation of Adv Hermione Cronje, Head: Investigating Directorate (ID), National Prosecuting Authority (NPA), and the second of which was the NPA's failure to meet the deadline in relation to the Cradock Four matter. In light of this, he requested the Minister to present before Adv Shamila Batohi, National Director of Public Prosecutions (NDPP), NPA, so that he could be released.

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Minister's briefing

Minister Lamola thanked the Chairperson for inviting the Ministry to the briefing. He said that he would be present in the meeting until 10 am, at which point he would have to leave to present an item at a Cabinet meeting. He said that Mr John Jeffery, Deputy Minister of Justice and Constitutional Development, would remain in the meeting.

The Department of Justice and Constitutional Development (DoJ&CD) had tried its best to give the necessary support for the establishment of the ID as per the President's directive in 2019. The ID was set up to investigate common law offences, including fraud, forgery, theft, and any offence involving dishonesty. The ID was required to attend to statutory offences, such as organised crime, money laundering, and offences related to corruption in the public service. The ID investigated any unlawful activities relating to serious high-profile corruption matters arising from various commissions of inquiry or from those cases referred to by the NDPP.

He had been briefed on the institutional requirements of the NPA and the ID, which had left him believing that the challenges faced would be difficult, but not insurmountable. This task would be to help rebuild the NPA and ensure the institution was able to restore public confidence in the justice system. The NPA had been able to fill the vacant positions at senior management level. The ID had been assisted to acquire additional personnel and a new building. The terms of reference of the commission of inquiry had been amended to help the ID. The Ministry had also provided support to the ID in its engagements with National Treasury and the Department of Public Service and Administration (DPSA).

He said he would leave the matter of Adv Cronje's resignation to Adv Batohi. With regard to the Truth and Reconciliation Commission (TRC) matters, the Directorate for Priority Crime Investigation (DPCI) had appointed 34 investigators to deal exclusively with those cases, and the NPA had obtained approval from the DPSA to designate 23 prosecutors exclusively to TRC cases which had to be prosecuted within a period of three years.

A request had been made to appoint an investigative judge on the matter relating to alleged interference by the executive in terms of investigations into the TRC. Former Justice Kate O'Regan had been approached, but she was unavailable to assist, and hence this search was still ongoing. Hopefully the judge would be appointed before the end of 2021. There was a process of issuing the memorandum regarding the resignation of Adv Cronje to the Ministry, whereafter it would be sent to the President.

The Chairperson asked the Members if they had any questions to ask Minister Lamola before he left the meeting.

Discussion

Adv G Breytenbach (DA) asked Minister Lamola to be more specific regarding what the challenges were in respect of the ID and what he had done to address those challenges. She noted that it had taken the ID nearly three years to finally acquire and move into the new building. She asked if Minister Lamola was suggesting that two or three Cabinet Members could not engage and sort out this issue in less than three years for an institution that was launched to much fanfare and was heralded by Minister Lamola as being the answer to corruption in South Africa. She asked what made the accommodation that the ID had received suitable and why it was so difficult to finally give them accommodation.

She noted that the ID had eroded public confidence. She was sure that a lot of groundwork had been done, but the public did not want to hear that, they wanted to see results and consequences for actions. The ID had not taken a single case to court in its existence. How would that restore public confidence? How was the ID assisted with obtaining personnel? What access did the ID have to digital forensic skills, and how had the DoJ&CD assisted with this? As far as the TRC prosecutions were concerned, the ratio of investigators to prosecutors was unacceptable. The TRC investigations and prosecutions were thus poorly capacitated.

She asked when Minister Lamola was approached to appoint an investigative judge. There were so many retired judges, so she could not imagine why this appointment was taking so long. She asked for more clarity regarding this.

The Chairperson noted that due to time, some of the responses to the questions would have to be answered by the Deputy Minister.

Mr W Horn (DA) said that Minister Lamola had previously, and constantly, referred to the role the Ministry had played in relation to the ID and the NPA as "the giving of support". This was concerning, because looking at his constitutional responsibilities, Minister Lamola had final responsibility for the NPA, which meant that he had to play a more active role. Minister Lamola had to explain why he thought in providing merely reactionary support he was discharging these responsibilities and duties in respect of the NPA. Further, considering that Minister Lamola was the poster model of this government's fight against corruption, he had to explain how he had discharged his duties and functions in terms of the National Prosecuting Authority Act 32 of 1998.

He asked if Minister Lamola had, at some stage since the ID had been established, engaged with the ID and taken the entity to task about the slow pace at which matters had progressed. In light of Adv Cronje's resignation, had Minister Lamola scrutinised the dysfunctionality of the ID? What had he done to ensure that the ID became functional? He had to do more than merely support the entity so as to adequately discharge his duties.

Mr G Hendricks (Al Jamah-Ah) asked if Minster Lamola had been hampered by decisions taken at the Convention for a Democratic South Africa (CODESA) not to prosecute the TRC cases. He said Minister Lamola had to be honest with South Africa. It seemed as though National Treasury was complicit in that they failed to support Minister Lamola by not giving sufficient funds to ensure the functioning of the ID and the NPA.

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He asked if Minister Lamola could provide a list of persons of interest in the TRC cases and whether those persons could be brought to appear in court and provide evidence, as many interested parties were passing away before being able to receive justice. The lack of prosecutions, and the slow pace with which the TRC matters were being dealt with was a betrayal of the TRC. The TRC cases took priority over modern corruption cases.

Ms N Maseko-Jele (ANC) appreciated the work that had been done, even though much more work still had to be done. She asked if Minister Lamola understood the feelings of families affected by the TRC cases, because there had been so many delays. The public had lost confidence in justice as a result of the slow process, with many interested persons dying without receiving justice. She asked what criteria the DoJ&CD was using in selecting the so-called serious cases.

She noted that with the resignation of Adv Cronje, more time would be lost in dealing with the TRC matters. She asked when the Committee could expect tangible progress, especially with regard to the TRC cases.

Mr S Swart (ACDP) said that it was known that the Zondo Commission would give its report at the end of December. It was also expected that the NPA would then be on the receiving end of an immense amount of work. Hence, he asked whether Minister Lamola, in light of prior capacity complaints, ensure that the ID and the NPA were properly capacitated to do the required work. How long would it take for the investigative judge to be appointed and complete his or her work? Was there a timeframe on this?

Mr R Dyantyi (ANC) suggested that the NDPP provide their presentation before the Members receive a response from either Minister Lamola or the Deputy Minister so that there could be an expansive discussion, because the exercise of rapidly throwing questions at Minister Lamola and expecting prompt responses was not appropriate. He said it was better to get into a discussion after receiving both briefings.

Response

Minister Lamola said that it unfortunately seemed as though some of the Members had called him to the meeting for politicking rather than a civilised discussion. This sort of questioning was not helpful. The ID was in the process of being established when he had arrived. As such, support had been given, including ensuring that the ID operated in accordance with the DPSA regulations, in terms of personnel. The digital forensic laboratory [assembled for the Zondo Commission] was in the process of being migrated [to the ID]. Engagements had been conducted. He said the DPCI had been struggling to acquire and provide sufficiently experienced investigators to the ID, hence work had to be done with the limited resources. But, there were constant engagements with the DPCI to get more investigators

He admitted that the ID had not been able to operate optimally, but this was not unusual for entities which had to work on such complex matters. The necessary engagements had been done, and reports were requested when appropriate. Hence, progress reports had been received, and the Department had done the necessary political oversight.

On the issue of the new building, if Ministers had procured the building for the ID then the Committee would have called those Ministers to appear and face scrutiny for procuring that building. The Director-General of the DoJ&CD was instructed to engage with National Treasury, the NPA, and all the relevant stakeholders to ensure that the building was procured. He said that it had taken less than two years for the ID to acquire the building, because within the first year there was not a lot of staff which required a separate building. Further, the Covid-19 pandemic resulted in the need for a building also diminishing, but the building was nonetheless procured through the proper channels. He was sure that Adv Breytenbach and Mr Horn knew that Ministers could not procure buildings for government entities.

On the TRC cases, there was new designated capacity for the cases. There were many reasons why these matters were not prioritised in the past, but there was now a focus on resolving those matters. The NDPP would be able to clarify the matters directly relating to those cases. He said that the question regarding what he had done to give effect to his duties in relation to the NPA was merely an attempt at immature political grandstanding, which he did not expect of Mr Horn. That question was not helpful nor necessary. There was no need to copy the EFF and say that he was a poster boy for the fight against corruption.

On CODESA, he was not aware of any agreements which provided that there would be no prosecutions of TRC matters. The NPA Act was clear with regard to what matters were to be prosecuted, and Adv Batohi could provide more detail on that. He understood the victims of the TRC matters frustrations. He had attended the Cradock Four memorial lecture, and had engaged with some of the victims. He had provided some insight into the progress of proceedings. It was hoped that the process going forward would be helpful to the victims, the community, and South Africa as a whole.

He said that the NPA had the necessary capacity to deal with the relevant matters, and Adv Batohi had been engaged with regard to starting to prepare for what would arise from the Zondo Commission. Hopefully, with the evidence given, the NPA could start to prepare itself for the issuing of the Zondo Commission report. In certain cases the Ministry approved specific cases brought by the NPA relating to investigations of high profile matters in order to speed up the processes.

The Chairperson thanked Minister Lamola for briefing the Committee and for responding to questions. He allowed Minister Lamola to leave the meeting and asked Adv Batohi to present.

National Prosecuting Authority briefing

Adv Cronje's resignation

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SAPA

PRETORIA July 14 - SAPA

FORMER SADF CHIEFS CALL FOR GENERAL AMNESTY

Three former SA Defence Force chiefs on Wednesday called for general amnesty to be granted to soldiers and officials from all camps who were involved in the apartheid struggle.

This was the only way to deal even-handedly with human rights violations committed by former SADF members and liberation fighters, they said in Pretoria through a spokesman, retired General Dirk Marais.

Citing what they labelled the shortcomings of the Truth and Reconciliation Commission, Generals Magnus Malan, Constand Viljoen and Jannie Geldenhuys called for legislation to allow for general amnesty.

They said they had urged the TRC earlier in the month to lend its support to this proposal in the interest of reconciliation.

"The TRC should at least recommend to the government that general amnesty be allowed in order to realise the original aims of the TRC."

A memorandum along similar lines was submitted to Justice Minister Dullah Omar last month.

Marais said it was by now commonly accepted that the TRC would not be able to deal with all human rights abuses committed between 1960 and 1994.

The generals said it would be impossible for either apartheid forces or liberation fighters to reveal each and every act committed by them over the 34-year period. This meant they could not possibly comply with the TRC's prerequisite of full disclosure in order to receive amnesty. Therefore, blanket amnesty would be a more viable option.

The generals also contended that the TRC had painted itself in a corner with regard to human rights violations committed outside South Africa during the apartheid years.

The TRC refused to probe abuses in former African National Congress camps in neighbouring states, saying legal limitations precluded it from guaranteeing indemnity from prosecution abroad for such violations.

"Yet, the TRC is critical of former SADF members using the same argument for not seeking amnesty for human rights transgressions committed in past cross-border raids," the generals said.

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They said this reinforced perceptions that the TRC was biased in favour of the African National Congress.

"The TRC's only escape will be to either investigate the ANC punishment camps or to promote the idea of general amnesty," the generals said.

Marais said deputy TRC chairman Alex Boraine last week reacted to the generals' call by saying the TRC would not make recommendations on policy issues.

"We are still awaiting a response from Mr Omar," Marais said.

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SAPA

CAPE TOWN 4 March 1999 - SAPA

REJECTION OF ANC AMNESTY HIGHLIGHTS FLAWS IN TRC LAW: FF

The Truth and Reconciliation Commission's decision to reject the amnesty applications of 37 senior African National Congress leaders opened up the possibility that they could now be prosecuted for their actions, Freedom Front leader Constand Viljoen said on Thursday.

If this was the case, and prosecutions did flow from the TRC's report, everyone had to be treated equally before the law, he said in a statement.

The FF reitterated its standpoint that the existing TRC law had many flaws and was causing polarisation in South Africa, Viljoen said.

The party repeated its call for the courts to be given the right to grant amnesty once the TRC's amnesty committee has ceased to exist.

People would then have to plead for amnesty in the courts, rather than pleading guilty or not guilty to committing acts under apartheid, Viljoen said.

The ANC leaders' amnesty applications were rejected by the TRC's amnesty committee on the grounds that they had been based on the notion of collective responsibility, and on their statement that they had not committed any offence in terms of the TRC legislation.

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ARTICLE / 1 JANUARY 2002

Generals, ANC members talk about amnesty

By Hannes De Wet

Retired military generals and top African National Congress figures recently reached agreement on a form of extended amnesty, former SA Defence Force chief General Jannie Geldenhuys said on Sunday.

They submitted proposals in this regard to the government a few months ago, he told Sapa in Pretoria.

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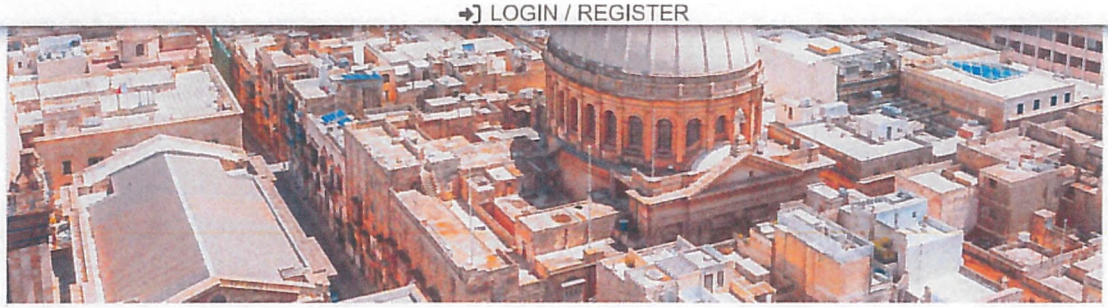

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The recommendations resulted from talks that started about four years ago. A forum comprising senior ANC members and five former SADF chiefs conducted the deliberations.

These revolved around individuals who, for whatever reason, did not have amnesty for acts committed during the armed struggle against apartheid.

Geldenhuys, who took part in the talks, said: "We reached consensus. Our proposals provide for some form of indemnity which would be available to all parties that were involved in the armed struggle."

Geldenhuys declined to name the ANC members who served on the forum.

President Thabo Mbeki mentioned to parliament in March 1999 — while he was still deputy president — that amnesty ideas put forward by military generals needed to be discussed.

The amnesty issue came to the fore again earlier this month after Mbeki pardoned 33 Eastern Cape prisoners, including a number of individuals who have been denied amnesty by the Truth and Reconciliation Commission.

Government representative Joel Netshitenzhe at the time explained that the move to pardon the group was not a policy decision. It was in response to representations made by the prisoners.

He added a discussion by the government was on the cards on a general amnesty for prisoners convicted of crimes that might be politically motivated.

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The Justice Ministry has since said there would be no blanket amnesty.

The amnesty recommended by the forum of generals and ANC members provided for some exclusions, Geldenhuys said on Sunday.

"It would not apply to any individual who has committed deeds for his own financial or other gain or to satisfy his own objectives or needs," he said.

"All members of parties that were involved in the armed struggle should be equal before the law."

Geldenhuys would not elaborate on the nature of the recommendations, which he said were submitted to the Justice Ministry.

"I am not sure what path they have followed after that, and I cannot say what the precise status of the proposals are at present."

Justice Ministry representative Paul Setsetse said he was not aware of the matter. Presidential representative Bheki Khumalo also had no knowledge of recommendations by such a forum.

Several former SADF members, including those who were involved in cross-border operations, have opted not to seek amnesty from the TRC.

On the side of the ANC, the amnesty bid of a number of leading figures was refused by the TRC in 1999, partly because their applications did not relate to any specific act.

The group included Mbeki and his deputy Jacob Zuma.

Opposition parties at the time pointed out that the TRC ruling rendered these ANC leaders vulnerable to criminal prosecution and civil claims. – Sapa

Tags: Eastern Cape, Kwazulu Natal, Pretoria

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SAPA

JOHANNESBURG May 22 1999 - SAPA

MBEKI WANTS CHANGES TO TRC RULES ON AMNESTY

Deputy president Thabo Mbeki has asked for a review of the Truth and Reconciliation Commission legislation to allow people to be granted amnesty without having to apply as individuals, as is presently required, the Sunday Times reported.

Soldiers of the old SADF, those involved in violence in KwaZulu-Natal and members of political parties should qualify for such amnesty, Mbeki said in an interview with the Sunday newspaper.

He said that although the deadline for amnesty applications had passed, he had asked justice minister Dullah Omar to look into allowing "organisations and bodies" to be granted amnesty in cases where no perpetrators had come forward to seek indemnity.

Smuts Ngonyama, Mbeki's ANC communications chief, said a group of former SADF generals had told Mbeki that they would "come clean" and hand over the full details of all abuses sanctioned by the military, but only if they were assured they would qualify for amnesty.

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the appropriate course of action.'[83] Such statements will later be put into context with regard to the governmental perspective concerning its actual approach towards prosecutions.

In 2007, there were announcements made regarding yet another pardon process concerning liberation movement members convicted of political crimes related to the apartheid conflict.[84]

2. *Bargaining Over the TRC's Legacy*

In 2002, rumours on secret consultations between former generals of the SADF and the government were highlighted in the media.[85] The South African government and the ANC did indeed engage in secret talks and consultations with representatives of the SADF and the security police over a long period from the end of the TRC in 1998 until about early 2004. Two separate processes of consultations concerning the two factions of the former security establishment took place.[86] Details of the secret meetings were never disclosed to the public.[87] As will later be outlined, the common denominator of the talks was that a legislative solution should be reached on how to avoid prosecutions in the wake of the TRC. The consultations are indicative of the real motivations and political considerations of the government during the years after the end of the TRC in 1998 and also provide valuable background information for the evaluation of later developments.

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[83] Statement by President Mbeki to the National Houses of Parliament and the Nation, at the Tabling of the Report of the Truth and Reconciliation Commission (April 15, 2003).

[84] *Presidential pardons in the spotlight* SAPA, Nov 15, 2007.

[85] M. Fullard and N. Rousseau 'An imperfect past: the Truth and Reconciliation Commission in transition' in J. Daniel et al. (eds) *State of the nation* (2003) 78 at 93; P. Pigou *Unfinished business* Mail & Guardian, Sep 21, 2002.

[86] Interview with Jan Geldenhuys in Pretoria (May 10, 2006); Interview with Johan van der Merwe in Pretoria (May 5, 2006).

[87] P. Pigou *Unfinished business* Mail & Guardian, Sep 21, 2002.

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2.1 *Consultations with the security police*

During and after the operation of the TRC, the Foundation for Equality before the Law occasionally conducted talks with the government concerning the amnesty proceedings and general questions of accountability.[88] Especially after the main work of the TRC was completed in 1998, consultations concerning post-TRC accountability were conducted, which mostly involved high-ranking members of the government. On behalf of the former apartheid state employees and the Foundation for Equality before the Law, former President F.W. de Klerk assumed a central role in the consultations. De Klerk often consulted with President Mbeki directly or with other high-ranking members of the government. Apart from that the organisation was in contact with various other government officials and submitted proposals.

The Foundation for Equality before the Law's aim in the consultations was to find a solution to avoid the prosecution of former members of the security police who had not received amnesty. Allegedly, legislation for a general amnesty was never requested. A general amnesty would certainly have served the organisation's purposes in avoiding trials. However, it was clear that a general amnesty was not an option since it would have seriously damaged the TRC process and its scheme of conditional amnesties and would thus not have been feasible politically. Accordingly other legislative options had to be explored. After 1998, the Foundation for Equality before the Law initially advocated a procedure, which envisaged that indemnity from prosecution could be granted, if all details regarding the crime in question were disclosed. This would therefore have reproduced the TRC's precondition of amnesty subject to a full disclosure. The proposal was later altered so that the granting of indemnity would be dependent only on the crime in question falling within the legal ambit of section 20(1) of the TRC Act. This would mean that the act was associated with a political objec-

[88] Unless otherwise stated, the information laid out in this subchapter comes from an interview with Johan van der Merwe in Pretoria on 5 May 2006. The consultations were conducted in strict confidentiality. Apart from the broad framework, details concerning negotiations with security police members could thus not be provided.

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tive and was committed in the course of the conflicts of the past.[89] The proposal was quite similar to the indemnity laws of the early 1990s.[90] It was proposed that a full disclosure in terms of the TRC Act should not be required since the amnesty proceedings had shown that there were still many uncertainties as to when a full disclosure was in fact made.[91] According to the proposal, such indemnity proceedings should be conducted before a judge.[92]

Although among members of the Foundation for Equality before the Law the government had raised expectations that a solution according to the proposals was desirable, no agreement was reached. The talks continued until about 2004. The consultations had allegedly highlighted the government's lack of political will to adequately react to the TRC's recommendations on prosecutions, which also explains the huge delay in initiating trials.[93]

2.2 *Consultations with the generals*

More or less concurrently with the consultations with the police representatives, starting in 1998, the government conducted talks with a group of high-ranking former generals of the SADF.[94] Initially, the former chief of the SADF, General Constand Viljoen[95] was approached by one of the leading members of the ANC and government at that time, Jacob Zuma,[96] with the aim of consulting over questions of criminal

[89] E-mail from Johan van der Merwe (May 31, 2006).

[90] See *supra* Chapter 2 note 297.

[91] E-mail from Johan van der Merwe (May 31, 2006).

[92] Ibid.

[93] Interview with Jan Wagener in Pretoria (May 16, 2006).

[94] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[95] After his career in the SADF, Viljoen went into politics as the co-founder and leader of the right-wing Afrikaner party *Vryheitsfront* (the predecessor of the Freedom Front Plus) and was a member of parliament (See P. van Niekerk and B. Ludman (eds) *A-Z of South African politics 1999* (1999) 83–84 and 302–3).

[96] The later deputy President of South Africa was at the time mainly involved in regional politics of his home province KwaZulu-Natal (See P. van Niekerk and B. Ludman (eds) *A-Z of South African politics 1999* (1999) 317–18).

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accountability in the wake of the TRC.[97] Viljoen, however, considered that such matters were better discussed with the group of former SADF generals who had established the support network for former soldiers and the *Kontak Buro*,[98] who were, thus, already working intensely on amnesty issues and prosecutions. He immediately referred Zuma to the network group of generals around Geldenhuys.[99]

2.2.1 *The process of meetings*

General Geldenhuys agreed to meet with Zuma. A series of frequent meetings, negotiations and consultations ensued from 1998. The main process of consultations was conducted over four years until early 2003.[100] A small number of meetings, however, infrequently continued until 2004.[101] The consultations were, like the security police consultations, generally aimed at finding a mutual solution as to how to avoid trials after the TRC through new indemnity mechanisms.[102] The talks were mediated and facilitated by Johannesburg businessman Jurgen Kogl, who is closely connected to leading ANC members, especially to Jacob Zuma. All meetings took place strictly separated from the meetings with the police, which was in the interest of the generals.[103]

Zuma was asked to conduct the talks on behalf of the government or ANC.[104] Apart from him, various other high-ranking members of the ANC, such as the then Minister of Justice Penuell Maduna or Mathew Sposa, Sidney Mufamadi and Charles Nqakula also participated occasionally. On various occasions Thabo Mbeki was also present, as Vice

[97] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[98] See *supra* Chapter 3(1.1.2).

[99] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[100] Interview with Jurgen Kogl in Johannesburg (May 12, 2006).

[101] Ibid.

[102] Interview with Jurgen Kogl in Johannesburg (May 12, 2006); Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[103] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[104] Interview with Jurgen Kogl in Johannesburg (May 12, 2006). Since in practice the distinction between ANC and government concerning the negotiations was often blurred, the two expressions will be used synonymously.

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President and later in his capacity as the President.[105] On the side of the generals, Jan Geldenhuys assumed a leading role. He participated along with two to four other generals belonging to their support group. Both sides were accompanied by legal advisors. The main process of consultations came to an end in or about early 2003. Only as a matter of courtesy did a few meetings continue to take place until 2004.[106]

2.2.2 *Motivation of the government*

The main catalyst for Zuma's approach to the generals was the still very volatile political situation in KwaZulu-Natal, which was due to prolonged political tensions between supporters of the ANC and IFP during the late 1990s.[107] Zuma was at that time successfully conducting mediation and appeasement efforts between the two political factions of the ANC and IFP in order to contain possible fresh occurrences of violence.[108] The question of accountability for political crimes in the wake of the TRC was considered to be a critical issue in this regard.[109] As a great amount of politically motivated human rights violations had occurred in the conflict between IFP and ANC, especially during the negotiation period between 1990 and 1994, and considering that many IFP members accused of such crimes had not applied for amnesty, it was feared that the release of the TRC Report and prosecutions in its wake could stir up conflict again and be a constant source of unrest in the region.[110] On top of that, the second democratic elections were imminent and it was crucial to avoid new conflicts flaring up.[111] The initial intention was, thus, to create an amnesty scheme which would specifically cover the political crimes that happened between ANC and

[105] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[106] Interview with Jürgen Kogl in Johannesburg (May 12, 2006).

[107] Ibid.

[108] P. van Niekerk and B. Ludman (eds) *A-Z of South African politics 1999* (1999) 317. See also *supra* Chapter 1(2.).

[109] Interview with Jan Geldenhuys in Pretoria (May 10, 2006); Interview with Jürgen Kogl in Johannesburg (May 12, 2006).

[110] Interview with Jürgen Kogl in Johannesburg (May 12, 2006).

[111] Telephone interview with Jürgen Kogl (June 14, 2006).

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IFP supporters in KwaZulu-Natal.[112] Yet it was clear that, regarding the constitutional framework and the political implications for the TRC amnesty scheme, a purely local solution would be almost impossible to implement. The generals also categorically refused to support a regionally confined amnesty process.[113]

They were contacted on this specific issue for various reasons. According to Kögl, the government intended to ensure support of other influential groups and important role-players of the apartheid regime, such as the generals, in order to put any possible solution, even if initially mainly focussing on KwaZulu-Natal, on a wider national basis.[114] The generals were already dealing with amnesty issues, had legal expertise, and as such, were relevant candidates to be canvassed for such support.

There was also a range of other specific reasons why the generals were contacted. According to Kögl, one reason for the government's initiative was the SADF's, and therefore the general's alleged involvement in the KwaZulu-Natal conflicts between the IFP and ANC.[115] During the TRC process the former top command of the SADF was accused of having fuelled the conflict between the ANC and IFP during and before the negotiations towards a transition to democracy, in order to weaken the position of the ANC. Allegations were made that weapons and expertise had been supplied to Zulu fighters. There were strong signs that a so-called "third force", established and steered by the security forces, had fuelled the atrocities committed by IFP supporters against ANC supporters, not only in Natal but also to a great extent in the Transvaal areas.[116] There were strong indications of SADF involvement in such activities, such as had been thxe case when weapons were supplied to

[112] Interview with Jan Geldenhuys in Pretoria (May 10, 2006); Interview with Jurgen Kögl in Johannesburg (May 12, 2006).

[113] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[114] Interview with Jürgen Kögl in Johannesburg (May 12, 2006).

[115] Telephone interview with Jürgen Kögl (June 14, 2006).

[116] See *TRC Report*, vol. 6, s. 4, appendix, paras. 1–43; *TRC Report*, vol. 2, chap. 7, paras. 497–551; *TRC Report*, vol. 5, chap. 6, paras. 126–29.

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the Inkatha Caprivi trainees.[117] Geldenhuys and other generals had been charged in 1995 for their alleged involvement in these Caprivi activities and the KwaMakutha massacre.[118] The government, when approaching the generals, was mindful of the fact that the SADF had supplied the Zulu fighters with weapons on a large scale and that the locations of a number of the hidden weapons caches, which had been established in the region during the last apartheid years, remain as yet unknown.[119] Government officials were wary that the generals could still possess knowledge of such still hidden and unknown weapons caches, established during the late 1980s and early 1990s, that they could, thus, still exercise negative influence on the peace process between IFP and ANC and that they could generally, through the possible third force networks, in some way thwart appeasement attempts or contribute to a re-ignition of the conflict.[120] These factors were allegedly a major reason for integrating the generals in any future approach to post-TRC accountability, to contain their potentially negative influence.[121] Such considerations are also clearly indicated in the aforementioned speech by President Mbeki.[122]

It was also considered that the TRC process suffered from a lack of sufficient findings on SADF activities, especially concerning those that took place in South Africa.[123] Very few SADF members had applied for amnesty, despite the fact that the SADF was involved in many gross human rights violations.[124] The SADF leadership practically refused

[117] *TRC Report*, vol. 6, s. 4, appendix, para. 18.

[118] See *supra* Chapter 1(4.).

[119] Telephone interview with Jürgen Kögl (June 14, 2006).

[120] Ibid.; Interview with Jürgen Kögl in Johannesburg (May 12, 2006).

[121] Ibid. Whether the generals really had any potential to thwart the appeasement attempts in KZN remains unclear. Geldenhuys insists that the generals neither would engage in any kind of violent activity nor would they have any special knowledge of weapons caches or have the resources to exercise negative influence on mediation efforts in KwaZulu-Natal.

[122] See text accompanying *supra* Chapter 3 note 81.

[123] Interview with Jürgen Kögl in Johannesburg (May 12, 2006); Telephone interview with Jürgen Kögl (June 14, 2006).

[124] *TRC Report*, vol. 6, s. 3, chap. 1, para. 4.

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completely to cooperate with the TRC. There were no disclosures made on the involvement in violence during the negotiation period.[125] In this regard the TRC also referred to certain networks with access to weapons and resources.[126] As it was unable to establish the extent of such networks, the TRC stated that it would be essential to investigate the involvement of the police and military in third force activities more closely.[127] The government had this in mind when it approached the generals. The aim was also to work out proposals to satisfy the generals' desire to avoid prosecutions of SADF members and to create mechanisms for cooperation and disclosures on still uncovered secret SADF activities, in order to compensate for the lack of TRC findings in this regard.[128]

Another factor was the government's fear that South Africa could be exposed to claims for reparation and damages by countries, which had been attacked by the apartheid state.[129] The territorial integrity of various neighbouring countries had frequently been violated by illegal invasions of the SADF.[130] Angola, for instance, suffered enormous damages due to the war that was waged by South Africa and due to the massive support the apartheid government provided to the rebel movement UNITA.[131] Apparently, during the late 1990s neighbouring governments had discussed the issue of reparation claims against South Africa concerning the activities of the SADF. The government, thus, tried not to fuel such discussions by prosecuting SADF members for

[125] Ibid., s. 4, appendix, para. 7.

[126] Ibid., para. 33.

[127] Ibid., paras. 42–43.

[128] Interview with Jürgen Kögl in Johannesburg (May 12, 2006).

[129] The TRC found that the military strategy of South Africa during the times of Apartheid was guided by the principles of pre-emptive interventionism and counter-revolutionary warfare (*TRC Report*, vol. 2, chap. 2, para. 6). It further for instance found that the SADF committed a great amount of gross human rights violations e.g. in its war against Angola (*TRC Report*, vol. 2, chap. 2, para. 72).

[130] *TRC Report*, vol. 2, chap. 2, para. 48.

[131] Ibid., paras. 70–72.

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the atrocities caused in other countries.[132] In this regard, the aim was to make sure that full-scale criminal trials did not go ahead.

Yet another aspect was that the government tried to avoid a drain of military competence and intelligence from South Africa to other African countries.[133] In the process of establishing an effective army for the new democratic South Africa, it was absolutely vital to ensure the support and expertise of former officers and generals of the apartheid state's SADF. Moreover, a number of other African countries were apparently very keen to engage officials of the SADF as advisors on improving their respective armies.[134] The South African government thus wished to avoid former SADF generals and military experts being driven away from South Africa, should SADF activities be investigated and tried on a large scale.[135]

Furthermore, the intention was to avoid setting precedents concerning criminal liability for military operations.[136] The army of the new democratic South Africa, the SANDF, at that time had increasingly become involved in peace keeping and military operations throughout Africa. The government was concerned that trials concerning military operations of the former apartheid-state's defence force, the SADF, could negatively impact on SANDF operations, in that they might lead to legal uncertainty concerning the legality of certain measures.[137] Precedents in terms of what actions by soldiers engaged in conflict situations can lead to criminal liability were to be avoided.[138] The government wanted to ensure that the effectiveness of the South African army and its capacity to act was not tainted by any kind of legal uncertainty.[139] Thus, military operations were to be generally kept out of criminal trials. However, the notion that the SADF generals would in any way be

[132] Interview with Jurgen Kogl in Johannesburg (May 12, 2006)
[133] Ibid.
[134] Ibid.
[135] Ibid.
[136] Ibid.
[137] Telephone interview with Jurgen Kogl (June 14, 2006)
[138] Ibid.
[139] Ibid.

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willing and capable of instigating any kind of violent uprising against the new South African state is, allegedly, completely unfounded.[140]

The consultations generally have shown that the government is not at all keen to promote post-TRC prosecutions. Rather it has indicated its desire to leave the apartheid past behind as quickly as possible, in order to move forward towards a stable and reconciled nation and to avoid thwarting the project of nation-building by costly and extensive trials, which constantly bring up the atrocities and injustices of the past.[141] According to Geldenhuys, Zuma underlined this quite clearly when during one of the meetings he emphasised that prosecutions were not in the interest of the government as this could destroy some of the good effects the TRC had on nation-building and reconciliation. The issue needed to be dealt with in a political manner, rather than by the NPA.[142]

In summary, the government tried to work out some kind of legal mechanism, by which to generally avoid convictions, specifically concerning crimes committed in the conflict between IFP and ANC and concerning the SADF and simultaneously to create a mechanism by which to uncover more information that was not uncovered by the TRC.

2.2.3 *Interest of the generals*

Regarding the interest of the generals in the negotiations, it has often been claimed that, considering the many atrocities and criminal offences of the SADF which have not yet been dealt with properly, a general amnesty or convenient deal had been requested.[143] Yet a general amnesty was allegedly neither proposed nor discussed, especially not one that

[140] Ibid.; Interview with Jan Geldenhuys in Pretoria (May 15, 2006)

[141] Interview with Jurgen Kögl in Johannesburg (May 12, 2006); E-mail from Jürgen Kögl (June 26, 2006).

[142] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[143] Interview with Yasmin Sooka in Pretoria (May 3, 2006); *Victims to fight amnesty* Mail & Guardian, June 7, 2002; P Pigou *Unfinished business* Mail & Guardian, Sep 21, 2002; C. Carter *No truth for the thousands of apartheid dead* Cape Argus, April 8, 2006.

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would only cover the generals.[144] From the outset it was rather clear that a general amnesty would not square with the TRC scheme on amnesty. A less overt and again, somehow conditional indemnity scheme was also in the generals' interest.[145] However, the generals were obviously interested in securing a convenient agreement in the interest of their former subordinates and in their own interest, which would diminish the chances that former SADF members would be charged for their involvement in SADF operations.[146] As most SADF members had been very suspicious of the TRC process, which was perceived to be biased, the generals sensed they could now take part in working out a, in their eyes, fairer procedure.[147] Furthermore, after the TRC, the general attitude towards the activities of the SADF was perceived to be unreasonably negative and hostile. The TRC's findings in its report were perceived to be an unjustified attack on the SADF's integrity.[148] When entering into consultations with the government the generals were motivated by the opportunity to correct the perceived wrong image of their activities in another forum.[149]

2.2.4 *Results*

The aim of the government was to take the amnesty legislation of the TRC as a reference point and try to establish a new mechanism adapted to the previous amnesty legislation.[150] The mechanism had to apply to the whole of the country and could not be limited to the province of

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[144] Interview with Jurgen Kogl in Johannesburg (May 12, 2006); Interview with Jan Geldenhuys in Pretoria (May 15, 2006).

[145] Telephone interview with Jurgen Kogl (June 14, 2006).

[146] Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[147] Interview with Jan Geldenhuys in Pretoria (May 15, 2006).

[148] Interview with Jan Geldenhuys in Pretoria (May 10, 2006). The top commanders never made an effort to acknowledge the brutal atrocities which had been caused by the SADF. It also never properly participated in TRC hearings which would have given the SADF command an occasion to defend against perceived unjustified allegations.

[149] Interview with Jan Geldenhuys in Pretoria (May 15, 2006); Interview with Jurgen Kogl in Johannesburg (May 12, 2006).

[150] Interview with Jurgen Kogl in Johannesburg (May 12, 2006).

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KwaZulu-Natal. By the end of 2002, the consulting parties had agreed on a detailed proposal for the enactment of a legal mechanism practically amounting to a new amnesty law.[151] It envisaged a legal concept according to which a special plea on amnesty would be introduced as an amendment to the Criminal Procedures Act.[152] The solution on how to deal with criminal accountability in the wake of the TRC should, thus, be embedded in the normal court procedures. After the agreement was reached, the consultations were practically concluded and only continued with the participation of Zuma and Minister of Justice, Maduna, on an infrequent basis as a matter of courtesy and to conduct a rather general exchange of thoughts on the topic until 2004.[153]

The solution provided that perpetrators of politically motivated offences falling within the ambit of the TRC Act should not principally be exempted from criminal liability.[154] In case they are criminally charged, an alleged perpetrator who had not received amnesty by the TRC could then in the criminal trial launch a special plea on amnesty. Once such a plea was launched, a special inquiry by the judge embedded in the normal public criminal trial should ensue. Should the plea for amnesty succeed, the trial needed to result in an acquittal of the accused.[155] The envisaged preconditions for a successful plea on amnesty were that the criminal offence in question needed to satisfy exactly the same test which was outlined as a precondition to the granting of amnesty according to the TRC Act. It, thus, had to be committed within the fixed time frame applicable for the TRC Act and had to be connected with a political objective and committed in the course of the conflicts of the past etc.[156] Furthermore, the alleged perpetrator would then have to make a full disclosure before the court in order to succeed with the plea.[157] Whether the criteria are satisfied should be

[151] Ibid.; Interview with Jan Geldenhuys in Pretoria (May 10, 2006).
[152] Ibid.
[153] Interview with Jurgen Kogl in Johannesburg (May 12, 2006).
[154] Ibid.; Interview with Jan Geldenhuys in Pretoria (May 10, 2006).
[155] Ibid.
[156] Ibid.
[157] Telephone Interview with Jurgen Kogl (June 14, 2006).

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subject to the scrutiny of the judge and other participants as is normal procedure in a criminal trial.[158] If the plea would not succeed, the trial would resume.[159]

The solution that was agreed upon at the consultations of the generals and the government, thus, embodied an exact replication of the TRC amnesty scheme. The only difference was that the competence to decide on the granting of indemnity would rest with an ordinary criminal court and not with a special committee such as the Amnesty Committee of the TRC. The idea to introduce a special plea on amnesty to criminal procedure law was not at all new. Before the TRC process began, the NP launched a similar proposal aimed at extending the amnesty regime by the same means.[160]

By late 2002 the proposal had been worked out in great detail by the Justice Department and was practically ready to be presented to Parliament for enactment.[161] The public was neither informed of the existence of the proposal nor of details thereof. By the end of 2002, it was first put forward for the consideration of President Thabo Mbeki. The implementation of the proposal depended on the decision of President Mbeki.[162] In early 2003 it was eventually rejected by President Mbeki.[163] The President apparently did not expressly communicate to the consultation group of generals and ANC government representatives that he rejected the draft law. However, his announcements in the speech at the tabling of the TRC Report in Parliament in April 2003 effectively and unmistakably signalled to the consulting parties a rejection of their proposal on another round of indemnity legislation.[164] As mentioned above,[165] Mbeki had announced that it would be up to

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[158] Interview with Jürgen Kögl in Johannesburg (May 12, 2006); Interview with Jan Geldenhuys in Pretoria (May 10, 2006).

[159] Ibid.

[160] F. Kutz *Amnestie für politische Straftäter in Südafrika* (2001) 143.

[161] Interview with Jürgen Kögl in Johannesburg (May 12, 2006).

[162] Ibid.

[163] Ibid.

[164] Ibid.

[165] See *supra* Chapter 3(1.3).

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the NPA to pursue post-TRC prosecutions according to its normal procedures and that any approach such as general amnesty will not be considered, which of course means that the specific indemnity procedure proposed would, at least at the beginning, not be implemented. What exactly motivated Mbeki to turn away from the proposal at that stage cannot be established. However, it is implicit from his speech that he apparently did not consider such an obvious legislative introduction of another amnesty mechanism similar to that of the TRC as appropriate, since he expressly stated that any new amnesty approach, whether applied regionally or nationally, would harm the TRC process. However, elements of the consultations did, as will be shown below, reappear in later policy decisions.

3. *A Prosecution Policy for TRC-Related Cases*

It becomes clear from the consultations with the security forces that the government attempted to introduce new legal mechanisms aimed at avoiding trials directly after 1998. As has been outlined in the preceding paragraphs, the solution, which had been reached by late 2002, was in early 2003 not found fit by the President to provide a sufficient new indemnity mechanism. However, the urge to introduce a satisfactory mechanism persisted. It took until late 2004 for the government to start a new process of developing a solution. Eventually in early 2006, a new legal approach to post-TRC prosecutions was introduced. On 24 January 2006 the NPA presented a set of new guidelines to the public, which were supposed to apply specifically to prosecutions of political crimes connected with the conflicts of the apartheid past.[166] The so-called 'prosecution policy and directives relating to the prosecution of offences emanating from the conflicts of the past and which were

[166] See NPA, press statement *Amended prosecution policy and directives relating to prosecution of criminal matters arising from the conflicts of the past* (Jan 24, 2006).

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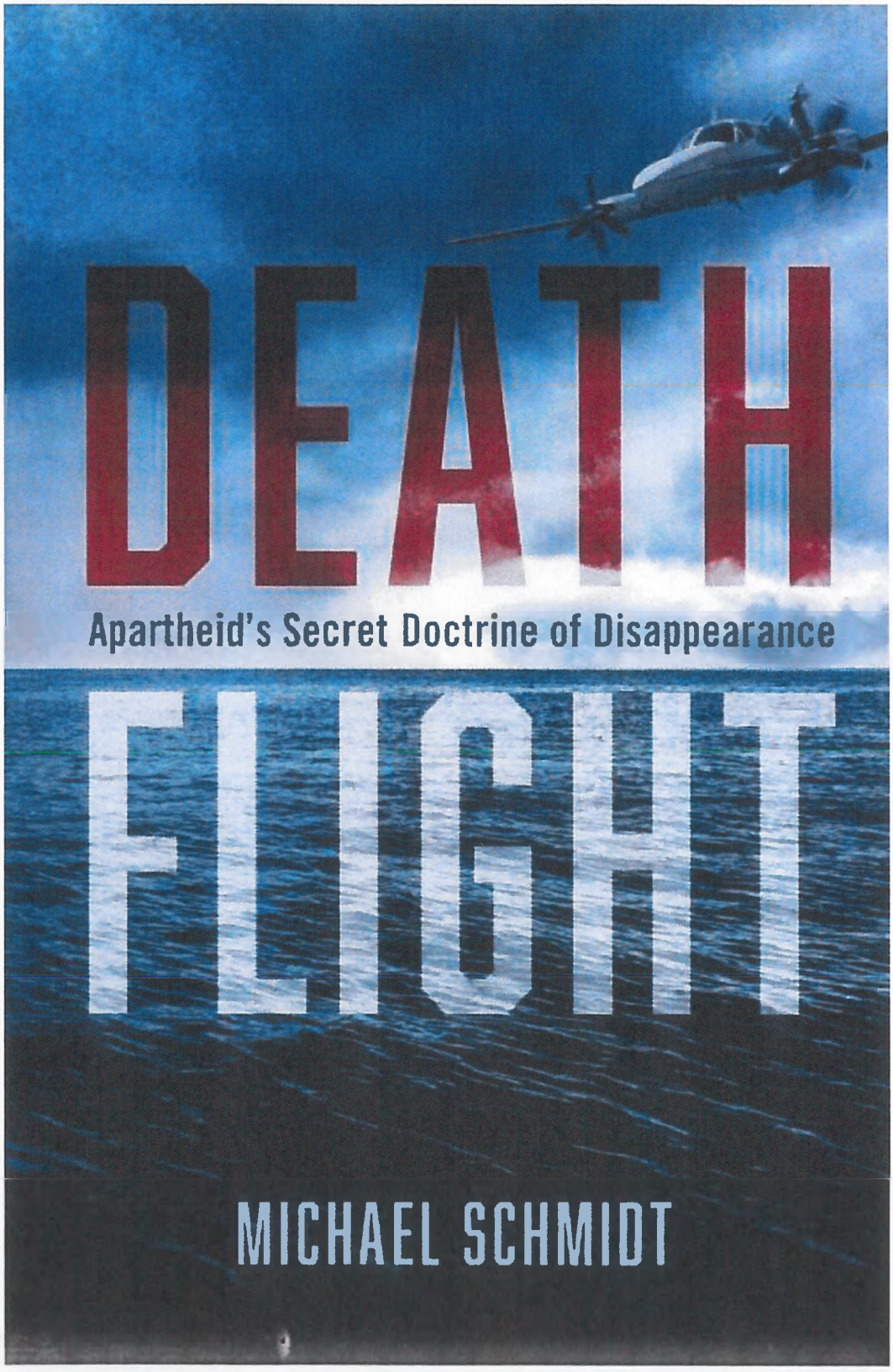

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countries had indeed discussed the possibility of such reparations, so the "government... tried not to fuel such discussions by prosecuting SADF members for the atrocities caused in other countries. In this regard, the aim was to make sure that full-scale criminal trials did not go ahead." Fifthly, the government was wary that a purge of the new SANDF would undermine its military effectiveness – and possibly create "legal uncertainty" over some SANDF actions in peacekeeping operations in Africa. Lastly, Bubenzer states: "The consultations generally have shown that the government is not at all keen to promote post-TRC prosecutions. Rather it has indicated its desire to leave the apartheid past behind as quickly as possible, in order to move forward towards a stable and reconciled nation and to avoid thwarting the project of nation-building by costly and extensive trials, which constantly bring up the atrocities and injustices of the past."

But there was another crucial impetus for the ANC initiating what became a seven-year secret negotiations process: from the outset, President Mandela's objective as expressed via his team leaders, Thabo Mbeki in his capacities both as Deputy President and as President of the ANC's National Executive Committee (NEC), its top administrative structure, and Jurgen Kögl, the ANC's/Government's Convenor, was explicitly a quid pro quo, in Marais' words: "They don't want us to be charged – and they don't want them to be charged"[466] – or, as Marais later claimed were Mbeki's words: "I don't want my President to be charged in court," explaining, however, that Mbeki had not meant this in the specific, as in President Nelson Mandela, but rather in the generic, in that he did not want to see *any* ANC State President facing charges. It is a curious aspect of the negotiations that Marais' opposite, Kögl, hailed from the country in which or for the defence of which, as a colony, South Africa's armed forces had spilled the most blood, and in which Operation Dual had performed the bulk of its grisly disposal work. Jurgen Kögl is a South West African-born businessman in whose apartment Mbeki had stayed when he returned from exile.[467]

A letter written by Marais to then Deputy President Jacob Zuma in early 2004, for the signature of the former Chiefs of the SADF,[468] recalled the initiation of the lengthy series of secret, high-level talks: "A process of communicating between the ANC initially and the government lately with the former chiefs of the SA Defence Force was initiated by the Deputy President of South Africa Mr T. Mbeki when he approached General C.L. Viljoen in [late 1996?]. General Viljoen after consultation with the former Chiefs of the Defence Force within the structure of the SADF Contact Bureau conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC. A convenor, Mr J. Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg [in early 1997?]. That meeting was in the form of discussions followed by a dinner hosted by Mr Kögl. It was attended by Mr Mbeki and various of his ministers as well as the Premier of Mpumalanga Mr M. [Matthews] Phosa," leader of an ANC lobby arguing that its members be protected from prosecution, "and by us the former Chiefs of the SADF. There was enthusiastic agreement that the commenced communication should be continued and that more meetings should follow. We, the former Chiefs of the SADF, being aware of the Deputy President's tight work schedule, suggested that he appoint one of his ministers to represent the ANC in future deliberations. Mr Mbeki expressed, however, the opinion that the process of communication that was mutually agreed to was so important to him that he preferred to remain the prime representative of the ANC in further deliberations."

Bubenzer claims the talks were initiated later, in 1998, at the same time as a separate series of negotiations with representatives of the Police hierarchy began[469] – and he claims that Viljoen was

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[466] Author interview with Dirk Marais (2019).

[467] Jurgen Kogl did not respond to a telephonic message request by this author for an interview.

[468] Draft letter, Dirk Marais to Jacob Zuma, undated, early 2004, copy in the author's possession.

[469] Ole Bubenzer (2009) bases his assertion of separate strictly confidential talks between the ANC/government with the Security Branch in particular on his interview with former SB chief Gen Johan van der Merwe.

initially approached not by Mandela but by Jacob Zuma, then KwaZulu-Natal's Economic Affairs chief, though Zuma could only have been authorised at the very highest level, "with the aim of consulting over questions of criminal accountability in the wake of the TRC. Viljoen, however, considered that such matters were better discussed with the group of former SADF generals who had established the support network for former soldiers and the *Kontak Buro* [the SADF Contact Bureau convened by Marais] who were, thus, already working intensely on amnesty issues and prosecutions. He immediately referred Zuma to the network of generals around [Jannie] Geldenhuys."[470] Bubenzer writes that Geldenhuys and Zuma proceeded to meet, both sides flanked by legal advisors: "The consultations were, like the security police consultations, generally aimed at finding a mutual solution as to how to avoid trials after the TRC through new indemnity mechanisms... All meetings took place strictly separated from the meetings with the police, which was in the interest of the generals."[471] This compartmentalisation by the ANC of talks between the SADF and SAP may have been a divide-and-rule strategy for the ANC – but as the apex predators of the apartheid state, it likewise suited the military to separate its cause from that of their less powerful and more loose-lipped police colleagues.

Marais said[472] that on his side at the talks were former Defence Minister General Magnus Malan, former Chiefs of the Defence Force Generals Constand Viljoen and Jannie Geldenhuys, and former Chief of the Army General Kat Liebenberg – although sometimes they brought in other generals such as former Surgeon-General Niel Knobel, or one of the former Chiefs of the Air Force, as required. Although Marais said that no specific offences were ever discussed, Kat Liebenberg's continuous presence suggests he was monitoring any potential references to Special Forces' black ops such as Op Dual – though it was totally unknown by their ANC opposites at the time – while Knobel's intermittent presence suggests they were monitoring the ANC's limited knowledge of the Project Coast CBW programme. On the ANC/Government side, Marais said Mbeki's team at the talks usually consisted of the "security cluster": that would make it, initially under Mandela's Cabinet, Minister of Defence Joe Modise, Minister of Safety and Security (Police) Sydney Mufamadi, and Minister of Justice Dullah Omar. "Many deliberations followed and mutual agreements were reached," the letter read. Marais said that the discussions towards formulating a "Pact of Forgetting" (this author's term, not Marais') took place once every few months "a few times at Kögl's house, a few times at the Presidency, and once in Mbeki's house, and once in Durban with Zuma" – and were "very social... taking refreshments."

Telling Half-truths at the Truth Commission

Despite the intensity and probity of its investigators' tireless work in describing crimes against humanity committed by *all sides* over the over 1 March 1960 and 26 April 1994 – in other words, over the period from just before the Sharpeville Massacre which had provoked the formation of uMkhonto we Sizwe, until the eve of the first democratic elections – public knowledge of Delta 40 would remain a mere will-'o-the-wisp, an ephemeral flicker in the peripheral vision of TRC investigators. It is not necessary to detail the extent to which the TRC assessed the SADF's sweeping guilt in conducting a dirty war against the civilian populations of South Africa and neighbouring countries, other than to note its controversial finding that "while some acts of regional destabilisation may have been a defence against Communism, the purpose of the war was also to preserve white minority rule in South Africa and was, therefore, a race war," but we will focus here on what the TRC revealed about the military's death-squad functions

[470] Ole Bubenzer (2009).

[471] Ole Bubenzer (2009) claims that the SB and other state employees were championed in negotiations by former President F.W. de Klerk – who "often consulted directly with President Mbeki or with other high-ranking members of the government" – and a lobby group, the Foundation for Equality Before the Law

[472] Author interview with Dirk Marais (2019).

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specifically – or rather, how the military managed to obscure the very existence and operations of such entities, while allowing the police death-squads to bear the brunt of scrutiny.

Along the lines of their secret "Pact of Forgetting" negotiations with the ANC, the warchiefs attempted in fact to more stridently demand a blanket amnesty – similar to that applied in South West Africa in 1989 and 1990 – be applied to cover all apartheid-era crimes committed by whatever force: on 14 July 1998, 19 years almost to the day after the first Operation Dual death-flight, former Defence Minister General Magnus Malan and former SADF Chiefs General Constand Viljoen and General Jannie Geldenhuys made their suggestion public. They had submitted a similar demand the previous month to Minister of Justice Dullah Omar – who had ironically been targeted by the CCB for assassination. Yet the TRC's Deputy Chairperson Dr Alex Boraine responded that it could not make legislative recommendations on a general amnesty. Although they were unable to succeed with the TRC, which completed its work within a few months of their appeal, behind the scenes, the secret "Pact of Forgetting" talks with the ANC Cabinet/NEC leaders continued. According to Marais' letter to Zuma: "When Mr Mbeki could not attend [the talks], he authorised someone, usually a minister, and later on when he became president in 1999, you [Deputy President Jacob Zuma] represented him. In execution of mutual decisions, much effort was put in by the Contact Bureau and some of your ministers to prepare papers and submissions for acceptance by the Deputy President and later on the President."[473] When Mbeki became President, Zuma's "security cluster" team at the talks would most likely have included Minister of Defence Mosiuoa Lekota, Minister of Justice and Constitutional Development Penuell Maduna (replaced by Brigitte Mabandla in Mbeki's second Cabinet), Minister of Intelligence Joe Nhlanhla (replaced by Ronnie Kasrils), and Minister of Safety and Security Steve Tshwete (replaced by Charles Nqakula) – but Ole Bubenzer names only Penuell Maduna, Matthews Phosa, Charles Nqakula, and Sydney Mufamadi, adding: "On various occasions Thabo Mbeki was also present, as Vice [sic.] President and later in his capacity as the President."[474]

Meanwhile, the TRC investigators prepared to consolidate their immense work. At the heart of the TRC's seven volumes, handed to President Nelson Mandela on 29 October 1998 as the *TRC Interim Report* and updated with the *TRC Final Report* of over 4,500 pages handed to President Thabo Mbeki on 21 March 2003, is the list of 21,748 victims identified by the Commission in its hearings – and yet, in the entire list there are only two SWAPO victims named: SWAPO lawyer Anton Lubowski, assassinated by the CCB in 1989; and 22-year-old Tshikani Nkuna, who was "assaulted by members of the SAP at John Vorster Square, Johannesburg, in 1983. Mr Nkuna was interrogated and forced to admit to being a SWAPO member."[475] It is obviously untrue that in its bloody 23-year war against SWAPO, the apartheid authorities only accounted for two SWAPO victims. In echo of this blind spot in the record, Marjorie Jobson, co-ordinator of the Khulumani Support Group, a lobby group acting for victims of apartheid, confirmed that while "we have 169 cases on our disappearances database," none of them were SWAPO members.[476] The *Final Report* stressed that while the police had proven a valuable source of information, the Commission "received notably fewer amnesty applications from members of the former South African Defence Force (SADF), notwithstanding the fact that the SADF was involved in a series of regional conflicts over a period of more than fifteen years. Many of these conflicts transgressed the 'laws of war' as laid down in international protocols."[477] And in fact, the TRC's *Final Report* admits to what can only be described as a fatal limitation of its scope: "While few statements were received from deponents and victims outside South Africa, it has been argued that the *majority* of victims of gross

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[473] Draft letter, Dirk Marais to Jacob Zuma (2004).
[474] Ole Bubenzer (2009).
[475] TRC Victims' List, *TRC Final Report* (2003).
[476] Author sms communication with Marjorie Jobson, 17 January 2020.
[477] *TRC Final Report*, Volume 2, Chapter 1 (2003).

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violations of human rights were in fact residing outside the country's borders at the time the violations were committed." Nevertheless, in its chapter on *The State Outside South Africa between 1960 and 1990*, the TRC noted that evidence had been gathered of "violations committed by South African security forces or their agents and/or surrogates in nine regional states – Botswana, Lesotho, Swaziland, Angola, Mozambique, Zimbabwe, Zambia, Tanzania, and the Seychelles – and in Western Europe – in the United Kingdom, France, Belgium, the Netherlands and Scandinavia."[478]

Although no South West Africans were *judicially* executed during the occupation, out of fear of an international backlash, the TRC found that detentions for indefinite periods under emergency proclamations were widespread – as was the torture of detainees: "In 1983, the SADF revealed that it had detained a total of 2,883 people during the 1977–83 period, while the security police disclosed that they had detained 2,624 people during the same period. Mass detentions in the 'operational areas' were common. Many detainees were held secretly and without access to lawyers or relatives for long periods, sometimes years. Such conditions provided opportunities for prolonged abuse and torture." This period covers the formative phase of Delta 40/Barnacle – and gives an indication of the size of the detainee population that so worried Colonel Johan Theron that he came up with his own "final solution." As the report stated: "There is considerable evidence that the process of 'turning' was accompanied by torture and that the price of non-compliance was summary execution. Once 'turned,' these *askaris* and other *Koevoet* members are said to have carried out atrocities while disguised as SWAPO fighters in order to discredit the liberation movement, as the Selous Scouts had done during the Rhodesian war..."

Finally, D40/Barnacle did make a named, albeit brief, appearance in the Truth Commission's *Final Report*, but its true nature, composition, and mandate was confused by the investigators and commissioners who wrapped it up in their *Final Report* within a general description of the Recce Regiments: "The four Recce regiments were numbered 1, 2, 4 and 5. For a brief period there was also a Recce 3 but that name seems to have given way to Delta 40 or D40. This unit was formed in response to the independence of Zimbabwe and the large numbers of experienced Rhodesian counter-insurgency personnel who were recruited into the South African security network through *Operation Winter*." As will be readily appreciated, here the ex-Selous Scouts unit 3 Recce, a formal if covert military Special Forces commando, was conflated with Delta 40, a secret "civilian" pseudo-ops unit, even if they both reported to Speskop. The Truth Commission's confusion, and slender knowledge of the staffing, functions and operations of Delta 40 and its immediate successor, Barnacle, is excusable as its investigators and commissioners appear to have been deliberately misled or at the very least grossly underinformed by the generals, in a TRC special hearing in Cape Town on 8 October 1997 at which former SADF chief General Constand Viljoen testified, as did the former GOC Special Forces, Major-General Joep Joubert, but at which D40 initiator Major-General Fritz Loots was strangely absent. General Viljoen stated: "There was an increasing requirement for clandestine and covert operations of a new kind in 1986. A small group known as D40 was originally organised for this purpose. D40 developed into Barnacle which later was transformed in the CCB. The CCB was a covert military organisation managed by a managing director under supervision of a senior officer Special Forces."[479] So Viljoen compressed the entire unit history of D40/Barnacle over 1979 to 1986 into two sentences – and naturally completely omitted to mention the Operation Dual death-flights as these were totally unknown to TRC investigators. Also, the way he stated it makes it seem as if D40 was founded in 1986, though by that time, the unit's transformation into the CCB, it had already been an operational unit for almost seven years.

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[478] *TRC Final Report*, Volume 2, Chapter 2 (2003).

[479] Constand Viljoen, TRC testimony, Cape Town, 8 October 1997.

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In his amnesty application,[480] former GOC Special Forces Major-General Joep Joubert was a little more frank, yet still concealed more than he displayed: the functions of the CCB were "a) that ANC leaders and people who substantially contributed to the struggle would be eliminated; b) that ANC facilities and support services would be destroyed; c) activists, sympathisers, fighters and people who supported them would also be eliminated..."[481] In his testimony in illumination of his application, he explained: "before I took over command, the Special Forces started executing clandestine operations outside the borders against ANC bases but its operations were for a long time restricted to intelligence gathering operations overseas. Special Forces consisted of reconnaissance units and a small group known as D40 which eventually became Barnacle and then the CCB. Under my command their task was generally expanded... to support the SA Police in its internal covert operations. The members of Barnacle were all in civilian garb..." Again, no D40/Barnacle personnel or specific operations, missions, or actions were identified, and there was not a whisper of Operation Dual's many dolorous death-flights – which had continued for at least a year under his command as GOC SF between 1 November 1985 and the last presumed death-flight on 12 December 1987. In fact, Joubert's testimony grossly undercounts the death-toll of the CCB: asked by TRC Commissioner Ilan Lax to estimate how many persons he was aware of that Special Forces (as a whole, including the CCB) had killed in operations in support of the SAP – that is, in its *internal* application to the South African domestic situation – Joubert replied that "it must be around 12 persons."[482]

Op Dual Exposed: the Wouter Basson Trial

But Operation Dual finally became public knowledge with the indictment against former Project Coast Director Brigadier Wouter Basson on 23 March 1999. The full-bearded Basson, who had glided apparently untouchably through his TRC testimony only the previous year, cheekily sporting a colourful African-style embroidered, open-necked shirt, now appeared to have been run to ground, facing a litany of 24 fraud and theft charges relating to a web of intrigue and secret slush-fund money that spanned the globe, six drugs charges, 11 murder, 16 conspiracy-to-murder, and two attempted murder charges, plus a handful of lesser counts.

What was most startling to observers was that, at the heart of the murder-related charges, accounting for about 229 deaths, was Charge 31, conspiracy to murder, which claimed that during "the period from 1979 to Dec 1987 and at or near Special Forces... Headquarters, in the district of Pretoria in the jurisdiction of the Transvaal Provincial Division, the accused intentionally conspired with" former GOC Special Forces Major-General Fritz Loots, Speskop SSO Counter-intelligence Colonel Johan Theron, Theron's SO2 Counter-intelligence Major Eric Kennelly, Speskop SO3 Counter-intelligence Captain Danie Phaal, former 5 Recce detention barracks chief Sergeant-Major Chris Pretorius, former Military Intelligence interrogator at Fort Rev Major Henk Coetzee, Speskop SSO Air Ops Colonel Matie van der Linde and his successor Colonel Hap Potgieter, D40/Barnacle adjutant Sergeant-Major Trevor Floyd, Basson's former staff officer at Speskop Dr Kobus Bothma, D40 founding OC Major Neil Kriel, D40 Urban Intel chief Major Gray Branfield, "and other persons unknown to the State to murder a) members of South West African People's Organisation... who were in custody and posed a security risk; and b) own powers that had created a security risk, either committing and/or assisting in the commission of the crime and/or effecting it."

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[480] A key – and very controversial – formulation of the TRC was the offer of amnesty to perpetrators in exchange for a full and truthful confession; these confessions were heard by a separate TRC arm, the Amnesty Committee.
[481] Joep Joubert TRC amnesty application AM3799/96.
[482] Joep Joubert TRC testimony, Cape Town, 8 October 1997.

But on 12 October 1999, just over a week into the trial, presiding Judge Willem Hartzenberg upheld South West African Administrator-General Louis Pienaar's blanket amnesty for crimes committed by security forces in the territory, and further ruled that other crimes alleged to have been committed by Basson and his associates outside of the border of South Africa were beyond his jurisdictional reach. This effectively saw the hundreds of murders related to Operation Dual dropped. Given prosecutor Advocate J.P. "Torie" Pretorius' very explicit location of the origination of these war crimes and criminal conspiracies at Speskop south of Pretoria, Hartzenberg was playing fast and loose with the legal truth. Fortunately, for the purposes of this study, the men responsible for the Operation Dual death-flights and those drawn into its web were still required to testify over 2 May to 24 November 2000 regarding Basson's alleged provision of drugs and poisons to them – or knowledge of the death-flights, like their unnumbered victims, would have languished in benighted obscurity. It will be readily appreciated that their self-incriminating testimony – and the key confirmatory interviews with this author – forms the backbone of this study.

When it all went down to the wire, however, Hartzenberg discounted the results of prosecution investigator Henry Bruwer's seven-year forensic audit of Basson's WPW/Wisdom Group of companies, finding that Bruwer "failed" to prove that Basson was the beneficial owner of the Group; instead, the judge accepted Basson's bald statements that he had merely been following orders in moving tranches of up to tens of millions of rands around the globe. Frustrated prosecutor Anton Ackermann had attempted in February 2000 to have what he perceived as an obviously biased Hartzenberg recuse himself but failed, and in June 2001, Hartzenberg dismissed another 15 out of the remaining 61 charges to which Basson plead not guilty; by the time Basson himself took to the stand in June 2002 for nine weeks of showboating testimony, he was bursting with confidence and charm, and had the court eating out of his hands.

On 11 April 2002, Hartzenberg read out his judgement, and, as recorded by observers Marlene Burger and Chandré Gould: "The court accepted without reservation that the 'gruesome' murders described had been committed [under Operation Dual], but found that Basson was not involved in them, and that the meeting with General Fritz Loots at which he allegedly agreed to supply Theron with drugs, never took place. Theron was 'a decidedly strange man,' said the judge, who had taken a scientific approach to Operation Dual, he said that the idea of placing poisoned beer at taxi ranks in the Eastern Cape at random [evidence of which had been lead] was a plan so bizarre that it could 'only have been thought up by the same man who devised Operation Dual and single-handedly executed that plan.' According to the judgement, Basson was an 'excellent' witness while Trevor Floyd and Danie Phaal were poor witnesses."[483]

Despite Hartzenberg's careful severance of Basson's ties to Operation Dual, the importance of his official acceptance of the fundamental truth of the Operation Dual crimes against humanity and war crimes is that they can without a shred of doubt be said to have indeed occurred as Neil Kriel, Johan Theron, Trevor Floyd, Matie van der Linde and their cohorts testified. The two observers opined: "There could be no doubt that a conspiracy existed within the SA Defence Force's Special Forces unit to eliminate selected targets, or that poison was one of the assassination weapons available to ensure that the murders could not be traced back to the SADF... considerable care is taken to carry out covert operations in such manner that they can be plausibly denied, and so it was within the Civil Cooperation Bureau and its forerunner, [D40/]Barnacle... all operations were carried out on a strictly enforced need-to-know basis. Because of these safeguards, none of the witnesses called by the State had been able to provide the court with a full or complete picture, but the cumulative effect of all the evidence provided all the proof needed. There could be no doubt that the lethal injections administered to victims killed by

[483] Marlene Burger and Chandré Gould, *Daily Reports About the Trial of Dr Wouter Basson: 4 October 1999 – 11 April 2002*, Institute for Security Studies, Pretoria, South Africa, 2002.

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the mastermind of Operation Dual, Johan Theron, had been supplied by Basson, or that Theron was telling the truth when he said Basson taught him how to use the substances."

Yet in the biggest reversal since the failure of the Trial of the Generals, Brigadier Wouter Basson was acquitted on all remaining 46 charges – the news sending shockwaves through the country with much angst wrung out in newspaper opinion pieces. The evidence of 153 state witnesses, buttressed by up to 50 supporting affidavits that had been teased out over some 300 trial days, producing 33,000 pages of court transcript had astoundingly been found wanting by Hartzenberg.

Marlene Burger and Chandré Gould reported: "As the judge pronounced Basson not guilty on all charges, there was applause from a group of about 30 supporters, including five former SADF generals – retired Defence Minister Magnus Malan, erstwhile SADF chief Constand Viljoen, former surgeon-general Niël Knobel, who was the Project Coast manager and Basson's immediate superior, Joep Joubert, former commander of the SADF's Special Forces to whom the head of the CCB reported, and Dirk Marais, co-ordinator of the SADF's largely successful campaign to dissuade soldiers involved in the Angolan and Namibian conflict during the 1980s from applying for amnesty from the Truth and Reconciliation Commission."[484] The adulatory response of these men is a powerful indicator that Basson's role was to stand in the breach in lieu of the higher chain-of-command generalship responsible for the war crimes of Operation Dual and other SADF criminality; with the apparent connivance of Hartzenberg, he would not, however, be sacrificed as a judas goat as the SAP had done with Gene de Kock; the leading apartheid military echelons could at last sleep soundly at night. On 3 May, as Burger and Gould recounted, "Hartzenberg granted indemnity from prosecution to 24 of the 30 state witnesses who testified":[485] they included Colonel Matie van der Linde and Major Eric Kennelly, but indemnity was *not* granted to Colonel Johan Theron, Major Neil Kriel, Captain Danie Phaal, Sergeant-Major Trevor Floyd, and Dr Kobus Bothma. Thus the founding OC of Delta 40, his intimate death-flight sidekicks, and at least one of their providers of drugs and poisons were left entirely vunerable to war crimes prosecutions – an exposure underlined by Hartzenberg's ruling that Op Dual had indeed been real.

The month before Basson's acquittal, the TRC Amnesty Committee had appeared to offer hope of a better outcome when it finalised its own report – separate to that of the Truth and Reconciliation Commission's report – in which it had recommended about 300 prosecutions of apartheid-era perpetrators of gross human rights violations. Then on 21 March 2003, a year after Basson waltzed free, the *TRC Final Report* was publicly released, recommending a "bold prosecution policy" in those cases where amnesty has not been applied for so as "to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law." As we have seen, remarkably only two SWAPO dead made it onto the list of victims identified by the Commission, but the *Final Report*'s recommendations on a stern prosecutions approach grounded in international law appeared to strengthen the hand of the National Prosecuting Authority (NPA).

Yet on 3 June, the Supreme Court of Appeal (SCA) in Bloemfontein to whom the NPA had applied to overturn Judge Hartzenberg's 12 October 1999 quashing of the six extraterritorial charges against

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[484] Marlene Burger and Chandré Gould, *Daily Reports About the Trial of Dr Wouter Basson: 4 October 1999 – 11 April 2002*, Institute for Security Studies, Pretoria, South Africa, 2002. On one occasion, Marais reported that "a working session of former SADF chiefs" had adjourned to allow Brig Steve Prinsloo, chairman of the SA Infantry Association, to convey its high esteem for generals Magnus Malan, Constand Viljoen, Jannie Geldenhuys and Kat Liebenberg, and express dismay at the bias of the TRC. Association chaplain Maj-Gen Chris Naudé prayed at the meeting "that the Almighty would give them strength to persevere until success is obtained and the real truth about the righteousness of the cause of the SA Defence Force is known." (SA Press Association report, 24 October 1997).

[485] Marlene Burger and Chandré Gould (2002).

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Basson – including the conspiracy to murder the hundreds of victims of Operation Dual[486] – ruled in favour of Basson, thus upholding the dismissal of the Op Dual conspiracy. So the State advocates of the NPA appealed to the court of last resort, the democratic state's new highest judicial body, the Constitutional Court in Johannesburg.

(Re)disappearing the Disappeared: our "Pact of Forgetting"

But meanwhile, progress had been made by the old warchiefs and Cabinet's security cluster in the seven-year negotiations on agreeing on a legal framework for a post-TRC amnesty process. Major-General Dirk Marais, the Convenor of the SADF Contact Bureau, recalled: "Eventually there was an agreement that they would prepare legislation to grant a sort of amnesty-in-general... and they had a writer, a law writer in Cape Town and when it was time they invited us to Cape Town at state expense..."[487] The date was 17 February 2003, and a delegation of generals lead by former Chief of the SADF General Jannie Geldenhuys met with Minister of Justice and Constitutional Development Penuell Maduna and Minister of Safety and Security Charles Nqakula. "They were very nice," Marais recalled. "We gathered at seven in the morning because it was Zuma's speech at the Parliament that day... they called their writer [a state official in the Department of Justice] and he read to us the proposed legislation... and when he finished we said 'But that's got nothing to do with us'... because they [said] they will grant amnesty to everyone who will make a full statement of his [crimes committed]... so General Geldenhuys said 'No, we don't need that. All our people who wanted to make statements and ask for forgiveness already went to the TRC. Our other people... don't have to do that, so this means nothing to us'[488]... The whole thing collapsed there... This whole conversation collapsed..." The differences between the sides were now irreconcileable: the warchiefs wanted a new law granting a blanket amnesty with no disclosure required – but the ministers wanted a new law granting amnesty on a case-by-case basis only after full disclosure.[489] Geldenhuys' delegation then met with Zuma in his office as he had expressed a desire to meet with them, but they merely shared, in Marais' words, "a few niceties and then he greeted us and then we asked [Jürgen] Kögl to book us [a flight] directly back... That was the last getting together."[490] The attempt at estabilishing a mutually-agreed "Pact of Forgetting" had collapsed – though Bubenzer claims "only as a matter of courtesy did a few meetings take place until 2004"[491] – but would be secretly, dramatically revived by the ANC government unilaterally, on its own, very different, terms.

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[486] The State had also applied to the SCA for a ruling against Judge on Hartzenberg's refusal on 15 November 1999 to allow the record of Basson's bail hearing into the record before the accused had even been asked to plead, and against Hartzenberg having refused on 16 February 2000 to recuse himself on the grounds of bias; the SCA ruled against the State in these instances too.

[487] Author interview with Dirk Marais (2019).

[488] Marais implausibly claimed that "Those who did something wrong went to the TRC – and the others did their job.": author interview with Dirk Marais (2019).

[489] Marais claimed that it was the ANC and not the SADF that stood to gain the most from a general amnesty – and the most to fear from any legal requirement that amnesty was dependent upon full disclosure, because they were in power and the stability of their rule would be threatened by prosecutions: author interview with Dirk Marais (2019).

[490] Ole Bubenzer (2009) claims a 1998-2004 timeline for the talks instead of the 1997-2003 timeline that can be deduced from from Marais' letters: "A series of frequent meetings, negotiations and consultations ensued from 1998. The main process of consultations was conducted over four years until early 2003. A small number of meetings, however, infrequently continued until 2004."

[491] Ole Bubenzer (2009).

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Advocate Howard Varney, who had consulted to the TRC,[492] wrote regarding the TRC's amnesty process: "In March 2003 the National Prosecuting Authority established the Priority Crimes Litigation Unit (PCLU) [under Advocate Anton Ackermann] to pursue, amongst other cases, matters emanating from the TRC process. Following an audit of the 300 cases [recommended for prosecution by the TRC Amnesty Committee], the PCLU indicated that just over half of these cases could not be prosecuted but that twenty-one cases, with some further investigation, were ripe for immediate prosecution. However, the unit was rendered impotent by the failure of the State to assign it investigators or to compel the police to provide investigation officers. Less than a handful of prosecutions were taken forward between 2002 and 2004. The only significant prosecution, that of three security police officers who were denied amnesty for the murder of three activists, has stalled." The three – heavyset, moustachioed former Security Branch Colonel (later Major-General) Christoffel Lodewikus "Chris" Smith, Captain Gert J.L.H. Otto and Captain Hermanus Johannes "Manie" van Staden – had not applied for amnesty at the TRC, but almost the entirety of their involvement in the CCB plot to kill the ANC's Reverend Frank Chikane had emerged during the Wouter Basson trial as Basson had allegedly supplied the Paraoxon nerve toxin used to impregnate Chikane's underwear. It turns out that this stalling of prosecutions and the under-resourcing of the PCLU was the result of a deliberate – yet not uncontested – and ultimately *illegal* process that most probably has its origins in the 1996-2003 secret talks towards formulating a legal "Pact of Forgetting" initiated by Nelson Mandela and pursued by Thabo Mbeki and then Jacob Zuma in consultation with the four apartheid warchiefs who had previously demanded a blanket amnesty: Magnus Malan, Constand Viljoen, Jannie Geldenhuys, and Kat Liebenberg. Although the ANC's attempt to get the generals to agree to a general amnesty law that would require a case-by-case granting of amnesty in exchange for full disclosure had fallen apart in February 2003, it appears that the ANC's continued interest in pursuing some kind of post-TRC additional amnesty process *must* have been driven by their fear of the consequences for certain leading ANC figures of the PCLU's recommendations that 21 cases against perpetrators across the political spectrum be initiated in the courts.

On 23 February 2004, Cheryl Gillwald, the Director-General of the Department of Justice & Constitutional Development (DOJ&CD), under Justice Minister Penuell Maduna in the Mbeki Cabinet, convened a forum of her peers which appointed an "Amnesty Task Team" chaired by the department's Deon Rudman and consisting of Yvonne Mabule and Vincent Mogotloane of the National Intelligence Agency (NIA),[493] Advocates Gerrie Nel and Lungisa Dyosi of the NPA, Joy Rathebe of the Department of Defence, and Commissioner Ray Lalla of the South African Police Service (SAPS).[494] The Task Team's mandate – as detailed in a report marked "SECRET"[495] – was given as "1. Consideration of the nature of the 'arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation' that the NPA and intelligence agencies may come up with in assisting persons who divulge information relating to offences committed during the conflicts of the past. 2. Consideration of a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past. 3. Bearing the above-mentioned in mind, whether legislative enactments are required."

The secret report notes that the Amnesty Task Team met for the first time on 26 February, then again on 1 March 2004. By its own rather restrained account, these meetings were very stormy as the Task

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[492] He went on to become chief investigator for the Sierra Leone Truth and Reconciliation Commission, and an advisor to the Commission for Reception, Truth and Reconciliation in East Timor, and now works as a senior project advisor for the New York City-based International Centre for Transitional Justice.

[493] The NIA was the democratic-era successor to the NIS as South Africa's internal intelligence service, the NIS' external functions being taken over by the new South African Secret Service (SASS).

[494] The SAPS was the direct descendant of the apartheid-era SAP.

[495] The "SECRET"-classified *Report: Amnesty Task Team* was disclosed during the proceedings in the matter of Nkadimeng & Others v The National Director of Public Prosecutions & Others (TPD Case Number 32709/07).

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Team's considerations proved to be a lightning-rod for contestations that lay at the heart of the TRC's reconciliation process. Its secret report highlighted a series of concerns, including that the story behind "persons who have disappeared" might not be revealed; here, Operation Dual's victims have a ghostly presence – and in fact, the report later explicitly mentions that although the Criminal Procedure Act allows both for the granting of indemnity from prosecution to perpetrators who testify honestly for the state in court, and for crimes older than 20 years not to be prosecuted, the Task Team specifically *excluded* war crimes[496] from the latter provision. The report nevertheless concludes that "The Task Team is of the view that the only way to address [its] concerns adequately would be to provide for a further amnesty process similar to that of the TRC process. This possibility elicited much debate within the Task Team." This fiery argument was between those who rejected a supplementary amnesty process out of hand, feeling this amounted to gross disrespect for the victims on all sides, and between those who believed a further process could resolve the problem that so few perpetrators had applied for amnesty via the TRC[497] – as well as reveal what had happened to the disappeared; the caveat raised by some of those in favour, however, was that (in echo of the generals' position) such a supplementary process *had* to be legislated by Parliament as a statutory follow-on process to the TRC Amnesty Committee's concluded work Unfortunately, the minutes do not reveal who among the participants adopted what stance in this debate. At around this time, Major General Dirk Marais wrote a letter to Jacob Zuma to be signed by the former Chiefs of the SADF, claiming that at the Cape Town meeting of the previous year, "Agreement on outstanding matters [had been] again confirmed," yet complaining that more than a year after that meeting, "no sign of implementation has become apparent, neither was there any effort on your behalf to inform us of any progress which could lead to eventual implementation. In view of the above, you are requested to inform us of the desirability from your point of view to keep the door open for further co-operation."[498] But the old warchiefs were now apparently considered irrelevant to the process and Zuma did not respond, slamming that door. Almost a year later there was an attempt to formally conclude the secret negotiations: in response to a 31 January 2004 letter from Kögl suggesting that the defunct talks be properly wound up, Dirk Marais drafted a letter on behalf of "all the members of the Panel of the SADF Contact Bureau,"[499] thanking Kögl for "the diligent efforts displayed by you through the years," and stating further that his "role as a devoted convenor and facilitator during the seven year process of communication between the ANC initially, and the government lately, is admired. It is however considered inappropriate that the process, initiated by Mr T. Mbeki in his former capacity as Deputy President, should stagnate or be concluded without any communication in this regard by the person who initiated it." The letter said the generals were separately appealing to President Mbeki in this regard, but asked Kögl "as the ideally positioned player during the years of deliberations, to compile a review of the entire process which would serve as a trustworthy neutral record of the initiation and development of the process of communiation within the Forum..." The appeals went unanswered: the generals were out in the cold.[500]

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[496] In referring to war crimes, however, the Amnesty Task Team erred in referring to the Rome Statute establishing the International Criminal Court (ICC) which is empowered to prosecute, among other things, war crimes and crimes against humanity – because the ICC has no retroactive jurisdiction for acts committed before 1 July 2002, the date it came into effect. Op Dual's war crimes and those of the apartheid era thus properly fall under the Geneva Conventions.

[497] A total of 7,111 amnesty applications were received, of which 5,392 were refused and 849 granted (this leaves out other categories, such as where applications were withdrawn, etc). The TRC noted with regret that there was little overlap between amnesty applications and victims seeking restitution.

[498] Draft letter, Dirk Marais to Jacob Zuma, undated, early 2004, copy in the author's possession.

[499] Draft letter, Dirk Marais to Jürgen Kögl, undated, early 2004, copy in the author's possession.

[500] At about the same time, ANC/government negotiations with the former Security Branch chiefs also came to an end, according to Ole Bubenzer (2009).

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Dear Mr Zuma

A process of communicating between the ANC, initially, and the Government lately, ~~on~~ with the former Chief of the ~~Defence F~~ SA Defence Force was initiated by the then Deputy President of South Africa, Mr T. Mbeki when he approached Gen C. L. Viljoen in 19?

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Gen Viljoen, after consultation with other former Chiefs of the Defence Force within the structure of the SADF Contact Bureau, conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC.

A convenor, Mr J. Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg. That meeting was ~~held~~ in the form of discussions ~~and~~ followed by a

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dinner, hosted by Mr Kögl. It was attended by Mr Mbeki and various of his ministers as well as the Premier of Mpumulanga, Mr M. Phosa, and by us, the former Chiefs of the SADF.

There was enthusiastic agreement that the commenced process of communication should be continued and that more meetings should follow. We, the former Chiefs of the SADF, being aware of the Deputy President's tight work schedule suggested that he appoint one of his ministers to represent the ANC in future deliberations. Mr Mbeki, however expressed the opinion the process of communication, which was mutually agreed to, was so important to him that he preferred to remain the prime representative of the ANC in future deliberations.

Many deliberations followed and mutual agreements were reached. When Mr Mbeki could not attend, he authorised somebody, usually a minister, and later on, the Deputy when he became President in 1999, you represented him.

In execution of mutual decisions much ~~was~~ effort was put in by the Contact Bureau and some of you

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Ministers to prepare papers and submissions for ~~the President~~ acceptance by the Deputy President and later on the President.

In spite of such ~~~~ submissions and apparent acceptances, little, notable implementation was effected by the ANC or Government.

In similar fashion we, the former Chiefs of the SADF, as members of the Forum, were flown to Cape Town ~~at~~ for discussions with Ministers Modluna and Chakula and thereafter with you on 17 Feb 2003. Agreement on outstanding matters was again confirmed. Yet, more than a year later, no sign of implementation has become apparent. Neither was there any effort on your behalf to inform us of any progress which could lead to eventual implementation.

In view of the above you are requested to inform us of the desirability, from your point of view, to keep the door open for further cooperation.

LC NGI

ANC to seek broad national amnesty

Published Dec 11, 2002

SHARE

The African National Congress is to hammer out the guidelines for a "broad national amnesty", which could take the form of presidential pardons, for apartheid-era human rights violators at the ruling party's 51st national conference in Stellenbosch next week.

ANC presidency head Smuts Ngonyama said the dramatic proposal was motivated by ANC branches in politically divided KwaZulu-Natal. It comes hard on the heels of a bitter legal battle by the Inkatha Freedom Party that has delayed the release of the last draft of the Truth and Reconciliation Commission's final report until next year.

"We need to find a way to balance the situation," said Ngonyama.

"There has been a strong call for some sort of solution in KwaZulu-Natal. The ANC branches there moved to have a special amnesty policy discussed at the conference and they have been asked to bring along a concrete proposal."

The ANC supported a "broad national amnesty", said Ngonyama, and a "unique solution" was required.

Most IFP amnesty applications, for example, were rejected by the TRC and the IFP's Musa Zondi said Justice Minister Penuell Maduna had asked the party earlier this year to compile a list of members to be considered for presidential pardons.

The ANC had first approached the IFP with a "special amnesty" offer in 1996, he said.

The extraordinary new move could pave the way for patching relations between the ANC and the IFP in KwaZulu-Natal.

Fragile coalition rule collapsed there in the wake of the floor-crossing controversy.

The amnesty proposals come a week after the government announced plans to initiate an "intense national dialogue" aimed at ensuring "a common national approach" on apartheid reparations and to pronounce its own position on longer-term reparations.

The move also comes amid fears by multinational companies operating in South Africa and potential investors, at the prospect of massive class action suits for compensation launched in the US and Switzerland by three sets of apartheid victims.

Government spokesperson Joel Netshitenzhe said last Wednesday after the cabinet's final meeting for the year that arrangements to hand over the TRC report to President Thabo Mbeki had been abandoned when the IFP, declared the "primary non-state perpetrator" and fingered for 33 percent of apartheid-era atrocities investigated by the commission, turned to the courts to have its leader Mangosuthu Buthelezi exonerated.

The matter is due to be heard in the Cape High Court on January 29 next year.

Netshitenzhe said the government would initiate the dialogue immediately after the court ruling.

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Adding that the government favoured reparations which emphasised "a collective approach", Netshitenzhe pointed out that it had already spent R50-million on urgent financial reparations to 18 000 apartheid victims identified by the TRC for urgent intervention.

Peter Dickson

LC
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Apply the law equally for past political crimes - Foundation for Equality for Law

Johan Botha |
23 February 2020
Johan Botha says no member of ANC NEC has been prosecuted for crimes committed under that organ's command

OPEN LETTER TO THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES, MR. RONALD LAMOLA, BY THE FOUNDATION FOR EQUALITY FOR LAW

21 February 2020

Your recent statement that, as a result of state capture looting of the Treasury, the National Prosecuting Authority lacks the capacity to prosecute the persons responsible, is disingenuous to say the least. Millions of Rands are currently being wasted by the National Prosecuting Authority due to ineffective planning and politically motivated and selective prosecution of only certain persons for offenses related to conflict of the past.

The 2019 re-opened inquest into the death of Ahmed Timol is a case in point and now we have the re-opened inquest into the death of Dr. Neil Aggett. In both cases, all the persons directly involved in the incidents have already died. There is no primary evidence available and consequently secondary and even anecdotal hearsay evidence is presented which cannot be admitted in any criminal case. Moreover, it is a one-sided process where the interests of persons who have died are not protected in any manner and therefore a pervasive system of justice.

The provisions of Article 9 of the Constitution which provide for equality before the law are, in essence, being disregarded by the National Prosecuting Authority.

The following political leaders and members of the former government and security forces have already been prosecuted for crimes related to the conflict of the past.

> General Magnus Malan, former Minister of Defense, General Jannie Geldenhuys, former head of the South African Defense Force and several other generals and members of the security forces in the Kwamakhutha case. They were all acquitted. More than R40 million was wasted on this case.
>
> Dr. Wouter Basson was also charged and acquitted. More than R40 million was also wasted in this case.
>
> Mr. Adriaan Vlok, former Minister of Law and Order, General Johan van der Merwe, former Commissioner of Police and three other former members of the security branch were prosecuted.
>
> Col. Gideon Nieuwoudt and three other members of the security branch were prosecuted for the PEBCO-3 case.
>
> Colonels Willem Coetzee and Anton Pretorius with Capt. Frik Mong are currently being prosecuted for allegedly murdering a member of Umkhonto weSizwe.
>
> Joao Rodriques is currently being prosecuted for the murder of Ahmed Timol.

In stark contrast with these prosecutions, not a single member of the National Executive Committee of the ANC, to whom amnesty has been denied, has ever been prosecuted despite the fact that abundant evidence is available to prove that according to the principle of common purpose in our law, they can be prosecuted in the following cases.

> On 20 May 1983, a powerful car bomb exploded in front of the Nedbank Square Building in Church Street, Pretoria, at approximately 4 p.m. (The building was known as the Nedbank Square Maritime House). A total of 19 people was killed, including 12 civilians and 7 members of the Defence Force. A total of 219 people was seriously injured or mutilated, including 217 civilians and 2 members of the Defence Force.

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On 23 December 1985, targeting civilian Christmas shoppers, members of Umkhonto weSizwe (MK) placed an explosive device in a refuse bin at the Amanzimtoti shopping centre. 5 civilians were killed and 40 seriously injured and mutilated. Former President Jacob Zuma publicly admitted that these MK members acted under his authority.

On 14 June 1986, a car bomb exploded in front of the Magoos pub in the Parade Hotel in Durban. 3 Civilians were killed and 89 seriously injured and mutilated.

On20 May 1987, a limpet mine and car bomb exploded in front of the Johannesburg Magistrate's Court. 3 Policemen were killed and 15 civilians seriously injured and mutilated.

On 2 July 1988, a car bomb exploded in front of the Ellis Park Rugby Stadium in Johannesburg. Two civilians were killed and 37 were seriously injured and mutilated.

On 25 July 1993, defenceless churchgoers who included women and children, were attacked in the St. James church, Kenilworth, Cape Town with AK47 rifles and hand grenades and 11 killed in cold blood. Many were wounded. Mr. Letlapa Mphahlele, the former president of the PAC, who ordered the attack, was prosecuted and initially appeared in court on multiple charges of murder but the case was postponed and has since disappeared.

More than 90% of the victims of the terrorist acts mentioned above were defenceless civilians, including women and children. These acts were all, from a moral point of view, flagrant violations of the provisions of the Protocol to the Geneva Convention and as such a crime against humanity. Decisions by Amnesty Committees and statements made by members of Umkhonto WeSizwe during amnesty hearings are hereby attached to indicate the extent of the evidence available against members of the National Executive of the ANC who have been denied amnesty.

The Foundation for Equality for Law believes that selective, political populist prosecutions and the reopening of inquests fly in the face of the concluding paragraph of the Interim Constitution which is also the basis of the current Constitution and ignore the spirit of the negotiations which led to the Constitution.

Maintaining equality before the law as provided for in terms of Section 9 of the Constitution, is at the heart of any sound legal system and if disregarded, the whole system will rot.

With due regard

Johan Botha

CHAIRMAN : FOUNDATION FOR EQUALITY BEFORE THE LAW

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AfriForum

MEDIAVERKLARINGS

AfriForum waarsku oor eensydige vervolgings van apartheidseramisdade

Deur AfriForum 12/09/2021

D e burgerregteorganisasie AfriForum het 'n dokumenter uitgere'k wat ook die soeklig werp op ANC-lede en hul alliansievennote se misdade tydens apartheid. D t volg na die staat planne aangekondig het om polities gedrewe misdade te vervolg wat tydens apartheid gepleeg is.

Adv. Shamila Batohi, hoof van die Nasionale Vervolgingsgesag (NVG), is in d e proses om 'n eenheid op die been te bring om hierdie tipe misdade te vervolg. Die Valke het ook reeds 'n eenheid gest g om die misdade te ondersoek.

Volgens AfriForum gaan die stappe opnuut polarisasie n die land skep. Die praktyk het naamlik reeds bewys dat die staat wat vervolgings betref, nalaat om hooggeplaaste ANC-lede te vervolg wat nie amnestie van die Waarheid-en-versoen ngskomm ssie ontvang het vir die opdragte wat hulle destyds vir die uitvoer van terreurdade gegee het nie.

> "AfriForum is van mening dat die boek van die verlede gesluit moet word. As die staat wel met die vervolgings voortgaan, behoort dit ook lede van die ANC en sy vennote – wat verantwoordelik was vir die dood en besering van duisende mense – te vervolg. Sou dit blyk dat hierdie vervolgings eensydig is, sal AfriForum se privaatvervolgingseenheid druk op die NVG plaas om ook ANC leiers te vervolg. As dit onsuksesvol is, sal privaat vervolgings sterk oorweeg word," se Kallie Kriel, uitvoerende hoof van AfriForum.

"Daar blyk gronde te wees vir vervolg ng in talle van die sake waar n ANC-lede en bondgenote die verdagtes is. Indien wel, en indien die staat selektief sou vervolg, sal die pr vaatvervolgingseenheid in lyn met ons fokus op gelykheid voor die reg die sake vir privaat ervolging oorweeg," meen adv. Gerrie Nel, hoof van AfriForum se privaatvervolgingseenheid.

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Tit-for-tat threat by apartheid generals

| Published Jul 20, 2008

Apartheid generals have threatened to lay charges against ANC leader Jacob Zuma, President Thabo Mbeki and some of his ministers if the state insists on charging former security chiefs.

The situation has been precipitated by the Umkhonto weSizwe Military Veterans' Association demanding the prosecution of former apartheid chiefs, including the former police commissioner, General Johan van der Merwe.

But Van der Merwe said that lawyers representing the generals would be given the go-ahead to lay charges against "a number of senior ANC officials" if the government went ahead with its plans to prosecute them for apartheid crimes.

Afriforum - a pressure group representing the interests of minorities, such as Afrikaners - is also likely to institute litigation against Mbeki, Zuma, intelligence minister Ronnie Kasrils and the senior party leaders who were members of the 1985 national executive committee of the ANC that gave the go-ahead for the use of land mines in the northern Transvaal, now Limpopo.

Threat

Among those likely to be implicated are former transport minister Mac Maharaj and former defence force chief General Siphiwe Nyanda.

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Pikoli was suspended in September - purportedly for a breakdown in his relationship with his boss, justice minister Bridgette Mabandla - while considering about the feasibility of prosecuting people who did not apply for amnesty before the Truth and Reconciliation Commission (TRC).

Menzi Simelane, director-general of the justice department, confirmed that there had been no progress in pursuing such prosecutions since Pikoli's suspension.

He said an interdepartmental team made up of representatives of the justice and intelligence departments and the police was meant to meet Pikoli to discuss which former apartheid chiefs would be prosecuted. The meeting never took place.

"I think everybody just got caught up in the Pikoli matter," said Simelane.

He said one of the main causes of the delay in taking a decision on whom to prosecute was the need to determine which cases warranted further investigation.

Van der Merwe's lawyer, Jan Wagener, said that progress in deciding which of the former apartheid security chiefs to prosecute was awaiting Pikoli's participation.

Pikoli said he was not sure what had become of the discussions since his suspension.

Challenge

Wagener said all eyes were on the Legal Resource Centre's legal challenge to the justice department's directives on post-TRC prosecutions.

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"We see it as another way of opening the door for those who failed to get amnesty from the TRC, to apply for amnesty again," said Achmed Mayet, a director at the Legal Resource Centre.

Van der Merwe said the men who had been under his command did not resent the prosecution of members of the apartheid government's security apparatus, but leaders and members of the ANC and the Pan Africanist Congress, and of their military wings, should also be liable for prosecution.

"We have had our turn," he said, referring to his prosecution, with others, for the attempted murder of Frank Chikane in the 1980s.

Chikane is now director-general of the office of the president.

"We have, over many years, been in discussions with the authorities, including President Mbeki, in an attempt to see if there is a way in which we can deal with the past other than through prosecution," Van der Merwe said.

The Umkhonto weSizwe veterans said they supported the prosecution of all apartheid operatives who failed fully to disclose their actions to the TRC.

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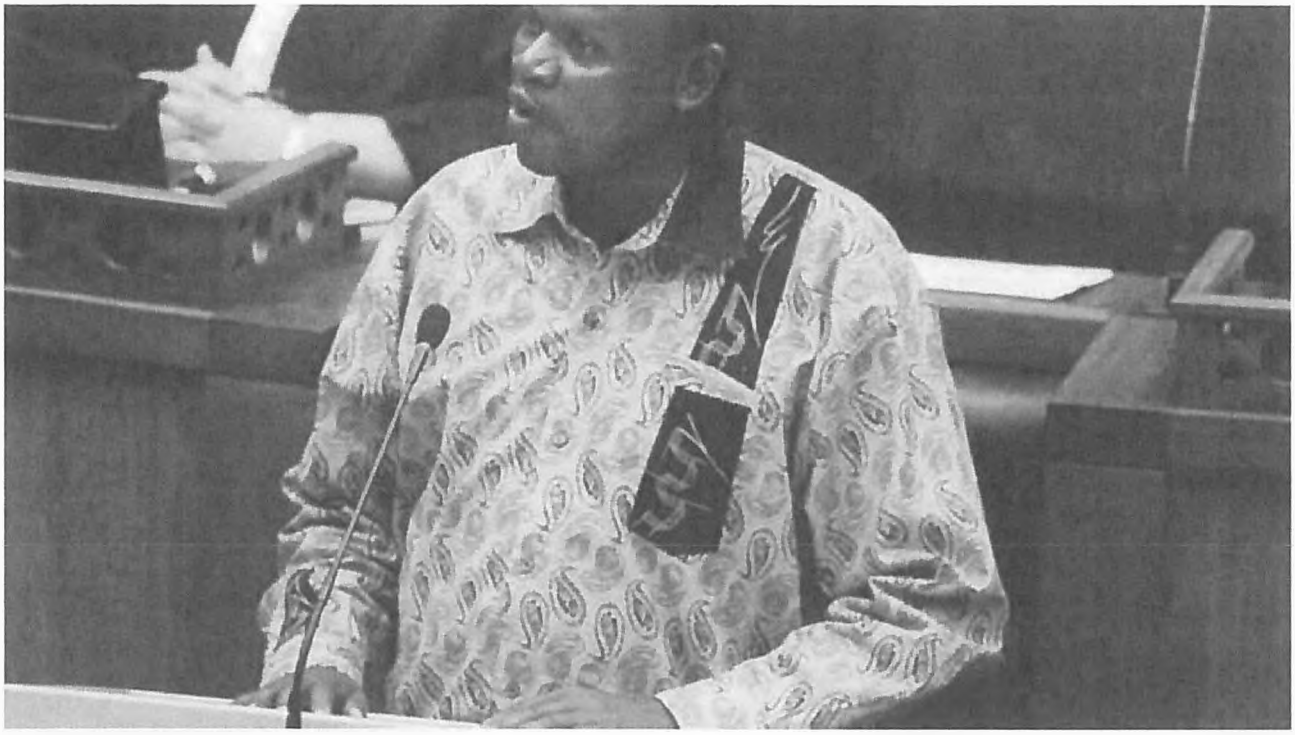

Letlapa Mphahlele File picture: ANA

| Published Mar 1, 2020

Calls have been made for the prosecution of leaders of the former liberation movement for offences related to "the conflict of the past".

The call has been made by the Foundation for Equality for Law, which wants former president Jacob Zuma and former PAC president and Azanian People's Liberation Army (Apla) commander Letlapa Mphahlele to be among those who should be prosecuted.

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The foundation made the call in an open letter to Justice and Constitutional Development Minister Ronald Lamola.

In his letter, the foundation's chairperson Johan Botha said Lamola's recent statements that the National Prosecuting Authority (NPA) lacked capacity to prosecute those responsible for state capture was disingenuous.

"Millions of rand are being wasted by the NPA due to ineffective planning and politically motivated and selective prosecution of only certain persons for offences related to conflict of the past," he wrote.

He also decried the re-opening of inquests into the death of political activists Ahmed Timol and Dr Neil Agget, saying people who were directly involved in the incidents had long ago died.

Botha charged that there was no primary evidence and "anecdotal hearsay" presented was inadmissible in court.

Botha said the NPA disregarded the provision of the constitution which provided for equality before the law.

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prosecuted.

"In stark contrast with these prosecutions, not a single member of the national executive committee of the ANC, to whom amnesty has been denied, has ever been prosecuted despite the fact that abundant evidence is available to prove that according to the principle of common purpose in our law.

Neither Zuma's spokesperson Vukile Mathabela nor ANC spokesperson Pule Mabe responded to

questions sent to them.

Political Bureau

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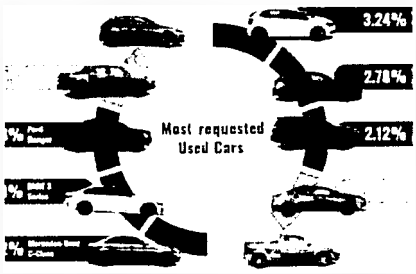

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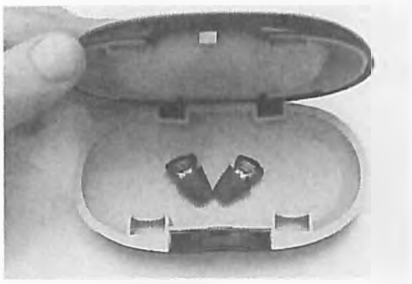

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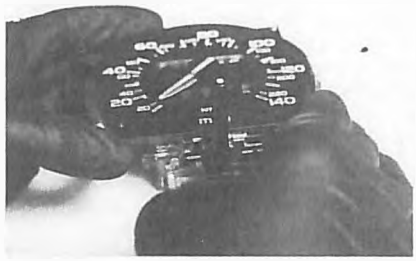

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Long-awaited NPA report gives no answers on ANC govt's alleged blocking of apartheid trials

Karyn Maughan

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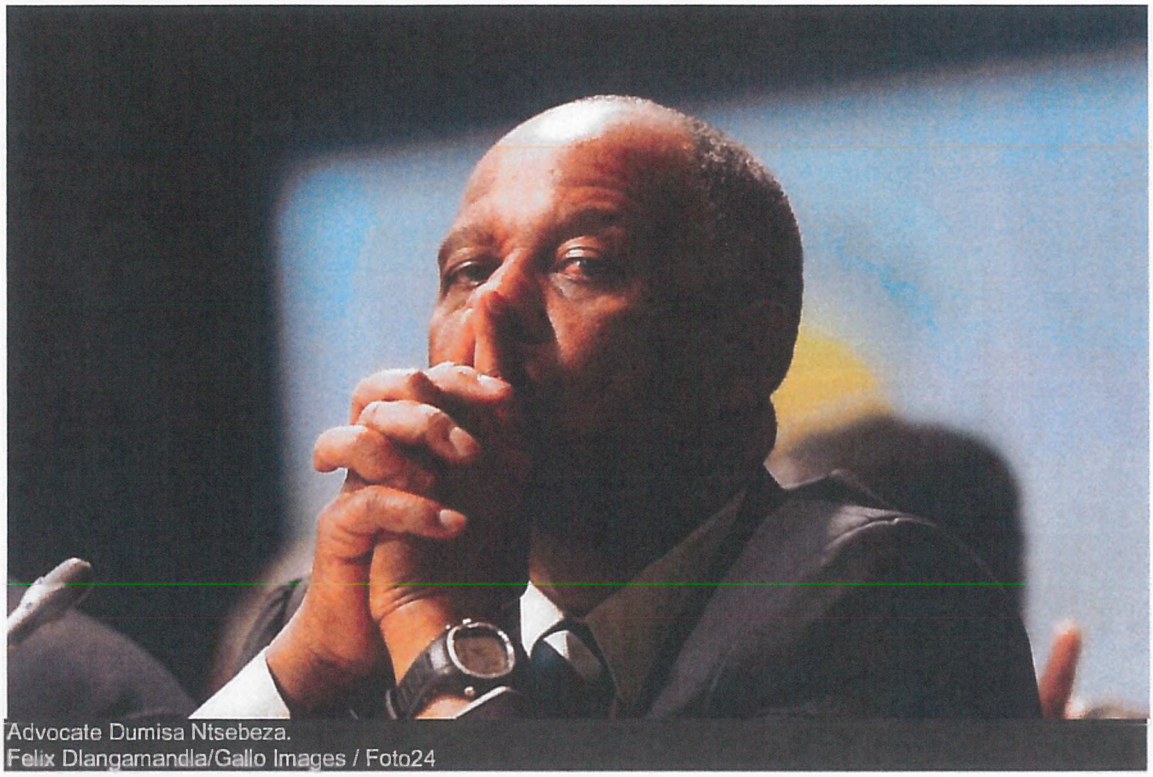

Advocate Dumisa Ntsebeza.
Felix Dlangamandla/Gallo Images / Foto24

- **The Truth and Reconciliation Commission's final report referred more than 300 apartheid-era crimes to the National Prosecuting Authority (NPA) for possible prosecution.**
- **Former National Director of Public Prosecutions Vusi Pikoli and other NPA officials said their efforts to pursue the cases were actively stymied.**
- **Last year, the NPA announced that it had appointed advocate Dumisa Ntsebeza to determine whether anyone should face charges for trying to block apartheid prosecutions.**

Three years after the Supreme Court of Appeal (SCA) ordered the state to investigate uncontested evidence that powerful Mbeki administration officials blocked the prosecution

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of apartheid cases, the latter has provided an "opinion" that recommends a public inquiry into those claims.

"The NPA [National Prosecuting Authority] must pursue the establishment of an independent commission of inquiry under either Section 84(2)(f) of the Constitution or the Commissions Act 1947 to investigate the extent of, and rationale behind, the political interference with the NPA between the period 2003 and 2017," former Truth and Reconciliation Commission (TRC) member Dumisa Ntsebeza and his team stated in an opinion the NPA released on Monday.

"It is important that any inquiry is public and is empowered with sufficient authority to carry out the investigation, and is clothed with powers of search and seizure, and is able to subpoena people of interest."

Ntsebeza and his team stressed, in the preamble to their investigation into the NPA's ongoing efforts to prosecute crimes linked to the anti-apartheid movement, that they had only been given three months to conduct their potentially politically explosive investigation – and "not been given any investigatory powers or powers to subpoena or interrogate" potential witnesses.

This meant they were unable to obtain possible "valuable information on the rationale behind certain NPA policy decisions adopted during 2003-2017 or the reasons why prosecutions were not pursued and charges under international law were not instituted against accused persons for the crime of apartheid".

Ntsebeza and his team admitted they had not conducted any further investigation into undisputed evidence given by former National Director of Public Prosecutions (NDPP) Vusi Pikoli and other senior NPA officials who detailed how their efforts to pursue the prosecution of alleged apartheid atrocity crimes had been actively stymied by high-ranking officials during the administration of former president Thabo Mbeki.

READ | NPA appoints investigators and prosecutors to tackle TRC matters

That evidence had resulted in the SCA supporting a Gauteng High Court ruling that NDPP Shamila Batohi should conduct a "proper investigation into these issues" to determine whether "any action ... was necessary".

In a ruling that dismissed the bid by accused apartheid killer Joao Rodrigues for a permanent stay of his prosecution for the 1971 murder of activist teacher Ahmed Timol,

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the SCA also confirmed that, between 2003 and 2017, "the executive adopted a policy position" that TRC cases would not be pursued.

The SCA said it was "perplexing and inexplicable why such a stance was taken".

While confirming that the allegations made by Pikoli and other NPA officials were "serious", Ntsebeza and his team now say that determining whether any officials should be charged for unlawfully interfering in these prosecutions would require "a proper investigation, affording the principal players an opportunity to present their version of events".

The NPA says it has not decided whether or not to act on this recommendation, which is not binding on it.

Pikoli has told News24 that he has serious doubts that the ANC government will support a public inquiry into the political interference he detailed.

"Well, essentially it [the government] would be supporting the prosecution of its own officials," he said.

"That's what it amounts to because people who were obstructing the investigation and potential prosecutions were ministers of state, and there were also other officials in other departments, like the late national commissioner of police [Jackie Selebi], [as well as] people in intelligence services who were opposed."

Pikoli added that these allegedly obstructive officials also included then-justice director-general Menzi Simelane, who led the Mbeki administration's efforts to justify his permanent removal from office, and then-Justice Minister Brigitte Mabandla.

READ | 'Never too late for justice': Pikoli urges NPA to investigate 'blocking' of apartheid cases

For its part, the NPA has not disputed that the evidence of political interference in the TRC cases given by Pikoli, former prosecutor Anton Ackermann and late internationally renowned police officer and Zondo Commission investigator Frank Dutton was all true

In court papers, senior prosecutor Torie Pretorius stated: "The [NPA] does not deny that the executive branch of the state took what one can describe as political steps to manage

the conduct of criminal investigations and possible prosecution of the perpetrators of the political murders."

In an affidavit filed in 2015, Pikoli detailed how he was subjected to pressure from various ministers – mainly Mabandla – to drop the apartheid-era prosecutions.

"I have little doubt that my approach to the TRC cases contributed significantly to the decision to suspend me. It is no coincidence that there has not been a single prosecution of a TRC case since my suspension and the removal of TRC cases from advocate Ackermann," he stated at the time.

After being suspended by Mbeki after he pursued an ultimately successful corruption prosecution against Selebi, Pikoli was charged, during the Ginwala Inquiry into his fitness to hold office, over his insistence on pursuing post-TRC prosecutions.

But that charge would be dropped during the inquiry hearings, he believes, because "it was going to embarrass them".

"One can take a cue from that. Why did they subsequently drop that charge after the inquiry had started and also following what I had said in the commission? They felt it was going to embarrass [the] government if they were to proceed with that charge. It stands to reason," he told News24.

The testimony given by Pikoli, Ackermann and Dutton in TRC prosecution litigation has also laid bare how Mbeki administration ministers tried to stop the NPA from pursuing an attempted murder case against apartheid minister of law and order Adriaan Vlok, who would ultimately enter into a plea deal with the State over his role in the attempted poisoning of Reverend Frank Chikane.

Vlok had also been identified as one of four suspects in the murders of the Cradock 4 – activist teachers Matthew Goniwe and Fort Calata, school principal Sicelo Mhlauli and railway worker Sparrow Mkhonto – who were butchered by apartheid police on 27 June 1985.

READ | **Cradock Four: Lamola reopens inquest into the deaths of anti-apartheid activists**

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Calata's son, Lukhanyo, says undisputed evidence revealed that Vlok had visited Cradock on 5 June 1985, when he was shown the houses that Calata and Goniwe lived in with their respective young families.

Vlok then led an Eastern Province Joint Management Centre meeting that discussed what to do about Goniwe, whose activism had become a significant thorn on the side of the oppressive apartheid regime.

A day after that meeting, the Joint Management Centre sent a military signal to the high-level State Security Council (which included then-education minister FW de Klerk) recommending the "permanent removal from society as a matter of urgency" of Goniwe.

The Cradock 4 were killed less than three weeks later.

In an interview with Al Jazeera, which was broadcast in May 2021, Vlok admitted that the words "permanent removal from society" were probably an instruction to murder.

"You know, we in the Security Council, we were very careful not to tell, not to say and [not] to have in the minutes to 'kill' anybody," he said.

"So, we would say, 'remove a person from the society, remove him'. And, you know, nobody said killing. But ... it meant if you can't solve the problem by removing the guy, then you could kill him."

It does not appear that Vlok was ever questioned about these comments by law enforcement authorities.

Instead, after years of NPA delays in deciding on the possible prosecution of the Cradock 4's alleged killers, Vlok died on 8 January 2023.

Lukhanyo told News24 on Tuesday he had assumed that Ntsebeza and his team would "replace" a commission of inquiry by conducting a thorough investigation and "coming up with names of people who should be held accountable in some way or the other" for the NPA's failure to seek the truth about his father's murder.

Instead, he said, Ntsebeza's report had only confirmed the SCA's instruction that there needed to be a proper investigation into the allegations of political interference in TRC cases made by Pikoli and other senior NPA officials.

"Now we are right back at square one," he said.

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According to Lukhanyo, Justice Minister Ronald Lamola had previously told him that his department was unable to afford a commission of inquiry into alleged political interference in apartheid prosecutions.

He said:

The minister made it clear to me on a few occasions that, based on the amount of money that they had spent on the State Capture Commission, they simply didn't have money for yet another commission of inquiry.

Lamola's spokesperson Chrispin Phiri did not respond to requests for comment on the decision not to ask for a commission of inquiry into the apparent suppression of TRC prosecutions rather than the investigation that has now called for that commission. He also did not indicate whether Lamola would support such a commission now.

Instead, Phiri said: "We are in the process of studying the report that advocate Ntsebeza has compiled. We are pleased that the NPA has taken active steps to find a mechanism to establish a process of how to address allegations of political interference in TRC matters. We all have a duty to ensure that the independence of the National Prosecuting Authority is not compromised."

Asked if he believed that the Ntsebeza investigation had been deliberately limited in its powers and scope to limit potential political fallout to the ANC in an election year, Lukhanyo responded that, if this was the case, it would be "really, really sad because it would show ultimately that they are not the leaders we thought they were and that they are not the party that should be leading us".

"If that was the case, then it's clear that they are more interested in protecting the party than actually forging the kind of society for which my father sacrificed his life," he said.

READ | 'Cradock Four' families sue NPA, police over failure to prosecute their killers, cite De Klerk

He added that, should the terms of reference for the Ntsebeza investigation have been designed to "protect and shield members of the ANC from being held accountable for the criminality they perpetuated by denying us justice and politically interfering in these matters, then maybe the ANC is not who we need to have in government and maybe they aren't the leaders they proclaim to be".

"The interests of the ANC can never surpass the interests of society," he stressed.

"The real question that matters for us as the families of the victims is: Who was it within government, between 2003 and 2023, who interfered to the extent that it completely denied us justice? That's really what we want to know, and we'd also like those individuals to be held criminally accountable for what they've done because what they did was criminal."

The Thabo Mbeki Foundation was asked to respond to questions about the former president's response to the Ntsebeza report recommendation that there should be a commission of inquiry into the allegations of political interference made by Pikoli and others against his administration.

The foundation responded: "As you well know, government functions under the principle of legal continuity. The answers to your questions can best be answered by the government, as it has done on many other instances."

Thabo Mbeki
FOUNDATION

Statement by former President Thabo Mbeki on allegations of NPA interference by the Executive.

01 March 2024

As a general rule, I subscribe to the understanding that government functions on the basis of legal continuity. I therefore always defer to government to clarify policies and programmes adopted and implemented while I was in government.

Accordingly, it is with some reluctance that I respond to Ms Karyn Maughan's article: "Long-awaited NPA report gives no answers on ANC govt's alleged blocking of apartheid trials" published on News24 on February 21. However, failure to challenge some of what Ms Maughan has written would assist to perpetuate various falsehoods.

During the years I was in government, we never interfered in the work of the National Prosecuting Authority (NPA). The executive never prevented the prosecutors from pursuing the cases referred to the NPA by the Truth and Reconciliation Commission.

I insist on this despite a 2021 Supreme Court of Appeal judgment which found, on the strength of uncontested submissions by former National Director of Public Prosecutions (NDPP), Advocate Vusi Pikoli, that the NPA "investigations into the TRC cases were stopped as a result of an executive decision" which amounted to "interference with the NPA."

I repeat, no such interference ever took place. If the investigations Adv Pikoli referred to were stopped, they were stopped by the NPA and not at the behest of the Government as alleged by the Advocate. There is no record of a single instance when the NPA stopped investigating and prosecuting any case on account of the so-called "executive interference" – at least not during the period 1999 - 2008.

There are some questions which the NPA must answer honestly.

Who in the executive instructed the NPA not to do its work? Will the NPA publish this 'instruction' which, presumably, will be in its archives? Why did the NPA accept and respect what would have patently been an illegal instruction?

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Instead of propagating falsehoods, the NPA must investigate and prosecute the cases referred to it by the TRC.

I also recall that the same Pikoli who allegedly buckled under pressure of "executive interference" concerning the TRC cases, earned a lot of respect by portraying himself as an independent and principled NDPP who defied an "all too powerful" President Mbeki, who was supposedly hell-bent on stopping him from investigating and arresting the late former National Commissioner of Police, Jackie Selebi.

The question arises, what happened to his cherished independence and commitment to principle when he acquiesced to 'members of the executive' on the TRC cases?

In her article Ms Maughan also refers to so-called "back door amnesties".

What happened in this regard is that years after the dissolution of the TRC, some prisoners approached the Government arguing that they had been imprisoned for political activities – and were therefore political prisoners – but had not had the opportunity to apply for amnesty with the TRC.

The Government thought that rather than ignore these approaches, it should institute a process akin to what was pursued by the TRC Amnesty Committee to allow these prisoners to make presentations. After studying the submissions and using his Constitutional powers, the President would decide whether to grant amnesty to any of the prisoners.

Ultimately, this did not happen because the courts ruled that the intervention would violate the TRC Act. But there was nothing "back door" about the process. I addressed a joint sitting of the Houses of Parliament on this matter on November 21, 2007.

Conveniently, some people forget that the ANC was the principal architect of the Constitution of the Republic. During the years when I served as Deputy President and President of the Republic, I, together with my colleagues in Government, always bore this in mind and acted knowing that the Constitutional prescripts we helped to negotiate were binding on us.

There was never any Minister of Justice during those years who was ever authorised to instruct any NDPP to act in one way or another. No NDPP, including Pikoli, ever approached me to complain that he/she had been instructed by a Minister, or any other official, to violate the independence of the NPA as prescribed by the Constitution.

The NPA must demonstrate enough integrity by apologising for not processing the TRC cases, rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication.

Issued by the Office of former President Thabo Mbeki

Johannesburg

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Attention: Adv Pretorius SC

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Your reference	Our reference	Date
	M Hathorn / M Peters 3005790	18 January 2018

CONFIDENTIALITY NOTE: This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so

Dear Advocates Abrahams and Pretorius

APARTHEID ERA CASES:

1. **STATE v MSEBENZI TIMOTHY RADEBE & 3 ORS, CASE NO.: CC 16/2016**
2. **INQUEST INTO DEATH OF AHMED ESSOP TIMOL: CASE NO: I01-2017**
3. **LATE NEIL AGGETT**
4. **LATE MATTHEWS MABELANE**
5. **LATE HOOSEN HAFFEJEE**
6. **LATE SULIMAN BABLA SALOOJEE**
7. **OTHER UNRESOLVED DEATHS**
8. **SERIOUS CASES WHERE AMNESTY WAS REFUSED OR NO APPLICATION WAS MADE**

1. We seek a meeting with you discuss the abovementioned cases.

   Case 1: Late Nokuthula Simelane

2. In respect of case 1, which deals with the late Nokuthula Simelane, we have received no responses to our letter to Advocates Mathenjwa and Barnard dated 24 October 2016 and our letter to you dated 28 February 2017.

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Senior Partner: JC Fis **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp OA Ampofo-Anti RL Appelbaum DC Bayman AF Bennett AP Blair DHL Booysen AR Bowley JL Brink S Browne MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn JJ Daniels JH Davies PM Daya L de Bruyn PU Dela JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson SJ Gilmour H Goolam CI Gouws PD Grealy JM Harvey MH Hathorn IS Henning KR Hillis XNC Hlatshwayo S Hockey CM Holfeld PM Holloway HF Human AV Ismail MF Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PN Kingston N Kyle J Lamb L Marais S McCafferty MC McIntosh SJ McKenzie M McLaren SI Meltzer CS Meyer AJ Mills JA Milner D Milo NP Mncomezulu S Mogale M Moloi LE Mostert VM Movshovich RA Nelson BP Ngoepe A Ngubo ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SF Phajane TC Phala MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew G Richards-Smith NJA Robb DC Rudman S Rugan M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit MP Spalding PS Stein MW Straeuli LJ Swaine JM Swanepoel Z Swanepoel A Thakor A Toefy PZ Vanda PP van der Merwe SE van der Merwe CS Vanmali JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RH Wilson M Yudaken **Chief Operating Officer** SA Baird

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3. In these letters we raised grave concerns about the prosecutorial strategy adopted in this case, which in our view serves to undermine the prospects of a successful prosecution. Indeed we pointed out that our client has lost faith in the ability of this prosecutorial team to conduct a serious and vigorous prosecution. We accordingly seek the appointment of fresh prosecutors to take this matter forward.

Case 2: Late Ahmed Timol

4. Our letter to Adv Pretorius SC dated 25 October 2017 refers. Judge Mothle recommended that criminal charges be pursued against former Sergeant Joao Anastacio Rodrigues, former Warrant Officer Neville Els and former Colonel Seth Sons. We wish to discuss progress in these investigations and the prosecutorial approach to be taken.

Case 3: Late Neil Aggett

5. In case 2, the Neil Aggett matter, we are concerned that to date, no request has been made to the Minister of Justice to seek the reopening of the inquest into Aggett's death.

6. We have engaged in extensive correspondence with you in relation to this matter. In these communications we have pointed out why an early decision is important, including the fact that some witnesses are now elderly and sickly.

7. We have repeatedly pointed out that there is already more than sufficient new evidence to warrant the reopening. Moreover, there would be a time lapse of several months between such decision and the hearing, during which outstanding investigations could be concluded. In particular we refer you to:

7.1 Our presentation provided to you on 19 January 2016;

7.2 Our email dated 21 June 2016 and letter to you dated 8 July 2016;

7.3 Our letter to you dated 23 August 2016;

7.4 Our letter to you dated 21 February 2017.

8. Advocate T Pretorius SC has advised our investigators, Messrs Dutton and Bursik that he may not make available the files of the relevant detainees or SAPS members until the Minister of Justice had agreed to re-open the Inquest. The late delivery of such files in the Timol inquest placed enormous pressure on the legal teams in that matter.

9. We also place on record that our investigators are still waiting for a number of ID numbers of detainees and former SAP members.

10. We accordingly seek a firm date upon which the NDPP will recommend to the Minister of Justice to reopen the Aggett Inquest in terms of s 17A of the Inquest Act 58 of 1959.

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Case 4: Late Matthews Mabelane

11. In this matter the late Matthews Mabelane fell to his death on 15 February 1977 from the tenth floor of John Vorster Square following 23 days of Security Branch detention. The Legal Resources Centre are the attorneys of record in this case.

12. We wish to discuss the progress of investigations in this case and what paperwork has been uncovered so far.

Case 5: Late Hoosen Mia Haffejee

13. In this matter the late Dr Hoosen Haffejee died on 3 August 1977 at the Brighton Police Station in Durban after 1 day of Security Branch detention. According to the police he committed suicide by hanging.

14. We understand that the NPA is seized with this matter and that investigations are proceeding. We would be pleased to hear of the progress in these investigations. We also wish to ensure that the Haffejee family is legally represented.

Case 6: Late Suliman Babla Saloojee

15. The police claim that Babla Saloojee, who died on 9 September 1964, committed suicide by jumping from the 7th floor of the Greys Building in Johannesburg following 65 days in detention. Imtiaz Cajee is in touch with the wife of the late Saloojee who has indicated a desire to have the inquest reopened.

16. We wish to enquire whether this matter is on your books, and if so the state of the investigations.

Other cases

17. We would be pleased to hear whether the NPA is seized with any other apartheid-era cases. When we met with Advocate Abrahams after the launch of civil proceedings in the Nokuthula Simelane matter in 2015 he indicated that the NPA was pursuing an additional 10 cases.

18. Mr. Imtiaz Cajee is also in contact with the families of:

18.1 Nicodemus Kgoathe: He died in detention 4 February 1969 after "slipping in the shower' at the Silverton Police Station;

18.2 Solomon Modipane: He was arrested with Kgoathe and died on 28 February 1969 after "slipping on a piece of soap" at the Silverton Police Station;

18.3 Jacob Monnakgotla: He was arrested with the above and died in Pretoria Prison on 10 September 1969, apparently of natural causes.

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18.4 Dr Albert Luthuli: He died on 21 July 1967 in Groutville, near Durban, after apparently being run over by a train.

19. Other deaths in detention which ought to be followed up include:

19.1 Imran Haroon: After being held incommunicado for 123 days by the Security Branch Imam Haron died on 27 September 1969. During an inquest into his death, police claimed that his injuries were from falling down a flight of stairs at the Maitland police station. At his post mortem several pre-death injuries were found. Haroon had 28 bruises on his legs as well as other injuries inconsistent with a fall down stairs. The inquest predictably found that nobody was to blame for his death.

19.2 The well-known case of Bantu Stephen Biko who died in Security Branch detention on 12 September 1977.

20. We also wish to raise the possibility of opening or reopening the inquests into the abovenamed.

Serious cases where amnesty was refused or no application made

21. Eleven cases have been selected following an analysis of the amnesty records of the TRC.

22. All the crimes are serious. They include murder, conspiracy to murder, attempted murder, kidnapping and torture. In all the matters listed the evidence is either available or can be secure through the most basic investigative steps. The 11 cases are:

22.1 Murders of Eustice "Bimbo" Madikela, Ntshingo Mataboge & Fanyana Nhlapo

22.2 Murders of Sipho Charles Hashe; Qaqawuli Godolozi & Champion Galela (Pebco 3)

22.3 Murders of Matthew Goniwe, Sparrow Mkhonto, Fort Calata & Sicelo Mhlauli (Cradock 4)

22.4 Kidnapping, Torture & Disappearance of Peter Thabuleka

22.5 Kidnapping & Murder of Ntombikayise Khubeka

22.6 Murder of Richard Motisi & Irene Motisi

22.7 Kidnapping & Disappearance of Moses Morudi

22.8 Kidnapping, Torture & Murder of Jameson Ngoloyi Mngomezulu

22.9 Murder of Johannes Sweet Sambo

22.10 Murder of Adriaano Louis Bambo

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22.11 Murder of Welcome Khanyile

23. The potential accused are those persons who were denied amnesty by the Truth and Reconciliation Commission (TRC) or who declined to apply for amnesty. Details of these cases are annexed hereto in a memorandum marked "A".

24. The 11 cases set out in Annex A are ripe for investigation and possible prosecution, and have been so for many years, if not decades. Where prosecutions are not possible inquests should be held or reopened.

25. Aside from discussing each case mentioned in this letter we also wish to discuss the possibility of these cases being handled by a small group of dedicated and committed prosecutors within the NPA, supported by carefully selected investigators.

26. In the circumstances we seek a meeting with you at your earliest convenience.

Yours faithfully

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Letter submitted electronically without signature.

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FA67 FORT CALATA FOUNDATION

Date: 27 June 2023

From: Lukhanyo Calata
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To: Mr Gratitude Bulelani Magwanishe
Chairperson,
Portfolio Committee on Justice and Constitutional Services
Committee Secretariat:
Siyabamkela Mthonjeni
Email: smthonjeni@parliament.gov.za
Vhonani Ramaano
Email: vramaano@parliament.gov.za

Dear Mr Magwanishe,

RE: DEVELOPMENTS IN THE CRADOCK FOUR CASE

I write on behalf of the Fort Calata Foundation and the families of Fort Calata, Matthew Goniwe, Sicelo Mhlauli, and Sparrow Mkonto, who have been struggling for truth and justice for decades. We wish to bring to the attention of the Portfolio Committee on Justice and Correctional Services recent developments in the Cradock Four case.

On the morning of Thursday 22 June 2023, the families, together with their legal representatives, were meant to meet with the Cradock 4 prosecution team at 10.30 am. About an hour before the meeting was due to start, the NPA advised attorneys Cliffe Decker Hofmeyr (CDH) that the meeting was cancelled. The meeting had been long awaited. The last meeting with the NPA had been in October 2022 and requests for a further meeting had been made from March 2023 onwards. The attorneys were advised that the prosecutors were tied up until June, and eventually a meeting date of 22 June was agreed upon.

It was a particularly important meeting about the future of the case, given the recent death of the last remaining key suspect, Hermanus Barend du Plessis. Family members had set aside

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time to attend the meeting. Not only was the last-minute cancellation of the meeting downright discourteous to all involved, but it was also deeply offensive to the families.

It is the typical practice of the attorneys to circulate a proposed agenda a day or so before a meeting. The draft agenda is then considered before the meeting starts and it is either accepted or adjustments are made. The proposed agenda circulated the day before was:

1. Welcomes
2. Inputs by families
3. NPA update since receipt of our analysis on 2 March
4. NPA explanation for legal basis of refusing to prosecute Du Plessis (as set out in their press statement)
5. NPA strategy going forward
    a. Is it their intention to still hold a 3rd inquest, and if so, what they aim to achieve thereby?
    b. Response of families
6. Closure

In any event, it was no mystery what had to be discussed given the presentation of certain documents in March, together with subsequent communications, and of course the death of Du Plessis. However, around 9.30 am, the NPA wrote to CDH saying "*This is a very short notice to discuss the items on the agenda, as such the meeting cannot proceed. The items on the agenda call for internal consultation with our DPP, the Legal Affairs Division, and our National Office.*"

The NPA should have attended the meeting and if they felt uncomfortable or not ready to deal with any item, they should simply have said so and explained why. In refusing to do so, they displayed considerable discourtesy to the families and legal representatives. It also suggested that they were not familiar with the reasons behind decisions that had been made in relation to the case, or they were uncomfortable in dealing with such questions.

It is somewhat breath-taking that the NPA team were not willing or ready to discuss these basic issues, especially since the decisions in question had already been taken last year. Indeed, the decision not to prosecute anyone and to proceed with a 3rd inquest was communicated by the DPP (Eastern Cape) to the families on 23 June 2022. The legal representatives then asked the NPA to hold back on a final decision until further representations could be made. To this end a presentation was made to the NPA on 26 October 2022, and written representations (including an analysis) was supplied on 2 March 2023.

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Regrettably, the conduct of the NPA is consistent with the general malaise plaguing the TRC cases. We also wish to discuss the possibility of involving families and their representatives in future Justice Portfolio Committee meetings in relation to the TRC Cases. So far only the NPA has been invited to provide briefings. We believe it is high time for the Portfolio Committee to hear the side of the victims and the families.

We are available to meet at the earliest convenience of the Portfolio Committee.

We look forward to hearing from you.

Yours sincerely,

Lukhanyo Calata
Executive Director

Nomonde Calata, Dorothy Calata
Lukhanyo Calata, Tumani Calata, Abigail Calata
Mary-Faith Saku, Sidumo Nyamezele, Mziwenqaba Ntshangase, Martina Della Togna
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5 February 2019

Dear Mr. President,

CALL FOR APOLOGY TO VICTIMS & FOR APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

We write to you as former Members of the Truth and Reconciliation Commission (TRC) to call on you to appoint a commission of inquiry into the political interference that has stopped the investigation and prosecution of virtually all the cases referred by the TRC to the National Prosecuting Authority (NPA). We also call on you, in your capacity as President of South

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Africa, to apologise to victims of apartheid-era atrocities who have been denied justice for several decades and suffered considerable trauma as a result.

Thembi Nkadimeng, the sister of Nokuthula Simelane, Lukhanyo Calata, the son of Fort Calata, Imtiaz Cajee, nephew of Ahmed Timol, and Jill Burger, sister of Neil Aggett have been struggling for justice and closure over several decades. Their struggles are symbolic of those waged by countless other families. The sacrifices made by their loved ones laid the basis for South Africa's democracy with its enshrined freedoms. The families feel justifiably betrayed by South Africa's post-apartheid state which, to date, has turned its back on them. We owe them answers and we owe them an apology.

Amnesty process

The historic compromises made during our negotiations for a peaceful transition demand that justice be pursued for serious apartheid-era crimes, such as murder. This was encapsulated in the postscript to the Constitution of the Republic of South Africa Act 200 of 1993 ("the Interim Constitution") and subsequently in the Promotion of National Unity and Reconciliation Act 34 of 1995 ("the TRC Act"). The constitutional and statutory design of the amnesty process specifically envisaged that criminal investigations, and where appropriate, prosecutions, would take place where perpetrators were refused amnesty or failed to apply for amnesty. This lay at the heart of the compact struck with victims. The compact required the State to take all reasonable steps to pursue justice where perpetrators were not amnestied.

In our Final Report released on 21 March 2003 we stressed that the amnesty should not be seen as promoting impunity. We highlighted the imperative of *"a bold prosecution policy"* in those cases not amnestied to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law.[1] Most victims accepted the necessary and harsh compromises that had to be made to cross the historic bridge from apartheid to democracy. They did so on the basis that there would be a genuine follow-up of those offenders who spurned the process and those refused amnesty. Sadly, this has not happened.

Political interference

Post the TRC, the story of post-apartheid justice in South Africa is a shameful story of terrible neglect. Both the SAPS and the NPA colluded with political forces to ensure the deliberate suppression of the bulk of apartheid era cases. Even though the TRC had handed over a list of

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[1] Vol 6, Section 5, Ch 1 at para 24

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several hundred cases to the NPA with the recommendation that they be investigated further, virtually all of them were abandoned. All these cases involved gross human rights violations such as torture, murder and enforced disappearances in which amnesty was either denied or not applied for (the TRC cases).

The reasons for the inaction on the TRC cases were exposed in the 2015 legal proceedings launched by Thembi Nkadimeng who sought to compel the NPA to make a prosecutorial decision in the 1983 murder of her sister, Nokuthula Simelane, by Security Branch officers.[2] This application disclosed evidence of gross political interference in the operations of the NPA, as per the supporting affidavits of former NDPP, Adv. Vusi Pikoli and Anton Ackermann SC, former Special Director of Public Prosecutions in the Office of the NDPP and former head of the PCLU. The aforesaid NPA officials were instructed and cajoled by cabinet ministers and the then Commissioner of the SAPS to stop all work on the TRC cases.

A secret Amnesty Task Team was established in 2004 to address "*the absence of any guarantee that alleged offenders will not be prosecuted*",[3] which resulted in amendments to the NPA's Prosecution Policy to allow for a backdoor amnesty as well the launch of President Mbeki's Special Dispensation on Political Pardons. Both initiatives had to be stopped in the courts. [4] The Nkadimeng case disclosed a memorandum addressed by Pikoli to the then Justice Minister, Bridgett Mabandla, in which Pikoli concludes that there had been improper interference in relation to the TRC cases and that he had been obstructed from taking them forward. He complained that such interference impinged upon his conscience and his oath of office. [5]

As a result, when Imtiaz Cajee approached the NPA in 2003 to investigate the death in detention of Ahmed Timol no investigation took place. The NPA pretended that the matter had been investigated when in fact it was not.[6] Had it been investigated the lead interrogators could have been held to account, since the last suspect only died in 2012. This amounted to a travesty of justice. Indeed, the NPA had to be threatened with litigation to have the Timol inquest reopened in 2017.[7]

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[2] *Thembisile Phumelele Nkadimeng vs. National Director of Public Prosecutions & 8 Others*, Gauteng Division Case Number 35554/2015

[3] Undated Secret Report: Amnesty Task Team.

[4] *Nkadimeng v National Director of Public Prosecutions* [2008] ZAGPHC 422; *Albutt v Centre for the Study of Violence and Reconciliation, and Others* 2010 (3) SA 293 (CC).

[5] 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' dated 15 February 2007 (classified secret).

[6] The speaking to one journalist does not amount to an investigation. See "*History, suppressed: What didn't get revealed at the Timol inquest*" by Kevin Bloom published in the Daily Maverick on 22 September 2017

[7] Para 114 and sub-paras read with annexes IC21 – 24 of the answering affidavit of Imtiaz Cajee, *Rodrigues v NDPP & Others*, Case No.: 76755/18, Gauteng Division.

Pikoli and Ackermann stated in 2015 that it was no coincidence that there had not been a single prosecution of any TRC matter since September 2007. The indictment in the Nokuthula Simelane case in 2016 was only issued because of the litigation launched in the abovementioned Nkadimeng case. Needless to say, the Simelane and Timol families had to conduct the investigations themselves and rely on the services of pro bono lawyers in order to make these modest advances.

Emboldened by the outcome of the reopened Timol Inquest, human rights activists placed 20 more cases (including the Cradock 4 and Pebco 3 murders) before the NPA and the Hawks in January 2018. Although the Hawks appointed investigating officers it was subsequently discovered that the officers leading the investigations were former Security Branch (SB) or associated with the SB. The most senior investigator had been implicated in the torture of a political detainee in the 1980s. This detainee, together with his wife, were subsequently shot dead by the SB, after he sued the SAP for damages. Although the two officers have since been removed from these investigations following complaints, it is hardly surprising that no progress has been made in any of these 20 cases. As recent as 2018 it is still business as usual with the TRC cases ultimately controlled by forces from the past.

We note with alarm that the real decision makers behind the atrocities committed by the erstwhile SB have not been investigated and prosecuted. Individuals, such as Eugene de Kock and those recently indicted in the Nokuthula Simelane case, were mere foot soldiers. While junior officers must face justice, they acted at the behest of the generals and politicians who remain shielded from accountability. The failure to pursue those most responsible speaks volumes about the captured state of our criminal justice system.

Need for a commission of inquiry

In our view it can be safely concluded that the SAPS and the NPA became captured by political forces in respect of the TRC cases. The few prosecutors with the courage to stand up to the political interference were either removed from their positions or frozen out from these cases. The rest acquiesced and ensured that the TRC cases never saw the light of day.

We contend that the manipulation of the criminal justice system to protect individuals from prosecution serves an ulterior and illegal purpose, interferes with the independence of the NPA and amounts to gross subversion of the rule of law. Indeed, those behind the suppression of these cases may very well have been involved in a conspiracy to obstruct or defeat the course of justice, which is a very serious crime in South African law.

In the application brought by Joao Jan Rodrigues to permanently stay the prosecution against him for his role in the murder of Timol, the NPA and the SAPS in papers filed on 4 February 2019, admitted to the political interference described above.

We accordingly request that you appoint a commission of inquiry to investigate the political interference set out in this document and identify those responsible, within and outside the NPA and SAPS, for suppressing the TRC cases. The terms of reference should consider whether such persons have acted unlawfully, committed any crimes and what steps, if any, should be taken against them. The terms should also include the making of recommendations to prevent such manipulation taking place in the future.

Alternatively, since the political interference has taken the form of state capture you could instruct the *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State* (also referred to as the Zondo Commission) to carry out this inquiry. Further alternatively you could expand the mandate of the *Mokgoro Commission of Inquiry* – which is already seized with a probe into the NPA, to handle this inquiry.

Need for apology

The failure to investigate and prosecute those who were not amnestied represents a deep betrayal of all those who participated in good faith in the TRC process. It completely undermines the very basis of South Africa's historic transition. The failure stands as a betrayal of victims who have been waiting for the criminal justice process to take its course and has added considerably to their trauma. Indeed, the policy or approach to allow perpetrators to escape justice adds insult to the suffering endured by victims.

Above all, the failure stands as a betrayal of all South Africans who embraced the spirit of truth and reconciliation in order to move beyond the bitterness of the past. The failure is wholly inconsistent with the spirit and purpose of South Africa's constitutional and statutory design in dealing with crimes of the past.

We as former Commissioners are deeply outraged by the actions of those who purport to serve the State and who in fact are compromising it. So far nobody in authority has acknowledged that the role of the NPA and SAPS amounted to the most fundamental violations of the Constitution and the law. No expression of regret, remorse or apology has been offered by anybody in authority for the deep betrayal of victims of past atrocities.

We respectfully call on you to apologize to the victims in your State of the Nation Address for the dereliction of duty by those who were meant to serve.

Yours faithfully

Yasmin Sooka and Advocate Dumisa Ntsebeza SC
On behalf of the Commissioners who have endorsed this letter

Ms Yasmin Sooka
Adv. Dumisa Ntsebeza SC
Ms. Mary Burton
Ms. Glenda Wildschut
Dr Fazel Randera
Mr Richard Lyster
Revd Bongani Finca
Adv Denzil Potgieter
Dr Wendy Orr
Desmond and Leah Tutu Legacy Foundation on behalf of Archbishop Emeritus Desmond Mpilo Tutu

Former Committee Members
Dr Russell Ally
Prof Piet Meiring.
Ms Pumla Gobodo-Madikizela

This letter is also endorsed by the South African Coalition for Transitional Justice constituted by the below-mentioned organisations and individuals:

Centre for the Study of Violence and Reconciliation(CSVR)
Khulumani Victims Support Group
Institute for Justice and Reconciliation(IJR)

Lc

Foundation for Human Rights(FHR)
Ahmed Timol Family Trust
Legal Resources Centre
Human Rights Media Centre
Imam Haron Family
Ms Shamela Shamis
Mr. Muhammed Haron
Mr. Imtiaz Cajee
Ms Fatima Haron Masoet
Mr. Lukhanya Calata
Mr Tshepo Madlingozi
South African History Archives (SAHA)
Ms. Jill Burger
Ms. Shirley Gunn
Mr. Hugo van der Merwe
Ms Valdi van Reenen-le Roux
Ms. Maxine Rubin
Ms. Judy Seidman
Mr. Stanley Henkerman
Ms. Sufiya Bray Freislaar
Ms Geraldine
Mr. Piers Pigou

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Chairperson: Deputy Chief Justice Zondo

Hillside House
17 Empire Road
ParkTown
Johannesburg, 2193

AND TO:

Acting Secretary of the Commission, Peter Pedlar;
Head of Investigation, Terence Nombembe;
Head of Legal Team, Paul Pretorius SC; and
Senior Investigator, Frank Dutton.

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Your reference	Our reference	Date
	M Hathorn / S Robb 3033110	17 April 2019

Dear Sir

REPRESENTATIONS OF LUKHANYO CALATA TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

1. We note the delivery of five files and accompanying letters to the following persons:

1.1 Chairperson: Deputy Chief Justice Zondo;

1.2 Acting Secretary of the Commission, Peter Pedlar;

1.3 Head of Investigation, Terence Nombembe;

1.4 Head of Legal Team, Paul Pretorius SC; and

1.5 Senior Investigator, Frank Dutton.

2. Please acknowledge receipt by singing below:

Acknowledgement of receipt

Name: Boipelo Ratshikanai
Position: Executive Assistant
Date: 17 April 2019 1:48pm

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa M Adderley NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair DHL Booysen AR Bowley MS Burger RJ Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland JH Davies PM Daya L de Bruyn PU Dela JHB de Lange M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue HJ du Preez CP du Toit SK Edmundson KH Eiser AF Esterhuizen MJR Evans AA Felekis G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson N Goolam CI Gouws PD Grealy JM Harvey MH Hathorn JS Henning KR Hillis S Hockey CM Holfeld PM Holloway AV Ismail ME Jarvis CA Jennings CM Junker S Jooste IA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel M Kyle J Lamb E Louw L Marais S McCafferty MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu M Molor LE Mostert VM Movshovich RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatsumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane BA Phillips MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew SA Pitchie NJA Robb DC Rudman WJ Rystergon G Sader M Sader H Samsodien JW Scheltz KE Shepherd AJ Simpson N Singh N Singh Nogueira P Singh J Smit RS Smith MP Spalding PS Stein MW Streeuli LJ Swaine Z Swanepoel A Thakor TK Thekiso FJ Vanda PP van der Merwe SS van der Meulen CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson N Yudaken Chief Operating Officer: SA Boyd

LC

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in alliance with > Linklaters

Yours faithfully

WEBBER WENTZEL
Moray Hathorn
Partner
Direct tel: +27 11 530 5539
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Email: moray.hathorn@webberwentzel.com

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Chairperson: Deputy Chief Justice Zondo

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AND TO:

Acting Secretary of the Commission, Peter Pedlar;
Head of Investigation, Terence Nombembe;
Head of Legal Team, Paul Pretorius SC; and
Senior Investigator, Frank Dutton.

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17 April 2019

Your reference	Our reference	Date
	M Hathorn / S Robb 3033110	17 April 2019

Dear Sir

REPRESENTATIONS OF LUKHANYO CALATA TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

1. We act for Mr Lukhanyo Calata.

2. We attach his representations to the Judicial Commission of Inquiry into Allegations of State of Capture, Corruption and Fraud in the Public Sector including Organs of State.

3. He makes these representations on his behalf personally, and on behalf of his mother, Nomonde Liza Calata, and his sisters, Dorothy Calata-Dombo and Tumani Pauline Calata. His father was the late Fort Calata, who together with Matthew Goniwe, Sicelo Stanely Mhlauli and Sparrow Thomas Mkhonto ("The Cradock Four") were brutally murdered by apartheid era security personnel near Port Elizabeth on 27 August 1985.

4. He also makes these representations on behalf of other victims of apartheid era crimes. These include:

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa M Adderley NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair DHL Bonysen AR Bowley MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland JH Davies PM Daya L de Bruyn PU Dela JHB de Lange M Derenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue HJ du Preez CP du Toit SK Edmundson KH Eiser AE Esterhuizen MJR Evans AA Felekis G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson H Goolam CJ Gouws PD Grealy JM Harvey MH Hathorn JS Henning KR Hilis S Hockey CM Holfeld PM Holloway AV Ismail ME Jarvis CA Jennings CN Jonker S Jooste TA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel M Kyle J Lamb E Louw L Marais S McCafferty MC McIntosh SJ McKenzie CS Meyer AJ Mills D Mlo NP Mngomezulu M Molo LE Mostert VM Movshovich RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatsumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane BA Phillips MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew SA Ritchie NJA Robb DC Rudman WJ Rysbergen G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh Nogueira P Singh J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor TK Tlhekiso PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld LM Visagie EME Warmington J Watson AWR Westwood WJ Wilson M Xudabeni Chief Operating Officer: SA Baird

4.1 Thembi Nkadimeng, the sister of Nokuthula Simelane who was abducted, tortured and allegedly killed by the Security Branch ("SB") in 1983.

4.2 Imtiaz Cajee, nephew of Ahmed Timol who was tortured and murdered by the SB at John Vorster Square in 1971.

4.3 Lasch Mabelane, brother of Mathews Mabelane who was tortured and killed while in SB detention at John Vorster Square in 1977.

4.4 Jill Burger, sister of Neil Aggett, who was tortured and killed while in SB custody in John Vorster Square in 1982;

4.5 Fatima Haron-Masoet and Muhammed Haron, daughter and son of Imam Haron who was tortured and killed in SB detention in Cape Town in 1969;

4.6 Sarah Lall, sister of Dr Hoosen Haffajee, who was tortured and killed at the Brighton Police Station in Durban in 1977.

5. The purpose of our client's representations is to support his request to the Judicial Commission of Inquiry into Allegations of State of Capture, Corruption and Fraud in the Public Sector including Organs of State to investigate the political interference which resulted in the suppression of virtually all the 300 cases, including the cases referred to above, referred by the Truth & Reconciliation Commission to the National Prosecuting Authority.

Yours faithfully

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Moray Hathorn
Partner
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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

28 May 2019

Mr Lukhanyo Calata
Webber Wentzel
90 Rivonia Road, Sandton
Johannesburg
2196

Dear Mr Calata

RE: REPRESENTATIONS OF LUKHANYO CALATA TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

1. I acknowledge receipt of your letters dated 17 April 2019 and 23 April 2019 together with a file which you sent to the Commission in regard to the above subject.

2. By direction of the Chairperson of the Commission, the Deputy Chief Justice, I write to request you to have regard to the terms of reference of the Commission, a copy of which is attached for your convenience, and indicate under which part of the terms of reference you suggest that this matter falls and provide your motivation as to why you think the matter falls under that part of the terms of reference.

3. It does seem to the Chairperson that the matter might fall outside the terms of reference of this Commission, but the Commission will only decide that issue after you have delivered your comments or representations. It will be appreciated if your representations could reach this office on or before 17 June 2019.

Yours Sincerely

Mr. Peter Pedlar

Acting Secretary

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,

CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

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PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. 3 OF 2018

by the

President of the Republic of South Africa

JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

In terms of section 84(2)(f) of the Constitution of the Republic of South Africa of 1996, I hereby appoint a Commission of Inquiry to investigate allegations of state capture, corruption and fraud in the Public Sector including organs of state with the terms of reference in the Schedule attached hereto and appoint Honourable Mr Justice Raymond Mnyamezeli Mlungisi Zondo, Deputy Chief Justice of the Republic of South Africa, as its Chairperson.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this the 23rd day of January Two Thousand and Eighteen.

President

By Order of the President-in-Cabinet:

Minister of the Cabinet

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SCHEDULE

TERMS OF REFERENCE

OF THE

JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO THE ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

A Judicial Commission of Inquiry ("the Commission") is hereby appointed in terms of Section 84(2)(f) of the Constitution of the Republic of South Africa, 1996. The Commission is appointed to investigate matters of public and national interest concerning allegations of state capture, corruption, and fraud.

1. The Commission shall inquire into, make findings, report on and make recommendations concerning the following, guided by the Public Protector's state of capture report, the Constitution, relevant legislation, policies, and guidelines, as well as the order of the North Gauteng High Court of 14 December 2017 under case number 91139/2016: -

1.1 whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and/or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOE's. In particular,

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the commission must investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered Cabinet positions by the Gupta family;

1.2. whether the President had any role in the alleged offers of Cabinet positions to Mr Mcebisi Jonas and Ms Mentor by the Gupta family as alleged;

1.3. whether the appointment of any member of the National Executive, functionary and /or office bearer was disclosed to the Gupta family or any other unauthorised person before such appointments were formally made and/or announced, and if so,

whether the President or any member of the National Executive is responsible for such conduct;

1.4. whether the President or any member of the present or previous members of his National Executive (including Deputy Ministers) or public official or employee of any state owned entities (SOEs) breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOE's or any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government or any organ of state;

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1.5. the nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organizations by public entities listed under Schedule 2 of the Public Finance Management Act No. 1 of 1999 as amended.

1.6. whether there were any irregularities, undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, government advertising in the New Age Newspaper and any other governmental services in the business dealings of the Gupta family with government departments and SOE's;

1.7. whether any member of the National Executive and including Deputy Ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta owned companies;

1.8. whether any advisers in the Ministry of Finance were appointed without proper procedures. In particular, and as alleged in the complaint to the Public Protector, whether two senior advisers who were appointed by Minister Des Van Rooyen to the National Treasury were so appointed without following proper procedures;

1.9 the nature and extent of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organizations by Government Departments, agencies and entities. In

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particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest;

2. These Terms of Reference may be added to, varied or amended from time to time.

3. All organs of State will be required to cooperate fully with the Commission.

4. The Commissions Act, 1947 (Act No. 8 of 1947) shall apply to the Commission, subject to such amendments and exemptions as may be specified by proclamation from time to time.

5. The Commission shall submit its report and recommendations to the President within 180 days of the commencement of the Commission.

6. Regulations shall be made, after consultations with the presiding judge, in terms of the Commissions Act, 1947 and shall apply to the Commission in order to enable the Commission to conduct its work meaningfully and effectively and to facilitate the gathering of evidence by conferring on the Commission powers as necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents.

7. The Commission shall where appropriate, refer any matter for prosecution, further investigation or the convening of a separate enquiry to the appropriate

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law enforcement agency, government department or regulator regarding the conduct of a certain person/s.

8. Regulations contemplated above shall also make provision for the resourcing and employment of staff of the Commission.

PROKLAMASIE NO. 3 VAN 2018

deur die

President van die Republiek van Suid-Afrika

GEREGTERLIKE KOMMISSIE VAN ONDERSOEK TEN EINDE ONDERSOEK NA BEWERINGS VAN STAATSKAPING, KORRUPSIE EN BEDROG IN DIE OPENBARE SEKTOR MET INBEGRIP VAN STAATSORGANE, IN TE STEL

1. Ingevolve artikel 84(2)(f) van die Grondwet van die Republiek van Suid-Afrika, 1996 stel ek hierby 'n Kommissie van Ondersoek aan ten einde ondersoek in te stel na bewerings van staatskaping, korrupsie en bedrog in die Openbare Sektor, met inbegrip van staatsorgane, met die opdrag in die Bylae en stel ek hierby die Agbare Regter Raymon Mnyamezeli Mlungisi Zondo as Voorsitter, aan.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hierdie 23ste dag van Januarie 2018.

President

By Las van die President-in-Kabinet:

Minister van die Kabinet

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WEBBER WENTZEL

in alliance with > Linklaters

Mr. Peter Pedlar
Acting Secretary
Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State

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Your reference	Our reference	Date
	Mr M Hathorn 3033110	12 June 2019

Dear Sir

REPRESENTATIONS OF LUKHANYO CALATA TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

1. We thank you for your letter dated 28 May 2019.

2. We are instructed that our client's abovementioned representations do fall within the terms of reference of the Commission of Inquiry into State Capture ("**the Commission**") for the reasons set out below.

State Capture and Corruption is not only about Financial Gain

3. In the first instance the Commission is seized with the subject matters of state capture, corruption and fraud. We submit that all 3 subject matters are not confined purely to conduct, or abuse of power aimed at financial gain but also for undue or illegal advantage.

Terms of reference

4. This is reinforced by paragraph 1.1 of the Commission's Terms of Reference which require the Commission to inquire into the

> "extent and by whom attempts were made through **any form of inducement or for any gain of whatsoever nature** to influence members of the National Executive (including Deputy Ministers), office bearers and /or functionaries employed by or office bearers of any state institution or organ of state..." (Emphasis added).

5 This indicates that the Commission's scope is not merely confined to matters of financial gain, but to "*any form of inducement or for any gain of whatsoever nature*". This would include, for example, shielding suspects from investigation and prosecution through inducing members of the NPA and SAPS to drop such cases.

Senior Partner: ... Managing Partner: SJ Hutton Partners: EW Abraham RB ... D Ackerley MS Alp PI Appelbaum DC Baymans KL Bayliss AE Beerwinkel AP Blair CHL Boezaart AR Bowley MS Burger RI Canham T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Coetzee DB Cron PA Cumberland JH Davies PM Daya ... de Bruyn PJ Dale JHB de Lange ... Dierenga DJV de Villiers EEF Dickerson MA Clermont DA Dingley G Driver M Duse HJ du Plessis CF du Toit SK Edmundson KH Eiser AE Esterhuizen MJR Evans AA Felekis ... Fitzmaurice TB Forman ... Gerber KJ Gerber PM Gerson D Gewer ... Gouws ... Gray MP Hathorn JB Hemming RJ Hollander PM Holloway AJ Ismail PE Jones PA Jones JN Jordaan S Joseph A Kahn AR Kantor M Kennedy A Keyser MP Kgokong IC Kramerwerke ... Leeuw ... Lewis ... Mackie ... Mahomed SC Malcolmess ... Mathews ... Mayet ... Mbikiwa ... Mkhabela ... Mohamed ... Moodley ... Mosdell ... Mpahlwa ... Mtshaulana ... Mvundlela ... Naidoo ... Nair ... Nathan ... Ndlovu ... Nel ... Nkosi ... Nkuhlu ... Nyman ... Odendaal ... Olivier ... Pammenter ... Patel ... Pillay ... Pitout ... Pooe ... Prinsloo ... Quarmby ... Rabie ... Rajah ... Ramkhelawan ... Reid ... Rossouw ... Sasman ... Scholtz ... Seabe ... Sibanyoni ... Smith ... Snyman ... Stein ... Steyn ... Stuart ... Swanepoel ... Taylor ... Thomson ... Tshabalala ... Van Der Merwe ... Van Der Spuy ... Van Niekerk ... Van Rensburg ... Van Zyl ... Vilakazi ... Visser ... Wessels ... Wiese ... Wilson ... Wood ... Yeates ... Yudaken ... Zaloumis ... Zietsman ... Zondi Chief Operating Officer: SA Rose

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Prevention and Combating of Corrupt Activities Act

6. The Prevention and Combating of Corrupt Activities Act 12 of 2004 ("the Act") confirms that corruption is not confined to crimes of greed or financial gain. The Act defines 'gratification' as including the avoiding of punishment or other disadvantage[1] and the providing of "*any other service or favour or advantage of any description, including protection from ... any action or proceedings of a disciplinary, civil or criminal nature*".[2]

7. Section 3 of the Act provides for a general offence of corruption which criminalises the accepting or giving of any gratification that amounts to an abuse of a position of authority; or the violation of a legal duty or which is designed to achieve an unjustified result.[3]

8. Section 4 of the Act specifically prohibits public officers from directly or indirectly accepting any gratification "*whether for the benefit of himself or herself or for the benefit of another person*" in order to act or influence another person to act in a manner as described in section 3. Section 4(2) provides that the words "*to act*" includes:

8.1 performing or not adequately performing any official functions;

8.2 expediting, delaying, hindering or preventing the performance of an official act;

8.3 showing any favour or disfavour to any person in performing a function as a public officer;

8.4 exerting any improper influence over the decision making of any person performing functions in a public body.

9. Section 9 of the Act specifically provides for an offence in respect of corrupt activities relating to members of the prosecuting authority. The elements of the crime are similar to those set out in sections 3 and 4. Section 9(2) provides that the words "*to act*" include:

9.1 not adequately performing a function relating to the institution or conducting of criminal proceedings;

9.2 delaying, hindering or preventing the performance of a prosecutorial function;

9.3 showing any favour or disfavour to any person relating to the institution or conducting of criminal proceedings; or

9.4 exerting any improper influence over the decision making of any person, including another member of the prosecuting authority or a judicial officer.

10. Section 19 of the Act makes it an offence to intentionally interfere with, hinder or obstruct the investigation of an offence.

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1 Section 1(c) of the Act.

2 Section 1(g) of the Act.

3 Section 3 of the Act.

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11. The conduct of those who imposed their will on the NPA and SAPS to stop the investigation and prosecution of several hundred cases of murder and other serious crimes falls within the scope of corruption as provided for in the Act. The same can be said of the prosecutors and police officers who agreed or acquiesced in the suppression of these cases.

12. The result of such corruption is that a large number of perpetrators of some of the worst crimes ever committed in South Africa have been shielded from justice. Those prosecutors who attempted to stand up to this injustice were either removed from the NPA or frozen out of the TRC cases. Those who collaborated or acquiesced flourished in the organisation. It would be up to an inquiry to determine the reasons, benefits and advantages behind such corruption.

Investigation into Capture of the Law Enforcement Agencies

13. At the proceedings of the Commission on 11 April 2019 on Day 81, the head of the Commission's Legal Team, Paul Pretorius SC, set out the scope of the Commission's investigations into the capture of the state's law enforcement agencies. We submit that Mr Calata's application falls squarely within the ambit of this investigation.

14. A key focal point of this investigation is the role and conduct of the Priority Crimes Litigation Unit (PCLU).[4] The PCLU was mandated to take forward the TRC cases in which amnesty had been denied or not applied for (the TRC cases). The affidavit of Anton Ackermann SC, former Head of the PCLU, (attached to the submissions of Mr. Calata) sets out in detail how the TRC cases came to be transferred to the PCLU.[5] The TRC cases were classified as '*priority crimes*' and more than 400 investigation dockets were transferred to the PCLU in 2003.

15. The affidavits of Ackermann, Chris Macadam (currently the Acting Director of the PCLU)[6] and Vusi Pikoli (former NDPP) [7], which are all attached to Calata's submissions, set out the systematic suppression of the TRC cases. According to Pikoli the instructions to stop the cases came from various quarters in the state, including cabinet ministers and the former Commissioner of Police.

16. The investigation into the capture of the law enforcement agencies is one of the most crucial investigations of the Commission as it will explain how these agencies became thoroughly corrupted and how they were subverted to serve unscrupulous elements in society.

An Appropriate Subject Matter for the Commission

17. Even though there have been leadership changes at the NPA and SAPS these institutions cannot be expected to vigorously investigate themselves. Indeed, many of the personnel

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4 See page 93 of the transcript to the proceedings of the Commission on 11 April 2019 on Day 81.

5 Annex LC4

6 Annex LC8

7 Annex LC3

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involved in the collusion described above remain in these institutions, some in powerful positions.

18. In this regard attention is drawn to the response of JP Pretorius SC (former acting head of the PCLU) in his second answering affidavit (attached to Calata's submissions)[8] in the matter of *Rodrigues v National Director of Public Prosecutions of South Africa and Others*[9] where he admitted the political interference but claimed that the NPA was blameless.

19. The Full Court in the *Rodrigues* matter strongly disagreed with the NPA's stance and the Commission is directed to the Court's findings in this regard.[10] The Court specifically affirmed the NPA's obligation to pursue TRC cases and to bring the allegations of political interference into the open. However:

> *"None of this occurred and the NPA must accordingly accept the moral and legal consequences of this most serious omission and dereliction of duty on its part."*[11]

20. The Court in *Rodrigues* saw fit to censure the NPA for its attempt to withhold the affidavit of Macadam, noting that:

> *"The suggestion that it was deliberately withheld from this Court is difficult to refute especially given its seriousness and the detailed allegations contained therein of political interference."*[12]

21. It is also noteworthy that notwithstanding considerable publicity on these matters over several years, neither the Ministers of Justice or Police, nor anyone else in government, has issued a single statement acknowledging the problem, or apologising to victims or undertaking to take expeditious steps. Their silence has been deafening. Indeed, in the *Rodrigues* matter referred to above, the aforesaid ministers, who were both respondents, studiously avoided dealing with the political interference, even though it was a centrepiece of the case and explained the delay and inaction, post the winding up of the TRC.

22. The judgment of the full bench in *Rodrigues* called on the NDPP to consider taking action in terms section 41 (1)[13] of the National Prosecuting Authority Act 32 of 1998.[14] The Court called for a:

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8 Annex LC7

9 (76755/2018) [2019] ZAGPJHC 159 (3 June 2019), available at: http://saflii.org/za/cases/ZAGPJHC/2019/159.html

10 *Rodrigues v National Director of Public Prosecutions of South Africa* [2019] ZAGPJHC 159 paras 57-70.

11 *Rodrigues v National Director of Public Prosecutions of South Africa* [2019] ZAGPJHC 159 para 64.

12 *Id* at para 68. See also paras 66 – 70.

13 Section 41(1) reads: "*Any person who contravenes the provisions of section 32 (1) (b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.*" Section 32 deals with the impartiality by members of the prosecuting authority. Section 32(1)(b) reads: "*Subject to the Constitution and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.*"

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> *"[P]ublic assurance from both the Executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again. In this regard they should indicate the measures, including checks and balances, which will be put in place to prevent a recurrence of these unacceptable breaches of the Constitution."*[15]

23. To date there has been no response to the recommendations of the Court by the NDPP or any member of the Executive. If past conduct is anything to go by the Executive is likely to maintain its silence and inaction. In relation to the NPA it appears from a statement in the Sunday Times of 9 June 2019 by the NPA's head of communications, Bulelwa Makeke, that the NPA is going to focus on the future rather than the past given that "... *political interference is now a thing of the past*".[16]

24. This all points to the urgent need for an independent investigation rather than leaving it to the institutions themselves.

Conclusion

25. In short, this matter directly implicates the Commission's terms of reference as it deals with both state capture and corruption in two key law enforcement agencies, the NPA and the SAPS.

26. In addition, efficient use of public funds and resources suggests that this Commission, which has demonstrated its independence and capability, take on this matter rather than the State establishing a new commission of inquiry.

27. Perhaps more than any other class of cases, the suppression of the TRC cases, has been almost total in its impact. Virtually all the 400 cases were blocked. The impact this has had on the families of those murdered, their communities and on the fabric of society, is incalculable. This in itself demands an expeditious, thorough and credible inquiry into the machinations that resulted in such a massive denial of justice.

Yours faithfully

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[14] Para 65

[15] Para 65. See also paras 21 – 24 and 57 – 64 of the judgment.

[16] Tymon Smith, *Court tells NPA to stop playing victim and do its job of punishing apartheid crimes*, Sunday Times, 9 June 2019 available at: https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2019-06-09-court-tells-npa-to-stop-playing-victim-and-do-its-job-of-punishing-apartheid-crimes/

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23 June 2019

Dear Respected Mr. President

CALL FOR APOLOGY TO VICTIMS & FOR APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

We wish you and your newly appointed Cabinet well as your term gets underway to lead our nation. As citizens of this beloved country, we are fully aware of the responsibility that you carry and we do sincerely hope and fervently pray that your respected team under your able leadership will overcome the various challenges that you inherited and that lay ahead.

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While we, as citizens, do value and continue to celebrate the freedom that we have so far experienced since spaces were opened up for us all to elect a democratic government during the early part of 1994, we are still very much haunted by our country's past. It is, we stress, a lingering past that has not disappeared from our memories and one that we all acknowledge remains unforgettable.

Mr. President, as you opened your State of the Nation address, you indeed started off on an important note when you reminded us all about the notorious 'Native Land Act' of 1913 and the 'grave injustice' that it wrought as the decades rolled by thereafter. As a matter of fact, we expected you to have continued in the same vein by recollecting in, at least, a few lines the inhumane apartheid state's atrocities; a series of reprehensible acts that we all know wreaked havoc among our communities and that have severely wounded us all.

So far, we all are fully aware of the fact that the effects of that repressive state's – that never represented any of the oppressed communities - disgraceful deeds most of us have not been able to shake them off psychologically and socially; they are ingrained in our beings. We were, therefore, somewhat dismayed that you made no reference to the battery of dishonorable Acts that the apartheid regime devised and enforced on our communities.

As we collectively pen this letter to you, Mr. President, we wondered why you failed to mention the socio-economic injustices that were perpetrated by that discriminatory regime; a racist administration that had caused permanent social scars and unfathomable inequalities that have deeply harmed our nation. To this very day, we all continue to sadly witness extreme communal disparities across the country; a point that you mentioned in your speech.

Permit us, Mr. President, to ask your Excellency the following question: Why did you not take the opportunity of saying something about that the Truth and Reconciliation Commission's (TRC) unfinished business that still needs urgent attention? On this note honorable President, we have been appalled at the manner in which the TRC's incomplete tasks were handled by our previous governments.

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For the record, when the previous democratically elected governments under Mr. T. Mbeki and Mr. J. Zuma came into power we had faith that they would ardently tackle the string of terrible apartheid cases to, at least, try and overcome the past's misconducts. We, in fact, had the confidence that these democratically appointed governments would give particular attention to all apartheid's victims especially those who were killed at the hands of the infamous Security Branch. Mr. President it is as a result of their deliberate – if we may describe it as such – inaction that our current status has been sorely affected on different levels. At present we, as family and friends of apartheid victims, are of the view that 'justice delayed is indeed justice denied.'

Returning to your speech Mr. President we thus wish to pose a few other questions: How can we, as a nation, become a socially safe & cohesive society and an ethically conscious nation if we haven't appropriately dealt with the past? Would it ever be possible to clearly define ourselves as a nation when we cognizant of the fact that we did not effectively tackle past crimes? In which way would we be able to truly transform and actually attain Vision 2030's noble goals when the past offences, which have caused so many traumas, still stay within our nation? And while we definitely agree with you Mr. President that 'through our collective action we determine our collective destiny', do you honestly think that this would be achievable when our former representative governments shrewdly sidelined and calculatingly canceled the racist state's wrongdoings of the past?

In the light of these remarks that include an array of unanswered questions, we take this opportunity of genuinely imploring you and your esteemed cabinet to consider prioritizing the more than 300 TRC cases that were - for some uncanny reason - ignored and that were forwarded to the National Prosecution Authority (NPA) for further investigation and prosecution.

Since this is our honest request, we want to draw your attention to an extract from the letter **(attached)** dated 5th of February 2019; it was issued by former members of the South African TRC and herein they made the following plea:

...We write to you as former Members of the ... TRC to call on you to appoint a commission of inquiry into the political interference that has stopped the investigation and prosecution of

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virtually all the cases referred by the TRC to ... NPA. We also call on you, in your capacity as President of South Africa, to apologize to victims of apartheid-era atrocities who have been denied justice for several decades and suffered considerable trauma as a result....

According to our information, it was observed that these members have to date not received any response to the above correspondence and for us, being family and friends of victims of that vicious inhumane system that disregarded our family members and friends' human rights, this is somewhat very disconcerting.

Nonetheless, very recently the nation publicly heard and read the decisive Judgment **(attached and PR from the Steve Biko Foundation)** that was issued by a Full Bench of the South Gauteng High Court on the 3rd of June 2019, Case Number 76755/2018; this was a matter between JOAO RODRIGUES (Applicant) and THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS and others in relation to the murder of Ahmed Timol during 1971. Here again we note with concern the following pertinent extracts:

"The court was faced with the issue of political interference in the National Prosecution Authority in finalising the prosecution of the applicant. The period in question was considered to be the period between 2003 and 2007. The court directed that the conduct of the relevant officials and others at the time needed to be brought to the attention of the National Director of Public Prosecutions for her consideration so that she may take any necessary action. The court concluded that although there was political interference, investigating it further in this court was not necessary."

On top of this historical verdict, a submission has been made to the Zondo Commission **(see attached)** by Lukhanyo Calata (dated 17th of April 2019); he, representing other victims of apartheid-era crimes too, made a special request that an investigation be undertaken regarding the political interference that resulted in the suppression of virtually all the 300 cases; you might recall that this was an issue that was already referred to by the TRC to the NPA.

We, family and friends of apartheid's victims who were unjustly killed, thus use this opportunity to petition you, as our country's State President, to do the very least and that is to honor the souls of our country's martyrs; individuals who had valiantly sacrificed their lives to attain social justice for us all. Although we only remind you of the names of Imam Abdullah Haron, Nicodemus Kgoathe, Simon Modipane, James Lenkoe, Caleb Mayekiso, Michael Shivute and Jacob Monnakgotla since this year (2019) is the 50th year of their killings while they were held in detention, we should not forget the names of many others such as Steve Biko, Mapetla Mohapi, Matthews Mabelane, and Neil Agget.

Essentially, we would like to drive home - now that you have addressed the nation – the point that as a nation that we not only repeatedly recall the critical contributions of, inter alia. Chief Albert Luthuli, Oliver Tambo, Nelson Mandela, and Robert Sobukwe, but that we too remember all of the martyred men and women; however, in order for us to do the latter we genuinely beseech you and your cabinet to take immediate action by opening their cases and all other related ones so that they may help to reconcile the festered injuries and heal the grief-stricken hearts.

So we, the undersigned, as victims' families and friends openly demand that you firmly intervene so that your office can assist to bring about some form of justice to many of the affected families and friends. More importantly, however, we want you, as our State President, to bring some measure of closure to not only the traumatized families and friends but to help heal our deeply troubled nation.

We want you to pursue these basic socio-legal obligations in order that we all may continue to enjoy the fruits of our democratic South Africa; a country wherein accountability should be one of our nation's hallmarks in all social sectors and one in which you, as our elected president, demonstrate audacious leadership from which we all can draw courage by giving 'hope to the hopeless' and offering genuine comfort to those who had lost their dear ones throughout the apartheid era.

Let us end off by stating that we subscribe to the view that we should all strive together towards constructing a protective and safe society within a secure environment and - drawing on your wise

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words - 'working together ... (to) build a country in which all may know (and harmonize their lives with) peace and (in which they may reside in reasonable) comfort and (ample) contentment.'

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Letter to President Ramaphosa: Call for an apology....

June 23, 2020 News

RE: CALL FOR AN APOLOGY TO VICTIMS & REQUEST FOR APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

A year has passed since we, as the families of the victims of apartheid wrote to your office, and to the Department of Justice and Constitutional Development, regarding the 'Unfinished Business' of the Truth and Reconciliation Commission (TRC). We were hopeful that you would offer a reply since the issues we highlighted were and remain a major concern for us as a nation. Media coverage recorded our humble plea: *"20 years on, apartheid victims' families ask Cyril Ramaphosa for closure"*).[1]

Our correspondence followed a letter that was sent to government by former TRC commissioners dated 05 February 2019 urging you to appoint a commission of inquiry "into the political interference that has stopped the investigation and prosecution of virtually all the cases referred by the TRC to the National Prosecuting Authority (NPA)". Media coverage of their plea to you: *"'No justice for apartheid victims' – Apologise and appoint inquiry, TRC members tell Ramaphosa"*).***[2]***

It is our urgent wish that you give your full and immediate attention to our request. We have had no response to our correspondence from your esteemed office or from that of the Minister of Justice and Constitutional Development (DOJ&CD). As we're sure you can imagine, it's led to us as victims' families questioning why our democratically elected government continues to neglect addressing our matters leading to our perception that the government of the African National Congress (ANC) has adopted an attitude of no concern to what was a matter of life and death for our loved ones. A matter indeed that should never have been ignored or abandoned from the start.

During the past two weeks, we have witnessed the cold-blooded killing of Mr. George Floyd in Minneapolis, It has since been followed by the murder of Mr. Rayshard Brookes this past weekend. The President will also know that a number of similar deaths have occurred in South Africa that are a cause for concern. The most recent of which include Collins Khosa as well as 11 other South Africans who died questionably at the hands of SANDF and the SAPS.

Mr. President, as you know such murders have been condemned locally and globally by governments and civil society groups. The reason for this response underlines the fact that police brutality against

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African communities has and continues to be unrelenting.

Mr President, on the 05th June 2020 we watched as you officially launched the anti-racism campaign dubbed "Black Friday" led by the ANC. In your speech you eloquently and extensively quoted one of our fallen and respected leaders, namely Bantu Stephen Biko; a leader who was brutally killed while in an Eastern Cape prison cell during 1977. On the occasion of the launch you correctly pointed out that here was *"a black man (who was) murdered by (the) white law enforcement officers"*; you continued, *"And it is important that we remember this as the whole world unites against the death of George Floyd. His death and the death of so many others have not diminished our quest for a true humanity. They have not weakened our resolve, instead they have brought forth from within our collective being a relentless desire for justice, for peace, for understanding and for equality."*

If we may follow your reference more completely Mr President, on 14 September 1977 the apartheid Minister of Justice, Mr. Jimmy Kruger addressed a Nationalist Party congress in which he arrogantly denied any police involvement in the brutal killing of Bantu Stephen Biko. He flippantly stated that Biko 'died' as a result of a hunger strike. Two months later, on 14 November 1977, the 13 day inquest into Biko's 'unnatural death' began in Pretoria's Old Synagogue; Sydney Kentridge, who was the Biko family's appointed lawyer, led the prosecution. The post-mortem revealed that there were major injuries to the brain. Yet, despite empirical evidence indicating that Biko was brutally murdered, Magistrate Prins, like many of his peers during that era, chose to look the other way and conveniently sided with the apartheid regime's position and gave a three-minute ruling that 'no-one was to blame'. This ruling like that of Imam Haron, Ahmed Timol and others, attracted international condemnation of the apartheid regime.[3] The question that all of us who were involved in the anti-apartheid struggle asked then and continue to ask now: 'How often have we heard that 'no-one was to blame' for the deaths of so many of our activists?' For clarity, the annals of history and the extant judgements continue to misrepresent the truth by incorrectly reflecting that 'nobody' could be held accountable for the murder of Biko and many other activists.

Future generations will pose the same questions that we currently raise:

- 'What did democratic South Africa do to find justice for the family of Steve Biko and the families of so many others?'
- 'Why have the inquest findings not been revisited and investigated? and
- 'What reasons have been given for not having reversed those untruthful judgements?'

These are indeed weighty questions Mr. President and none of them can be wished away. We suggest that unless your office and related structures act to address the matter, they will remain unanswered. In fact, as you noted in the 2018 Steve Biko Memorial Lecture, Bantu Stephen Biko was once your leader as of many others who currently sit in parliament; he was, as you stated, someone who

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influenced the development of your political consciousness during the period when you and others were detained without trial; a committed and dedicated cadre who sacrificed his life for justice.

Mr. President, permit us to ask that if you were in the shoes of one of us: 'Would you not have been anxious in wanting to know the actual truth?' 'Would you not do the same as ourselves in pushing for an inquest?' 'Would you not be as frustrated as we are with the way your predecessors and our current government have dragged their feet up until now? And as disappointingly let down by the democratic principles that we observe and abide by?'

The Priority Crimes Litigation Unit (PCLU) was created by Presidential proclamation[4] on 23 March 2003; a proclamation, we are sure that you are aware of. Since then, it's been located in the office of the National Director of Public Prosecutions (NDPP). Its mandate Mr President, pertains to matters emanating from TRC findings. These include addressing the 'missing persons' and prosecuting those who were refused amnesty for having committed heinous crimes against our humanity in communities throughout country.

It is regrettable that when, on different occasions, attempts were made by victims' families to bring to book those unpardoned Security Branch officers, none of them was brought to court. We were informed that government officials intervened to prevent this from taking place.

On different occasions some among us have made attempts to see that those Security Branch officers, who were denied amnesty, be brought to book; yet for reasons unknown to us, none of them have ever been brought to court. Instead we've been reliably informed that government and ANC officials have intervened to stop such justice from taking place. Related to this, we want to bring to your attention, Mr. President, a decisive judgment recently handed down for your record, we attach it herewith.

On 3 June 2019 a full Bench of the South Gauteng High Court [Case Number 76755/2018] dealt with a matter between JOAO RODRIGUES (Applicant) and THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS and others in relation to the murder of Ahmed Timol in 1971. The following extract is pertinent:

"The court was faced with the issue of political interference in the National Prosecution Authority in finalising the prosecution of the applicant. The period in question was considered to be the period between 2003 and 2007. The court directed that the conduct of the relevant officials and others at the time needed to be brought to the attention of the National Director of Public Prosecutions for her consideration so that she may take any necessary action. The court concluded that although there was political interference, investigating it further in this court was not necessary."

At paragraph 64 it held that *"...society as a whole had an ongoing interest in the work of the TRC and the follow up that the government committed itself to. Parliament, which ultimately represents the*

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legislative authority of the state had a right to know when the letter and spirit of legislation that it had passed was being deliberately undermined. None of this occurred and the NPA must accordingly accept the moral and legal consequences of this most serious omission and dereliction of duty on its part."

At paragraph 65 it held that *"it is also for these reasons that conduct of the relevant officials and others outside of the NPA at the time must be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular to consider whether any action in terms of Section 41(1) of the NPA Act is warranted."*

Considering these developments, Mr. President, as families and friends of victims, we request an assurance from both your administration and the NPA that the kind of political interference that had occurred and continues to occur in all matters of TRC cases will never happen again. We would also like to hear about the necessary measures, including checks and balances, which will be put in place in order to prevent a recurrence of these unacceptable breaches of our rights and our Constitution.

Perhaps it is also opportune to advise that an open letter (dated 18 February 2020) was sent to the office of the National Director of Public Prosecutions (NDPP) Shamila Batohi by the nephew of Ahmed Timol, Imtiaz Ahmed Cajee. In the letter, he drew her attention to the above ruling of the South Gauteng Full Bench. Sadly, Mr. President, so far there has been no response from her desk or any other official from the NDPP to date. We are forced to assume that political interference is continuing until we can be proven wrong.

In fact, as we penned this letter to you Mr. President, we eagerly await Lukhanyo Calata (son of Fort Calata) testifying before the Zondo Commission. He had made a submission (dated 17 April 2019). For your information, Mr President, Lukhanyo Calata also represents other families of victims of apartheid-era crimes; he made a special request that an investigation be undertaken with regard to the political interference which has resulted in the suppression of virtually all of the 300 TRC cases referred to the NPA.

Mr. President, we note (rather worryingly) that to date our democratic government has neither heeded the call made by families, nor the call made by the former TRC commissioners for justice. Apartheid-era perpetrators continue to enjoy their lives while others die without any of them being ever held accountable for their dastardly crimes against our humanity. Many of our family members, some key witnesses, are elderly; and they too are passing on without ever learning the truth or finding closure about the deaths of their loved ones. One such tragic death is that of Mrs. Galiema Haron who waited literally for fifty years and never saw justice for her husband, Imam Haron, despite her desperate pleas to successive ANC governments.

We boldly and frankly state, Mr. President, that the deafening silence of the ANC and the government that leads to our pleas is an insult to us and all the memory of all fallen comrades. Men and women

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who were callously murdered by the apartheid regime. The country and the democracy that you lead today was not handed to us by Mr. F W de Klerk and his ilk. It was gained through the blood of our martyrs. Men and women who your government has today apparently decided to banish to the dustbin of our history.

Mr. President, we can no longer continue to remember our martyrs only during the elections cycle or when the anniversaries of their brutal killings roll around or when Presidents confer upon them posthumous awards, or renaming streets. We believe that our loved ones can only be respectably honoured when the truth around their deaths is completely revealed. We ache to know how and why they were murdered and most importantly who ordered their deaths and then murdered them. As far as we their families are concerned, it is the reversal of apartheid-era inquest findings so that those that were complicit in their deaths should be held accountable and whose names should be publicly shamed.

Mr. President, we, the undersigned Apartheid Era Victims' Families Group (AVFG) once again openly and humbly appeal to you, to make a decisive intervention while you hold this prestigious position of responsibility. We ask that you firmly, if not forcefully, intervene so that justice may bring about familial solace to the affected families and societal satisfaction. We ask that you note our adopted Charter **(see attached)** in which we outline who we are; the contribution we can provide in assisting the government and the demands we make to bring justice and closure to these matters. Such closure is not only for the traumatized families but also for our deeply troubled nation in order that we all and our future generations, may enjoy the fruits of our democracy.

Mr. President, we do not want future generations to look back at us and our democracy with disdain for not having addressed the TRC's unfinished business. If you heed our sincere call, then we shall be standing alongside you to see these processes through and reach an agreeable conclusion. We leave our request and our plea in your generous hands; and we hope for a timeous reply that will chart our democratic government's undivided attention forward for every TRC case.

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[1] 19 June 2019, BY ERNEST MABUZA; https://www.timeslive.co.za/news/south-africa/2019-06-19-20-years-on-apartheid-victims-families-ask-cyril-ramaphosa-for-closure/

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[2] 06 February 2019, City Press Staff Reporter, https://www.news24.com/citypress/News/no-justice-for-apartheid-victims-apologise-and-appoint-inquiry-trc-members-tell-ramaphosa-20190206

[3] https://artsandculture.google.com/exhibit/steve-biko-the-inquest-steve-biko-foundation/AQqnVp5h?hl=en

[4] http://www.npa.gov.za/UploadedFiles/About PCLU signedoff.doc

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25 March 2021

Dear Mr President,

CALL FOR THE APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

We, the former Commissioners of the Truth and Reconciliation Commission (TRC), called on you in early 2019 to establish a commission of inquiry into the suppression of the investigation and prosecution of apartheid-era crimes that had been referred by the TRC to the National Prosecuting Authority (NPA) (the TRC cases). A copy of our letter dated 5 February 2019 is

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attached for your ease of reference as appendix A. Aside from an acknowledgment of receipt you did not respond to this request.

We also refer to the letters dated 23 June 2019 and 23 June 2020 addressed to you by the families of Chief Albert Luthuli, Steve Biko, the Cradock Four, Nokuthula Simelane, Ahmed Timol, Dr Neil Aggett, Imam Haron, Matthews Mabelane, Dr Hoosen Haffejee, Ashley Kriel, Nicodemus Kgoathe, Solomon Modipane, Jacob Monagotla, Mapetla Mohapi, Mxolisi 'Dicky" Jacob, Caiphus Nyoka, Anton Fransch, Moshin Jeena, Haroon Aziz, Coline Williams and Robert Waterwitch. These families expressed their deep pain and anguish at having been denied truth and justice in the new South Africa. They also called for a commission of inquiry into the suppression of the TRC cases. Their letters were ignored.

In the light of your failure to respond, representatives of several families of victims of apartheid-era crimes, including the families of the Cradock Four, Nokuthula Simelane, Ahmed Timol, Neil Aggett, Imam Haron and Hoosen Haffejee approached the Judicial Commission of Inquiry into Allegations of State Capture with the request that it inquire into the capture of state institutions meant to pursue justice in respect of the TRC cases. Regrettably the commission was unable to complete its investigations into this matter and it will close on 30 June 2021. We understand that the bulk of the remaining period is to be devoted to the preparation of the Commission's final report.

Accordingly, the former TRC Commissioners, the undersigned organisations and family representatives renew their call for a standalone independent commission of inquiry to investigate the suppression of some 400 serious cases, including murders and disappearances, from South Africa's past.

The need for a Commission of Inquiry

There is no longer any dispute that political interference blocked several hundred serious criminal cases in which amnesty had been denied or not sought. A former National Director of Public Prosecutions and a former head of the NPA's Priority Crimes Litigation Unit have provided affidavits to this effect in the 2015 matter of *Nkadimeng v. National Director of Public Prosecutions.*[1] Senior officials representing the NPA admitted under oath in 2019 that the Authority succumbed to political interference in respect of the TRC cases in *Rodrigues v National Director of Public Prosecutions of South Africa*.[2] The Full Court in that matter expressed its dismay at how such interference could take place in the new constitutional order. It called on the Executive and the NPA to take appropriate action to ensure that such breaches of the Constitution do not recur.[3] To date, neither the government, nor the NPA have taken such action. In our respectful view, appropriate action to prevent recurrence can only be based on a full and thorough inquiry.

While some evidence has been uncovered in the *Nkadimeng* and *Rodrigues* matters, the reasons behind the suppression of the cases are not known and the sources of such

[1] T.P.D. Case No. 3554/2015), Gauteng Division
[2] 3 All SA 962 (GJ) 2019; (2) SACR 251 (GJ) 2019
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interference remains opaque. It is not known if arrangements and agreements were struck with individuals and entities outside government. The full means by which the will of outsiders was imposed on the NPA and the South African Police Service (SAPS) is yet to be exposed. It is not known how institutions with firm constitutional and statutory obligations to uphold justice so easily abandoned their legal duties in respect of the TRC cases.

The suppression of the TRC cases involved multiple entities and individuals across the public sector. The secret Amnesty Task Team created by the Director-General's Forum in early 2004 to explore means of guaranteeing impunity for apartheid-era perpetrators involved multiple departments including the Department of Justice and Correctional Services, the National Intelligence Agency, the NPA, the SAPS and the Department of Defence. The available evidence suggests that politicians, cabinet ministers, senior civil servants, police officers and prosecutors were all involved in efforts to ensure that the TRC cases never saw the light of day.

It is accordingly not sufficient for there to be separate internal or departmental inquiries by the different institutions. Such inquiries will not be able to deliver the full history of the interference as it unfolded over time over multiple entities. Moreover, such inquiries will not be able to compel the production of testimony and evidence from other departments. In any event, there appears to be considerable resistance to carrying out meaningful investigations at these levels; and it goes without saying that departmental officials should not be investigating themselves or their colleagues.

The subject matter is of great public concern

Perhaps more than any other class of cases, the suppression of the TRC cases has been almost total in its impact. Virtually all the 400 cases were blocked. The impact visited on the families of those murdered, their communities and on the fabric of society is incalculable. The harm done to the families and our society demands an expeditious, thorough, and credible inquiry into the machinations that resulted in such a massive denial of justice.

Commissions of inquiry are investigative tools which the President may invoke for purposes of investigating matters of public concern or for gathering information considered necessary for formulating policy. In addition, there is a critically important need to restore public confidence in the institutions implicated in the suppression of the TRC cases. This is particularly the case in respect of the families of victims of apartheid-era crimes and their communities who have lost all trust and confidence in the SAPS and NPA.

A further objective of the proposed commission is to reveal the truth pertaining to the suppression of the TRC cases, which gives it a deeper public purpose. This is necessary given the extent of disquiet and discontent around such serious lapses by public organs meant to uphold the rule of law. There can be little doubt that such lapses have provoked much anxiety and worry amongst many South Africans who regard the suppression of these cases as a matter of great public interest and importance.

The Constitution requires that the notion of 'public concern' be interpreted to promote the spirit, purport and objects of the Bill of Rights and to underscore the democratic values of

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human dignity, equality and freedom. In respect of the suppression of the TRC cases, these democratic values have been obliterated. We scarcely need to point out that the human dignity of Lukhanyo Calata and the Cradock 4 families, together with the families of hundreds of other victims of apartheid crimes, have been deeply offended. Their right to equality before the law has been grossly disrespected. The TRC cases have been treated differently from other serious criminal cases for purposes of serving undisclosed political and ulterior ends. Such brazen arbitrariness should have no place in South Africa's constitutional order.

Appoint a commission

We accordingly request that you appoint, without further delay, an independent commission of inquiry into the suppression of the TRC cases in terms of the Commissions Act 8 of 1947, with the necessary powers to compel the production of testimony and evidence. We have prepared draft terms of reference to assist you in your deliberations, which are annexed to this letter as appendix B.

The late Mr Justice Arthur Chaskalson, then President of the Constitutional Court, later Chief Justice of South Africa, said a few months after South Africa's democratic elections in 1994:

> *"We need to remember that the first incursion into rights is often the most damaging; that once inroads are permitted, the will to resist subsequent incursions is lessened..."*

Should you not announce a decision of your intention to establish a commission of inquiry by 30 April 2021 we will refer this matter to our attorneys. They will be instructed to vindicate the constitutional rights of families of apartheid-era crimes and to bring an appropriate application to court.

Yours sincerely,

Yasmin Sooka o.b.o the former TRC Commissioners
Archbishop Emeritus Desmond Tutu
Advocate Dumisa Ntsebeza SC
Ms Mary Burton
Dr Fazel Randera
Ms Glenda Wildschut
Mr Richard Lyster

The Committee Members
Ms Joyce Piliso-Seroke
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Organisations
Desmond and Leah Tutu Legacy Foundation
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Khulumani Victims Support Group
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Ahmed Timol Family Trust
Centre for Applied Legal Studies
Imam Haron Foundation
Fort Calata Foundation
Steve Biko Foundation
Human Rights Media Centre
Open Secrets
South African History Archive
Southern African Litigation Centre
Violence Prevention Agency
Legal Resources Centre (LRC)
Lawyers for Human Rights (LHR)

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Appendix B: Proposed Terms of Reference

TERMS OF REFERENCE

OF THE

JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO THE ALLEGED SUPPRESSION OF CASES REFERRED BY THE TRUTH AND RECONCILIATION COMMISSION TO THE NATIONAL PROSECURING AUTHORITY

A Judicial Commission of Inquiry ("the Commission ") is hereby appointed in terms of Section 84(2)(f) of the Constitution of the Republic of South Africa, 1996. The Commission is appointed to investigate the alleged suppression of cases referred by the Truth and Reconciliation Commission to the National Prosecuting Authority.

1. The Commission shall inquire into, make findings, report on and make recommendations concerning the following, guided by the court papers filed in *Nkadimeng v. National Director of Public Prosecutions* T.P.D. Case No. 3554/2015, Gauteng Division; the court papers and judgment in *Rodrigues v National Director of Public Prosecutions of South Africa* 3 All SA 962 (GJ) 2019; (2) SACR 251 (GJ) 2019, relevant information and evidence in possession of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, as well as the Constitution and relevant legislation:

    1.1 whether, and to what extent and by whom efforts or attempts were made through any form of persuasion or inducement for any purpose, advantage or gain of whatever nature to influence or pressure members of the National Prosecuting Authority (NPA) and/ or the South African Police Service (SAPS) to refrain or stop investigating and/ or prosecuting apartheid-era cases referred by the Truth and Reconciliation Commission (TRC) to the NPA (the TRC cases), or to abandon or undermine such cases (the interference).

    1.2 the role played in the alleged interference by any person within or outside government, including any current or former members of the National Executive (including Deputy Ministers), office bearers and /or functionaries employed by or office bearers of any state institution or organ of state, including but not limited to the Department of Justice and Correctional Services, the Presidency, the National Intelligence Agency, the Department of Defence and the former Directorate of Special Operations.

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1.3 whether, and to what extent, any current or former member or functionary of the NPA and SAPS colluded in the alleged interference, or agreed, acquiesced, or succumbed to the alleged interference by:

1.3.1 not adequately performing a function relating to the institution or conducting of criminal investigations or proceedings,
1.3.2 delaying, hindering, or preventing the performance of an investigative or prosecutorial function,
1.3.3 showing any favour or disfavour to any person relating to the institution or conducting of criminal investigations or proceedings,
1.3.4 exerting any improper influence over the decision making of any person, including another member of the SAPS or the NPA,
1.3.5 any other act or omission that promoted the interference.

1.4 the nature and extent of the interference, if any, including:

1.4.1 the reasons or motivation behind the interference,
1.4.2 whether any person within or outside government issued formal or informal, written, or unwritten instructions or directions for the interference to proceed,
1.4.3 whether any formal or informal arrangements or agreements were made between persons within and/ or outside government to carry out the interference,
1.4.4 how the interference was imposed on the NPA and the SAPS.
1.4.5 how members of the SAPS and NPA were persuaded, influenced, or forced to cooperate in the interference.

1.5 whether any person breached or violated the Constitution, any law, guideline, or ethical code by engaging in or facilitating the interference or failing to stop or expose such interference.

1.6 whether any conduct committed during the interference, *prima facie*, amounts to the crime of defeating or obstructing the course of justice, or a crime in terms of the National Prosecuting Authority Act 32 of 1998, or the crime of corruption, particularly as framed in sections 9 and 19 of the Prevention and Combating of Corrupt Activities Act, 12 of 2005 or a crime under any other law.

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1.7 the impact, if any, on victims, families, communities, the rule of law, the criminal justice system and related institutions, and South Africa as a whole.

1.8 the steps, measures and reforms needed to prevent a recurrence of the interference.

2. These terms of references may be added to, varied, or amended from time to time

3. All organs of state must cooperate fully with the Commission.

4. The Commissions Act,1947 (Act No. 8 of 1947) shall apply to the Commission, subject to such amendments and exemptions as may be specified by proclamation from time to time.

5. The Commission shall submit its report and recommendations to the President within 180 days of the commencement of the Commission.

6. Regulations shall be made, after consultations with the presiding judge, in terms of the Commissions Act, 1947 and shall apply to the Commission in order to enable the Commission to conduct its work meaningfully and effectively and to facilitate the gathering of evidence by conferring on the Commission powers as necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents.

7. The Commission shall where appropriate, refer any matter for prosecution, further investigation, or the convening of a separate enquiry to the appropriate law enforcement agency, government department or regulator regarding the conduct of certain persons.

8. Regulations contemplated above shall also make provision for the resourcing and employment of staff of the Commission.

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THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Our ref: URN0002021OOP000145

Former Commissioners of the TRC
Foundation for Human Rights
Tel: 011 593 4002

By email: yasmin.sooka@gmail.com

Dear Ms Sooka and Adv Ntsebeza SC,

CALL FOR APOLOGY TO VICTIMS & FOR APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

With reference to the above we hereby wish to acknowledge receipt of your letter pertaining thereto.

In addition, we wish to confirm that the matter has been referred to the Department of Justice and Correctional Services for further attention and reply.

Trusting you find it in order.

Yours faithfully,

Mr Geofrey Mphaphuli
Acting Head: Legal and Executive Services
Date: 06/05/2021

Mr Geofrey Mphaphuli
Legal and Executive Services
Email: Geofrey@presidency.gov.za

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Fax: +27 (0)21 462 2838
Email: presidentrsa@presidency.gov.za;
MaleboS@presidency.gov.za

Cc: Mr Musi Sikhosana
Chief of Staff in the Office of Minister in the Presidency
Email: musi@dpme.gov.za

Mr Mike Louw,
Director: Support Services (for correspondence related matters)
Email: presidentrsa@presidency.gov.za

Mr Ronald Lamola
Minister of Justice and Correctional Services
Email: ZaneNdlovu@justice.gov.za / Ministry@justice.gov.za

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Your reference	Our reference	Date
URN0002021OOP000145 Mr Georffrey Mphaphuli/ Acting Head Legal and Executive Services	Mr M Hathorn 3048523	8 June 2021

Dear Mr President,

REQUEST FOR A COMMISSION OF INQUIRY INTO THE SUPPRESSION OF THE TRC CASES

We refer to the TRC Commissioners' letter to you dated 25 March 2021 and your letter addressed to them dated 6 May 2021, in which your office indicated that the matter has been referred to the Department of Justice and Correctional Services. We attach copies of these letters for your easy reference.

In the TRC Commissioners' letter to you dated 25 March 2021 you were requested to indicate whether you intended to appoint a commission of inquiry into the suppression of the TRC cases by 30 April 2021, failing which the matter would be referred to attorneys.

The matter was referred to us. We have been furnished with an opinion from eminent senior counsel indicating that the issue in question is one of significant public concern; and that in these

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Bellings AE Bennett AP Blair DHL Booysen AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya I de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun IM Harvey JS Henning KR Hillis Z Hlophe CM Holfeld FM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kenredy KE Kliner A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Molori N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyalsumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan CI Rapson K Rew SA Ritchie NJA Robb J Roberts G Sader M Sader H Samsudien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen IK Thekiso C Theodosiou T Theunissen R Tlhavoni G Truter PZ Varda SE van der Meulen JP van der Poel CS Vanmali IE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

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specific circumstances, your failure to make a decision, or your refusal to appoint a commission, is susceptible to review under the legality principle as well as a Bill of Rights challenge.

We have now been instructed by several families of apartheid-era victims (including members of the Cradock Four and Biko families) as well as multiple organisations to prepare an application to court for the appropriate relief. Counsel has been duly briefed in this regard.

Our instructions are to place you formally on terms. Should we not hear from you within 10 days of receipt of this letter we will proceed to launch an application to court for an order compelling you to fulfil your obligations under the Constitution and to appoint a commission to inquire into the suppression of the TRC cases.

Yours faithfully

WEBBER WENTZEL
Moray Hathorn
Consultant
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Direct fax: +27115306539
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Former Commissioners of the Truth and Reconciliation Commission

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Mr Ronald Lamola
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Email: ZaneNdlovu@justice.gov.za / Ministry@justice.gov.za

25 March 2021

Dear Mr President,

CALL FOR THE APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

We, the former Commissioners of the Truth and Reconciliation Commission (TRC), called on you in early 2019 to establish a commission of inquiry into the suppression of the investigation and prosecution of apartheid-era crimes that had been referred by the TRC to the National Prosecuting Authority (NPA) (the TRC cases). A copy of our letter dated 5 February 2019 is

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attached for your ease of reference as appendix A. Aside from an acknowledgment of receipt you did not respond to this request.

We also refer to the letters dated 23 June 2019 and 23 June 2020 addressed to you by the families of Chief Albert Luthuli, Steve Biko, the Cradock Four, Nokuthula Simelane, Ahmed Timol, Dr Neil Aggett, Imam Haron, Matthews Mabelane, Dr Hoosen Haffejee, Ashley Kriel, Nicodemus Kgoathe, Solomon Modipane, Jacob Monagotla, Mapetla Mohapi, Mxolisi 'Dicky" Jacob, Caiphus Nyoka, Anton Fransch, Moshin Jeena, Haroon Aziz, Coline Williams and Robert Waterwitch. These families expressed their deep pain and anguish at having been denied truth and justice in the new South Africa. They also called for a commission of inquiry into the suppression of the TRC cases. Their letters were ignored.

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There is no longer any dispute that political interference blocked several hundred serious criminal cases in which amnesty had been denied or not sought. A former National Director of Public Prosecutions and a former head of the NPA's Priority Crimes Litigation Unit have provided affidavits to this effect in the 2015 matter of *Nkadimeng v. National Director of Public Prosecutions*.[1] Senior officials representing the NPA admitted under oath in 2019 that the Authority succumbed to political interference in respect of the TRC cases in *Rodrigues v National Director of Public Prosecutions of South Africa*.[2] The Full Court in that matter expressed its dismay at how such interference could take place in the new constitutional order. It called on the Executive and the NPA to take appropriate action to ensure that such breaches of the Constitution do not recur.[3] To date, neither the government, nor the NPA have taken such action. In our respectful view, appropriate action to prevent recurrence can only be based on a full and thorough inquiry.

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Commissions of inquiry are investigative tools which the President may invoke for purposes of investigating matters of public concern or for gathering information considered necessary for formulating policy. In addition, there is a critically important need to restore public confidence in the institutions implicated in the suppression of the TRC cases. This is particularly the case in respect of the families of victims of apartheid-era crimes and their communities who have lost all trust and confidence in the SAPS and NPA.

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> *"We need to remember that the first incursion into rights is often the most damaging; that once inroads are permitted, the will to resist subsequent incursions is lessened..."*

Should you not announce a decision of your intention to establish a commission of inquiry by 30 April 2021 we will refer this matter to our attorneys. They will be instructed to vindicate the constitutional rights of families of apartheid-era crimes and to bring an appropriate application to court.

Yours sincerely,

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Advocate Dumisa Ntsebeza SC
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Human Rights Media Centre
Open Secrets
South African History Archive
Southern African Litigation Centre
Violence Prevention Agency
Legal Resources Centre (LRC)
Lawyers for Human Rights (LHR)

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THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Our ref: URN0002021OOP000145

Former Commissioners of the TRC
Foundation for Human Rights
Tel: 011 593 4002

By email: yasmin.sooka@gmail.com

Dear Ms Sooka and Adv Ntsebeza SC,

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Mr Geofrey Mphaphuli
Acting Head: Legal and Executive Services
Date: 08/05/2021

Mr Geofrey Mphaphuli
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23 Jun 2021

Karyn Maughan | ANC government owes South Africa answers about why it protected apartheid killers

Karyn Maughan

news24

Ahmed Timol (Source: ahmedtimol.co.za)

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The failed permanent stay of prosecution application by anti-apartheid activist Ahmed Timol's accused murderer confirms that the ANC government blocked criminal cases against apartheid killers. It is now crucial that it explain why, writes **Karyn Maughan.**

There is no longer any doubt that the ANC government actively blocked the prosecutions of alleged apartheid-era murderers - but up until today, it has never explained why.

Now, following a hard-hitting ruling by the Supreme Court of Appeal (SCA), the party may soon be forced to. On Monday, the SCA confirmed what the North Gauteng High Court in Pretoria had stated in 2019; there was undisputed evidence from the National Prosecuting Authority (NPA) that, between 2003 and 2017, "the executive adopted a policy position" that apartheid atrocity cases recommended for prosecution by the Truth and Reconciliation Commission (TRC) would not be pursued.

As part of its final report, the TRC had urged the NPA to pursue criminal action against more than 300 alleged perpetrators who had not applied for amnesty or lied about the murders they were allegedly implicated in. But these prosecutions never happened because the executive - including government ministers - successfully blocked these cases from proceeding.

READ | Ahmed Timol murder: Apartheid cop's application for permanent stay of prosecution fails

In a ruling that dismissed former apartheid policeman Joao Rodrigues' bid to secure a permanent stay of his prosecution for the 1971 murder of anti-apartheid activist and teacher Ahmed Timol, the SCA said it was "perplexing and inexplicable why such a stance was taken".

This, Judge Aubrey Ledwaba wrote, was particularly "in light of the work and report of the TRC advocating a bold prosecutions policy, the guarantee of the prosecutorial independence of the NPA, its constitutional obligation to prosecute crimes and the interests of the victims and survivors of those crimes".

Legal considerations

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All these considerations, the judge said, "should have stood in the way of any such moratorium on the prosecution of TRC-era cases".

"That it happened despite the constitutional, legal and other considerations suggests disdain for those important considerations and interests," he added, before stating the High Court had "rightly recommended" that National Director of Public Prosecutions (NDPP) Shamila Batohi conducted a "proper investigation into these issues" to determine whether "any action ... was necessary".

That investigation will be pursued under the provisions of the NPA Act, which stated "no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions".

From the evidence already given by former prosecutions head Vusi Pikoli and senior prosecutor Torie Pretorius, it is apparent there was manifest political interference in the prosecution of TRC-linked cases - most blatantly by the administration of then-president Thabo Mbeki.

"The [NPA] does not deny that the executive branch of the State took what one can describe as political steps to manage the conduct of criminal investigations and possible prosecution of the perpetrators of the political murders," Pretorius stated in court papers in the Rodrigues case.

As part of his application for a permanent stay of prosecution, Rodrigues - who stands accused of pushing the severely beaten and tortured Timol from the 10th floor of John Vorster Square police station - argued his prosecution had been unduly delayed, largely as a consequence of political interference in the TRC cases.

Murder of Ahmed Timol

While Rodrigues and other apartheid police officials claimed Timol had taken his own life, it was only in 2017 that an inquest court found he has been, in fact, been murdered. In other words, it took the NPA more than two decades to ensure the young teacher's family finally had official confirmation he had not taken his own life.

In another 2015 court case to compel law enforcement to conduct a proper investigation into the 1983 abduction, torture and presumed murder of Umkhonto weSizwe activist Nokuthula Simelane, Pikoli revealed how he had been placed under pressure by then-justice and constitutional development minister Brigette Mabandla, among others, to drop the TRC cases.

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READ | Ahmed Timol's death shattered the family, broke his father

"I have little doubt that my approach to the TRC cases contributed significantly to the decision to suspend me," Pikoli said.

He was suspended by Mbeki in 2008, largely as a consequence of his efforts to pursue then-national police commissioner Jackie Selebi for corruption.

"It is no coincidence that there has not been a single prosecution of a TRC case since my suspension and the removal of TRC cases from advocate [Anton] Ackermann," Pikoli stated in a 2015 affidavit.

Ackermann, who eventually left the NPA in 2013, detailed how he had experienced interference and obstruction with his attempt to go after the apartheid police officers who had tried to kill Reverend Frank Chikane as well in his team's efforts to uncover what had happened to Simelane.

Undermining of rule of law

He said he believed investigations of TRC cases "have been effectively stopped by machinations that took place above the level of the NPA". These machinations, he stated, undermined the rule of law and constituted a "deep injustice against the family of the late Simelane as well as the families of other victims of apartheid-era crimes".

Pikoli further revealed how, during a 6 February 2007 meeting with Mabandla, she appeared to gain the impression that he had agreed not to pursue the TRC cases, when he had not done so.

The following day, the she sent Pikoli a letter, where she stated: "I must advise you at the outset that the media articles alleging that the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise.

"In our discussions, you briefly mentioned to me that the NPA will not go ahead with prosecutions. As you had undertaken to advise me in writing, I will appreciate it if you could advise me urgently on the matter so that there can be certainty."

Pikoli said he was at a loss to explain how she reached such a conclusion and found her assumption that the TRC cases would not be prosecuted disturbing. This pointed to an expectation from the political level

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that he would not prosecute the TRC cases, he added, saying he regarded such an expectation as unwarranted interference in his constitutional duty to prosecute without fear, favour or prejudice.

Arguing for Timol family in the Rodrigues permanent stay of prosecution application, advocate Howard Varney slammed the NPA for failing to explain why - following Pikoli's suspension - it had acquiesced with instructions that the TRC cases not be pursued.

READ | NPA not pursuing charges against security branch officers implicated in Ahmed Timol murder

Instead, the prosecuting authority stated "the only conclusion to arrive at is that the delay in prosecuting [Rodrigues] was not as a result of the first respondent's [the NPA] own doing or its malice - it was as a result of the political interference and severe political constraints to which the first respondent [the NPA] was subjected".

Varney said this claim was "utterly breathtaking".

"It defies all logic. Essentially, the NPA appears to be saying that as unfortunate and unlawful as the suppression of the TRC cases may be, it was not the NPA's *'own doing'*, and its officials had little or no say in the matter.

"Once the politicians leaned on them, they were obliged to comply with their demands and accordingly cannot be held accountable. That this claim is made by an organisation comprising almost entirely of lawyers makes it even more astonishing in the light of the prevailing law."

An investigation into the interference

Speaking to News24 on Tuesday, Justice Minister Ronald Lamola's spokesperson, Chrispin Phiri, confirmed that, in accordance with the SCA's ruling in the Rodrigues case, the NPA would pursue an investigation into the executive's apparent political interference in the TRC prosecutions and the resultant failure of officials to pursue these cases.

He said a retired judge would be appointed to "assist the NDPP to consider whether the conduct of the relevant officials and others outside of the NPA warrants any action in terms of Section 41[1] of the NPA Act".

In other words, whether anyone can and should be criminally prosecuted for blocking the TRC cases from going ahead.

"This is will give effect to the Rodrigues judgment which requires a public assurance from both the executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again," Phiri added.

> **"In this regard, they [the investigation body] should indicate the measures, including checks and balances, which will be put in place to prevent a recurrence of these unacceptable breaches of the Constitution".**

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That, however, is not good enough for the former TRC commissioners and families of murdered activists who have spent the last two years lobbying President Cyril Ramaphosa for a public commission of inquiry into why the TRC prosecutions were not pursued.

The NPA's inquiry will almost certainly happen behind closed doors, with little prospect that the public will be given insight into how and why the executive interfered with these prosecutions.

Importantly, a judicial commission of inquiry would force role players like Mbeki and Mabandla to finally answer to claims that they used their positions to ensure that those accused of heinous apartheid crimes were never bought to book. It will also force the ANC, which has maintained an almost deathly silence about the aborted pursuit of apartheid perpetrators, to finally account for the conduct of its functionaries in allegedly interfering with these cases.

As French philosopher Voltaire famously stated: "To the living we owe respect, but to the dead, we owe only the truth."

Those who sacrificed their lives for South Africa's freedom are not just owed the truth about who murdered them and why. They and their families - and South Africa itself - deserve to know why the country's liberation movement seems to have done everything it could to prevent that truth from ever being uncovered.

Why did it protect those who tried to kill democracy rather than those who died for it?

Statement: Call For an Independent Public & Open Commission of Inquiry into the Suppression of the TRC Cases

Press releases

Former Commissioners of the

Truth and Reconciliation Commission

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MEDIA RELEASE
TO: All Media
ATT: News Editors, Human Rights Reporters
For immediate release

Tuesday, 09 November 2021

CALL FOR AN INDEPENDENT PUBLIC & OPEN COMMISSION OF INQUIRY INTO THE SUPPRESSION OF THE TRC CASES

Statement by the Former TRC Commissioners, Apartheid-Era Victims' Family Members and Civil Society Organisations

On Friday, 5 November 2021, the Minister of Justice, Mr Ronald Lamola, in his address to the Inaugural Fort Calata Foundation Memorial Lecture, indicated that he had appointed an inquiry to investigate the suppression of the cases referred by the TRC to the NPA, which were more than 300 serious crimes that were not amnestied, mostly murder cases ("the TRC cases"). He indicated that the investigation would be presided over by a judge.

The Minister did not disclose the terms of reference of the inquiry or the identity of the judge. No indication was given as to how the judge was appointed and under what legal authority. When asked whether the inquiry would be open or closed the Minister said he would have to discuss this with the

judge. He declined to give his own view on the matter stating it would amount to a policy statement.

Since the President is not involved in this appointment and no mention was made of the Commissions Act, the envisaged inquiry can only be an internal inquiry. Internal inquiries are held behind closed doors. If it was intended to be an open and transparent inquiry the Minister would have not hesitated to say so. Normally judges are not appointed to oversee internal inquiries launched by the executive and it must be asked why the Minister has taken this extraordinary step in this instance.

The Minister's decision to appoint an internal inquiry must be seen in the context of the fact that the former TRC Commissioners and the Apartheid Era Families' Victim Group (AFVG) have requested the President and Minister of Justice on no less than 4 occasions since early 2019 to appoint an open and public commission of inquiry into the suppression of the TRC Cases.[1] Aside from letters of acknowledgment the requests were ignored. Given that the Minister has announced an internal inquiry, it can be deduced that an effective decision has been taken not to hold a commission of inquiry, which are typically public in nature.

Avoiding public scrutiny

It appears that the State wishes to avoid an open and public inquiry into the suppression of the TRC Cases. This may be for purposes of damage control to ensure that the truth behind the suppression is carefully managed by a closed-door inquiry, away from the glare of public scrutiny. This is unsurprising given the role of senior members of the executive, NPA and SAPS in the suppression of the TRC Cases. Since a closed inquiry will be viewed with great suspicion, the inescapable conclusion to be drawn is that a judge is being asked to oversee an effective secret investigation to give it an air of respectability.

Typically, a commission of inquiry includes public hearings, the power to subpoena witnesses and documents, the calling of witnesses, cross examination and the participation of victims and other stakeholders. While it is possible that attempts will be made to deflect criticism by allowing victims to make submissions and requiring the Judge to issue a report, it will remain a closed inquiry. There will be no public hearings and no opportunity for victim representatives to ask tough questions to those who shut down justice. Victims, the media and the public will be effectively shut out of this inquiry.

An inference will almost certainly be drawn that the inquiry has been so designed to protect powerful elements in society and shield them from scrutiny and embarrassment.

The executive investigating the executive

The Minister is appointing an executive inquiry to investigate members of the executive. The suppression of the TRC cases involved multiple entities and individuals across the public sector, including the Department of Justice, the National Intelligence Agency, the NPA, the SAPS and the Department of Defence. The available evidence suggests that politicians, cabinet ministers, senior

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civil servants, police officers and prosecutors were all involved in efforts to ensure that the TRC cases never saw the light of day.

An internal inquiry cannot hope to get to the bottom of a problem of this magnitude and sensitivity. An internal investigation will not be able to deliver the full history of the interference as it unfolded over time over multiple departments and within and outside government.

An internal inquiry, unlike a commission of inquiry, will have no power to compel the production of testimony and evidence and will have to rely on requests and cooperation of individuals and different government departments.

The track record of the SAPS and NPA in relation to the TRC Cases speaks for itself. It is well known that there remains considerable resistance to carrying out meaningful investigations of the TRC Cases, let alone investigations into the suppression of the cases. In these circumstances it is disturbing that the Minister has seen fit to reject a public commission of inquiry in favour of an internal investigation. Members of the executive will be expected to investigate their own colleagues. Such an inquiry will have little or no credibility in the eyes of the public, and the gloss of an 'oversight' role of a judge will not change this.

It is particularly disturbing that a Judicial Officer is required to lend judicial legitimacy to an investigation conducted by the executive. Not only is such an expedient function well outside the functions of the judiciary, but it is also harmful to that institution and is a breach of the separation of powers principle, rendering such an appointment unconstitutional, as the Constitutional Court has ruled.

The need for a Commission of Inquiry

There is no longer any dispute that political interference blocked several hundred serious criminal cases in which amnesty had been denied or not sought. A former National Director of Public Prosecutions and a former head of the NPA's Priority Crimes Litigation Unit have provided affidavits to this effect in the 2015 matter of *Nkadimeng v. National Director of Public Prosecutions*.[2] Senior officials representing the NPA admitted under oath in 2019 that the Authority succumbed to political interference in respect of the TRC cases in *Rodrigues v National Director of Public Prosecutions of South Africa*.[3] The High Court and the Supreme Court of Appeal expressed their dismay at how such interference could take place in the new constitutional order.

While some evidence has been uncovered in the *Nkadimeng* and *Rodrigues* matters, the reasons behind the suppression of the cases are not known and the sources of such interference remains opaque. It is not known if arrangements and agreements were struck with individuals and entities outside government. The full means by which the will of outsiders was imposed on institutions such as the NPA and the SAPS is yet to be exposed. It is not known how institutions with firm

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constitutional and statutory obligations to uphold justice so easily abandoned their duties in respect of these cases.

The subject matter is of great public concern

Perhaps more than any other class of cases, the suppression of the TRC cases has been almost total in its impact. Virtually all the cases were blocked. Most of the cases cannot be resuscitated as many perpetrators, witnesses and family members have died over the past 20 years. The impact visited on the families of those murdered, their communities and on the fabric of society is incalculable. The harm done to the families and our society demands an expeditious, thorough, and credible inquiry into the machinations that resulted in such a massive denial of justice.

There is a critically important need to restore public confidence in the government as a whole and the institutions implicated in the suppression of the TRC cases. This is particularly the case in respect of the families of victims of apartheid-era crimes and their communities who have lost trust in the government, especially the SAPS and NPA. An investigation held behind closed doors is likely to destroy all confidence and trust in the state.

A closed-door inquiry will undermine the effort to reveal the full truth behind the suppression of the TRC cases. This will add considerable anxiety to the affected families and communities who have been waiting decades for the truth. The suppression of the TRC Cases deeply violated their rights to human dignity, equality and the rule of law. The refusal to hold an open and public commission of inquiry only exacerbates the violation of these rights.

The cost of a commission

It will no doubt be argued that the country is suffering "commission fatigue" and cannot afford yet another commission of inquiry, particularly after the State Capture Commission which cost some R1 billion. Such an argument is deeply insulting to the families who endured apartheid-era crimes. Their loved ones laid down their lives for our democracy and its enshrined freedoms. Not only has the post-apartheid state turned its back on them and suppressed their cases, but in raising such an argument, it says they are not worthy of a rigorous public inquiry. It is also insulting to the families given the readiness of state officials to squander billions on mismanagement, corruption and nepotism.

In any event, the State Capture Commission cannot be compared to an inquiry into the suppression of the TRC Cases. Unlike the State Capture Commission, there is an extremely limited set of witnesses and a very limited set of facts to explore. Whereas the State Capture Commission required years to complete its work, a commission into the suppression of the TRC Cases could be wrapped up in few months.

Call for a public and open commission of inquiry

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The late Mr Justice Arthur Chaskalson, then President of the Constitutional Court, later Chief Justice of South Africa, said a few months after South Africa's democratic elections in 1994:

"*We need to remember that the first incursion into rights is often the most damaging; that once inroads are permitted, the will to resist subsequent incursions is lessened...*"

The post-apartheid state engineered multiple incursions into the rights of victims of apartheid-era crimes over the last 20 years. The holding of a closed-door inquiry will constitute yet another incursion into their rights. This cannot be allowed to happen.

The families of apartheid-era victims deserve nothing less than a fully open, public and transparent inquiry. This must include public hearings, the power to subpoena and compel the production of evidence, and the right of victims to be represented in the commission and to lead evidence and put questions to witnesses. Only a commission of inquiry can allow provide for such accountability.

Accordingly, we the undersigned former TRC Commissioners, families and organisations again call on you to work with the President to speedily appoint an independent and public commission of inquiry into the suppression of the TRC cases in terms of the Commissions Act 8 of 1947, with the necessary powers to compel the production of testimony and evidence.

Signed by Yasmin Sooka on behalf of:

Former TRC Commissioners

Ms Yasmin Sooka
Adv Dumisa Ntsebeza SC
Ms Wendy Orr
Ms Glenda Wildschut
Dr Fazel Randera
Ms Mary Burton
Mr Richard Lyster

Former TRC Committee Members

Prof Piet Meiring
Mr Ilan Lax
Dr Russel Ally

Family members

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Mr Lukhanyo Calata, son of the late Fort Calata
Ms Thembi Nkadimeng, sister of the late Nokuthula Simelane
Mr Mohammad Timol, brother of the late Ahmed Timol
Ms Jill Burger and Mr Stephen Aggett, sister and nephew of the late Dr Neil Aggett
Ms Fatima Haron and Prof Muhammed Haron, daughter and son of the late Imam Haron
Ms Nation Nyoka, niece of the late Caiphus Nyoka
The family of Mxolisi Dicky Jacobs
Mr Nkosinathi Biko

Organisations

Nelson Mandela Foundation
Desmond and Leah Tutu Legacy Foundation
Foundation for Human Rights (FHR)
Fort Calata Foundation
Khulumani Support Group
Imam Haron Foundation
Human Rights Media Centre (HRMC)
Centre for Applied Legal Studies (CALS)
Institute for the Healing of Memories
Centre for the Study of Violence and Reconciliation (CSVR)
Open Secrets
Violence Prevention Agency
Steve Biko Foundation
Apartheid-Era Victims' Families Group (AVFG)
South African Coalition for Transitional Justice (SACTJ)

For media enquiries contact:

Lindiwe Sibiya, Media and Communication Officer, **Foundation for Human Rights** at lsibiya@fhr.org.za and 082 634 7154

Fort Calata Foundation

Lukhanyo Calata, 082 394 6481

South African Coalition for Transitional Justice (SACTJ)
Shirley Gunn, Executive Director of the Human Rights Media Centre
director@hrmc.org.za

[1] On 5 February 2019, former TRC Commissioners addressed a letter to the President, calling on him to establish a commission of inquiry into the political interference. Calls for a commission of

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inquiry were also made in letters to the President on 23 June 2019 and 23 June 2020 by the families of Chief Albert Luthuli, Steve Biko, the Cradock Four, Nokuthula Simelane, Ahmed Timol, Dr Neil Aggett, Imam Haron, Matthews Mabelane, Dr Hoosen Haffejee, Ashley Kriel, Caiphus Nyoka and several other families. The former TRC Commissioners again wrote to the President on 18 March 2021 requesting a commission of inquiry. This letter attached proposed terms of reference for a commission of inquiry.

[2] T.P.D. Case No. 3554/2015), Gauteng Division

[3] 3 All SA 962 (GJ) 2019; (2) SACR 251 (GJ) 2019

NPA Further Enhances Efforts To Ensure Effective Handling And Prosecution Of TRC Cases

on 13TH JAN 2023

National Prosecuting Authority of South Africa

The National Prosecuting Authority (NPA) has taken an important step to further enhance its efforts to deal with and prosecute cases stemming from the Truth andReconciliation Commission (TRC). Over the last couple of years, the NPA has focused on reopening and pursuing priority cases, and enhancing its internal capacity andprocesses both to ensure effective handling of these cases and to prevent any undue political influence. 64 new cases have been registered for investigation. 25 prosecutors and 40 investigators have been appointed within the various divisions to deal specifically with TRC matters. A detailed overview of these measures was presented to Parliament in November 2022.

As part of this effort, the NPA has appointed Adv D Ntsebeza SC to review the measures that have been adopted to deal with and prosecute TRC matters and to provide recommendations as needed. This is in line with the remarks made by the Full Bench in Rodrigues v National Director of Public Prosecutions of South Africa and Others 76755/2018)(2019) in the South Gauteng High Court in 2019 where the court held:

"It is also for these reasons that the conduct of the relevant officials and others outside the NPA at the time should be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular, to consider whether any action in terms of Section 41(1) of the NPA Act is warranted. Finally, there must be a public assurance from both the Executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again. recurrence of these unacceptable breaches of the Constitution."

The Senior Counsel will conduct a thorough assessment and make recommendations, if necessary, to strengthen the NPA's handling of TRC cases. Further, if Counsel finds evidence or information that could amount to a violation of Section 41(1) of the NPA Act, such issues will be escalated to the National Director of Public Prosecutions (NDPP) to take forward as appropriate. If necessary, the NPA will refer relevant matters for criminal investigation.

Senior Counsel has three months to finalise his report and recommendations. The NPA will provide the necessary support to ensure that this timeline is kept andrelevant interventions and improvements are implemented without delay.

The NPA has engaged with the Executive as appropriate on this matter. The Executive is expected to release its own statement in due course, as per the remarks by the Court highlighted above.

Adv Mthunzi Mhaga

NPA Spokesperson

0836418141

CONNECT WITH US

2023 - Letter to request release of Advocate Ntsebeza's report

The University of the Witwatersrand, Johannesburg

11 October 2023 - South African Coalition for Transitional Justice

Survivors and civil society organisations request the release of Dumisa Ntsebeza SC's report into the NPA's approach towards prosecutions of TRC cases

Dear Advocate Shamila Batohi

We write to you as survivors and the families of victims of apartheid era gross human rights violations to request that your office publicly releases the report by Advocate Dumisa Ntsebeza SC to the National Prosecuting Authority (NPA). Ntsebeza was appointed to review the measures adopted by the NPA to deal with and prosecute Truth and Reconciliation Commission (TRC) cases and provide recommendations as needed.

Our rights to justice, truth recovery and reparations, were brutally compromised when the NPA, the South African Police Services and other state institutions succumbed to political interference by the Executive. As a result, they neither investigated nor prosecuted apartheid era political crimes, and those complicit in them. Many of these crimes were investigated by the TRC, which recommended further investigation and prosecution in the instances when amnesty had been denied or not applied for. The South African state is responsible under both international and domestic law for ensuring our rights to truth, justice, reparations and the guarantee of non-recurrence.

The failure to duly and timely investigate and prosecute apartheid era political crimes has led to a massive injustice, and is a flagrant violation of our rights to accountability including criminal justice. High-profile apartheid era perpetrators and foot soldiers went to their graves without having ever faced justice. Similarly, many of our family members died in pain without knowing the truth about of what had happened to our loved ones. These actions of the state, the NPA and the SAPS have deepened impunity in our country. In Rodrigues v NDPP ([2021] 3 All SA 775 (SCA)), the Supreme Court of Appeal found it "perplexing and inexplicable" why such a stance on prosecutions of the TRC cases was taken in the new constitutional order.

In June 2021, the NPA and the Directorate for Priority Crimes Investigations (DPCI, Hawks) issued a joint press statement. They announced a new approach to the investigations and prosecutions of the cases arising from the TRC. The change in the state's approach to apartheid-era cases was a result of sustained pressure from survivors, victims' families and civil society, which have been demanding

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justice since the wrapping up of the TRC in 2003.

We felt encouraged by the appointment of Advocate Dumisa Ntsebeza SC and welcomed this decision by the NPA with much hope and anticipation. However, nine months have now passed since the NPA announced this three-month inquiry by Advocate Ntsebeza SC and we are yet to see the fruits of the process. We assume that by now the inquiry has concluded its work and submitted its report. It is in this context that we are reaching out to you to request the release of the report to the public.

First and foremost, the release of the inquiry report is essential to uphold the principles of transparency and justice. As victims' families and survivors we have endured unimaginable pain and suffering. We have an inherent right to know the truth about what transpired during the inquiry and the recommendations that have arisen from the inquiry's investigation. We also wish to know what steps, if any, the NPA is taking in response to the inquiry's recommendations.

Furthermore, releasing the report is crucial for rebuilding trust in the NPA. The scars of the past are deep, and the only way to heal them is through transparency and accountability. By making the inquiry report public, the NPA would signal its intent to face and acknowledge the shortcomings and challenges in its past approach to TRC cases. It would also demonstrate its commitment to ensuring prompt investigations and prosecutions.

The release of the report is also vital to ensure public accountability. The widespread access to the report's findings and recommendations would allow us and the general public to hold the NPA accountable for the implementation of these recommendations. Accountability is a foundation of the rule of law, and there can be no accountability without full and open access to this information.

We therefore request that you release the report to the public by the of end October 2023: to serve the cause of justice and truth, and to demonstrate your commitment to rebuilding trust among the people in South Africa by upholding the principles of accountability and transparency.

Thank you for your attention to this matter, and we look forward to your positive response.

Yours sincerely,

Survivors and families of victims including:

Muhammed Haron, on behalf of the family of the late Imam Haron

Lyndene Page, on behalf of the family of the late Deon Harris

Neville Beling, a survivor of the Highgate Hotel Massacre in 1993

Karl Weber, a survivor of the Highgate Hotel Massacre in 1993

Tshidiso Motasi, on behalf of the family of the late Irene and Richard Motasi

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Fowzia Rahiman, on behalf of the family of the late Dr Hoosen Haffejee

Thuli Kubheka, on behalf of the family of the late Ntombikayise Kubheka

Marc Fransch, on behalf of the family of the late Anton Fransch

Alegria Nyoka, on behalf of the family of the late Caiphus Nyoka

Theledi Tlhapi, on behalf of the family of the late Ramatua Tlhapi

Mbulelo Goniwe, on behalf of the family of the late Matthew Goniwe

Mbusowesizwe Khoza, on behalf of the family of the late Musawakhe Phewa

Nombuyiselo Mhlauli on behalf of the family of the late Sicelo Mhlauli

Tshepo Matabane, on behalf of the family of the late Peter Matabane

Maide Selebi, on behalf of the family of the late Eustice Madikela

Tryphina Mokgatle, on behalf of the family of the late Zandisile Musi

Thandi Nhlapo, on behalf of the family of the late Fanyana Nhlapo

Mkhontowesizwe Godolozi, on behalf of the family of the late Qaqawuli Godolozi

Mohammad Timol, on behalf of the family of the late Ahmed Timol

Lonwabo Mkonto, on behalf of the family of the late Sparrow Mkonto

Mandisa Hashe, on behalf of the family of the late Sipho Hashe

Hlekani Rikhotso and Edgar Mushwana, on behalf of the family of the late Ignatius Mtebule

Stephen Mabelane, on behalf of the family of the late Matthews Mabelane

Nontombi Nama, on behalf of the family of the late Champion Galela

Lukhanyo Calata, on behalf of the family of the late Fort Calata

Bonakele Jacobs, on behalf of the family of the late Mxolisi Jacobs

Stephen Aggett, on behalf of the family of the late Dr Neil Aggett

Imraan Valodia, on behalf of the family of the late Dr Rick Turner

Thembi Nkadimeng, on behalf of the family of the late Nokuthula Simelane

The letter has been further endorsed by the following civil society organisations:

Foundation for Human Rights (FHR)

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Khulumani Galela Campaign

Human Rights Media Centre (HRMC)

Open Secrets (OS)

Centre for Applied Legal Studies (CALS)

Fort Calata Foundation

Imam Haron Foundation

Helen Suzman Foundation (HSF)

Legal Resources Centre (LRC)

Institute for Healing of Memories

Institute for Justice and Reconciliation (IJR)

The Southern African Catholic Bishops' Conference Justice and Peace Commission

South African Coalition for Transitional Justice (SACTJ)

For media queries, please contact:

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CC: Ms Khumbudzo Ntshavheni
Minister in the Presidency

By email: Didy@presidency.gov.za, Private Secretary
Humbelani@presidency.gov.za, Chief of Staff
Akhona@presidency.gov.za, Cabinet & Parliament Liaison

CC: Ms Thembisile Nkadimeng
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blwilliams@justice.gov.za, Director Legal Services

Your reference	Our reference	Date
	O Geldenhuys / 4005095	10 July 2024

Dear Mr President,

INTERFERENCE IN THE PROSECUTION OF CASES REFERRED TO THE NPA BY THE TRUTH AND RECONCILIATION COMMISSION

1. We act on behalf of survivors and the families of victims of apartheid era gross human rights violations (**"our clients"**). Our clients are:

Partners in office at Cape Town: Office Managing Partner: G Fitzmaurice **Partners:** RB Africa C Alexander AK Allie TB Ball AE Bennett AR Bowley SJ Chong KM Colman PA Crosland R Cruywagen HM de Villiers ST Dias BEC Dickinson HJ du Preez LF Egypt AF Esterhuizen OH Geldenhuys MM Gibson PM Holloway SJ Hutton KT Inglis ME Jarvis S Jooste LA Kahn A Keyser KE Kilner LC Lambrechts CS Meyer A Mhlongo LE Mostert A Muir P Naidoo C Nothling PD Novotny A October CH Prenaar K Rew G Richards-Smith H Samsodien J Smit WV Tembedza PZ Vanda SE van der Meulen L van Tonder T Viljoen DM Visagie AWR Westwood

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KF Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn A de Meyer PU Dela M Denenga C Dennehy CW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit TC Dye SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L França M Garden OH Geldenhuys MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis CM Holfeld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger J Lamb LC Lambrechts LM Lamola B Lotter E Louw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlall N Moodley L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni C Nothling M Nxumalo AN Nyatsumba MB Nzimande A October L Odendaal N Paige AS Parry S Patel N Pather GR Penfold SE Phajane MN Phala M Philippides BA Phillips MA Phillips CH Prenaar MP Pool DJ Rafferty C Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tlhavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali L van Tonder N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans

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1.1 The families of Fort Calata, Matthew Goniwe, Sicelo Mhlauli, and Sparrow Mkhonto (the Cradock Four)

1.2 The families of Eustice 'Bimbo' Madikela, Peter 'Ntshingo' Matabane, Fanyana Nhlapo, and Zandisile Musi (the COSAS 4)

1.3 The family of Caiphus Nyoka

1.4 The family of Mxolisi 'Dicky' Jacobs

1.5 The family of Imam Abdullah Haron

1.6 The family of Ahmed Timol

1.7 The family of Dr Hoosen Mia Haffejee

1.8 The family of Musawakhe 'Sbho' Phewa

1.9 The family of Ntombikayise 'Ntombi' Khubeka

1.10 The family of Dr Richard 'Rick' Turner

1.11 The family of Deon Harris (victim of the Highgate Hotel Massacre)

1.12 Karl Webber (survivor of the Highgate Hotel Massacre)

1.13 Neville Beling (survivor of the Highgate Hotel Massacre)

1.14 Ernestina Simelane, the mother of Nokuthula Simelane

1.15 Tshidiso Motasi, the son of Richard and Irene Motasi

2. We refer to our letter addressed to your office, dated 8 June 2021, which is attached as Annexure "**A**" ("**our letter**"). Our letter was the last in a series of correspondence that was exchanged between your office, former commissioners of the Truth and Reconciliation Commission ("**TRC**") and ourselves on behalf of clients regarding the appointment of a commission of inquiry into the suppression of the TRC cases (the "**TRC cases**").

3. In our letter, we informed you of our instructions to prepare an application to court for an order compelling you to fulfil your obligations under section 84(2)(f) of the Constitution and to appoint such a commission.

4. Since the delivery of our letter to you more than three years ago, you have not appointed a commission of inquiry despite numerous requests from clients, other victims of apartheid-era gross human rights violations, former TRC commissioners, and civil society organisations.

5. On 6 March 2023, the National Director of Public Prosecutions, Adv Shamila Batohi, briefed former TRC commissioner, Adv Dumisa Ntsebeza SC to:

5.1 review the measures adopted by the NPA to deal with the TRC cases and related matters;

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5.2 assess whether the measures put in place are adequate and, if the measures are not adequate, to make recommendations to strengthen the measures; and

5.3 determine whether, in relation to the TRC cases, there is reason to believe that organ(s) of state and/or member(s) or employee(s) of organ(s) of state or any other person, improperly interfered with, hindered or obstructed the NPA or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions, which amounts to a violation of section 41(1) of the NPA Act.

6. The brief to Adv Ntsebeza SC to determine whether the TRC cases were improperly interfered with, hindered or obstructed, emanated from the findings of the High Court and Supreme Court of Appeal of high-level political interference in TRC cases during the period 2003 to 2017 by the South African government, including former Presidents, members of the national executive and other high ranking government officials.

7. The findings of political interference were made by the Johannesburg High Court in the case of *Rodrigues v National Director of Public Prosecutions of South Africa and Others* 2019 (2) SACR 251 (GJ). These findings were confirmed by the Supreme Court of Appeal in the case of *Rodrigues v National Director of Public Prosecutions and Others* 2021 (2) SACR 333 (SCA). It is now well established that the political interference culminated in delays in investigating and prosecuting the TRC cases, resulting in the demise of most of the cases as many suspects and witnesses died in the intervening years.

8. Adv Ntsebeza SC delivered his opinion to the NDPP, and it was made public on or about 15 February 2024.

9. In his opinion, Adv Ntsebeza SC stated that a commission of inquiry is "*the only sensible way forward in order to get to the bottom of why the TRC cases were never investigated or prosecuted with zeal*".[1] Thus, the establishment of a commission of inquiry to investigate whether the political interference in TRC cases between 2003 and 2017 amounts an offence under section 41(1) of the NPA Act is justified.[2] Adv Ntsebeza SC recommended that:

> "*150.9 The NPA must pursue the establishment of an independent commission of inquiry under either section 84(2)(f) of the Constitution, or the Commissions Act, 1947 to investigate the extent of, and rationale behind, the political interference with the NPA between the period 2003 and 2017.*
>
> *150.9.1 The inquiry should take into consideration the multiple state entities involved, including the executive, the SAPS, South African intelligence agencies and politically exposed (connected) persons (PEPs) and specifically the 16 individuals named in the Calata affidavit filed before the Zondo Commission.*
>
> *150.9.2 It is important that any inquiry is public and is empowered with sufficient authority to carry out the investigation and is clothed with powers of search and seizure and is able to subpoena people of interest.*

[1] Ntsebeza opinion at paragraph 149.

[2] Ntsebeza opinion at paragraph 142

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150.9.3 The inquiry must be empowered to make recommendations of possible prosecution under section 41(1) of the NPA Act."[3]

10. We understand from questions that were answered in Parliament in April 2024 that the former Minister of Justice, Mr Ronald Lamola, considered the recommendations of Adv Ntsebeza SC. However, by the expiry of the sixth administration's term at the end of May 2024, the Ntsebeza recommendations had not been implemented.

11. In light of the above, we have been instructed to resubmit our clients' previous demands for the appointment of a commission of inquiry into the suppression of TRC cases to you as the President of the seventh administration, which we hereby do.

12. In the circumstances, we demand that you exercise your powers under section 84(2)(f) of the Constitution to appoint a commission of inquiry in line with the recommendations of Adv Ntsebeza SC and publicly announce the appointment thereof by **31 July 2024**, failing which we hold instructions to institute proceedings to compel the appointment of such a commission.

13. We further wish to inform you that we have been instructed to seek an additional order for constitutional damages against the government to vindicate the constitutional rights of our clients which have been breached by the suppression of the TRC cases.

14. If the government agrees that constitutional damages are warranted to vindicate the rights of our clients and other similarly affected victims, we recommend that we meet in order to commence negotiations on the nature, extent and quantum of such damages.

15. We kindly request that you provide us with a response to this letter by close of business on **Friday, 26 July 2024**. Failing your response, we will proceed to initiate the legal proceedings outlined above.

Yours faithfully

WEBBER WENTZEL
Odette Geldenhuys
Partner
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[3] Ntsebeza opinion at paragraph 150.9.

"A"

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Mr Ronald Lamola
Minister of Justice and Correctional Services
Email: ZaneNdlovu@justice.gov.za / Ministry@justice.gov.za

Your reference	Our reference	Date
URN0002021OOP000145 Mr Georffrey Mphaphuli/ Acting Head Legal and Executive Services	Mr M Hathorn 3048523	8 June 2021

Dear Mr President,

REQUEST FOR A COMMISSION OF INQUIRY INTO THE SUPPRESSION OF THE TRC CASES

We refer to the TRC Commissioners' letter to you dated 25 March 2021 and your letter addressed to them dated 6 May 2021, in which your office indicated that the matter has been referred to the Department of Justice and Correctional Services. We attach copies of these letters for your easy reference.

In the TRC Commissioners' letter to you dated 25 March 2021 you were requested to indicate whether you intended to appoint a commission of inquiry into the suppression of the TRC cases by 30 April 2021, failing which the matter would be referred to attorneys.

The matter was referred to us. We have been furnished with an opinion from eminent senior counsel indicating that the issue in question is one of significant public concern; and that in these

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Bellings AE Bennett AP Blair DHL Booysen AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PN Daya L de Bruyn PL Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AF Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CJ Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Holfeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser ND Kota JC Kraemwinkel J Lamb KJ Lebea F Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Molobi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyalsumba A Ortobet I Odendaal GJP Oliver N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GJ Rapson K Rew SA Ritchie NJA Robb J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tlhavan G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

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specific circumstances, your failure to make a decision, or your refusal to appoint a commission, is susceptible to review under the legality principle as well as a Bill of Rights challenge.

We have now been instructed by several families of apartheid-era victims (including members of the Cradock Four and Biko families) as well as multiple organisations to prepare an application to court for the appropriate relief. Counsel has been duly briefed in this regard.

Our instructions are to place you formally on terms. Should we not hear from you within 10 days of receipt of this letter we will proceed to launch an application to court for an order compelling you to fulfil your obligations under the Constitution and to appoint a commission to inquire into the suppression of the TRC cases.

Yours faithfully

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Mr Ronald Lamola
Minister of Justice and Correctional Services
Email: ZaneNdlovu@justice.gov.za / Ministry@justice.gov.za

25 March 2021

Dear Mr President,

CALL FOR THE APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

We, the former Commissioners of the Truth and Reconciliation Commission (TRC), called on you in early 2019 to establish a commission of inquiry into the suppression of the investigation and prosecution of apartheid-era crimes that had been referred by the TRC to the National Prosecuting Authority (NPA) (the TRC cases). A copy of our letter dated 5 February 2019 is

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attached for your ease of reference as appendix A. Aside from an acknowledgment of receipt you did not respond to this request.

We also refer to the letters dated 23 June 2019 and 23 June 2020 addressed to you by the families of Chief Albert Luthuli, Steve Biko, the Cradock Four, Nokuthula Simelane, Ahmed Timol, Dr Neil Aggett, Imam Haron, Matthews Mabelane, Dr Hoosen Haffejee, Ashley Kriel, Nicodemus Kgoathe, Solomon Modipane, Jacob Monagotla, Mapetla Mohapi, Mxolisi 'Dicky" Jacob, Caiphus Nyoka, Anton Fransch, Moshin Jeena, Haroon Aziz, Coline Williams and Robert Waterwitch. These families expressed their deep pain and anguish at having been denied truth and justice in the new South Africa. They also called for a commission of inquiry into the suppression of the TRC cases. Their letters were ignored.

In the light of your failure to respond, representatives of several families of victims of apartheid-era crimes, including the families of the Cradock Four, Nokuthula Simelane, Ahmed Timol, Neil Aggett, Imam Haron and Hoosen Haffejee approached the Judicial Commission of Inquiry into Allegations of State Capture with the request that it inquire into the capture of state institutions meant to pursue justice in respect of the TRC cases. Regrettably the commission was unable to complete its investigations into this matter and it will close on 30 June 2021. We understand that the bulk of the remaining period is to be devoted to the preparation of the Commission's final report.

Accordingly, the former TRC Commissioners, the undersigned organisations and family representatives renew their call for a standalone independent commission of inquiry to investigate the suppression of some 400 serious cases, including murders and disappearances, from South Africa's past.

The need for a Commission of Inquiry

There is no longer any dispute that political interference blocked several hundred serious criminal cases in which amnesty had been denied or not sought. A former National Director of Public Prosecutions and a former head of the NPA's Priority Crimes Litigation Unit have provided affidavits to this effect in the 2015 matter of *Nkadimeng v. National Director of Public Prosecutions.*[1] Senior officials representing the NPA admitted under oath in 2019 that the Authority succumbed to political interference in respect of the TRC cases in *Rodrigues v National Director of Public Prosecutions of South Africa*.[2] The Full Court in that matter expressed its dismay at how such interference could take place in the new constitutional order. It called on the Executive and the NPA to take appropriate action to ensure that such breaches of the Constitution do not recur.[3] To date, neither the government, nor the NPA have taken such action. In our respectful view, appropriate action to prevent recurrence can only be based on a full and thorough inquiry.

While some evidence has been uncovered in the *Nkadimeng* and *Rodrigues* matters, the reasons behind the suppression of the cases are not known and the sources of such

[1] T.P.D. Case No. 3554/2015), Gauteng Division
[2] 3 All SA 962 (GJ) 2019; (2) SACR 251 (GJ) 2019
[3] Para 65. See also paras 21 – 24 and 57 – 64

interference remains opaque. It is not known if arrangements and agreements were struck with individuals and entities outside government. The full means by which the will of outsiders was imposed on the NPA and the South African Police Service (SAPS) is yet to be exposed. It is not known how institutions with firm constitutional and statutory obligations to uphold justice so easily abandoned their legal duties in respect of the TRC cases.

The suppression of the TRC cases involved multiple entities and individuals across the public sector. The secret Amnesty Task Team created by the Director-General's Forum in early 2004 to explore means of guaranteeing impunity for apartheid-era perpetrators involved multiple departments including the Department of Justice and Correctional Services, the National Intelligence Agency, the NPA, the SAPS and the Department of Defence. The available evidence suggests that politicians, cabinet ministers, senior civil servants, police officers and prosecutors were all involved in efforts to ensure that the TRC cases never saw the light of day.

It is accordingly not sufficient for there to be separate internal or departmental inquiries by the different institutions. Such inquiries will not be able to deliver the full history of the interference as it unfolded over time over multiple entities. Moreover, such inquiries will not be able to compel the production of testimony and evidence from other departments. In any event, there appears to be considerable resistance to carrying out meaningful investigations at these levels; and it goes without saying that departmental officials should not be investigating themselves or their colleagues.

The subject matter is of great public concern

Perhaps more than any other class of cases, the suppression of the TRC cases has been almost total in its impact. Virtually all the 400 cases were blocked. The impact visited on the families of those murdered, their communities and on the fabric of society is incalculable. The harm done to the families and our society demands an expeditious, thorough, and credible inquiry into the machinations that resulted in such a massive denial of justice.

Commissions of inquiry are investigative tools which the President may invoke for purposes of investigating matters of public concern or for gathering information considered necessary for formulating policy. In addition, there is a critically important need to restore public confidence in the institutions implicated in the suppression of the TRC cases. This is particularly the case in respect of the families of victims of apartheid-era crimes and their communities who have lost all trust and confidence in the SAPS and NPA.

A further objective of the proposed commission is to reveal the truth pertaining to the suppression of the TRC cases, which gives it a deeper public purpose. This is necessary given the extent of disquiet and discontent around such serious lapses by public organs meant to uphold the rule of law. There can be little doubt that such lapses have provoked much anxiety and worry amongst many South Africans who regard the suppression of these cases as a matter of great public interest and importance.

The Constitution requires that the notion of 'public concern' be interpreted to promote the spirit, purport and objects of the Bill of Rights and to underscore the democratic values of

human dignity, equality and freedom. In respect of the suppression of the TRC cases, these democratic values have been obliterated. We scarcely need to point out that the human dignity of Lukhanyo Calata and the Cradock 4 families, together with the families of hundreds of other victims of apartheid crimes, have been deeply offended. Their right to equality before the law has been grossly disrespected. The TRC cases have been treated differently from other serious criminal cases for purposes of serving undisclosed political and ulterior ends. Such brazen arbitrariness should have no place in South Africa's constitutional order.

Appoint a commission

We accordingly request that you appoint, without further delay, an independent commission of inquiry into the suppression of the TRC cases in terms of the Commissions Act 8 of 1947, with the necessary powers to compel the production of testimony and evidence. We have prepared draft terms of reference to assist you in your deliberations, which are annexed to this letter as appendix B.

The late Mr Justice Arthur Chaskalson, then President of the Constitutional Court, later Chief Justice of South Africa, said a few months after South Africa's democratic elections in 1994:

> *"We need to remember that the first incursion into rights is often the most damaging; that once inroads are permitted, the will to resist subsequent incursions is lessened..."*

Should you not announce a decision of your intention to establish a commission of inquiry by 30 April 2021 we will refer this matter to our attorneys. They will be instructed to vindicate the constitutional rights of families of apartheid-era crimes and to bring an appropriate application to court.

Yours sincerely,

Yasmin Sooka o.b.o the former TRC Commissioners
Archbishop Emeritus Desmond Tutu
Advocate Dumisa Ntsebeza SC
Ms Mary Burton
Dr Fazel Randera
Ms Glenda Wildschut
Mr Richard Lyster

The Committee Members
Ms Joyce Piliso-Seroke
Prof Piet Meiring

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Mr Ilan Lax
Dr Russell Ally

Organisations
Desmond and Leah Tutu Legacy Foundation
Foundation for Human Rights
Apartheid Era Victims' Families Group
Centre for the Study of Violence and Reconciliation
Khulumani Victims Support Group
Institute for Justice and Reconciliation
Ahmed Timol Family Trust
Centre for Applied Legal Studies
Imam Haron Foundation
Fort Calata Foundation
Steve Biko Foundation
Human Rights Media Centre
Open Secrets
South African History Archive
Southern African Litigation Centre
Violence Prevention Agency
Legal Resources Centre (LRC)
Lawyers for Human Rights (LHR)

929

THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Our ref: URN0002021OOP000145

Former Commissioners of the TRC
Foundation for Human Rights
Tel: 011 593 4002

By email: yasmin.sooka@gmail.com

Dear Ms Sooka and Adv Ntsebeza SC,

CALL FOR APOLOGY TO VICTIMS & FOR APPOINTMENT OF A COMMISSION OF INQUIRY TO INVESTIGATE THE SUPPRESSION OF THE TRC CASES

With reference to the above we hereby wish to acknowledge receipt of your letter pertaining thereto.

In addition, we wish to confirm that the matter has been referred to the Department of Justice and Correctional Services for further attention and reply.

Trusting you find it in order.

Yours faithfully,

Mr Geofrey Mphaphuli
Acting Head: Legal and Executive Services
Date: 06/05/2021

Mr Geofrey Mphaphuli
Legal and Executive Services
Email: Geofrey@presidency.gov.za

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Jos Venter

From:	Jos Venter
Sent:	10 July 2024 18:10
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Cc:	Odette Geldenhuys; Nkosinathi Thema; Lize-Mari Doubell; Tasneem Kathrada; Refilwe Riba
Subject:	INTERFERENCE IN THE PROSECUTION OF CASES REFERRED TO THE NPA BY THE TRUTH AND RECONCILIATION COMMISSION
Attachments:	WW letter to the President of the Republic of South Africa 2024-07-10.pdf
Importance:	High

Good day,

Please find attached for the attention of President Cyril Ramaphosa, Minister Khumbudzo Ntshavheni, and Minister Thembisile Nkadimeng our letter dated 10 July 2024.

Kind regards,

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Jos Venter

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Sent: 10 July 2024 18:11
Subject: Relayed: INTERFERENCE IN THE PROSECUTION OF CASES REFERRED TO THE NPA BY THE TRUTH AND RECONCILIATION COMMISSION

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Subject: INTERFERENCE IN THE PROSECUTION OF CASES REFERRED TO THE NPA BY THE TRUTH AND RECONCILIATION COMMISSION

INTERFERENCE IN THE PROSECUTI...

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THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Your ref: O Geldenhuys / 4005095
Our ref: URN0002024OOP000212

Messrs Webber Wentzel
PO Box 3667
Cape Town
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By email: odette.geldenhuys@webberwentzel.com

Dear Ms Geldenhuys,

INTERFERENCE IN THE PROSECUTION OF CASES REFERRED TO THE NPA BY THE TRUTH AND RECONCILIATION COMMISSION

1. With reference to the above we hereby wish to acknowledge receipt of your letter pertaining thereto, dated 10 July 2024.

2. Kindly be advised that the Department of Justice and Constitutional Development was requested to consider the matter and advise the Presidency.

3. We will revert to you as soon as we are in receipt of the report/advice from the Department of Justice and Constitutional Development on the matter.

Trusting you find it in order.

Yours faithfully,

Mr Geofrey Mphaphuli
Acting Head: Legal and Executive Services
Date: 13 August 2024

Cc: Mr Sello Chiloane
Department of Justice and Constitutional Development

Mr Geofrey Mphaphuli
Legal and Executive Services
Email: Geofrey@presidency.gov.za

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My sister's heart

news24

On the 30th anniversary of her sister's disappearance, **Thembi Nkadimeng** writes about the MK envoy who refused to turn her back on the cause

The story of my sister, Nokuthula Simelane, is about freedom and betrayal. My sister believed in freedom with every fibre of her being.

It was her unshakeable dedication to freedom that took her to the Carlton Centre in Johannesburg on the morning of September 8 1983.

This year marks the 30th anniversary of her disappearance.

A 23-year-old university graduate at the time, she was a courier for Umkhonto weSizwe (MK), the ANC's armed wing, moving between Swaziland and South Africa. She was betrayed by one of her own.

Instead of a scheduled rendezvous with a comrade, she was met by members of South Africa's hated security police, who shoved her into the boot of a vehicle.

This betrayal was to condemn Nokuthula to a choice between life and death. An informant's life – a betrayal that would crush her spirit – or death with her dignity intact. In reality, there was no real choice for Nokuthula.

A photo of Nokuthula Simelane from the family archives

Her commitment to what she loved most dearly made the first option unthinkable.

My sister's death was not swift and it was not painless. The security police drove her to the police barracks in Johannesburg.

There, they tortured her.

After several days, she was moved to an isolated farm in the north of the then Transvaal, where her abuse intensified. It lasted for some three weeks.

Her torturers were convinced that with enough force this young, inexperienced woman would break and become an informant.

They believed that it was just a question of more violence and more fear: a few more vicious blows to her head, to her face and her body, or perhaps a few more near-drownings in an icy dam.

Maybe more days of solitary confinement shackled in handcuffs and leg irons in filthy conditions

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would push her over the edge.

The black police officers who testified before the Amnesty Committee of the Truth and Reconciliation Commission (TRC) reported that after weeks of torture, my sister was unrecognisable. H

er face was an appalling mess of bruises and swelling. She was too weak to walk.

The last time they saw her was when she was being pushed into the boot of one of the white officer's vehicles.

My family and I have not rested since we learnt that my sister went missing. We know the most terrible things about what she suffered. But we don't know how she died and where her body is today. We have spent three decades looking for Nokuthula.

We even appointed private detectives to assist us. Until we find her remains, or get answers about what really happened to her, we remain trapped in the past.

We did not expect the former South African Police to investigate themselves. However, we firmly believed that the new democratic South Africa would take the necessary steps.

We were wrong. This was the second betrayal of Nokuthula and everything she stood for.

This betrayal cut the deepest. My father went to his grave without knowing what happened to Nokuthula. My mother, now sick and old, fears that she will die without knowing – and without burying Nokuthula's remains with the dignity she deserves.

The Amnesty Committee of the TRC concluded that the white officers had lied to the commission about the degree of torture as well as her ultimate fate. They, nevertheless, granted amnesty to those officers for Nokuthula's kidnapping.

Nobody applied for amnesty for her murder. The committee betrayed its own law, which states that amnesty can only be granted in exchange for the truth and full disclosure.

How could they grant amnesty when they knew that the white officers had lied about what they did to Nokuthula during and after her kidnapping? The Amnesty Committee betrayed our faith in them and in the truth and reconciliation process.

The police and the prosecutors could have taken up the matter. However, they chose not to, though a police docket was opened in 1996.

After the amnesty decision in 2001, the matter was referred to the National Prosecuting Authority.

When I approached them, they advised me that their hands were tied as they were waiting for a new policy to deal with the so-called political cases. When the new prosecution policy emerged in late 2005, it essentially created a backdoor amnesty.

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It gave perpetrators, like my sister's killers, a second opportunity to escape justice.

Together with the widows of the Cradock Four, the young freedom fighters murdered by a police hit squad in 1985, I went to court to challenge the policy. In 2008 a Pretoria High Court judge struck down the policy, declaring it to be absurd and unconstitutional.

We thought this meant that the path was eventually cleared for justice to take its course. Again, we were wrong.

This time the prosecutors claimed that the police were refusing to provide investigators. It took a high-level intervention for an investigating officer to eventually be appointed to the case in 2010 – but apparently the docket had gone "missing".

Three years later, even after finding the docket, there was no progress. It was clear to me that the authorities were not going to investigate the case seriously, let alone prosecute anyone.

They even refused to charge those police officers involved in the kidnapping who did not apply for amnesty. At the beginning of 2013, I instructed my lawyers to demand the holding of a judicial inquest into her death.

This request was refused. After 17 years of idleness, the prosecutors advised us that their investigations were still not yet complete. We do not believe them.

We have lost all faith in the prosecutors and police. They have betrayed our trust.

They now claim that they are occupied with inquiries, which could conceivably drag on indefinitely while witnesses and suspects grow old and die. We do not know why the authorities in the new South Africa would turn their backs on one of their own.

Nokuthula's ultimate sacrifice helped to pave the way for the freedom and democracy we now enjoy.

We cannot bury her and we can find no peace. The betrayal of my sister, and what she stood for, is almost complete.

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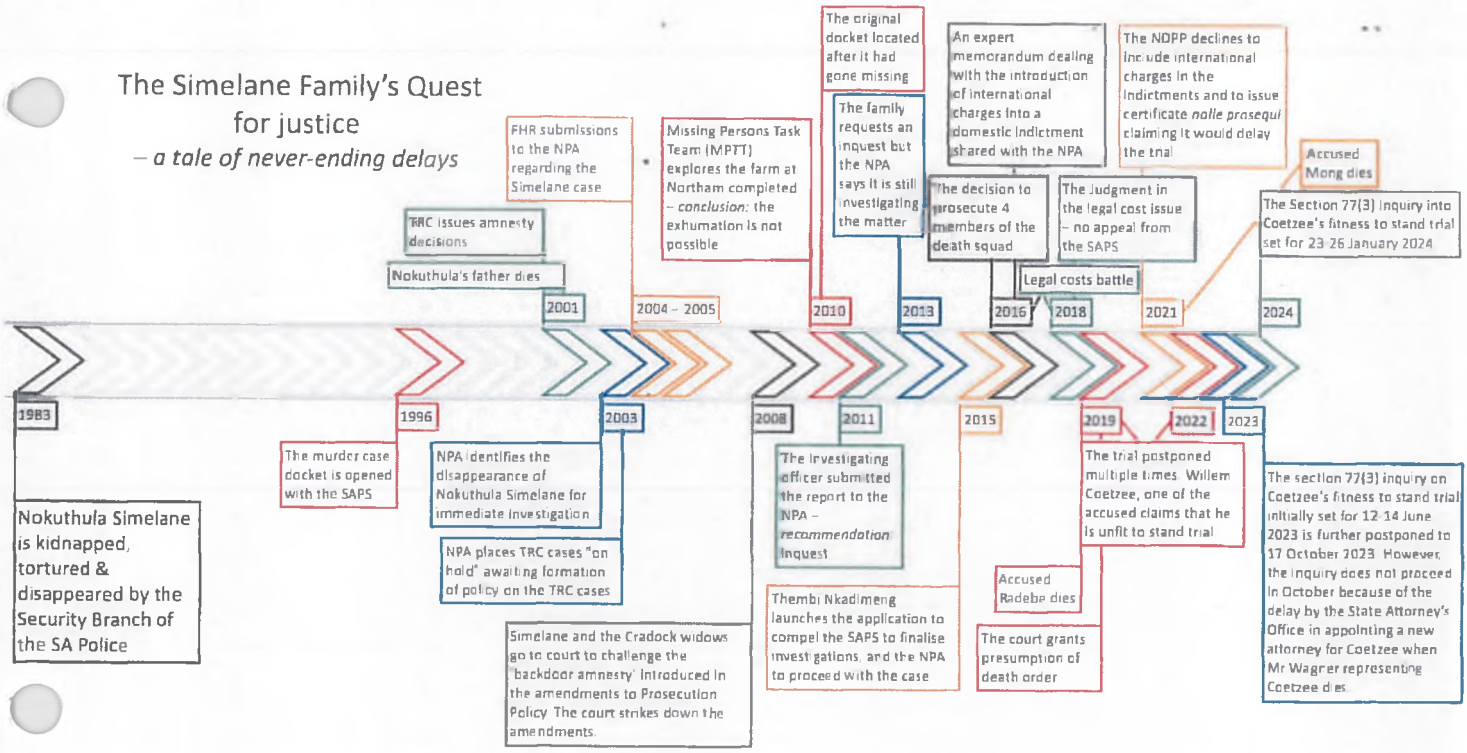
The Simelane Family's Quest for justice
– a tale of never-ending delays
1983
Nokuthula Simelane is kidnapped, tortured & disappeared by the Security Branch of the SA Police
1996
The murder case docket is opened with the SAPS
2001
TRC issues amnesty decisions
Nokuthula's father dies
2003
NPA identifies the disappearance of Nokuthula Simelane for immediate investigation
NPA places TRC cases "on hold" awaiting formation of policy on the TRC cases
FHR submissions to the NPA regarding the Simelane case
2004 – 2005
Missing Persons Task Team (MPTT) explores the farm at Northam completed – conclusion: the exhumation is not possible
Simelane and the Cradock widows go to court to challenge the "backdoor amnesty" introduced in the amendments to Prosecution Policy. The court strikes down the amendments.
2008
2010
The original docket located after it had gone missing
The family requests an inquest but the NPA says it is still investigating the matter
2011
The investigating officer submitted the report to the NPA – recommendation: inquest
Thembi Nkadimeng launches the application to compel the SAPS to finalise investigations, and the NPA to proceed with the case
2013
2015
An expert memorandum dealing with the introduction of international charges into a domestic indictment shared with the NPA
The decision to prosecute 4 members of the death squad
Accused Radebe dies
The court grants presumption of death order
2016
2018
Legal costs battle
The Judgment in the legal cost issue – no appeal from the SAPS
2019
The trial postponed multiple times. Willem Coetzee, one of the accused claims that he is unfit to stand trial
2021
The NDPP declines to include international charges in the indictments and to issue certificate nolle prosequi claiming it would delay the trial
2022
2023
Accused Mong dies
The Section 77(3) inquiry into Coetzee's fitness to stand trial set for 23-26 January 2024
2024
The section 77(3) inquiry on Coetzee's fitness to stand trial initially set for 12-14 June 2023 is further postponed to 17 October 2023. However, the inquiry does not proceed in October because of the delay by the State Attorney's Office in appointing a new attorney for Coetzee when Mr Wagner representing Coetzee dies

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

STATEMENT OF LUKHANYO BRUCE MATTHEWS CALATA

I, the undersigned,

LUKHANYO BRUCE MATTHEWS CALATA,

do hereby make oath and state:

1. I am the son of the late Fort Calata, and I am a journalist, author and filmmaker. I am currently employed as the News Director at eNCA based in Johannesburg.

2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

3. I depose to this affidavit to assist the Judicial Commission of Inquiry into stopped TRC Investigations and/or Prosecutions ("**the Commission**") to address paragraphs 1 to 1.3.2 of the terms of reference of the Commission.

4. I also confirm the contents of my founding affidavit dated 17 January 2025 filed in *Calata & Others v Government of South Africa & Others* (Gauteng Division, Case No. 2025-005245), ("**the Calata affidavit**"). A certified copy of this affidavit was supplied by Webber Wentzel attorneys to the Commission on 10 October 2025 in bundle 1 at paginated pages 1 - 842.

5. I confirm that I am the first applicant in the abovenamed High Court case against the Government, the President and other respondents. The Commission was established by the President in direct response to aforesaid legal proceedings.

6. I will rely on paragraphs 1 to 555 of the Calata affidavit and the annexes thereto to address the aforesaid paragraphs of the terms of reference.

LUKHANYO BRUCE MATTHEWS CALATA

Signed and sworn to before me at Dunkeld West on this the 5 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: Charles Horne

PHYSICAL ADDRESS: 4 Albury Road Dunkeld West

DESIGNATION: CA(SA)

Certified as a true copy of the Original
Commissioner of Oaths (RSA)
Charles Horne CA(SA)
2025 -11- 05
Registered Chartered Accountant
SAICA Membership No: 20034218
4 Albury Road, Dunkeld West 2196
Tel: +27 11 537 9300

Chapter Eleven

A Life Betrayed

LUKHANYO

It would be another four years before there was any news or movement with regards to the killings of my father and his comrades. It came in the form of a judicial inquest presided over by Magistrate Eric de Beer, starting in February 1989.

Arthur Chaskalson (the then national director of the Legal Resources Centre) represented our families. His instructing attorney was Fikile Bam, the director of the Port Elizabeth office of the LRC. George Bizos writes that, in the lead-up to the inquest, Chaskalson asked him to represent our families, but 'I was not available. He did it himself.'[165]

Chaskalson, working with very little in terms of evidence, would do his best to try to convince the court that the deaths of the Cradock Four were at the hands of the state, and were not a result of the UDF/AZAPO feud which had played itself out in Port Elizabeth at the time.

In his closing arguments, Chaskalson said: '"Your worship, I believe on the evidence [the court] is unable to make a finding as to who is responsible for the killings but Your Worship can, and indeed will, make a finding that they were murdered and that the circumstances of their deaths are as I have described them to Your Worship today."'

Bizos adds:

> 'At the time of the first inquest even a suggestion of the existence of hit squads within the security forces would have been denied as "communist and ANC propaganda" and could have exposed whoever suggested it to serious danger. Arthur Chaskalson had to tread a fine line.

165 Ibid.

> Magistrate de Beer did not take long to deliver his finding. After referring briefly to the "war" between UDF and AZAPO, he sketched the events on the evening of 27 June 1985, the post-mortem results and the evidence led. His conclusion was:
>
> "Finally, I find that it has been clearly proven who the deceased were, when they had died and what their cause of death was. As I have already said, the only real issue before me is to determine the identity of the actual killer or killers, and from what I have already said, this is not possible. The only finding I can make in this regard, which is also a finding to which all parties have agreed, is that their deaths were brought about by a person or persons or group of persons unknown."[166]

My mother remembered how all four widows, Sis' Nyameka Goniwe, Sis' Nonkosi Mkonto, Sis' Nombuyiselo Mhlawuli and she were devastated by the magistrate's ruling. They had hoped, she told me, that the inquest would help heal their wounds. But it turned out to be the first in a series of disappointments in our efforts to obtain justice for my father's life.

In December that same year, three black police officers from Port Elizabeth and an informer were killed when the car they were travelling in was bombed. A report on the incident was published in the *Evening Post* on 15 December under the headline 'PE Blast Kills 4', stating: 'The vehicle was torn apart by the explosion, and a crater was left in the road. Today police examined the wreckage before loading the fragments on to a bakkie and cleaning up the area along a lonely stretch of country road. The dead policemen were Detective Warrant Officer Glen Mgoduka, Detective Sergeant AT Faku, and Detective Constable DD Mapipa. The name of the informer would not be released.'[167] These three police officers are believed to have been part of the hit squad responsible for the murders of my father and his comrades.

Then, in 1992, right in the midst of the Convention for a Democratic South Africa (CODESA) negotiations, President FW de Klerk was forced to establish a second inquest into the murders of the Cradock Four. This occurred after the *New Nation* newspaper, edited at the time by the

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166 Ibid.

167 Post Reporters. 15 December 1989. PE Blast Kills 4. *Evening Post*.

late Zwelakhe Sisulu, published on its front page a copy of the signal sent by Colonel Lourens du Plessis to the Secretariat of the State Security Council. The signal had ordered the permanent removal from society of Matthew Goniwe, Mbulelo Goniwe, and Fort Calata as a matter of urgency.

Bizos, who represented our families in the second inquest, writes: 'The publication of the signal took the country by storm, as it seemed to contradict what Judge [Louis] Harms had found a year and a half earlier and showed that everything that President PW Botha and the security forces had been accused of was true. The authenticity of the signal was not denied.'[168]

Colonel Lourens du Plessis said of this period: 'When the Goniwe bubble burst, when that signal was published in the *New Nation*, from then on my life changed considerably. I was called to Pretoria, I met with the state attorneys. I got the impression that they wanted me to say what I didn't think was the truth. Although I did make a sworn statement at the time, it wasn't quite what I wanted to say.'[169]

George Bizos adds: 'The publication of the signal and [the subsequent] reopening of the inquest also reopened old wounds for the four widows and other family members of the murdered men. The prospect of reliving the events was painful but was outweighed by the possibility of finally finding the killers.'[170]

The newspaper reports were greeted with much optimism in Cradock. For my mother, it represented a step forward in the case. She hoped that the talks around a second inquest would finally reveal the truth around my father's murder. I was around ten or eleven years old at the time and one of my school teachers, Felicity Meyer, would quiz me in class about the Cradock Four matter whenever there was a story broadcast on SABC News the night before. Out of fear of being unable to answer her questions, I watched the news religiously, often asking

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168 Bizos, G. 1998. *No One to Blame? In Pursuit of Justice in South Africa*. David Philip & Mayibuye Books: Cape Town.

169 S Markovits and M Kaplan interview with Col. L du Plessis.

170 Bizos, G. 1998. *No One to Blame? In Pursuit of Justice in South Africa*. David Philip & Mayibuye Books: Cape Town.

my mother for 'exclusive details' to report back to my teacher and class.

To the ANC and other liberation movements around the CODESA table, the signal was evidence of the state's dastardly deeds in which death squads were allowed to kill 'the enemy', which included the likes of the Cradock Four, the PEBCO Three, and Victoria Mxenge.

The second inquest, which only started about a year later in 1993, was presided over by Judge Neville Zietsman, the then Judge-President of the Eastern Cape Division of the Supreme Court.

Bizos writes: 'We arrived in Port Elizabeth on March 1, 1993 to begin the Goniwe inquest. There was great excitement within and outside the courtroom. The large crowd that had come to see justice done sang freedom songs and toyi-toyied outside and packed the gallery.'[171]

On 28 May 1994, a month after South Africa's first democratic election was held on 27 April, my mother and the other three widows were back in court for the judgment. It had been over a year since the start of the inquest in which the defence force generals, among them Hekkel van Rensburg, Joffel van der Westhuizen, Lourens du Plessis, as well as Security Police Colonels Eric Winter and Harold Snyman, all suffered from a collective case of amnesia. Judge Zietsman ruled that the murderers of my father and his colleagues were indeed members of the security forces.

Zietsman stated: '"A case of suspicion had been made out against certain members of the police force, among them Colonels Snyman and Winter, as well as against Generals Van der Westhuizen, Van Rensburg and Du Plessis. But suspicion does not constitute prima facie proof. This would require some link between the deaths and acts committed by the persons under suspicion, which the evidence led did not establish."

Judge Zietsman then concluded his judgement by saying: '"I am not able, on the evidence placed before me, to identify the murderer or murderers."'[172]

Judge Zietsman's judgement was yet another blow to our families' hopes of finding justice for the murders of my father and his comrades.

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171 Ibid.

172 Ibid.

In June 1995, President Nelson Mandela visited iLingelihle to commemorate the tenth anniversary of the deaths of the Cradock Four. In his address to my family and the community at the graves, where he laid wreaths, he said: 'Cradock was the first to render the apartheid organs of government unworkable. The only crime of the Cradock Four was their unbending commitment to the struggle for the liberation of the motherland. The deaths of these gallant freedom fighters marked a turning point in the history of our struggle. They were the true heroes of the struggle.' Madiba added: 'Despite the revelations that have been made, the full story has not been told. There can be no reconciliation without truth. All those responsible, irrespective of their political affiliation, must own up. Their motives must be known. Only then can we prevent the repetition of such crimes.'[173]

On 19 July 1995, just over a month after his visit to Cradock, President Mandela signed the Truth Commission Bill into law.

My mother was among the first people to testify at the Truth and Reconciliation Commission (TRC) hearings chaired by Archbishop Desmond Tutu in the East London City Hall in 1996. Author Antjie Krog, who at the time served as a radio reporter for the SABC, would describe the moment my mother was overcome by her emotions during testimony as 'an indefinable wail that would become the signature tune' of the TRC hearings[174].

Alex Boraine, Tutu's deputy chairperson, recalls the moment as a 'primeval and spontaneous wail that caught up in a single howl all the darkness and horror of the apartheid years'[175].

Six police officers, Eric Taylor, Gerhard Lotz, Harold Snyman, Johan 'Sakkie' van Zyl, Herman du Plessis, and Nic van Rensburg applied to the Amnesty Committee of the TRC for amnesty for the murders of my father, Fort Calata, and his comrades, Matthew Goniwe, Sparro Mkonto, and Sicelo Mhlawuli. Their applications, however, were all denied as

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173 Nicholson, C. 2004. *Permanent Removal: Who Killed the Cradock Four?* Wits UP: Johannesburg.

174 Hartle, R. 20 April 2016. On a Tortured Path to Incomplete Accounting. *Daily Dispatch.*

175 Ibid.

the Commission felt they had failed to disclose the truth about the murders. But even the TRC, it seems, would fail to bring our families much-needed justice and closure on the murders.

In September 2017, over 32 years after the murders of the Cradock Four, I sat down for an interview with Deputy Minister of Justice John Jeffery. I wanted to hear his explanation for why the ANC-led government had failed to prosecute those responsible for the deaths of my father and his colleagues. He began by saying, 'Part of the problem is the nature of our transition [from apartheid to democracy] – the negotiated settlement. That was the price that had to be paid.' I then asked the deputy minister if he was implying that the murders of my father and his comrades, as well as those of many other South Africans, including the likes of Victoria Mxenge, the PEBCO Three, and even that of Bantu Stephen Biko in 1977, were used as pawns or tools during the negotiations for a democratic South Africa. His response astounded me when he said, 'That's part of the price that had to be paid.'

The deputy minister, who himself had lost a close friend and comrade in Reggie Nkabinde in the political violence which enveloped KwaZulu-Natal from the late Eighties to the early Nineties, astounded me even further when he said, 'We [the ANC-led government] don't have the resources to re-open all these investigations. We don't have the resources to have inquests into all these murders. Some can be done, as has happened with Ahmed Timol, as has been done with Nokuthula Simelane.

'The problem is that there are so many. That raid into Mthatha in the Transkei, that killed two young boys and I mean literally boys, was openly admitted as an operation. It was the army I think that went in, and they claimed they were raiding some or other PAC or MK person's house and they killed two young boys. I mean, there's so many. The whole of KZN, nobody knows what happened to most of the cases. It's unfortunately the result, I think, of our transition.'

I wasn't satisfied with these almost callous responses, so I pushed him a little harder. I asked him if this meant that I would now have explain to my mother that, according to the Deputy Minister of Justice, she and the rest of my family – in particular, my younger sister, Tumani, who had never seen our father except in pictures – would never see justice

for the life of Fort Calata. He answered, 'The problem we've got is, yes, you want to know what happened, but what happens if we can't do it all one time, as it were? I appreciate that what I am saying must sound terrible, but for me the pressure is the issue of getting a functioning justice system now that can deal with present-day crimes and ensure that perpetrators get brought to book.'

In my interview with Dr Allan Boesak, he told me that the murders of the Cradock Four were probably part of, if not central to, the secret negotiations between the ANC and apartheid leaders way before they ever set foot in the World Trade Centre in Kempton Park, Johannesburg, for CODESA in December 1991.

Indeed, our families had spoken of that very same fact. We as a collective had always suspected that the generals and architects of apartheid had negotiated themselves out of murder, making the ANC – in whose name Fort Calata, Matthew Goniwe, Sparro Mkonto, and Sicelo Mhlawuli were killed – complicit, at least in our opinion, in their murders.

Deputy Minister Jeffery's statement that the government has no resources to prosecute these crimes rings hollow. How dare he cite a lack of state resources as explanation for what is clearly a lack of political will? I find this most insulting. Especially when I consider that in the two weeks prior to my sitting down to pen this chapter, the Office of the Auditor-General of South Africa reported to parliament that state-owned entities Eskom and Transnet had in the previous financial year (2016/2017) squandered a total of R5,7 billion through irregular, fruitless, and wasteful expenditure. Just this week, on 9 October 2017, the CFO and COO of the SABC, which is once again mired in controversy and is currently without a Board of Directors or permanently appointed executives, reported to parliament that it had lost R4,4 billion in the previous financial year through irregular and wasteful expenditure. I'm certain that in the weeks to come more government departments and entities, including the very same Department of Justice and Correctional Services, will report large amounts of public monies lost through government wastage. I find it an outright insult to the thousands of South African families who lost loved ones at the hands of the apartheid state. Why would Jeffery cite a lack of resources as an excuse for why the ANC-led government would not help our families by investigating

and prosecuting those responsible for the deaths of our loved ones? This is shameful considered in light of the R250 million of tax-payers' money illegally spent on former president Jacob Zuma's Nkandla compound.

As I write this, it's barely 24 hours after Judge Billy Mothle of the North Gauteng High Court ruled anti-apartheid activist Ahmed Timol, who died in police custody in 1972, was pushed and fell to his death from the tenth floor of the notorious John Vorster Police headquarters in Johannesburg. Although I celebrate the judgment and this moment with the Timol family, I have very little hope that the government will in fact adhere to the judge's ruling and investigate one João Rodrigues as 'an accessory to Timol's murder'.

There's very little to suggest that the governing party will honour this court ruling, which, in essence, vindicates the family's long-held quest for justice. But I draw inspiration from their quest, as it will surely blaze a trail for many families, including mine, to continue to pursue justice for our loved ones. In the 23 years of ANC rule, the once-glorious liberation movement of Tatou and my father has not honoured the pain of our people in its politics, in the seeking of justice, and in securing the future of our children. That, to me and my family – and I'm sure to the families of Matthew Goniwe, Sparro Mkonto and Sicelo Mhlawuli – is the greatest betrayal which we could have imagined.

The ANC, in my opinion, has lost its revolutionary and moral moorings. Many in the party, chief among them its former president, Jacob Zuma, have their eyes so firmly fixed on self-interest and the power that they have taken – 'unredeemed from the hands of the apartheid government,' according to Dr Boesak – that they have lost sight of the sacrifices made by so many South Africans and, in doing so, greatly dishonour and disrespect these sacrifices for our freedom.

I feel that at no point did the ANC look at the power it was inheriting from the National Party in 1994 and say we must use our power differently. We must use our power to serve our people; we must use our power to bring justice to our people. Instead, many have looked at it as a power to enrich themselves.

My opinion on the ANC and how it has treated the people is shared and perfectly articulated by Dr Allan Boesak. In our interview, he said,

'I don't know how any leader in the ANC can look your mother in the eye, without feeling that they must be damned to hell for what they did and continue to do. If I think of what we have gone through and the price that has been paid, how can people walk through this country, how can we walk our streets, how can we walk through our townships and not see the blood still on the soil?'

He then asked me, 'How can I look you in the eye, Lukhanyo, and not think about what happened when you were three? Your father did not die of some illness, that [his death] was a deliberate act of murder and terrorism. So how can they look you in the eye, yet steal the money that's meant for our children and elderly? How can they look you in the eye and sit in their ministers' chair and yet they don't care what happens to our people? How can they fight about the size and the price and the colour of their ministerial automobiles like two ministers from the SACP *nogal* have been fighting? And those are the things that they worry about? And think that is okay?

'How can they talk about a National Democratic Revolution that has changed nothing for our people? Instead, it has reconfirmed the old inequalities, the old injustices. It has made this vast abyss between the rich and the poor in South Africa wider than it was in the days of apartheid. How can they do that?'

And, almost as if to challenge me, Dr Boesak made eye contact, a smile spreading across his face, and said, 'We must ask the question that I think your father and his three comrades would've asked. In a situation like this, what does integrity do? What does honesty do? What does decency do? And if you can answer those questions, then we might still save this place.'

Dr Boesak's questions would ring in my mind repeatedly over the next few days. They were still swirling around one Monday afternoon when I received a telephone call from Krivani Pillay (one of the SABC 8). She wanted to know if we as a group of journalists should issue yet another statement about the latest shenanigans at the SABC. Without stopping even once to consider the possible implications that yet another statement with my name on it (pertaining to the nonsense at the SABC) might entail, I agreed and began to give my input. It read:

'9 October 2017

To all News Editors

OPEN LETTER RE: SABC8 IMPLORES PARLIAMENT TO ACT ON BROADCASTER'S GOVERNANCE CRISIS

At the start, we the SABC8, want to affirm the good work done in 2016 by parliament's portfolio committee on communications, the ad hoc committee on the SABC and the interim board of the SABC. However, it is with deep regret that we write to you to register our alarm and deepest disappointment at the reckless abandon to which the public broadcaster has descended. We are extremely concerned at the governance crisis at the SABC. We believe that a recapture project of the public broadcaster is afoot and would like to endorse the open letter written to you by our fellow colleagues under the banner of BEMAWU (Broadcasting, Electronic, Media & Allied Workers Union). We wish to reiterate their statement that we are prepared to strike over the issues underlined. We will not allow our short-lived, recently gained freedom of expression to be rolled back.

It has been nine days since the term of the Interim Board has expired. However, there has been no political will to remedy the governance crisis at the broadcaster. The President has delayed the ratification of the permanent board members duly advised by Parliament. In terms of the Broadcasting Act, Section 14 (1), concerning the executive committee, "the affairs of the corporation are administered by an executive committee consisting of the group chief executive and six other members appointed by the board." In other words the Act makes absolutely no provision for the ministerial appointment of executive members; in fact the Act frowns on such. We have been told today, by acting GCEO Nomsa Philiso, that the Minister is currently preparing herself to extend the contracts of the current acting executives. If the Minister proceeds with such plans she would be usurping the powers of parliament or a board that should have been appointed by parliament. We wish to inform the executive arm of the state that we do not belong to them but to the people of South Africa via their public representatives – the Parliament of the Republic of South Africa.

In terms of the Companies Act, the current state of affairs amounts to reckless trading as no one is accountable for the major decisions and transactions of the insolvent entity that we work for. It is clear that the SABC is unable to pay its debts as they become due in the normal course of business. The attendant risks and implications are dire and grave. It would be reckless of us not to responsibly raise these concerns with Parliament as we do now by this correspondence.

Regarding the reversed merger between the News Resources Department and Henley; while on the surface it may seem resolved, we still call for a forensic investigation into how this merger came about in the first place and a full account of the moneys transferred and spent, particularly the millions transferred from the news division to the bankrupt Henley technical department. The Combating and Prevention of Corrupt Activities Act stipulates that we have an obligation to report such matters. Further, we have seen how when corruption is allowed to run rampant, the quality of news and governance decline.

We note, with concern, a reported meeting held at Luthuli House, wherein we believe it was said that the SABC news division is "the only propaganda tool left to the African National Congress"; and that the loss of this "tool" would be resisted by the governing party. In addition, we find that the meeting held by our Acting-GE of news with the head of the president's private office and spokesperson, Dr Bongani Ngqulunga, to be injudicious and we call on our head to exercise more circumspection in the future and to protect the newsroom from perceptions of bias. We also call on him to make the minutes of that meeting public. Editorial independence must not only be practised, like justice, it must be seen to be done.

We also raise concern that the editorial review process has been halted by the absence of the appropriate governance structures. ICASA has ruled that the SABC revert to the editorial policy of 2004. In this editorial policy the official mandated person to preside over the editorial process is the Group Chief Executive. We note with concern that the acting Chief Operating Officer has installed herself at the apex of this process, thus continuing with the practices of Hlaudi Motsoeneng under whom she gladly served. This is why we call on the presidency to ratify the board members so that we can institute the measures to ensure editorial independence, such as the Editorial Forum, as envisaged in the Broadcasting Act, clause 13 (b) which calls on board members to be committed to fairness and freedom of expression and the right of the public to be informed.

It has been eight months since the release of the final report of the SABC inquiry's ad hoc committee which recommended, among others, that the enforcers of unlawful instructions by Hlaudi Motsoeneng and his regime be held accountable. Instead, there appears to be efforts to launder their conduct and reinstate them as credible journalists. This is just a cosmetic exercise designed to ensure that they remain long enough to cover up the corrupt excesses and decisions of the past. Given the acting head of news' reluctance to correct the wrongs of the past, our faith in his leadership is gravely shaken.

> We call upon parliament to hold the executive to account and bring the corporation in line with the governance principles outlined in the Broadcasting Act. We cannot proceed in this fashion for much longer.
> Yours sincerely
> Thandeka Gqubule-Mbeki
> Busisiwe Ntuli
> Krivani Pillay
> Foeta Krige
> Lukhanyo Calata
> Vuyo Mvoko
> Jacques Steenkamp
> Nonkululeko Zonke Smith (convenor of SABC 101 – News Technical Staff)'

It's been a week since that statement and, so far, I'm happy to report there's been no comeback – besides the small matter of a response from the Office of the President. The fact that the highest office in the land would concern itself with a statement from a bunch of journalists at the SABC has once again made me realise how important it is for me either to speak up or act when I am confronted by injustice. It matters not in which form the injustice may present itself, what matters is that I (and to a large extent all well-meaning people) confront those behind the injustice. This is, after all, the legacy of my family through my great-grandparents, James and Miltha, their daughter (my grandmother) Nontsikelelo Calata, and my father, Fort Calata. It is also the legacy of my community of iLingelihle, through Matthew Goniwe, Sparro Mkonto, Sicelo Mhlawuli, Jamani Goniwe, Gangathumlungu 'Gandhi' Hlekani, Ben Ngalo and Lennox Melani, General Nonyanga, Madoda Jacobs, Mbulelo Goniwe, Daisy and Vulindlela Bontsi, Charles Nqakula, Moppo Mene, and the thousands of other activists who risked their lives every day for me to live in a South Africa that is free of the oppression and injustice of apartheid. I hold dear their sacrifices and honour their lives. I hope to also tell their stories. In my father's case, however (and of course that of Matthew, Sparro, and Sicelo), it means a continued pursuit of justice for his life. I'm certain it is what he and his comrades would want. *A luta!*

Acknowledgements

It would be remiss of us to take credit for this book and not to acknowledge the contributions of the many cheerleaders who helped bring it to light.

Firstly, we would like to give thanks to our God, the Redeemer, for without Him nothing, particularly this book, would have been possible.

Secondly, we would like to acknowledge our mother, Nomonde Calata, for her steadfast love and dedication to her late husband, Fort, throughout the decades. It is that undying love that kept alive the memories, which allowed us to tell his story. Ma, we honour your strength, your passion and absolute faith in us as we embarked on this project. You helped in so many ways. Not only were you available to answer our questions at the drop of a hat, you also put us in contact with the necessary and relevant people, personally at times set up interviews, and generally paved the way for this book. *Siyak'bulela mam' Tshonyane.* The loss of your husband when you were just 26 years old had threatened to break you, but you took that heartache and channelled it into us, your children, and into preserving Fort's legacy. We honour your heart and stand amazed at the strength you so consistently display. We love you, Ma.

We also owe a big debt of gratitude to David Forbes, who so generously made his document and video archive available to us. Your journey, David, to tell the story of the Cradock Four has been littered with obstacles and difficulty, including your battle with cancer. Yet you kept on fighting – at times with your life depending on the outcome. By fighting these battles with the authorities, you have spared us the same agony and troubles, and for that we are deeply grateful to both you and your wife, Nadine.

Another chronicler of the story of Cradock and the Cradock Four is

Jo-Ann Thesen [née Bekker], a former reporter of the *Eastern Cape Herald*. Your work in the township of iLingelihle in the Eighties has been exemplary for young(er) journalists such as us. It was your first drafts of our history between 1984 and 1985 that allowed us to tell this story today. Also, by keeping meticulous records of your articles and then generously handing them over to us, you saved us so much time, which we could use writing this book. We hope that, above all else, we have done you proud. Thank you!

We also wish to extend our gratitude to the Valley Trust administered by Anton Harber from Wits University's Department of Journalism for the research grant from the Taco Kuiper Fund for Investigative Journalism. The grant enabled our research and investigation, which resulted not only in our accurate account of the Calata family history, and the historical understanding of Cradock's contribution to the dismantling of apartheid, but also facilitated our knowledge of the hit squads which operated in the Eastern Cape in the early to mid-Eighties.

Finally, we are grateful to our families and friends, who were unrelenting with their encouragement. Your love and interest kept us buoyant and motivated to produce this tribute to Fort Calata and the other brave, selfless individuals, who, despite mortal danger, never wavered in their pursuit of freedom – an idea the apartheid government of PW Botha despised so much, it was prepared and, indeed, killed to prevent that freedom from being realised.

We salute your brave and gallant struggle. We promise never to forget.

A luta!

Lukhanyo and Abigail Calata

Bibliography

Books

Bizos, G. 1998. *No One to Blame? In Pursuit of Justice in South Africa.* David Philip & Mayibuye Books: Cape Town.

Callinicos, L. 2004. *Oliver Tambo: Beyond the Engeli Mountains.* David Philip: Cape Town.

Cupido, AB. 1991. *Matthew Goniwe, 'n Biografie* (unpublished).

Duka, Dr MM. 2011. *Canon James Arthur Calata: A Biography of One of the Greatest Sons of Africa.* Khoi Publishers: Queenstown.

Gumede, WM. 2005. *Thabo Mbeki and the Battle for the Soul of the ANC.* Zebra Press: Cape Town.

Luthuli, A. 2006. *Let My People Go: The Autobiography of Albert Luthuli.* Tafelberg: Cape Town.

Manong, S. 2015. *If We Must Die.* Nkululeko Publishers: Johannesburg.

Nicholson, C. 2004. *Permanent Removal: Who Killed the Cradock Four?* Wits UP: Johannesburg.

Tetelman, M. 2012. *We Can! Black Politics in Cradock, South Africa, 1948–85.* Rhodes University: Grahamstown.

Van Eck, J. 1989. *Eyewitness to 'Unrest'.* Pretoria: Taurus.

Verwey, EJ (ed.). 1995. *New Dictionary of South African Biography, Volume 1.* HSRC Publishers: Pretoria.

Journal Articles

Baxter, L. 1985. 'Section 29 of the Internal Security Act and the Rule of Law.' *Reality,* vol. 17, no. 6, pp. 4–6.

Suttner, R. November 2003. 'The African National Congress (ANC) Underground: From the "M-Plan" to Rivonia.' *South African Historical Journal,* 49, pp. 123–146.

Newspaper Articles

Eastern Province Herald

Bekker, J. 2 April 1984. *Cradock Meetings Banned.* 28 June 1984. *Cradock Meeting-Ban Expires Sunday.*

2 July 1984. *MPs Meet Minister on Cradock.*
24 July 1984. *Cradock School Unrest: Five Pupils in Court.*
8 August 1984. *Teargas Was Fired 'While Pupils Were Leaving Hall'.*
10 August 1984. *Policeman Threatened to Hit Her.*
10 August 1984. *Nine from Cradock Released on R 50 Bail.*
10 August 1984. *Boesak Shocked at Cradock's Reign of Terror.*
11 August 1984. *Teargas Was Used 'After Police Were Stoned.'*
2 October 1984. *Cradock Meetings Ban Is Lifted.*
11 October 1984. *Three Cradock Leaders Freed, Returned Home.*
11 December 1984. *Owners' Counter Offer to Beerhall Boycott.*
5 January 1985. *'Rejected' Cradock iLingelihle Council Resigns en Masse.*
8 January 1984. *iLingelihle Resignations Draw Mixed Reactions.*
11 July 1985. *Council Assistance for Cradock Funeral.*
20 July 1985. *Scores Converge on Cradock for Funeral.*

Coutts, L. 29 June 1985. *Goniwe Missing with Others: Car Found Burnt Out.*
1 July 1985. *Burnt-out Car: Two Bodies Are Found.*

Herald Reporter. 5 November 1984. *Reinstatement of Woman in Mandela T-shirt Trial Is Called For.*
February 1985. *Police Probing Four Herald Reports.*
5 July 1985. *Nel Denounces 'Insinuations' about Killings.*
20 July 1985. *Appeals for Calm at Cradock Funeral.*

Koch, I. 28 May 1985. *Cradock Raid: Some Arrests.*

Maggs, J. 3 July 1985. *Grieving Cradock Widow Says: 'I Am Just Empty.'*

Rogers, A. 3 July 1985. *Goniwe and Calata Are Found Dead.*

Tyala, M. 11 October 1984. *No Reason to Celebrate Says UDF Spokesman.*
February 1985. *Government Must Act on Cradock.*
3 July 1985. *Find These Killers.*

Daily Dispatch

Dispatch Reporter. 24 July 1985. *East Cape Emergency: The Terms.*

Hartle, R. 20 April 2016. *On a Tortured Path to Incomplete Accounting.*

Evening Post

Post Reporters. 15 December 1989. *PE Blast Kills 4.*

Sunday Tribune

Sole, S. 31 May 1992. *Wraps Come Off General's 'Personal Task Force' as Ex Members Spill the Beans.*

Weekly Mail

Missing: The List Grows Longer. 14 June 1985.

Webpages

Who Was Ntsikana? www.historicschools.org.za

Strikes in the Schools. http://www.sahistory.org.za/archive/strikes-schools

Pass Laws. https://en.wikipedia.org/wiki/Pass_laws

Padraig O'Malley Archives. https://www.nelsonmandela.org/omalley/index.php/site/q/03lv01508.htm

January 8th Address 1985. http://www.anc.org.za/

Koevoet homepage. http://koevoet.webs.com/

Archives

Jo-Ann Bekker Archives.

David Forbes Archives.

Rev James Arthur CALATA Papers 1909–1974. University of the Witwatersrand.

Calata Papers. Cory Library, Rhodes University.

Goniwe Papers. Cory Library, Rhodes University.

Affidavits: Henri Fouché. 31 January 1985; Fred Koni. 1992; Christoffel Pierre van der Westhuizen. 1992.

Classified document. 25 June 1985. 'Uiters Geheim, Suid-Afrikaanse Polisie, Die Kommissaris.'

Confidential Minutes of EP JMC Meeting 3/85 held at Eastern Province Command Headquarters on 23 May 1985.

Declassified National Intelligence Agency Document. Briefing Notes: '"The Cradock Four" – Fort Calata, Matthew Goniwe, Sparro Mkonto, Sicelo Mhlawuli.'

S Markovits and M Kaplan interview with Col. L du Plessis.