

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

OPENING STATEMENT ON BEHALF OF THE 25 FAMILIES & SURVIVORS & THE FOUNDATION FOR HUMAN RIGHTS¹

Table of Contents

INTRODUCTION	2
THE BETRAYAL	5
Compact with the nation	8
APARTHEID-ERA VIOLATIONS	10
POLITICAL INTERFERENCE.....	11
Lack of delivery	12
Discussions between the old and new orders.....	13
Handover of cases.....	15
Evidence pointing to interference	16
The axe falls on the TRC cases	20
CALLS FOR A COMMISSION OF INQUIRY.....	24
THE LITIGATION.....	25
CONCLUSION.....	26
Annex A: Perpetrators who died without facing justice	29

¹ Also referred to as the 'Calata Group'. The *Truth and Reconciliation Commission of South Africa* is referred to as the 'TRC'.

INTRODUCTION

1. This opening statement is made on behalf of:

- 1.1. Lukhanyo Bruce Matthews Calata – representing the family of the late Fort Calata, one of the Cradock Four activists abducted and murdered near Port Elizabeth in 1985.
- 1.2. Nombuyiselo Mhlauli – representing the family of the late Sicelo Mhlauli, one of the Cradock Four.
- 1.3. Sindiswa Elizabeth Mkonto – representing the family of the late Sparrow Mkonto, one of the Cradock Four.
- 1.4. Alegria Kutsaka Nyoka – representing the family of the late Caiphus Nyoka murdered by the police in Daveyton in 1987.
- 1.5. Bonakele Jacobs – representing the family of the late Mxolisi ‘Dicky’ Jacobs, who died in security detention in the Upington Prison in 1986.
- 1.6. Fatiema Haron-Masoet – representing the family of the late Imam Haron, tortured and killed in security detention in Cape Town in 1969.
- 1.7. Tryphina Nomandlovu Mokgatle – representing the four families of the Cosas Four, three of whom were murdered by the Security Branch in 1982, and one seriously injured.
 - 1.7.1. Zandisile Musi,
 - 1.7.2. Eustice ‘Bimbo’ Madikela,
 - 1.7.3. Ntshingo Matabane and
 - 1.7.4. Fanyana Nhlapo.
- 1.8. Karl Andrew Weber – a survivor of the Highgate Hotel Massacre in East London on 1 May 1993.

- 1.9. Lyndene Page – sister of the late Deon Harris, who was killed in the Highgate Hotel Massacre on 1 May 1993.
- 1.10. Neville Beling – a survivor of the Highgate Hotel Massacre in East London on 1 May 1993.
- 1.11. Mbuso Khoza – representing the family of Musawakhe ‘Sbho’ Phewa, who was forcibly disappeared by the Security Branch near Winkelspruit in 1987.
- 1.12. Thuli Kubheka – representing the family of Ntombikayise Priscilla Kubheka, who was forcibly disappeared by the Security Branch in 1987 near Winkelspruit, KZN.
- 1.13. Kim Turner – representing the family of the late Dr Rick Turner murdered at his Durban home in 1978.
- 1.14. Sarah Bibi Lall – representing the family of the late Dr Hoosen Haffejee, tortured and murdered at Durban's Brighton Beach police station in 1977.
- 1.15. Sizakele Ernestina Simelane – representing the family of the late Nokuthula Simelane, who was abducted, tortured, and forcibly disappeared by the Security Branch in 1983.
- 1.16. Stephans Mbuti Mabelane – representing the family of the late Matthews ‘Mojo’ Mabelane, who died in security detention at Johannesburg’s John Vorster Square in 1977.
- 1.17. Hlekani Edith Rikhotso – representing the family of Ignatius ‘Iggy’ Mthebule, who was forcibly disappeared in 1987.
- 1.18. Tshidiso Motasi – representing the family of the late Richard and Busisiwe Irene Motasi murdered by the SAP at their home in Hammanskraal in 1987.
- 1.19. Nomali Rita Galela – representing the family of the late Twasile Champion Galela, one of the PEBCO 3 activists abducted, tortured, and murdered by the Security Branch at Post Chalmers in 1985.

- 1.20. Phumeza Mandisa Hashe – representing the family of the late Sipho Hashe, one of the PEBCO 3.
 - 1.21. Mkhontowesizwe Godolozzi – representing the family of the late Qaqawuli Godolozzi, one of the PEBCO 3.
 - 1.22. Mogapi Solomon Tlhapi – representing the family of Nicholas Ramatua ‘Boiki’ Tlhapi, who was forcibly disappeared in 1986.
 - 1.23. The Foundation For Human Rights – a non-profit organisation in pursuit of justice and the rule of law and acting in the public interest.
2. We collectively refer to the survivors and family members referred to above as “the families”.
 3. On 25 March 1965, Martin Luther King, delivered a speech on the steps of the Alabama State Capitol in Montgomery after leading 8000 civil rights marchers from Selma to the State capital.
 4. King asked: *“How long will justice be crucified, and truth bear it?”* He answered: *“Not long, because the arc of the moral universe is long, but it bends toward justice.”*² For the families the arc of the moral universe has indeed been long, multiple decades long. They believed that in the post-apartheid order the arc would bend firmly towards justice.
 5. Regrettably for most of the families, the arc of the moral universe has been firmly deflected from justice. Most will never see justice done in their cases.
 6. It emerged over the years that the failure to pursue justice in their cases was no accident or oversight. It was not, as a senior ANC official claimed on an international TV show, a matter of the TRC cases *“simply falling through the cracks”*.³

² Full speech available at: <https://speakola.com/ideas/martin-luther-king-jr-how-long-not-long-1965>.

³ 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.”* Available at: <https://www.aljazeera.com/video/people-power/2021/5/6/south-africa-my-father-died-for-this>.

7. In fact, various high level interventions ensured that these cases were to be treated differently from other murders and serious crimes. They were to be treated as second class cases not worthy of attention in the normal course.
8. The interventions undermined, eroded and ultimately stopped most of the TRC cases from proceeding at crucial times when suspects were alive and witnesses were available.
9. The interference caused the families and their communities incalculable and irreversible harm and prejudice. They deserve to know how and why this happened. They deserve a reckoning.
10. It is for this reason they spent more than 6 years asking the President for an inquiry and when he ignored their pleas, they approached the High Court in January 2025 seeking constitutional damages and an order compelling him to set up a commission.⁴ Only then did the President act, establishing the TRC Cases Commission of Inquiry ("the Commission").
11. The families ask, with considerable justification, why it took a substantial application to court, to prompt the President to act.

THE BETRAYAL

12. The families had to endure violence, murders and disappearances perpetrated against themselves and their loved ones during apartheid. In the post-apartheid era, they had to endure the denial of justice. This denial cut the deepest. It stands as a deep betrayal.
13. The families are at their wits' end as to why successive post-apartheid governments turned their backs, not only on them, but also on their loved ones who paid the ultimate price for South Africa's freedom and democracy.

⁴ *Calata & Ors v Govt of the Republic of South Africa & Ors*, Gauteng Division, 2025-005245. Available at: https://www.trc-inquiry.org.za/wp-content/uploads/2025/10/Calata-and-Others-v-Government-of-RSA-and-Others-Case-No_2025_5245-issued.pdf . See paras 483 to 525 of the Calata founding affidavit which sets out the various attempts made by the families and the former TRC Commissioners since early 2019 to persuade President Ramaphosa to establish a commission.

14. The sacrifices of the families and their long fight for justice have defined them and their life choices. They have spent decades searching for the truth and struggling to do justice to the lives of their loved ones, which were so brutally cut short. They have done so in the face of the intransigence of the post-apartheid state, which has misled them and treated them with contempt.
15. In this regard, the Commission is expected to hear from Lukhanyo Calata, the son of Fort Calata, one of the Cradock Four;⁵ and Thembi Simelane, the sister of Nokuthula Simelane who was abducted, tortured and murdered by the Security Police.⁶ Supporting affidavits of 21 other family members providing their stories and struggles for justice have been supplied to the Commission.⁷
16. For most of the families, it is too late. Their life-long struggle for truth and 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.
17. Most perpetrators have died without facing justice. We attach hereto marked “A” a list of some 30 suspects in apartheid-era crimes who have died since the winding up of the TRC.
18. Family members have also passed on. These include:
 - 18.1. Saroma Nyoka mother of Caiphus Nyoka, murdered by police in his bedroom in 1987, died in June 2010.
 - 18.2. Yusuf Haffejee, brother of Dr Hoosen Haffejee, who died under Security Branch interrogation in 1977, died in 2009. He led the attempts to investigate Haffejee's death in detention. Hoosen's mother, Fathima Bibi Rahim, died in 2011.

⁵ See Calata Group Bundle 1: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-1_Calata-Group-Volume-Lukhanyo-Calata.pdf (referred to as the “Calata FA”).

⁶ See Calata Group Bundle 4: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-4_Calata-Group-Volume-Thembi-Nkadimeng.pdf

⁷ See Calata Group Bundle 9: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-9_Calata-Group-Volume-Supporting-Affidavits.pdf. This bundle includes certified copies of the supporting affidavits filed in *Calata & Ors v Govt of the Republic of South Africa & Ors*, Gauteng Division, 2025-005245

- 18.3. The sons of Champion Galela, one of the PEBCO 3, Tebogo and Lehlohonolo, died in 1996 and 2011.
- 18.4. On 29 September 2019, exactly 50 years after her late husband Imam Haron was buried, Galiema Haron died at age 93. She did not see anyone punished for her husband's torture and death in detention.
- 18.5. Phillip Mabelane, father of Matthews Mabelane, who died in security police detention at John Vorster Square in 1977, passed away in May 2018, while on 6 August 2020, Lasch Mabelane, Matthews' brother, passed away without reaching closure.
- 18.6. Barileng James Tlhapi, father of Boiki Tlhapi who was forcibly disappeared from security police detention, died in September 2020.
- 18.7. On 28 June 2021, Zandisile Musi, the only survivor of the Cosas Four entrapment killing died without seeing justice.
- 18.8. 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.
- 18.9. Neville Harris, father of Deon Harris, who was one of the five murdered during the Highgate Hotel Massacre, died in July 2023, without closure.
- 18.10. On 2 June 2005, Lucia Mthebule, the mother of Iggy Mthebule, a former MK operative who disappeared in 1987 while in the hands of the Security Branch, died. Iggy's brother, Samuel, died in January 2021.
- 18.11. There are many more examples.
19. It is not surprising that apartheid-era perpetrators, witnesses and family members are rapidly dying off, given that most of the offences took place between the 1960s and 1980s. Most perpetrators 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 have seen little or no urgency on the part of the authorities, a situation which sadly prevails till today.

20. The cruel indifference of the post-apartheid state robbed the families of justice, peace and closure. The damage done to the families and their communities is incalculable. They remain deeply scarred.⁸

Compact with the nation

21. South Africa's ground-breaking transition required a limitation of the fundamental rights of the victims of gross human rights violations. 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.
22. The principles set out in the postscript to the Interim Constitution⁹ were reflected in the design of the TRC Act.¹⁰ Perpetrators of politically motivated crimes who made full disclosure were eligible for amnesty, 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.
23. 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 the nation, and victims in particular. This compact required the State to take all reasonable steps to prosecute deserving cases in respect of offenders who were not amnestied.
24. The TRC's Final Report,¹¹ 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 cases not amnestied to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law.¹²

⁸ See also paras 539 to 554 of the Calata FA under the heading "Denial of justice": https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-1_Calata-Group-Volume-Lukhanyo-Calata.pdf

⁹ Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993)

¹⁰ Promotion of National Unity and Reconciliation Act (34 of 1995)

¹¹ Truth and Reconciliation Commission of South Africa Report. Volumes 1–5 were released in 1998; volumes 6–7 were released in 2002. Available at: <https://sabctrc.saha.org.za/reports.htm>

¹² Vol 6, Ch1, p 593, para 24.

25. 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 who were refused amnesty.
26. This part of South Africa's historic pledge has not been kept. Contrary to this obligation, in the aftermath of the TRC, the State chose ultimately to abandon its obligations by undermining or blocking the TRC cases.
27. Over the years, families of apartheid-era victims conducted themselves with resilience and remarkable patience. They committed themselves to the historic compromises that were required to move from South Africa's oppressive past to a democratic future. They participated in the TRC process in good faith. This involved having to accept that perpetrators granted amnesty would not face prosecution or civil damages claims.
28. 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, most victims, survivors and family members did not sue the new South African state for the transgressions of the apartheid state.
29. According to the TRC Report,¹³ read with figures¹⁴ released by the Department of Justice, 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.¹⁵
30. Some 849 of these applicants were granted amnesty while approximately 358 applications were refused. Murders comprised the biggest category of the crimes

¹³ Volume 6, section 1 [page 36](#).

¹⁴ DOJ figures available at: <https://www.justice.gov.za/trc/amntrans/index.htm>

¹⁵ The DOJ's summary of amnesty decisions is annexed to the Calata founding [affidavit](#) marked FA1.

for which amnesty was refused, some 189 cases, which involved at least 353 deaths.¹⁶

31. The families 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.¹⁷
32. The families did expect the post-apartheid state to pursue justice. However, a near blanket impunity for apartheid era crimes was effectively extended into the post-apartheid era, through the meddling by the State in these cases.

APARTHEID-ERA VIOLATIONS

33. The Constitutional Court has held that the practice of apartheid constituted a crime against humanity and that South Africa is obliged to prosecute apartheid-era crimes against humanity and war crimes.¹⁸
34. 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).¹⁹

¹⁶ An excel spreadsheet comprising details of each refusal is annexed to the Calata FA marked FA2.

¹⁷ Paul Gready and Lazarus Kgalema, "*Magistrates under Apartheid: A case study of professional ethics and the politicisation of justice*", South African Journal on Human Rights, Vol 19, 2003; TRC Report, Vol 4, Ch 4, p 108; TRC Report, Vol 5, Ch. 6, Findings and Conclusions, p 253, at para 158, sub-para b; *The re-opened inquest into the death of Ahmed Essop Timol* [2017] ZAGPPHC 652 at para 341; Affidavit of George Bizos in the Neil Aggett Re-opened Inquest, Exhibit G1 paras 15 – 19.

¹⁸ *S v Basson* 2005 (1) SA 171 (CC) par [37]. On 14 April 2025, the High Court in Johannesburg handed down a landmark judgment (*S v Mfalapitsa & Rorich, LRC as Amicus*, SS70/2021: <https://www.saflii.org/za/cases/ZAGPJHC/2025/410.html>) dismissing the two accused's' objections to the inclusion of murder and apartheid as crimes against humanity charges in respect of the Cosas Four case (See: <https://unfinishedtrc.co.za/cosas-4/>). In so doing, the court cleared the way for crimes against humanity charges to be pursued under customary international law in a South African domestic court for the first time. It also opened the door to the first ever prosecution of apartheid as a crime against humanity anywhere in the world. This judgment is currently on appeal before the Supreme Court of Appeal.

¹⁹ *Rome Statute of the International Criminal Court*, July 17, 1998, 2187 U.N.T.S. 90. Incorporated into the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002.

35. The TRC found that very serious crimes were committed during the apartheid-era. The TRC Report found that the security forces of the apartheid state committed a host of gross violations of human rights, including:
- 35.1. extra-judicial killings;
 - 35.2. the desecration and mutilation of body parts;
 - 35.3. kidnappings and disappearances;
 - 35.4. torture, severe ill treatment, abuse and harassment;
 - 35.5. destruction of homes or offices through arson, bombings or sabotage;
 - 35.6. manipulation of society by turning groups against each other, resulting in violent clashes; and
 - 35.7. creation and provision of support hit squads for deployment internally against opponents of the government.
 - 35.8. tens of thousands of anti-apartheid activists were detained without charge or trial or acted against under security laws.²⁰
36. The TRC concluded that the security forces were a law unto themselves. The vast majority of murders and crimes carried out by them were covered up.
37. 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.²¹ The total number of political prisoners held at all prisons runs into several thousand. Virtually all prosecutions were brought against those opposing apartheid.

POLITICAL INTERFERENCE

38. On behalf of the families, we intend to demonstrate that systematic steps were taken by members of the Executive to close down or impede the TRC cases from

²⁰ Vol 5 Ch. 6, Findings and Conclusions, p 222.

²¹ Available at: <https://sahistory.org.za/article/list-robben-island-political-prisoners>

being taken forward. We will argue that but for these steps it is highly probable that from 2003 several cases would have been investigated and some prosecuted.

39. There were early attempts to secure justice for apartheid-era crimes in the 1990s post 1994. These were carried out in an *ad hoc* manner by different investigations. These are set out in the Calata founding affidavit.²²
40. These cannot be referred to as ‘TRC cases’ as they were pursued independently of the TRC around the same time of its operations. Notably, these cases, such as the prosecution of former Vlakplaas commander, Eugene de Kock, took place before steps were taken to close down the investigations.

Lack of delivery

41. In terms of post-TRC delivery the record is dismal. This stark fact is not seriously disputed by anyone.
42. Since the handover of the TRC cases to the National Prosecuting Authority (“NPA”) some 25 years ago, the record as at the filing of the Calata papers in January 2025 amounted to:
 - 42.1. 6 concluded reopened inquests (between 2017 and 2025),
 - 42.2. 4 plea and sentence agreements (all occurred between 16 and 21 years ago),
 - 42.3. 2 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.
 - 42.4. In the Caiphus Nyoka murder case, one accused entered a guilty plea and was convicted in November 2024 and sentenced in July 2025.²³

²² See paras 82 to 94 of the Calata FA under the heading “*Early attempts to secure justice*”.

²³ On 2 December 2025, the Johannesburg High Court convicted two of three former apartheid-era police officers charged with the 1987 murder of student leader Caiphus Nyoka. Sgt A Engelbrecht and Sgt P Stander were found guilty of Nyoka’s murder, while Maj L van den Berg was acquitted. A fourth accused, Johan Marais, had already

43. An account of the work carried out, or the lack thereof, is set out in the Calata founding affidavit.²⁴
44. From the perspective of the families this failure is largely due to institutional interventions on the part of the then executive.
45. In contrast the former members of the executive appear to be saying that the lapses are due to the failures of the NPA and South African Police Service (“SAPS”) themselves, or alternatively the neglect visited on the cases by individual prosecutors and police officers.²⁵
46. This is one of the key questions that this Commission will have to interrogate.

Discussions between the old and new orders

47. It appears that between approximately 1998 and 2003, there were meetings and interactions between police and military generals (“the generals”) and senior ANC or government officials.²⁶
48. Information points to several prominent persons attending one or more of these meetings.
 - 48.1. From the side of the old order attendees included: FW de Klerk, Magnus Malan, Constand Viljoen, former police commissioner Johann van der Merwe, Generals Jan Geldenhuys, Major General Dirk Marais, Niell Knobel, amongst others.

pleaded guilty and was sentenced to 15 years’ imprisonment in July 2025. See: <https://unfinishedtrc.co.za/caiphus-nyoka/>

²⁴ Paras 112 to 120 of the *Calata FA* under the heading “*Lack of delivery*”.

²⁵ Paras 401 to 404 of the *Calata FA* under the heading “*Former President Mbeki denies involvement in political interference*”.

²⁶ Paras 370 to 400 of the *Calata FA* under the heading “*Was there a political agreement not to prosecute?*”. In this regard we note that para 1 of the Commission’s *terms of reference* appears to limit its investigations from 2003. This was a blunder on the part of the Presidency. As a matter of necessity, the Commission must investigate the context and the genesis of the interference. We urge the Commission to interpret its mandate purposively rather than literally. Where there are events / developments in earlier years that inform or are directly linked to what happened from 2003 onwards they must be fully investigated.

- 48.2. From the side of the new order, attendees included: Thabo Mbeki, Jacob Zuma and various security cluster cabinet ministers.
49. It appeared that the generals, representing the former apartheid security apparatus, were seeking protection against prosecution, either in the form of a general indemnity or other forms of protection.²⁷
50. News of these interactions emerged from interviews conducted by authors Ole Bubenzer in 2006 and Michael Schmidt in 2019 and 2020. Extracts from their books have been supplied to the Commission.²⁸ Both authors are expected to testify in the first sitting of the Commission's hearings.
51. Before FW De Klerk died, the FW de Klerk Foundation, on 5 July 2021, released an editorial titled "The NPA's Decision to Prosecute 'Apartheid Era' Crimes". 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."²⁹
52. This statement points to the fact that there was some kind of 'informal agreement' or understanding in place between the old and new orders on the question of prosecutions.
53. An overview of these interactions, as gleaned from the books by Bubenzer and Schmidt, is set out in the Calata founding affidavit.³⁰ It appeared that there was consensus amongst all or most involved that something needed to be done to address the impending prosecutions.

²⁷ *Ibid.*

²⁸ Calata Group Volume, Bundle 7: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-7_Calata-Group-Volume-Ole-Bubenzer.pdf and Bundle 8: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-8_Calata-Group-Volume-Michael-Schmidt.pdf

²⁹ Annexed to the Calata FA as FA51. See: <https://fwdeklerk.org/article-the-npa-s-decision-to-prosecute-apartheid-era-crimes/>

³⁰ Paras 370 to 400 of the Calata FA under the heading "*Was there a political agreement not to prosecute?*". Also see annexes FA51 – FA63.

54. A blanket amnesty was apparently rejected by the government because of the constitutional implications, but other options were explored, including preparing draft legislation for the creation of a new kind of special plea in criminal procedure, based on the TRC's amnesty criteria. While this did not see the light of day, its essential ideas emerged later in the Prosecution Policy amendments.
55. It seems that the generals were not awarded with a blanket amnesty or any other type of immunity, but the scene had been set for subsequent developments that occurred from 2003, which largely provided the outcome sought by the generals.

Handover of cases

56. During the winding up of the TRC between October 1998 and September 2000, lists of cases involving serious crimes where amnesty had been refused or not applied for were handed over to the NPA. The exact number of cases is not known but the Priority Crimes Litigation Unit ("PCLU") registered some 459 cases during 2003.³¹ These steps are set out in the Calata affidavit.³²
57. We expect to hear from former TRC commissioners Yasmin Sooka and Dumisa Ntsebeza SC³³ in this regard, as well senior TRC staffer, Adv Paddy Prior.³⁴ On the side of those receiving the lists we also expect to hear from former National Director of Public Prosecutions ("NDPP") Adv Bulelani Ngcuka ("Ngcuka") and Judge Vincent Saldanha, the former head of the NPA's Human Rights Investigation Unit ("HRIU").³⁵
58. Preliminary work on the TRC cases was commenced by the HRIU (which had been established by Ngcuka for this purpose, and then subsequently by the

³¹ According to the NPA's Annual report 2002/2003, the PCLU instituted an audit of all available cases and registered 459 cases that were handed over from the TRC, the D'Oliveira Unit and DPP offices.

³² Paras 95 to 111 of the *Calata FA* under the heading "*Post TRC developments*"; and see annexes FA9 - FA18.

³³ The statement of Yasmin Sooka is available at Calata Group Volume, Bundle 5: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-5_Calata-Group-Volume-Yasmin-Sooka.pdf. The statement of Dumisa Ntsebeza is available at Calata Group Volume, Bundle 6: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-6_Calata-Group-Volume-Dumisa-Ntsebeza.pdf.

³⁴ See statement at: <https://www.trc-inquiry.org.za/wp-content/uploads/2026/02/ADV.-PATRICK-CHARLES.pdf>

³⁵ See statement at: <https://www.trc-inquiry.org.za/wp-content/uploads/2026/02/C.-Saldanah.pdf>

Special National Projects Unit (“SNPU”) under Adv Chris Macadam (“Macadam”) in the Directorate of Special Operations (“DSO”, also known as the Scorpions).

59. In May 2003, Ngcuka decided that all TRC-related cases in which amnesty had not been granted were to be prioritised. They were ironically declared to be ‘*priority crimes*’ in terms of the PCLU proclamation. According to Adv Anton Ackermann SC, head of the PCLU (“Ackermann”), this resulted in more than 400 investigation dockets being transferred to the PCLU.³⁶
60. Shortly thereafter, Ackermann and Macadam started to identify and prioritise cases for prosecution. However, before they could really get going, outside interventions brought a halt to their plans. They could only proceed with a handful of matters in which investigations had been previously finalised.

Evidence pointing to interference

61. There is too much detail to try and include in an opening statement, so we will confine ourselves to a high-level summary. A more detailed account can be found in the Calata affidavit, and the annexes attached thereto.³⁷
62. The families have compiled evidence and information pointing to various steps that resulted in the closing down of the TRC cases. The Commission is expected to hear the testimony of former NDPP, Adv Vusi Pikoli,³⁸ and advocates Ackermann³⁹ and Chris Macadam⁴⁰ in this regard. An outline is set out below.

³⁶ See affidavit of Ackermann dated 7 May 2015 at Calata Group Volume, Bundle 3: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-3_Calata-Group-Volume-Anton-Ackermann.pdf

³⁷ Paras 121 to 369 of the Calata FA under the heading “*The Political Interference*”. A comprehensive chronology on the political interference will be supplied in due course.

³⁸ Calata Group Volume, Bundle 2: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-2_Calata-Group-Volume-Vusi-Pikoli.pdf

³⁹ Calata Group Volume, Bundle 3: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-3_Calata-Group-Volume-Anton-Ackermann.pdf

⁴⁰ Affidavit of Macadam dated 1 November 2018 at FA5 of Calata Group Bundle 1 at p 276.

Refusal to provide investigating officers

63. The first practical intervention was the refusal of the DSO and SAPS to assign investigating officers to the TRC cases in 2003.

63.1. This was notwithstanding much pleading and strenuous attempts on the part of Ackermann and Macadam to secure investigators.

63.2. The SAPS indicated that they would only investigate TRC cases if the President specifically instructed them in writing.⁴¹

63.3. This state of affairs persisted until 2010, when an investigating officer was assigned to the TRC cases, but he made little or no progress.⁴²

64. As a result, there were practically no investigations at a time when many suspects and witnesses were still alive and when evidence and leads were reasonably fresh.

Creation of the Amnesty Task Team

65. The next step was the creation of an Amnesty Task Team (“ATT”) by the Director-Generals’ Forum (DGs’ Forum or Committee) in early 2004 to explore ways of accommodating perpetrators who were not amnestied.⁴³

65.1. The ATT included representatives from the Department of Justice (“DOJ”), National Intelligence Agency (“NIA”), SAPS, NPA and Department of Defence (DOD).

65.2. It recommended the creation of an Inter-departmental Task Team which would,

65.2.1. include a representative from the Office of the President.

65.2.2. act under the direct supervision of an Inter-Ministerial Committee.

⁴¹ Paras 131 to 147 of the Calata FA.

⁴² See the confirmatory affidavit of Thembi Simelane, available at <https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Thembi-Simelani-Affidavit-COI.pdf>.

⁴³ Paras 148 to 172 of the Calata FA.

65.2.3. consider the advisability of a prosecution in each case, make a recommendation to a DGs' Committee,⁴⁴ which would advise the NDPP.

65.3. The ATT prepared a draft Indemnity Bill and made various other recommendations on the use of prosecutorial discretion and pardons to avoid prosecutions.

65.4. It also explored ways of eliminating private prosecutions and civil litigation on the TRC cases.

65.5. The ATT recommended that all involved, including the NDPP, "*take the national interest into account*" when making decisions on the TRC cases.⁴⁵

Moratorium on investigations and prosecutions

66. During 2003, an effective moratorium was placed on the pursuit of the TRC cases ("the moratorium").

67. The moratorium came into effect more formally in November 2004 after Justice Minister, Bridgitte Mabandla ("the Minister"), instructed Acting NDPP Adv Silas Ramaite SC ("Ramaite") to suspend work on the TRC cases pending the issuing of "guidelines" for those matters.⁴⁶

68. This occurred after an attempt by the PCLU to execute arrest warrants against suspects in the attempted murder of Reverend Frank Chikane was blocked by steps taken by their attorney, the late Jan Wagenaar, who secured the intervention of the Ministry of Justice.⁴⁷

69. Ramaite advised the Minister that her plans "*encroached on prosecutorial*

⁴⁴ It appeared that the DGs' Committee was at some point subservient to another body, the "*Cabinet Committee on Post TRC matters*", which was a subcommittee of the Justice, Crime Prevention and Security Cluster.

⁴⁵ Paras 162 and 166 of the Calata FA.

⁴⁶ Affidavit of Silas Ramaite SC dated 26 November 2025, available at: https://www.trc-inquiry.org.za/wp-content/uploads/2026/02/RAMAITE_AFFIDAVIT_TRC.pdf at paras 32 - 33.

⁴⁷ See paras 17 – 17.3 of Ackermann's supporting affidavit (FA8) at p 388 of the Calata FA

decision making” and violated “*prosecutorial independence*”.⁴⁸

70. Ramaite holds the view that the imposition of the moratorium by the executive and the development of “guidelines” by members of the executive to deal with the TRC cases were unconstitutional and “forms of political interference”.⁴⁹
71. Needless to say, victims, survivors and families were not consulted before their cases were placed on ice. The application of the rule of law was effectively suspended for the TRC cases.⁵⁰

Amendments to the Prosecution Policy

72. The new guidelines were the amendments to the Prosecution Policy (“the amendments”) which were only issued in December 2005.⁵¹ The amendments were aimed at shielding apartheid-era perpetrators from prosecution.
- 72.1. They inserted the TRC amnesty criteria as new grounds to decline to prosecute and added other novel reasons not to prosecute, such as the degree of indoctrination an offender was subjected to, and his commitment to reconciliation.
- 72.2. Ackermann and Macadam objected to the new policy on the grounds that it was unconstitutional, but they were overruled.⁵²
73. Thembi Simelane and the Cradock Four widows challenged the amendments in the High Court in 2007, which were struck down as unconstitutional in 2008.⁵³ Judge Legodi described the amendments as a “*recipe for conflict and absurdity*.”⁵⁴

⁴⁸ Paras 32, 35 36 of the Ramaite affidavit available at: https://www.trc-inquiry.org.za/wp-content/uploads/2026/02/RAMAITE_AFFIDAVIT_TRC.pdf . See also para 44.

⁴⁹ Paras 50 – 53 of the Ramaite affidavit.

⁵⁰ Paras 173 to 185 of the Calata FA; Bundle 2, p 9, para 24; Bundle 3, p 7, paras 17 and 18.

⁵¹ Annexed as FA27 to the Calata FA at p 634.

⁵² Paras 186 to 200 of the Calata FA.

⁵³ See the pleadings at p 631 of Bundle 4: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-4_Calata-Group-Volume-Thembi-Nkadimeng.pdf. Judgment in Case no.: 32709/07 at: <https://www.saflii.org/za/cases/ZAGPHC/2008/422.html>

⁵⁴ *Ibid*

The axe falls on the TRC cases

74. The issuing of the amendments at the end of 2005 did not clear the way for the TRC cases to go forward. Indeed, the clampdown only tightened. The PCLU was still denied investigators, and they made this known to the family of Nokuthula Simelane, amongst others.
75. While the then NDPP, Adv Vusi Pikoli (“Pikoli”), had cooperated with the Executive on these various initiatives in good faith, he started to push back during 2006, when it became clear to him that *“powerful elements within government structures were determined to impose their will on my prosecutorial decisions.”*⁵⁵
76. Later in 2006, Pikoli was summoned to a meeting which was convened at the home of Minister Zola Skweyiya, then Minister of Social Development, where other cabinet ministers were present. They indicated their concern that prosecutions on the TRC cases could open the door to cases against the ANC.⁵⁶
77. In February 2007, Minister Mabandla indicated to Pikoli in a letter that she was under the impression that the NPA would *“not go ahead with prosecutions”* of the TRC cases.⁵⁷
78. This caused an exasperated Pikoli to address a secret internal memorandum to the Minister in February 2007 in which he bluntly stated:

“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.”⁵⁸

⁵⁵ Calata Group Volume, Bundle 2: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-2_Calata-Group-Volume-Vusi-Pikoli.pdf, at para 43, page 16.

⁵⁶ *Ibid*, paras 32 – 33 from p 12; paras 62 – 65, from p 24.

⁵⁷ Paras 242 to 245 of the Calata FA. See annex FA31; Bundle 2: para 47 at p 18.

⁵⁸ Paras 246 to 249 of the Calata FA. See annex FA33.

79. In May 2007, Pikoli and Ackermann appeared before the Justice Portfolio Committee in Parliament where Pikoli advised the members that in relation to the TRC cases there was “*political intervention*” and the “*NPA was being held to ransom by the former generals*”.⁵⁹
80. The tipping point was probably the decision of Pikoli and Ackermann to proceed with the prosecution of former Law and Order Minister, Adriaan Vlok, former SAP Commissioner, Johann van der Merwe and others in relation to the attempted murder of the Rev. Frank Chikane, which resulted in a plea and sentence agreement in August 2007.⁶⁰
81. Later in August 2007, Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention and Security (JCPS) Cabinet Committee on Post TRC matters, attended by cabinet ministers and senior officials. In relation to Pikoli’s approach to the TRC cases, the late former Police Commissioner, Jackie Selebi, told him that the “*gloves are now off*” and that he was “*declaring war*” on him.⁶¹
82. On 23 September 2007 Pikoli was suspended from office by President Mbeki. Shortly thereafter, Ackermann, was summoned to the office of Adv Mokotedi Mpshe, who was acting NDPP. Mpshe advised Ackermann that he was relieved of his duties in relation to the TRC cases with immediate effect.⁶²

Special Dispensation on Political Pardons

83. Later in 2007, President Mbeki established the Special Dispensation on Political Pardons to accommodate those who had not applied for amnesty, as recommended by the ATT.⁶³

⁵⁹ Paras 250 to 251 of the Calata FA. See annex FA34.

⁶⁰ Previously, in November 2004, after intervention by the suspects’ attorney, Jan Wagenaar, Ackermann was instructed by a senior MOJ official and Acting NDPP Adv Silas Ramaite, on the instruction of the Minister, not to proceed with the arrests of the suspects. See paras 17 – 17.3 of Ackermann’s supporting affidavit (FA8) at p 388 of the Calata FA.

⁶¹ Paras 62 – 65 of Pikoli’s supporting affidavit (FA22) at p 587 of the Calata FA.

⁶² Paras 253 to 274 of the Calata FA.

⁶³ Paras 289 to 301 of the Calata FA.

84. As with the Prosecution Policy amendments, this process was aimed at shielding perpetrators who had not applied for amnesty from prosecution. It was held behind closed doors and also amounted to a rerun of the TRC's amnesty program.
85. Civil society organisations obtained an urgent interdict in April 2009 restraining the President from issuing political pardons; and the Constitutional Court struck down the political pardons process in 2010.⁶⁴

TRC cases remain buried

86. From late 2007, the NPA was placed in compliant hands and the TRC cases remained buried for years.
- 86.1. Even after considerable pressure, an investigator was appointed in 2010, the cases remained stuck. The dockets in cases such Nokuthula Simelane and the Cradock Four went “missing” and had to be reconstructed.⁶⁵
- 86.2. Families would only be taken seriously again when Thembi Nkadimeng (Simelane) applied to court in 2015 for an order compelling the NPA to take a prosecutorial decision or refer the death of Nokuthula Simelane to an inquest.⁶⁶
87. This ultimately resulted in an indictment being issued against four accused in 2016,⁶⁷ but it took a substantive application to court to get the NPA to act.

⁶⁴ Paras 289 to 301 of the Calata FA. Legal papers at <https://unfinishedtrc.co.za/historical-context-of-cases/#Special-Dispensation-on-Political-Pardons>. Interim interdict judgment at: <https://www.saflii.org/za/cases/ZAGPPHC/2009/35.html>, CC judgment at: <https://www.saflii.org/za/cases/ZACC/2010/4.html>

⁶⁵ Paras 328 to 332 of the Calata FA.

⁶⁶ Paras 333 to 341 of the Calata FA. Pages 1 – 474 Bundle 4: https://www.trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-4_Calata-Group-Volume-Thembi-Nkadimeng.pdf.

⁶⁷ The trial has still not started. Since the indictment of four accused in 2016 for the murder of Nokuthula Simelane, two of the accused, Frederick Mong and Msebenzi Radebe have died. Radebe in 2019 and Mong in 2021. WHJ Coetzee claims that he is mentally unfit to stand trial. Also, since 2016, at least eight witnesses and family members have died.

The NPA admits to the interference

88. The NPA in the *Rodrigues* permanent stay litigation⁶⁸ admitted in sworn affidavits in 2019 that the organisation had been subjected to interference in relation to the TRC cases.⁶⁹
89. Adv Chris Macadam compiled an affidavit for the NPA in the above matter (which was belatedly filed) and attached a number of relevant documents. He concluded his 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.”⁷⁰
90. Adv T P Pretorius SC on behalf of the NPA stated:

“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 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.”⁷¹ (Emphasis added)
91. However, the NPA vehemently denied that it should be blamed for the lapses, since it did not act out of “malice”, but it was a victim of circumstance given the political pressure from the executive.⁷²
92. The NPA did not make reference to its constitutional and statutory obligation to act independently and not to tolerate any interference in its duty to prosecute

⁶⁸ Jao Rodrigues, who following the reopened Inquest (in 2017) into the death in detention of Ahmed Timol, had been charged with Timol’s murder, filed an application in the Gauteng Division (Case No. 76755/2018) seeking a permanent stay of his prosecution.

⁶⁹ Paras 359 to 368 of the *Calata FA*.

⁷⁰ Affidavit of Macadam dated 1 November 2018 at FA5 of Calata Group *Bundle 1* at p 276.

⁷¹ Para 2 and sub-paras of the supplementary affidavit of TP Pretorius (FA50) at p 721 of *Bundle 1*.

⁷² Paras 359 to 369 of the *Calata FA*. The Commission is expected to hear from Advocates TP Pretorius SC and RC Macadam in this regard.

without fear or favour.

93. The full court and the Supreme Court of Appeal in *Rodrigues* expressed their dismay at the political interference and called for a full investigation.⁷³
94. The families will be submitting that the closing down of the TRC cases was not the result of a few bad eggs in the NPA and SAPS, but rather the result of a concerted institutional drive to suppress the cases.

CALLS FOR A COMMISSION OF INQUIRY

95. Following the admissions made by the NPA in *Rodrigues*, and the full court calling for an investigation, in early 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.⁷⁴
96. When the President was not moved to act, several families, including those of the Cradock Four, Ahmed Timol, Neil Aggett and others approached the State Capture Commission of Inquiry (Zondo Commission) with the request that it investigate the interference, as in their view the NPA and SAPS had been ‘captured’ by outside forces. The Zondo Commission did commence investigations but was not able to complete its work on this matter, before it closed.⁷⁵
97. 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, Ahmed Timol, Ashley Kriel and several others. The families followed-up again a year later, on 23 June 2020. Both letters were ignored.⁷⁶
98. In March 2021, the former TRC commissioners, together with 18 civil society organisations, again pressed President Ramaphosa for a decision on a

⁷³ *Rodrigues v National Director of Public Prosecutions of South Africa and Others* [2019] 3 All SA 962 (GJ) at <https://www.saflii.org/za/cases/ZAGPJHC/2019/159.html> at paras 21, 64 - 65; *Rodrigues v National Director of Public Prosecutions and Others* [2021] 3 All SA 775 (SCA) at <https://www.saflii.org/za/cases/ZASCA/2021/87.html> at paras 36 – 27 and 30.

⁷⁴ Paras 483 - 484 of the Calata FA. See annex FA68.

⁷⁵ Paras 485 to 492 of the Calata FA.

⁷⁶ Para 490 of the Calata FA. See annexes FA72 and FA73.

standalone commission of inquiry. The commissioners threatened litigation and concluded their letter with the following prescient quote from Chief Justice Arthur Chaskalson:

“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.”⁷⁷

99. Since the Minister of Justice indicated that he was investigating the setting up of an inquiry and the NPA had instituted its own internal inquiry, the Ntsebeza Inquiry into the handling of the TRC cases, the litigation was held back.⁷⁸

THE LITIGATION

100. When President Ramaphosa still did not react positively, he was placed on terms again in July 2024, and the litigation was launched in January 2025, seeking *inter alia* an order compelling the President to establish a commission of inquiry into the political interference; and a claim for constitutional damages on behalf of the families.⁷⁹
101. The litigation ultimately forced the President’s hand, and within a few weeks of the filing of the papers, he withdrew his opposition to the case and agreed to establish a commission of inquiry, stating that he wished to engage in mediation with the families.⁸⁰
102. However, subsequent to this, the conduct of the President and the Government respondents has been erratic and damaging to the families and the country.⁸¹

⁷⁷ Paras 493 to 499 of the Calata FA. See annex FA74.

⁷⁸ Paras 519 to 522 of the Calata FA.

⁷⁹ Paras 523 to 525 of the Calata FA.

⁸⁰ Notices to oppose and withdraw: <https://unfinishedtrc.co.za/constitutional-damages-case/#COURT-PAPERS>. See News24 article: These families deserve closure: <https://www.news24.com/southafrica/news/these-families-deserve-closure-ramaphosa-signals-support-for-apartheid-victims-denied-justice-20250226>

⁸¹ See press statements of the Foundation for Human Rights dated 29 April 2025 and 30 May 2025: <https://share.google/xJfRp1DlySRtZy3ti> and <https://share.google/D62hyT0lPgEm29CVj>

- 102.1. Instead of reaching out to the families to mediate, as publicly stated by the President, the government entities closed ranks and adopted a highly technical approach aimed at delaying resolution.
- 102.2. The President also unilaterally inserted the question of the families' claim for constitutional damages into the terms of reference of this Commission, knowing full well that this body cannot determine rights and remedies. It can only offer advice, which the President is free to reject or ignore.⁸²
- 102.3. The President then applied to court to reinstate his opposition to the families application and brought an application to stay the proceedings, pending the outcome of this Commission, further delaying matters.
- 102.4. In early October 2025, the application for a stay of proceedings was dismissed out of hand by the High Court, which noted that it is "*rather ironic that the Government, who is the sole cause for the delay, wants this Court to sanction yet a further indefinite delay without being able to point to any tangible benefit.*"⁸³

CONCLUSION

103. We are deeply concerned that former Presidents Jacob Zuma and Thabo Mbeki launched belated applications in December 2025 for the recusal of the Chairperson. Moreover, only last week Zuma launched an application before the High Court seeking to review the refusal of Judge Khampepe to recuse herself. Mbeki has also indicated that he will launch a similar application.
104. The families take the view that this 11th hour litigation is aimed at derailing the Commission's proceedings. They point out that both former presidents are under a moral obligation to disclose what they know about the subject matter of this inquiry. The families call on the former presidents to return to the inquiry. They

⁸² The families have notified the Commission that in their view the proper place to address the question of constitutional damages is before the High Court, which is presently seized with the matter.

⁸³ Judgment available at: <https://www.saflii.org/za/cases/ZAGPPHC/2025/1078.html>.

owe it to the families of those who laid down their lives for a democratic South Africa to explain why they were denied justice, truth and closure.

105. The families are satisfied that unlawful and improper institutional interventions stopped their cases from proceeding for extended periods. Indeed, three superior courts have also come to this conclusion.⁸⁴ However, the full reasons for the obstruction are not known. The families want to know the actual reasons why they were denied justice.
106. The source of the interference remains unclear. It appears that arrangements or understandings may have been struck with individuals and entities outside government to block the cases from proceeding. The Commission is requested to uncover the genesis of the interference.
107. The full means by which the will of outsiders was imposed on institutions such as the NPA and the SAPS must be exposed. The families want to know how institutions with firm constitutional and statutory obligations to uphold justice so easily abandoned their duties in respect of their cases.
108. 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 in the intervening period.
109. The impact visited on the families, their communities and on the fabric of society is incalculable. The harm done to the families and South African society demands an expeditious, thorough, and credible inquiry into the machinations that resulted in such a massive denial of justice.

⁸⁴ *Rodrigues v National Director of Public Prosecutions of South Africa and Others* [2019] 3 All SA 962 (GJ); *Rodrigues v National Director of Public Prosecutions and Others* [2021] 3 All SA 775 (SCA); and *Mbeki and Another v Calata and Others* (005245/2025) [2025] ZAGPPHC 753. Millar J refused the intervention application of Mbeki and Mabandla finding that: "... it cannot be in issue that there was political interference in the prosecution of the TRC cases. Our Courts have found this to be so, and those findings stand and are binding."

110. 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, to lead evidence and put questions to witnesses.
111. Where individuals fail to cooperate with the Commission, and where public entities fail to produce needed documents, they must be compelled through subpoena to appear before the Commission.
112. From the perspective of the families, the post-TRC period has been one of the most shameful periods in South Africa's history. The families have lost all faith in the institutions that were meant to uphold the rule of law.
113. There is a critically important need to restore public confidence in these institutions. This Commission can play a key role in beginning the process of restoring trust through a credible and robust investigation that leaves no stones unturned.

HOWARD VARNEY

Instructed by Webber Wentzel

11 February 2026

Annex A: Perpetrators who died without facing justice

Some examples of perpetrators of apartheid-era crimes who died without facing justice include:

- Johannes Zacharias van Niekerk (October 2006), Christoffel Andries Buys (February 2007), Johannes Hendrick Gloy (July 2012), Joao Anastacio Rodrigues (September 2021) who were involved in the killing of Ahmed Timol at John Vorster Square in 1971.
- Petrus Lodewikus du Toit (April 2008), Joseph Benjamin (December 2010), Vic MacPherson (April 2017), and James Brough Taylor (August 2019) who were involved in the 1977 torture and murder of Dr Hoosen Haffejee.
- Stephen Whitehead (April 2019), Nicholas Johannes Deetlefs (September 2023), who were involved in the 1982 killing of Dr Neill Aggett. Deetlefs was also involved in the 1982 killing of Ernest Moabi Dipale.
- Carel Coetzee, Abraham Grobbelaar, and Willem Frederick Schoon who were denied amnesty for the 1982 murder and attempted murder of the COSAS 4.
- Frederick Mong (2021) and Timothy Radebe (2019) who were involved in the 1983 kidnapping, torture and murder of Nokuthula Simelane.
- Those involved in the 1985 kidnapping, torture and murder of the PEBCO 3, PEBCO 3: Hermanus Bared Du Plessis (May 2023), Jan Hattingh ‘Jack’ Cronje, Harold Snyman (1998), Gideon Nieuwoudt (August 2005), Johannes Martin ‘Sakkie’ Van Zyl (2011), Johannes Koole, Gerhardus Jacobus Lotz (2016), Roelf Venter (July 2024), and Kimani Peter Mogoai.
- Andy Taylor (2019), Lawrence Gerald Wasserman (November 2024), and Jakob Albert Coetzer (2024 or 2025) who killed Ntombi Kubheka and forcefully disappeared Sbho Phewa in 1987.
- Jacques Hecter (July 2023) and Jan Hattingh ‘Jack’ Cronje who were refused amnesty for the cold-blooded execution of Richard and Irene Motasi in 1987.

- April Tshwaedi (2017), one of the police officers who last saw Boiki Tlhapi before he disappeared in 1987.
- In the Cradock Four case, some 49 persons who were associated in one form or another with the case. Virtually all of them have died.
 - All 7 members of the police hit squad who murdered the Cradock Four have died, including: Johannes Martin 'Sakkie' Van Zyl (2011), Eric Alexander Taylor (2016), Gerhardus Jacobus Lotz (2016), Mbalala Glen Mgoduka, Amos Temba Faku and Xolile Shepard Sakati.
 - All the masterminds, against whom there was a *prima facie* case have died, including: Hermanus Barend du Plessis (May 2023), Harold Snyman (1998), Eric Winter (August 2021), Lourens Du Plessis, Nicolaas Jacobus Janse Van Rensburg (2004) and Frederick Johannes van Rensburg.
 - Most of the members who sat on the State Security Council and its Secretariat between 1984 and 1985 have died, including: FW De Klerk (November 2021), Adriaan Vlok (January 2023), Johannes Velde van der Merwe (August 2022), Neil Barnard (January 2025), and Pieter Johannes Jacobus "Jannie" Geldenhuys (September 2018).