

THE ENQUIRY INTO THE FITNESS OF ADVOCATE VUSUMZI
PIKOLI TO HOLD THE OFFICE OF NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

AFFIDAVIT OF ASSISTANT COMMISSIONER P C JACOBS

I the undersigned,

PHILIPPUS CHRISTOFFEL JACOBS

Do hereby make oath and state that-

1

I am making this affidavit with reference to paragraphs 114 to 120 of the
Government submission to the Enquiry.

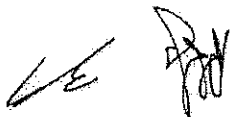
I am an officer in the South African Police Service holding the rank of
Assistant Commissioner. I am the Head of the Component: Legal Support:
Crime Operations, at the Head Office of the South African Police Service, in
Pretoria. Senior Superintendent Josias Lekalakala and I were instructed by
the then National Commissioner JS Selebi to represent the South African
Police Service on the Interdepartmental Committee set up in terms of the
guidelines of Cabinet to deal with post-Truth and Reconciliation (TRC)
matters.

2

Notice was given by the National Director of Public Prosecutions on 9 October
2006 of the first meeting of the Committee to be held and the National

Commissioner was invited to nominate an official to attend the meeting and also to attend the meeting personally. [A] This first meeting was convened for 12 October 2006, at the National Prosecuting Authority's Offices in Silverton. The National Commissioner of the South African Police Service did not attend the meeting. In effect two meetings were held on that day, one chaired by Advocate Pikoll, with the Directors-General and directly thereafter a meeting presided by Dr Ramatse with the designated officials from the respective Departments. I attended both meetings. It is reflected in the Minutes of the second meeting, presided by Dr Ramatse that Mr Ngidi of the Directorate for Special Operations said that "committee members will not be rubber stamps to the decisions already made by the PCLU and he was supported by Mr Kopedi (NIA) who said they are prepared to go through volumes of records in all cases". [B]

The first subsequent meeting of the TRC Committee was held on 25 October 2006, on which date both myself and Advocate Ackermann provided audit reports of the matters at hand. I received a list of such matters from S/Superintendent Louis Bester of the Unit Crimes Against the State, who was placed in custody of all the files which were previously removed from the Offices of the Director of Public Prosecutions: Pretoria, where they were dealt with by Advocate Fick and later on the PCLU together with retired investigators who were appointed on contract by the SAPS (S/Supt Henne Brits and S/Supt Nel). A more detailed report was requested from me, and I



indicated that if need be I would request S/Supt Brits to assist me as I was never personally involved in any of the matters. Advocate Ackermann, in a memorandum attached to revised report [c] and faxed to me on 3 November 2006, objected against Brits being appointed to assist. [D]

I revised the South African Police Service Audit Report, and requested S/Supt Louis Bester to provide me with a list of all matters which were according to the documentation at his disposal outstanding. I was referred to a number of decisions took by Advocate Ackermann, and where it was not clear whether the inquests in those matters were finalised. The revised report was submitted to the meeting of the Committee on the 6th of November 2006. It was decided at the meeting that the discussion of the report would stand over until the next meeting. [E] Advocate Ackermann informed the meeting that a decision to prosecute the suspects in the complaint of Rev Chikane had already been made, namely to proceed with the prosecution. It was minuted that S/Supt Lekalakala (referred to as "Josias") indicated to the meeting that recommendations of the task team are necessary because the National Commissioner is of the view that Rev. Chikane is not interested in prosecution in the matter. It was minuted that it was decided that the Rev. Chikane's attitude be ascertained and the matter was therefore closed pending a feedback on his attitude. [F]

The revised SAPS audit report was discussed at the next meeting, namely the meeting of 16 November 2006. Advocate Ackermann was furious about the SAPS report and once again referred to S/Supt Brits prosecution of the President. Dr Ramatle enquired from Advocate Ackermann about the relevance of his query. Upon enquiry from Advocate Ackermann, I confirmed that I have compiled the report and that the SAPS needed guidance on how to deal with the outstanding inquests. [G]

5

A draft progress report was received by e-mail from the Secretary of the Committee, Advocate Mhaga, on 1 December 2006. I commented by e-mail on 6 December 2006 and mentioned the decision of the last meeting that the Rev Chikane would again be consulted, that his wishes needed to be reflected and that our principals needed to make a recommendation to the NDP on the matter. Advocate Mhaga responded as follows: "Thanks for ya (sic) input but I would like to establish whether the national Commissioner has met with the Rev. Chikane to verify Josias' contention that he is not interested in prosecution. According to Anton Rev Chikane wants prosecution so the national Commissioner needs to substantiate such belief". I then informed Adv Mhaga by e-mail that: "I have conveyed to you and the Committee the view of the National Commissioner. It was decided in the Committee that this route should

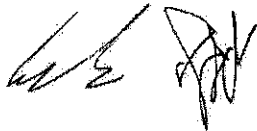
be followed, in respect of the Chikane matter. Whether you are in agreement with our view or not is irrelevant. Kindly reflect our recommendation in your report, so that the Committee of Directors-General may consider it". [H]

7

The next meeting was held on 4 December 2006, although the minutes are dated 2007. Nothing much emanated at this meeting, except that the issue of the appointment of investigators by the SAPS was discussed. [I]

8

At the meeting of 29 January 2007, a complaint was made by the representative of NIA about the manner in which minutes were kept and requested that in future the minutes should be more informative. I again mentioned the views of the National Commissioner on the Chikane matter and the need for consultation with the Rev Chikane, as well as the need to discuss the matter with our principals. The following was minuted: "Advocate Ackermann SC reminded the meeting that the National director has made his decision on the matter. Yvonne concurred with Commissioner Jacobs on Rev Chikane matter". [J]



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

The National Commissioner of the South African Police Service interacted in correspondence with the Directors-General of Justice and Constitutional Development and the National Intelligence Agency, who were in agreement that there was not a common understanding between these three Directors-General and the NPA on the Cabinet Guidelines and that the Directors-General needed to discuss the report, and in particular the prosecution in the matter where Rev. Chikane was the complainant. This was conveyed to the NPA who responded that:

"I advise that it is clear that our understanding of the mandate of the task team, as well as the guidelines that Cabinet approved, are not the same. In the circumstances, this matter as well as other issues that have emerged in the course of the NPA dealing with the TRC cases, are currently being taken up with the Minister of Justice and Constitutional Development". [K]

Copies of the letters to the National Director of Public Prosecutions [L] the Director-General of Justice and Constitutional Development [M] and the Director-General of the National Intelligence Agency [N] and the response of the National Director of Public Prosecutions [K] and a subsequent letter from the National Commissioner to the Director-General of Justice [O] are attached. The Director-General, Department of Justice and Constitutional Development thereupon wrote a letter to the National Commissioner of the SAPS, dated 7 February 2007, informing him that: "I am in agreement with the sentiments contained in your letter. Indeed I was also expecting that the Directors



General would be consulted formally, in a meeting, on the decisions regarding TRC cases. Whilst I agree that an urgent meeting of the DG's be convened, I am of the respectful view that it must also be to obtain a detailed report on all the cases on which the Task Team has deliberated and to recommend how those cases should be finalized. I would like to propose that, as most of the Directors General will be in Cape Town, the meeting should take place tomorrow or Friday, 9 February 2007". [P]

10

The news of the prosecution broke on 24 June 2007, [Q] without the matter again being discussed in the Committee or without any warning or information to the Committee. The NPA proceeded with and finalized the case against Gen. Van der Merwe and ex-Minister Vlok in a unilateral manner. To my knowledge the issue about how the Committee should function has also not been resolved.

I know and understand the contents of this statement.

I have no objection in taking the prescribed ~~oath~~/affirmation.

I consider the ~~oath~~/affirmation to be binding on my conscience

Signed at *Pharui* on this *15th* day of *January* 2008.

ASSISTANT COMMISSIONER PC JACOBS

[Signature]

*Not true
specific
I wanted
of meeting*

I certify that the above statement was taken by me and that the deponent

knows and understands the contents thereof. The statement was ~~sworn~~

affirmed before me and deponent's signature was placed thereon in my

presence at Pretoria on this 15 day of January 2008.

SIGNATURE OF COMMISSIONER OF OATHS

André Percy Henry De Vos

FULL NAMES AND SURNAME IN BLOCK LETTERS

SAPS Building, 225 Pretorius Street Pretoria

BUSINESS ADDRESS (STREET ADDRESS):

CAPACITY: SAPS Supervision deont

15
10
08
15
10
08

31. I turn now to elaborate further on the post TRC litigation process, in particular, why, in my view, the Task Team became dysfunctional soon after its formation.

32. I wish to state at the outset that Pikoli did not agree with the Directors General of the Justice Crime Prevention and Security Cluster ("JCPS") on how to deal with the post TRC matters. The purpose for which the Task Team was established by the Directors General in the JCPS Cluster together with Pikoli could not be achieved because Pikoli did not intervene sufficiently to resolve the problems that occurred between the officials of the NPA in the Priority Crimes Litigation Unit and the members of the Task Team from other Departments.

33. In this regard, I was advised by the Department's representative in the Task Team, Ms Marilyn Haswisiwi that during the meetings of the Task Team, there were disagreements between the NPA officials and other members on the mechanism to be followed in dealing with the cases. The NPA did not agree that all dockets within its possession be discussed so that the Task Team could advise the Directors General in the JCPS Cluster. Instead, the NPA submitted summaries of the dockets without detailed facts. This, *inter alia*, became a source of serious disagreement between the members of the Task Team.

34. The result of this disagreement was that the Task Team failed to discharge its responsibility and to advise the Directors General in the

JCPS Cluster on the post TRC matters being investigated by the NPA. The consequence of this was that the Directors General themselves did not subsequently meet to discuss the report from the Task Team and could therefore not give their views to Pikoll as was originally intended.

35. This matter created serious problems because the NPA continued on its own to finalise some of the post TRC cases without any input from the Directors General. I wish to state that the input from the Directors General was important to enable Pikoll to be advised on all the factors, including issues of national security, which Pikoll should have taken into account in making decisions on each case.

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Pretoria on this 16th day of January 2008, the Regulations contained in Government Notice No. 1258 of 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended, having been complied with.

DEPONENT

COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

SEGOPOTJE SHEILA MPHAHLELE
Commissioner of Oaths / Practising Attorney
1901 SALU Building
255 Schoeman Street
Pretoria, 0002

the procedure that would have to be followed in promoting such a request, amounts to a conscious and total disregard of my authority.

Post TRC litigation

62. Another area of difference between the National Director and I relates to the post TRC litigation processes. I refer to the supplementary affidavit of the Director-General of the department where the issues pertaining thereto and the failure of the National Director to ensure the efficient and effective operation of the Task team are dealt with in detail. I request that such assertions be read as if incorporated herein. I wish to point out however that reports made to me by the national Director on these issues were of such quality that it was impossible for me to advise Cabinet and Parliament thereon, in particular on the basis for the plea and sentence agreements and immunity from prosecution entered into and what public and national interest were taken into consideration in the conclusion of such agreements.

Warrants of arrest, search and seizures without proper reporting to the Minister

63. In 2005, the DSO obtained warrants for searches and seizure at, among other places, the Union Buildings and Tuynhuys. This was done without

15/11/05

11/11/05

11/11/05

M. M. M.

5