

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES (“The Commission”).

STATEMENT OF ADVOCATE MOKOTEDI JOSEPH MPSHE IN RESPONSE TO A NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES.

INTRODUCTION

- 1 I am an adult male South African and an advocate of the High Court of South Africa having been admitted on 29 January 1991. I am a member of the Pretoria Society of Advocates (“**PSA**”).
- 2 In 1998, I joined the National Prosecuting Authority (“**NPA**”) as a Director of Public Prosecutions in the KwaZulu-Natal (“**KZN**”) Province.
- 3 At this time, I was attached to the Truth and Reconciliation Commission (“**TRC**”) as Chief Evidence Leader, handled TRC amnesty cases, and scheduled all Amnesty Committee hearings.
- 4 In April 2002, I was transferred to the office of the Director of Public Prosecutions (“**DPP**”) in Pretoria where I remained until May 2006.
- 5 In May 2006, I was appointed to the position of Deputy National Director of Public Prosecutions (“**DNDPP**”) and was responsible for the National Prosecution Services (“**NPS**”).

6 While I held the position of DNDPP, I served as the Acting National Director of Public Prosecutions (“**Acting NDPP**”) from 23 September 2007 to 30 November 2009, and I took early retirement from the NPA during or about February 2010. My appointment as ANDPP was pursuant to the suspension of Advocate Vusi Pikoli as NDPP on the same date.

7 Unless the context indicates otherwise, the facts deposed to in this statement fall within my personal knowledge and are true and correct.

PURPOSE OF THIS STATEMENT

8 This statement is submitted in response to the Commission’s Notice in terms of Rule 3.3 of the Rules of the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases (“**the Commission**”) dated 8 October 2025.

MY ROLE IN THE TRC

9 Before joining the TRC, I practiced as a junior counsel in Pretoria. I was then approached by Mr Dumisa Ntsebeza, who informed me that the late Archbishop Desmond Tutu wished to meet with me. Mr. Ntsebeza was at the time the head of TRC investigations, if my memory serves me well.

- 10 I duly travelled to Cape Town, where I met with the late Archbishop Desmond Tutu and other TRC Commissioners. I was offered the role of the National Co-ordinator and Chief Evidence Leader in the Amnesty Unit.
- 11 I commenced serving on the Amnesty Committee on or about October 1997. The Amnesty Unit considered applications for amnesty from all those who participated in human rights violations during apartheid era.

**MY APPOINTMENT AS THE DIRECTOR OF PUBLIC PROSECUTIONS
(KWAZULU-NATAL)**

- 12 While at the TRC, I was approached by the then Minister of Justice, Dullah Omar, and informed that my services were required as the Director of Public Prosecutions (“**DPP**”) for the Province of KwaZulu-Natal (“**KZN**”).
- 13 Thereafter, I was contacted by the office of the NDPP, which office facilitated my appointment to the position of DPP for the Province of KZN. I was stationed in Pietermaritzburg from about 1998 to about 2002.
- 14 As DPP, I was responsible for prosecutions in the Province. This entailed the appointment of prosecutors and working with deputy directors in the Province, all of whom reported to me.
- 15 While I was DPP for KZN, I did not come across any matters that related to the TRC.

16 I was then transferred to serve as the DPP in Pretoria from April 2002 until May 2006.

MY ROLE AS THE DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

17 In May 2006, I was appointed to the position of Deputy National Director of Public Prosecutions (“**DNDPP**”). In this position, I was responsible for the National Prosecution Service (“**NPS**”) and was based at the Head Office in Pretoria.

18 My role as Head of the NPS involved taking charge of prosecutions in the country, managing all the DPPs who reported to me in all provinces. I reported to the NDPP about matters pertaining to prosecutions.

19 During my time as the DNDPP, I was not involved in any TRC matters. These were dealt with by Mr Ngcuka, who was the NDPP, and Dr Ramaite, the Special Deputy National Director (“**SNDP**”) responsible for the Priority Crimes Litigation Unit (“**PCLU**”).

20 I served as the DNDPP until 23 September 2007, when I was appointed as the Acting NDPP. This was upon the suspension of Advocate Vusi Pikoli as NDPP.

MY APPOINTMENT AS THE ACTING NDPP

21 During my tenure as Acting NDPP, I engaged from time to time with the following persons and structures whose relevance appears later in this statement :

21.1 Senior officials within the Justice, Crime Prevention and Security Cabinet coordination structures (“**the JCPS Cluster**”), through which the NPA, SAPS, and the Department of Justice and Constitutional Development (“**the Department of JCD**”) ordinarily interfaced on operational matters requiring interdepartmental coordination.

21.2 Mr Simelane, who then served as the Director General of the Department of Justice and Constitutional Development (from around June 2005 to about September 2009).

21.3 The interdepartmental task team (“**the ITT**” or “**the Task Team**”) which was established to facilitate coordination between SAPS and the NPA in relation to TRC-related investigations and prosecutions.

21.4 The Minister of Justice and Constitutional Development.

22 When I assumed my role as the Acting NDPP, the PCLU, which handled the TRC matters, reported to Dr. Ramaite, who served as the Special Deputy National Director.

23 Adv. Ackermann, was the head of the PCLU, working with Adv. MacAdam, as the Deputy Head. Dr. Pretorius was the other member and they were later

joined by Mr. Shaun Abrahams. Adv. MacAdam was, however, from time to time, involved in special projects such as prosecuting the nuclear case and representing the NPA in the Financial Action Task Force (“**FATF**”). Advocate MacAdam returned from the FATF in June 2008 to assume the operational management functions and responsibilities of TRC matters within the PCLU. I detail below the management and operationa structure of TRC matters during my tenure.

- 24 I left the position of Acting Director of National Public Prosecutions (“**ANDPP**”) in December 2009, when Mr Menzi Simelane was appointed to the position of NDPP, and reverted to my position as DNPP responsible for the NPS.

RESPONSE TO THE ALLEGATIONS CONCERNING ME

- 25 I now turn to address the allegations that have been made against me regarding the management of TRC matters by the NPA, during my term as the Acting NDPP.

- 26 The Rule 3.3 Notice served on me records, inter alia, allegations to the following effect, and to which I respond as follows:

26.1 That soon after Mr. Vusumzi Patrick Pikoli’s suspension on 23 September 2007, I relieved Advocate Anton Ackermann of his duties in relation to the TRC cases, and that Advocate Ackermann attributes that to political instruction.

26.2 That there was little or no work on TRC cases during 2008.

26.3 That in early 2009, I summoned Advocate MacAdam to my office, showed him a letter from SAPS indicating that SAPS was withdrawing from the Inter Departmental Task Team, asked him to negotiate with SAPS to investigate TRC cases, and told him to take over the TRC cases.

27 I respond to these allegations below:

AD PARAGRAPHS 271 THE RULE 3.3 NOTICE

The allegation that I relieved Advocate Ackermann of his duties in relation to the TRC.

28 In his affidavit, Adv. Ackermann alleges that shortly after Mr Pikoli's suspension on 23 September 2007, I immediately assumed the position of Acting NDPP, and I summoned him to my office and advised him that he was relieved of his duties in relation to TRC cases with immediate effect. This is incorrect. While I confirm that I relieved Adv. Ackermann of his operational functions and responsibilities in relation to TRC matters, this did not happen immediately after my appointment, and the suspension of Adv. Pikoli. I also explain below the reason and context within which I relieved Mr. Ackermann of his operational functions and responsibilities in relation to TRC matters.

29 Soon after my appointment as NDPP, I held briefings with various stakeholders, including those that were responsible for TRC matters as mentioned in paragraph 21 above. During these engagements, it had become

apparent to me that there was much acrimony directed towards Adv. Ackermann and his management of TRC matters. In my opinion, these were personality issues. Further, during or about November 2007, I received information concerning a complaint lodged by Reverend Frank Chikane, who was the Director General of the Presidency. Reverend Chikane had been a complainant in the matter of State v Van der Merwe and Others. This matter concerned the poisoning and attempted murder by security police of Reverend Chikane by the accused. Mr Ackermann was the prosecutor in the matter. I attach hereto, marked annexure “**MJM1**”, a copy of Reverend Chikane’s complaint to the Minister of Justice and Constitutional Development, Ms Bridget Mabandla,MP. After reading the complaint and considering relevant material including the plea agreement and the press statement issued by the accused after the conclusion of their case, I became concerned that the operational management of the functions and responsibilities of TRC matters by Mr. Ackermann had become untenable because of tensions between him and the stakeholders mentioned in paragraph 21 above. I attach hereto marked “**MJM1A**”.

- 30 I fully supported Mr. Ackermann in his response to the complaint, as is fully set out in my letter to Minister Mabandla; but the perception of him by stakeholders and the acrimony directed against him remained; and this would in my considered view compromise the necessary cooperation between the PCLU and the stakeholders with whom he was required to interphase in his work relating to TRC matters. Accordingly, and with effect from November 2007, I deemed it prudent to relieve Mr. Ackermann from TRC-related duties

and responsibilities. I was however confident that this could be done without compromising the work on TRC matters as Advocate Chris MacAdam would take over the TRC operational management and responsibilities as soon as he finished his FATF project. I attach hereto my letter dated 24 January 2008 marked as annexure “**MJM2**” addressed to Minister Mabandla, wherein I confirmed Mr Ackermann’s removal and addressed the complaint against Mr. Ackermann by Reverend Frank Chikane.

31 I refer to an internal memorandum dated 05 June 2008 addressed by Adv. Ackermann to Dr. Ramaite, then Deputy National Director of Public Prosecutions, the subject matter of which is the TRC Task Team. In that memorandum, Adv. Ackermann refers to a meeting between him, Adv. MacAdam and Dr. Ramaite, which concerned new internal arrangements and allocation of functions and responsibilities for TRC matters; and confirms the following:

- That Adv. MacAdam, who had now returned from the FATF, will supervise and manage Adv. Mhaga
- That Adv. MacAdam will attend all meetings of the Task Team, and attention will be paid to all investigations registered to date, and in that regard, Dr. Bukau will also be co-opted to deal with certain matters
- That prosecutors will not perform functions that will usurp the duties of the SAPS and NIA

- That the PCLU, as contemplated by the guidelines, will be responsible for operational management of TRC matters under the supervision of Dr. Ramaite and that of the NDPP.
- The memorandum deals with TRC matters, such as the Pebco Three case. I attach a copy of the internal memorandum marked “**MJM3A, MJM3B, MJM3C, MJM3D**”. It is noted that these internal arrangements concerning TRC matters were being implemented under the overall supervision of Mr. Ackermann.

32 I refer to an internal memorandum dated 9 June 2008 addressed to me by Adv. MacAdam, relating to TRC cases wherein he discusses the NPA annual plan that required the PCLU to formulate an action plan for the prompt and effective disposal of TRC cases, Adv. MacAdam in the internal memorandum that as a consequence of the action plan decision, Adv. Ackermann and him had meetings with Adv. Mzinyathi and Dr. Ramaite, pursuant to which an agreement was reached that Adv. MacAdam should attend the Task Team meetings as well as any strategic discussions involving Dr. Ramaite and I. I attach a copy of the memo marked annexure “**MJM3E**”

33 The next email is dated 09 July 2008, it is from Ms Helena Zwart, who was an assistant in the office of Adv Ackermann and Adv. MacAdam. Its subject matter is also TRC matters and is addressed to Adv. Ackermann. The email lists several TRC matters which Adv. MacAdam requests Adv. Ackermann to address during his absence the following week. I attach the email marked as annexure “**MJM4**”.

- 34 The next memorandum is dated 01 October 2008 from Adv. MacAdam addressed to Dr. Ramaite and copied to Adv. Ackermann, and deals with the TRC case of Dr. Anton Lubowski. I attach the email as annexure “**MJM5**”.
- 35 On 10 December 2008, Adv. MacAdam addressed an email to Dr. Ramaite, in which Adv. Ackermann is copied, and the email reports on TRC issues of the year 2008, and notes that the majority of matters referred to therein can only be taken forward with the assistance of SAPS and NIA. It further recommends that, as a matter of urgency in 2009, a meeting should be set up with the acting NDPP Adv. Ackermann and Adv MacAdam to obtain the NDPP’s approval on the way forward. I attach a copy of the email marked “**MJM6**”.
- 36 The memoranda referred to above are a contemporaneous record and reflect that Adv. Ackermann was months after my appointment as ANDPP, allocating operational management functions and responsibilities relating to TRC matters: This after consultation with Dr. Ramaite, who was the DNPP responsible for the PCLU and TRC matters. Mr Ackermann therefore retained his supervisory role over the staff dealing with TRC matters within the PCLU. I had no objections to this arrangement.

THE TRC PORTFOLIO AND ROLE ALLOCATION (AD PARAGRAPH 302 OF RULE 3.3 NOTICE)

- 37 I deny that I stopped or intended to stop the investigation or prosecution of TRC matters, whether by instructions, policy formulation, or any stratagem; or

that I acted on any improper political instruction, or that I participated in any collusion to suppress the investigation and prosecution of TRC matters.

38 I have already explained that I did not engage in any matters relating to the TRC which were being considered by the PCLU.

39 While I was Acting NDPP, I had no reason to believe that there was any interference with prosecutorial discretion. This is supported by reports that were tabled at meetings I attended with the leaders of various units, including the PCLU. To the extent that there were delays, inactivity, or limited progress in any matter during my tenure as the Acting NDPP, those circumstances must be understood against the practical constraints that existed at the time. The prosecution of complex historical matters is ordinarily dependent on complete investigation dockets, the identification and location of witnesses, sufficient admissible evidence, and the ability of the investigative authorities to prioritise and execute the required investigative steps. Challenges in interdepartmental cooperation and coordination may therefore have affected capacity and timing. Those constraints do not, without more, amount to interference with prosecutorial discretion. There were however constraints regarding the availability of investigators because the SAPS management and the NPA differed in the interpretation of each other's roles in the implementation of the NPA Policy and Guidelines.

TRC CASES DURING 2008 (AD PARAGRAPH 305)

40 The rule 3.3 notice records an allegation that little or no work was done on TRC cases during 2008.

41 I do not accept that the position can properly be reduced to a simple assertion that “no work” was done or that matters were “left unattended.” The available contemporaneous documentary record reflects internal management and supervision arrangements concerning TRC matters within the PCLU during 2008, including the arrangements recorded in MJM3 annexed above.

42 I further record that any material progress in TRC prosecutions depended on investigative cooperation, docket readiness, and resourcing, all of which were not within the unilateral control of the NPA.

43 To the extent that it is contended that any alleged inactivity in 2008 is itself proof of intentional suppression or collusion, I deny that inference.

44 I dispute that it is factually correct or that it can be assumed that little or no work was carried out by the NPA, SAPS, or DSO on the TRC cases during 2008. I have referred above to internal memoranda from “MJM3 to MJM7” as examples showing that work was being done during 2008 regarding TRC matters. These are merely examples and are not exhaustive. In addition to that, I attach my report to then Minister of Justice and Constitutional Development of the TRC work that was done during the relevant period, marked as Annexure “**MJM7**”. I also attach hereto a memorandum marked

“**MJM8**” dated 28 May 2009 addressed to Minister Jeff Radebe in which I report on the Pebco three matter. The last page of the memorandum is however missing and will be furnished as soon as I find it.

CONCLUSION

- 45 For the reasons set out above, I deny that I did anything to stop, suppress, or improperly interfere with TRC-related investigations or prosecutions.
- 46 I have responded to the allegations in the rule 3.3 notice as fully as I am presently able to do so on my personal knowledge and on the documents presently available to me.
- 47 From my knowledge and involvement in TRC matters, I deny that there was any political suppression or interference with prosecuting any TRC related matters.

MOKOTEDI JOSEPH MPSHE

18 March 2026

MMI



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
Private Bag X1900, Pretoria, 0001

22 October 2007

Ms Brigitte Mabandla, MP
Minister of Justice and Constitutional Affairs
Private Bag X276
PRETORIA
0001

Dear Minister:
STATE V VAN DER MERWE AND OTHERS

As you would know, the case of those who were involved in my poisoning, namely, Johannes Veldt VAN DER MERWE, Adriaan Johannes VLOK, Christoffel Lodewikus SMITH, Gert Jacobus Louis Hosea OTTO and Hermanus Johannes VAN STADEN was disposed of at the Pretoria High Court on the 17th August 2007 through a Plea Bargaining arrangement between the accused and the State.

Although I am pleased that we have concluded this matter, I am concerned about a number of issues, which I would like to raise with you and, hereby, the Government of the Republic of South Africa. I hope that you will find it necessary to share my concerns with Cabinet as I believe that this will be helpful in handling other matters of a similar nature.

The first point I would like to raise is the handling of this matter by the National Prosecuting Authority (NPA). From my interaction with the relevant officials within the NPA, it is clear to me that the said officials are simply the wrong people to deal with the post-TRC matters. My experience with them is that they will not be able to relate to victims of gross violation of human rights or their next of kin with the sensitivity that is required. In fact, they did not seem to understand the nature of the challenge we were facing. Firstly, my court case was used to fight battles between the NPA and the Government about the "Guidelines" for dealing with post-TRC cases. Throughout this process I was left with a feeling that no one in fact cared about me – as a "victim". What mattered were the politics around the handling of the post-TRC cases and how people would win their battles.

As part of the consultative processes relating to the case of the State v Van der Merwe and Others, Adv. Ackerman, the Special Director in the Priority Crimes Litigation Unit, and his assistant visited me (as the victim). Instead of just consulting me as the victim, he entered into an acrimonious argument with me about the approach of the

WMM
Assistant

Government on 'post-TRC' matters and the Guidelines. From this interaction, it was clear that he was radically opposed to the Guidelines as agreed upon by Cabinet and the Parliament of the Republic of South Africa. In fact, he seemed to be more interested in prosecution for the sake of it rather than the management of this difficult 'post-TRC' process.

What I detested most was that my case was being used to fight their battles with the Government. In pursuit of this objective, a draft letter which was constructed in a manner that would enhance their position in the prescribed forum with other departments was presented to me for my signature. What was more disgusting for me was that when I refused to sign the draft letter, Adv. Ackerman then threatened to use Section 204 of the Criminal Procedures Act against me to force me to surrender all the information he claimed I had received from Mr. Vlok on my poisoning. I dared him to do so, and reminded him that this was tried against me during the apartheid days and it did not work and that there is no reason why it would work now. He backed off and left. His colleague who was with him is my witness in this regard.

Secondly, I was not consulted about the details of the Plea Bargaining Agreement. The NIDPP informed me in writing about the arrangements for suspended sentences for the accused. My views were not solicited in this regard. In fact, I was not informed about the basis for the Plea Bargaining Arrangements. I only saw the Plea Bargaining Agreement during the proceedings in Court. I was particularly distressed by the submission in Section E, paragraph 6.3 of the 'plea agreement' which claims that I was consulted about it and that I was 'satisfied with the plea agreement' and that I did "not wish to make any further representation in connection with the matter". The reality is that I could not be satisfied with something I had not seen. Having now considered it, there are naturally a number of issues I have concerns about which I had no opportunity to deal with. This leads me to the second matter I would like to raise.

Failure to consult me before the Plea Bargaining Arrangements were made resulted in the presentation of documents in Court which did not only have factual errors, but were politically and philosophically problematic to me as a victim. Firstly, my background is presented as if I was both General-Secretary of the SACC and Vice President of the UDF when, in fact, I held these positions at different times (see paragraph 28). Secondly, the Plea Agreement document falsely argues that it was the stated policy of the UDF "to propagate and support ... violence for the ... purpose of rendering the country ungovernable" (own emphasis).

There are three issues I would like to raise on matters of substance. Firstly, Count 2 was withdrawn as part of the plea arrangements, and by so doing, the collaboration between the Security Police Special Unit and Wouter Basson and his team in producing and procuring the lethal chemicals used was not probed further when it is clear from the plea bargain arrangement document that more information could have been extracted. Secondly, there is a reference in the plea arrangement document to a 'list' containing the names of 'high profile' members of the anti-apartheid liberation struggle who were to be acted against, and in 'extreme cases' be killed (paragraph 37). There is no indication that this matter was probed further. The State should be interested, for instance, in a copy of such a list to determine as to who else was on the list and what happened to them. Thirdly, there is no indication as to what discussions the NPA had with General Basie Smit and Dr. Basson to source more information about their operations and what the State is planning to do about them. Fourthly, there is no indication that there has

v. Mkhaga
I agree with
exam of I
wedding

~~Plaintiff~~
Not true
was present
No threats
Made in
my
presence

been a process to probe the involvement of the SADF on these matters and what happened to their list of external targets.

The Guidelines for the 'post TRC' cases make it clear that our objective is not just prosecution but the need to solicit more information about what happened to victims of gross violation of human rights, especially those who died or disappeared. Moreover, it is to get a better understanding of how the old national security management system functioned to make sure it does not happen again. Although the Van der Merwe and Others case assisted me to know more about what happened to me, failure to follow the Guidelines (and thereby collaborate with other entities of the State, like intelligence services, the Police and the Defence Force) made us miss opportunities to learn more about what befell other people who might have been affected in the same way.

Lastly, I found the Court itself completely 'foreign' and insensitive to me as a 'victim'. Firstly, the Court was completely white, from the Judge to the Prosecutors, defence lawyers and the accused. But worse, the proceedings were conducted in Afrikaans without due regard to the 'victim', especially where technical, legal and court processes are involved. As a result, I missed the greater part of the proceedings in the court. I am sure that we can make the court friendlier to victims than what I experienced that day.

On the side of Government, I felt that the handling of the *State v Van der Merwe and Others* case was left to me, as a 'victim', to explain to the public instead of the State or the Government. No effort was made by Government to manage this process or deal with public perceptions about it. No one got involved to make sure that the process achieved the objectives Government had agreed upon. Clearly, once the NPA acted unilaterally the Government apparently walked away from the matter. I do not think that this hands-off approach assisted us in any way to achieve the objectives set out in the Guidelines.

I shall be pleased, Minister, if the Government could deal with all the matters I have raised as well as remedy the situation before another case is dealt with.

Sincerely Yours,



FRANK CHIKANE
DIRECTOR-GENERAL

COPY

MJMZ

Office of the
National Director of Public
Prosecutions



The National Prosecuting Authority of South Africa
Igunya Jikelele Labeshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

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Ms B Mabandla, MP
Minister of Justice & Constitutional Development
Private Bag X276
PRETORIA
0001

Dear Minister

REPRESENTATIONS: REV FRANK CHIKANE

As requested, find herewith my response to the complaints raised by Rev Chikane in his letter, dated 22 October 2007, addressed to you. I intend dealing with these matters *seriatim* as I have numbered the paragraphs 1 to 12 (a numbered copy of Rev Chikane's letter is attached hereto for ease of reference as **Annexure "A"**).

Ad par 1

I have no comments.

Ad par 2

I have no comments.

Ad par 3

1. The officials who dealt with post-TRC matters during the relevant period were:
 - (i) Adv Vusi Pikoli;
 - (ii) Dr MS Ramaite;
 - (iii) Adv AR Ackermann; and
 - (iv) Adv MC Mhaga.



2. As a result of this letter and the prominent role played by Adv Ackermann, I have deemed it prudent to relieve him from all TRC-related duties since November 2007.
3. As you are aware, Adv Pikoli has been suspended and his future role is presently the subject of the Ghinwala Inquiry.
4. I have decided that all future post-TRC investigations and prosecutions be managed by Dr Ramaite, Adv Mhaga and the TRC Task Team.

Ad par 4

Both Advocates Ackermann and Mhaga deny that there was an acrimonious argument. See also par 5 *infra*.

Adv Ackermann admits that he had some concerns about the Guidelines and in a number of official memoranda, raised his concerns on the constitutionality thereof. Despite reservations, he diligently applied the criteria as stipulated in the Guidelines. With the wisdom of hindsight, it appears that there was some merit in Adv Ackermann's reservations. Indicative thereof is the institution of a civil action in the High Court, challenging the validity of the TRC Guidelines. (See ***Nkadimeng & Others v the NDPP and the Minister of Justice & Constitutional Development*** (Case No 32079/07)).

Ad par 5

1. The gravamen of Rev Chikane's complaint is his perception of being used as a pawn in a battle between Government and the NPA. No mention is made of any specific Government department.
2. Rev Chikane further states that he was presented with a pre-drafted letter, which in his view was compiled in such a manner as to enhance the NPA's position in this so-called battle.
3. Adv Ackermann confirms that a pre-drafted letter was indeed presented to Rev Chikane after the former had explained the letter's *rationale* to Rev Chikane.
4. It is deemed necessary to briefly explain the background which led to the presentation thereof to Rev Chikane:
 - (i) In December 2004, prior to the drafting of the TRC Guidelines, Adv Ackermann had a consultation with Rev Chikane where *inter alia* the intended prosecution was

discussed. During this consultation, Rev Chikane fully agreed to the said prosecution.

- (ii) During December 2005, the TRC Guidelines came into operation. In terms of par A.4 thereof, the views of a victim are one of the factors to be taken into consideration prior to the institution of a prosecution.
- (iii) The TRC Guidelines provide for perpetrators to make representations to the NDPP. The perpetrators in *S v Van der Merwe & Others* submitted representations through their legal representative, which were dealt with by the NDPP and Dr Pretorius. Adv Ackermann was not involved in this process at all.
- (iv) After the conclusion of the process, Adv Pikoli instructed Adv Ackermann to proceed with the prosecution in terms of the Guidelines. Adv Pikoli also informed Adv Ackermann that Rev Chikane had been consulted and had intimated that the legal process should take its course.
- (v) During a TRC Task Team meeting thereafter, the representative of the SAPS informed the meeting that according to National Commissioner Selebi, Rev Chikane was against the intended prosecution.
- (vi) After Adv Ackermann had once again enquired from Adv Pikoli as to Rev Chikane's attitude to the intended prosecution, Adv Pikoli then once more contacted Rev Chikane, who apparently confirmed his previous views on the matter. Adv Pikoli thereafter instructed Adv Ackermann to immediately schedule a consultation with Rev Chikane and to arrange for Adv Mhaga to accompany him to this consultation.
- (vii) In order to prevent any further confusion regarding Rev Chikane's attitude as far as the intended prosecution was concerned, Adv Ackermann deemed it imperative to obtain his written views.
- (viii) Since Rev Chikane had conveyed his attitude to Advocates Pikoli and Ackermann on numerous occasions, the latter took the liberty of drafting a letter in Rev Chikane's name (a copy of which is attached hereto as **Annexure "B"**.)

- (ix) Upon presentation of the letter, Rev Chikane refused to append his signature thereto and declined the suggestion to formulate his views in writing.
5. With regard to Rev Chikane's alleged claims of threats by Adv Ackermann during this meeting, the latter vehemently denies having threatened Rev Chikane in any manner. On the contrary, Adv Ackermann is of the view that he had a very pleasant meeting with Rev Chikane. Adv Mhaga, who was at all times present, also denies having witnessed any threats during the meeting. Adv Mhaga is further of the view that the interaction between the parties was conducted in a very amicable manner. Both Advocates Ackermann and Mhaga are of the view that no animosity was revealed by either of the parties during the meeting.

Ad par 6

Adv Ackermann admits not having consulted with Rev Chikane on the details of the Plea & Sentence Agreement. Adv Chikane was however informed of the proposed suspended sentences.

However, in various newspaper articles, after the conclusion of the trial, Rev Chikane publicly expressed his satisfaction with the proceedings (**Annexure "C"**).

With regard to the concerns raised by Rev Chikane relating to the stated policy of the UDF, it is important to note that in Plea & Sentence Agreements, the version of an accused person also has to be incorporated.

The following *dicta* in **S v Esterhuizen 2005 (1) SACR 490 at 494 e – h** is apt in explaining plea bargaining in terms of Section 105A of Act 51 of 1977:

- "e
Indeed it will often be so, once plea negotiations are entered into, that the accused's defence will also be known to the State. The contents of the State's dockets and the strength of the State's case will be known to the accused.
- f *It must be so that substantial room for an adjustment of the charges (including the withdrawal of certain charges and the possible acceptance of competent verdicts on other charges) is open to the State. It must also be clear that in the give and take of negotiations, an accused person may tender in the negotiation to plead guilty to a charge of which that accused person is guilty, but in respect of which the State may have had considerable difficulty in achieving a conviction.*
- g

h In return for the concession of a plea of guilty to a charge difficult to prove, it must be so that the Legislature has envisaged that the bargaining mechanism would bring home a result which satisfies the interests of justice. These would be that where a crime has been committed a conviction has been achieved. The price may be that the sentence which would normally flow from the commission of such a crime is lower than might otherwise have been imposed. This does not mean that justice has not been achieved."

Ad par 7

It is incorrectly stated by Rev Chikane that his background had been presented as though he held the position of General-Secretary of the SACC and Vice President of the UDF simultaneously.

Par 28 of the English version of the Plea & Sentence Agreement states:

"... he was, inter alia the Secretary General of the South African Council of Churches and the Vice President of the United Democratic Front".

The use of the term "inter alia" clearly denotes that Rev Chikane held these two positions at a particular point in time in his life and not simultaneously.

Ad par 8

Withdrawal of Count 2

Count 2 was included as a legal tactical strategy to *inter alia* have key evidence admitted should the accused have pleaded not guilty. In any event, the available evidence which the prosecution relied on is in the public domain (See **S v Wouter Basson**).

The list

I am informed by Adv Ackermann that extensive attempts have been made to obtain knowledge of the contents of the list. He even went as far to use it as a bargaining tool not to accept any plea agreement. All avenues to obtain the list have been explored. Matters of this nature would not form part of a plea agreement.

The legal representative of the accused in the plea agreement categorically stated that none of the accused recalled the listed names.

Discussions with Smit and Basson

Basson has on numerous occasions publicly declared his innocence, most recently, during his hearing at the Medical Council.

Discussions were held between Smit's legal representative and Adv Ackermann. Smit denied any knowledge or involvement in these crimes.

One of the conditions negotiated by Adv Ackermann and which forms part of the Plea Agreement in *S v Van der Merwe & Others* is that the accused had undertaken to testify against Smit.

In August 2007, Adv Ackermann requested the NDPP's authorisation to proceed with an investigation against Basie Smit (See Annexure "D").

SADF Involvement

Dr Pretorius had extensive consultations with members of the SADF in this regard.

Ad par 9

The NPA is in full agreement with the sentiments expressed by Rev Chikane, save for the last sentence.

Ad par 10

A further complaint raised by Rev Chikane was that *"the Court was completely white, from the Judge to the Prosecutors, defence lawyers and the accused."*

This is unfortunate, but the following should be noted:

- (i) The prosecutor, Adv Ackermann, was appointed and directed to do these cases by the former NDPP, Mr B Ngcuka. This was later endorsed by Adv Pikoli.
- (ii) The Judge President, the Honourable Mr Justice B Ngoepe, appointed the judge who presided over the trial.
- (iii) The accused had a right to be represented by a legal representative of their own choice.
- (iv) The prosecutor had no control over who the accused were.

With regard to the complaint of the proceedings having been conducted in Afrikaans, Adv Ackermann took the following pro-active measures in ensuring that the court proceedings would be accessible to the gallery:

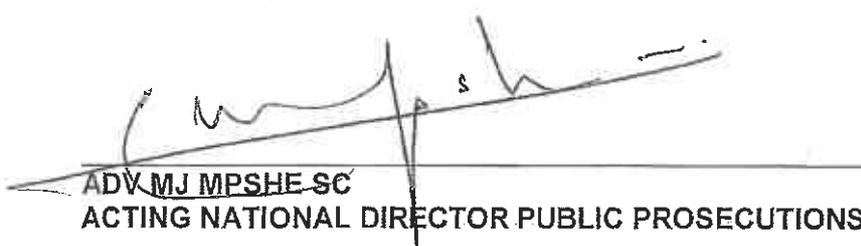
The indictment, sentence and plea agreement as well as his address to the Court were translated into English and 40 copies thereof were distributed to all stakeholders prior to the commencement of the trial.

It would have been prudent for a court interpreter to be present to translate the proceedings. This would have made the proceedings more victim-friendly.

Ad par 11

I do not have any comments on Rev Chikane's opinion in this regard, save to state that the NPA did not act unilaterally.

Yours sincerely



ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR PUBLIC PROSECUTIONS

MJM3A

/Z56 forms

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South Africa

INTERNAL MEMORANDUM

**TO: DR MS RAMAITE SC
DEPUTY NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

**FROM: ADV AR ACKERMAN SC
SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
AND HEAD: PCLU**

SUBJECT: TRC TASK TEAM

DATE: 5 JUNE 2008

Dear Dr Ramaite

With reference to the meeting between you, Adv Macadam and myself earlier this morning, I confirm the following:

Tel: (012) 845 6431
Cell: 082 498 6033

1. That Adv Macadam will supervise and manage Adv Mhaga's activities in respect of TRC matters;
2. That Adv Macadam will attend all meetings of the Task Team;
3. That Adv Macadam will be involved in all high level discussions with the Acting NDPP in connection with TRC matters;
4. That attention will be paid to the status of all investigations registered to date and in this regard, Dr Bukau will also be co-opted to deal with certain matters;
5. That the prosecutors will not perform functions which will usurp the duties of SAPS and NIA;

6. That the PCLU, as contemplated by the Guidelines, will be responsible for the operational management of TRC matters under your supervision and that of the NDPP.

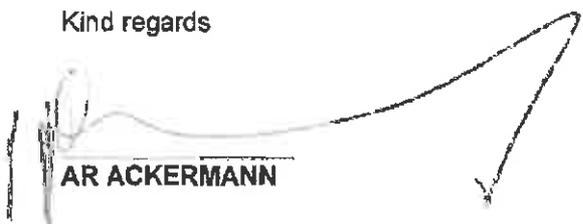
An additional matter which I wish to bring to your attention is the Pebco 3 matter, where the accused are due to appear on a final remand in the Port Elizabeth High Court on 5 August 2008. The accused had, since 2004, appeared in the High Court on indictment, but on each occasion, the matter has been postponed, due to the fact that the review of their refusal of amnesty by the TRC has not been finalized. The DoJ&CD is responsible for compiling a record and enrolling the review before the TPD. To date, this has not taken place and on each occasion when we take this matter up, we are informed that documents are missing, etc. On more than one occasion, we had been asked to consider withdrawing the criminal case, because of the problems with finalizing the review.

The fact that the matter has not gone to trial is of considerable distress and dissatisfaction with the victims. They have complained to the Minister and have also displayed their dissatisfaction at court on the dates of the postponements.

A decision must be taken as to how the next court appearance will be managed. We believe that this should first be discussed between ourselves and the Acting NDPP, whereafter the Task Team must be consulted and thereafter, a memorandum submitted to the Minister.

Our *prima facie* views are that the Court would not grant another postponement and in any event, this would not be acceptable to the victims. The review is only for the benefit of the accused and one option would be to proceed with the prosecution. We however believe that a judge is highly unlikely to order a trial when the accused has the opportunity of receiving amnesty and is in no way to blame for the failure to have the review process finalized. We would also have to establish whether the matter is in fact at this stage ready for trial, since the witnesses were last consulted almost five years ago. The Court may require or we would be obliged to call someone senior from the DoJ&CD to testify under oath as to the reasons for the delay with the review. We see both the NPA and the DoJ&CD being criticized severely by the victims and the media.

Kind regards



AR ACKERMANN

MJM 3B

TRC COMMITTEE MEMBERS

NAME	DEPT.	CONTACT No.	EMAIL	
Anton Ackeremann	NPA (FCLU)	012-845 6474	arackermann@npa.gov.za	
Mthunzi Mhaga	NPA (FCLU)	012-845 6398	mcmhaga@npa.gov.za	
Dr S Ramaite	NPA (NSSD)	012-845 6765	mrsramaite@npa.gov.za	Convenor
Marlyn Raswiswi	Justice	012-315 1730 0826600463		
Yvonne Mabule	NIA	012-427 4498 0827872853	yvonnem@nia.gov.za	
Philip Jacobs	SAPS	012-395 0063	jacobspe@saps.gov.za	
Josias Lekalakala	SAPS	0825745870	milekalakal@telkomsa.net	
Brian Koopedi	NIA	012-4262602 0824168357	bkoopedi@nia.gov.za	
AT Mngwenwe	NPA(DSO)	012-845 6470	atmngwenwe@npa.gov.za	
NVE Ngidi	NPA(DSO)	012-845 6401	nvenngidi@npa.gov.za	
		PRINCIPALS		
Adv Vusi Pikoli	NPA(NDPP P)	012-845 6758		
Kalyani Pillay	NPA	012-845 6749		
Loyiso Jafta	Presidency	012-300 5458		
M Simelane	DG justice	012-315 1730		
ME Manzani	NIA			

[Handwritten signature]

[Handwritten mark]

The meeting was then closed after the NDPP asked the committee to meet after the meeting with the Principals.

Committee Meeting

Dr Ramaite requested PCLU and SAPS to compile an audit report of all cases in their possession and that the PCLU will take charge of investigations being assisted by SAPS. The committee will then deal with all cases including matters that have been closed by the PCLU. Mr Ngidi indicated that committee members will not be rubber stamper to decisions already made by the PCLU and he was supported by Mr Koopedi who said they are prepared to go through volumes of records in all cases.

Mthunzi was then mandated to arrange a suitable date for the next meeting. Indeed a date was arranged for the 25/10/2006 at the DSO boardroom.

Handwritten signature and scribbles

mjm30

Helena H. Zwart

From: Helena H. Zwart
Sent: Thursday, June 05, 2008 1:20 PM
To: Silas Ramaite
Subject: TRC Task Team

Dear Dr Ramaite

Attached please find a memo from Adv Ackermann, addressed to yourself.

Regards

Helena

5/5/2008



mj 1930

/Z56 forms

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INTERNAL MEMORANDUM

TO: DR MS RAMAITE SC
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Cell: 082 498 6033

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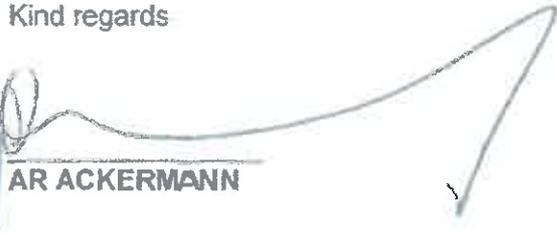
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Kind regards


AR ACKERMANN

TRC File

MJM3E

IZ56 forms

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INTERNAL MEMORANDUM

TO: ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

FROM: ADV RC MACADAM
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
AND DEPUTY HEAD: PCLU

SUBJECT: TRC CASES

DATE: 9 JUNE 2008

Dear Adv Mpshe

The NPA Annual Plan required of the PCLU that it formulate an action plan whereby TRC cases would be promptly and effectively disposed of. More specifically, I was appointed to manage this plan.

As a consequence thereof, Adv Ackermann SC and I met firstly with Adv Mzinyathi SC and thereafter with Dr Ramaite SC. Dr Ramaite SC agreed that I should attend the Task Team meetings as well as any strategic discussions involving himself and you. I also recommended that Dr Bukau be involved so as to assist Adv Mhaga on an operational level.

Dr Ramaite SC is not available for the remainder of the month. There is however one matter which requires urgent attention, namely the *Pebco 3* prosecution. The accused in this matter appeared on indictment in the Port Elizabeth High Court in 2004. On every occasion that the matter has been in court, it has been postponed so as to enable the review of the refusal of the amnesty to be heard by the full bench of the TPD. Last year, the

matter was postponed as a final date to 5 August 2008. The responsibility for arranging the review lies with the DoJ&CD.

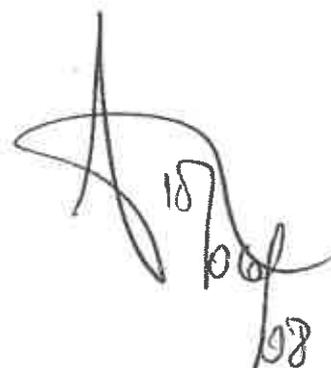
To date, no date for the hearing has been fixed, although Adv Ackermann SC and I were given the assurance that this would be either early or mid- 2008. Obviously, the Judge President would not be able to convene a full bench to hear the review between now and 5 August 2008. It would be enormously damaging for the Pebco 3 matter to be struck from the roll due to a failure on the part of a State department. In my view, the only way in which a postponement can be obtained is if a date for the review is set for the third or fourth quarter of this year's court sessions.

Although I intend taking up the matter with Tessie Bezuidenhout as a matter of urgency, I would recommend that you contact the Director General: DoJ&CD and request him also to ensure that the matter is expedited.

Another matter which requires attention is the status of the criminal investigation. As I recall, the matter was brought to court as a DSO investigation, but the investigators have now resigned. Consideration will have to be given to either appointing new investigators or to the matter being referred to SAPS. The reason why this is important is that the State may be required to demonstrate that it is ready to proceed with the prosecution on 5 August 2008.

Kind regards

RC MACADAM

Noted

18/08/08

MJM4

Helena Zwart (H)

From: Helena H. Zwart
Sent: 09 July 2008 04:41 PM
To: Anton R. Ackerman
Subject: TRC work
Importance: High

Dear Anton

While I am out the office next week, I recommend that you oversee the following work on TRC matters:

1. Pebco 3:

- 1.1 Tessie Bezuidenhout promised to come to the office so that an affidavit can be compiled confirming the fact that the record of the review had been filed with the High Court and giving reasons for the fact that this was not done already. She must be contacted and arrangements made for the affidavit to be compiled.
- 1.2 Adv Bukau was given a copy of my letter to Koole's attorney, placing certain facts on record and confirming that it was in his client's best interests that the matter be postponed. She should contact him and obtain a written confirmation.
- 1.3 Jan Wagener undertook to furnish an updated medical report in respect of Van Zyl, confirming that he is not fit to appear in court and also indicating that the matter should be postponed pending the review. I did not have time this week to meet again with him. However, one of the advocates should meet with him and resolve these issues. He has a spare copy of the CD which should be collected from his office.
- 1.4 Marion is meeting with the victims in PE from 20 – 22 July 2008. I have asked him to contact Madeleine to get the details of the victims support group which the Minister appointed to work with the families and that he should liaise with them in his contact with the families. I had also raised the desirability of Adv Mhaga being present in PE at the same time to meet with the families and explain the reasons for the further postponement of the matter.
- 1.5 It must also be established by Marion whether Venter and Mogai are still available and confirm their statements.
- 1.6 Consideration must be given to whether it is necessary for Marion to also submit an affidavit for use at the Court hearing. This would be to confirm that the witnesses, upon whose strength the prosecution was instituted, are still available.
- 1.7 Christo Nel indicated that the matter will be heard before either Jansen J or Liebenberg J and that he did not foresee that there would be any objection to a postponement. According to Jan Wagener, the earliest date for the review would be November 2008. It is likely that judgment would be reserved and probably only handed down in February 2009. Further, according to him, the party losing the review would definitely appeal to the SCA. It is therefore desirable that the matter again be postponed to August 2009 so as to enable the appeal to be finalised.
- 1.8 Van Zyl never applied for amnesty for assault. Therefore, even if the review was decided in his favour, he would still face prosecution on the assault charge. Koole has not applied for a review and therefore, can still be prosecuted for kidnapping and assault. If all of the urgent matters have been addressed, then the advocates should be instructed to locate the missing evidence in the docket. Andrew Leask has indicated that a member of his staff can download the data on "Eagle I". I have given Adv Bukau Leask's email, containing her contact details. Wagener's disk should also be perused. It would appear that Piet Jonker at one stage made material available for the purpose of compiling the record of the review. Arrangements should be made with Tessie Bezuidenhout for one of the advocates to review the documentary evidence which forms part of the review since certain of the missing portions of the docket could be filed there. A comprehensive memo should be compiled, setting out in a systematic

manner all further investigations necessary should the matter go to trial. The arrangement with the DSO as far as Marion is concerned is merely to confirm the availability of the witnesses upon whose evidence the decision to prosecute is taken. A new investigating officer would have to be appointed, so the instruction would have to be written in such a manner that a newcomer would be able to identify what is required. An executive summary of all the evidence should be compiled.

1.9 The evidence given by the State witnesses should be perused to establish whether there are any contradictions between such evidence and their statements in the docket. Any such contradictions should be described in detail and an opinion expressed as to whether they are fatal as far as the witnesses' credibility is concerned.

2. Anton Lubowski

2.1 Late last year, Mrs Lubowski requested her husband's murder to be reinvestigated and alleged that an explanation should be provided why Torie Pretorius and Neels de Lange did not follow up evidence which her attorneys had provided earlier to them.

2.2 Adv Mhaga apparently had meetings with various people. He should compile a comprehensive report, describing in detail what was conveyed to him by them and what follow-up actions, if any, were undertaken by himself. He should also file any documents acquired by him and should submit a report, setting out the relevance of such documentation.

2.3 A convicted diamond smuggler, Courtney Clark, repeatedly phoned Helena, requiring an appointment with me to arrange *inter alia* the arrest of Torie Pretorius. He was informed that I could not speak to him as I was not authorised to gather intelligence. Peter Bishop of the DSO also contacted him and explained that any allegations would have to be made to an investigating officer and followed up according to police procedures. Today, his advocate phoned me and I advised her that if he had any information on the Lubowski matter, he should reduce it to writing and submit it to her. She should peruse it and submit it to the PCLU if she considers it relevant to the Lubowski matter. It was specifically explained to her that any allegations could only be followed up by SAPS. It was explained to her that only Namibia had jurisdiction for acts committed in that country and that consideration could only be given if evidence was presented of a conspiracy formulated in South Africa as a result of which Achesen committed the murder. I pointed out to her that to date, no such evidence has been forthcoming and she agreed that it was unlikely that there would be a breakthrough.

3. St James/Heidelberg Tavern

3.1 The documentary evidence relating to these matters in a box under the table next to the safe should be analysed and a comprehensive report compiled, identifying all aspects thereof that would be relevant to Mphahlele.

3.2 The amnesty hearings are on the Justice website. An advocate must be appointed to peruse the evidence of the applicants in order to establish to what extent they implicate Mphahlele in the attacks.

3.3 Most of his claims to have ordered the attacks were made to the media. A comprehensive memorandum, setting out the law relating to the admissibility of this evidence must be compiled. Particular attention must be paid to the fact that the media will claim privilege and how this claim can be dealt with.

3.4 A detailed memorandum outlining all further investigations must be compiled.

3.5 His book is also in the office and must be read in order to determine its relevance to the investigation.

4. Simelane matter

4.1 A detailed analysis of the evidence in the docket must be conducted, identifying problem areas including legal issues and all aspects requiring investigation.

- 4.2 The TRC evidence must be analysed in order to establish whether it materially contradicts the statements in the docket.
- 4.3 A detailed analysis must be made of Howard Varney's report and the merits of his points in favour of a prosecution carefully analysed.

Kind regards

Chris

A handwritten signature or mark, possibly a stylized 'C' or a similar symbol, located in the bottom right corner of the page.

Helena Zwart (H)

From: Helena H Zwart
Sent: 01 October 2008 04:32 PM
To: Anton R. Ackerman
Subject: FW: Anton Lubowski

FYI

From: Helena H. Zwart
Sent: 01 October 2008 04:31 PM
To: Silas Ramaite
Subject: Anton Lubowski

Dear Silas

As you are aware, we forwarded a letter to Mrs Lubowski informing her that the allegations that her husband was murdered as a consequence of a conspiracy formulated in South Africa would have to be investigated by SAPS within the TRC Guidelines framework, but that this process cannot be taken forward until the Task Team reconvenes. In response, she has briefed an advocate to pursue legal options open to her to compel the NPA to act. I have had two lengthy conversations with the advocate, explaining to him the need for proper investigations to be conducted before any decision can be taken and pointing out to him the fact that executive direction is necessary before the Task Team can function. He will now take further instructions from the family, but obviously, we will be at a later stage again brought under pressure and may well face legal challenges which could place us in an embarrassing position.

My assessment of the matter is as follows:

1. There is no evidence of a conspiracy upon which a successful prosecution can be conducted.
2. Some considerable time ago, the D'Oliveira Investigation Unit obtained statements from the Namibian Police who investigated the deceased's murder and also obtained affidavits or conducted interviews with former SADF operatives and/or commanding officers. Various conflicting allegations were made by former CCB members, pointing to an involvement of the CCB with the murder of Lubowski. No proper attempt was made to reconcile these versions and more significantly, information obtained during interviews was never followed up by obtaining affidavits and corroboratory evidence. The upshot of all of this is to justify a suspicion that the deceased was in fact killed in pursuance of a CCB conspiracy, but one is left entirely in the dark as to where the conspiracy was formulated and who the conspirators were. It is common cause that prior to the change of Government in 1994, the former security forces destroyed all sensitive documentation.
3. In the light thereof, I believe that it is highly unlikely at this stage that evidence would emerge which would justify a successful prosecution. However, because we are dealing with a human rights abuse and our Constitution requires of us to conduct our business in a manner which upholds human rights, we are obliged to direct the police to follow up and obtain finality on these outstanding issues so that if we make a decision not to prosecute, we can justify this decision on the basis that there is no outstanding evidence.
4. Normally when we make a decision not to prosecute, we make all the evidence available to the family so that they can decide whether they do not want to obtain a certificate *nolle prosequi*. We might also face a request in terms of the Access to Information Act. Although I have said that the evidence is contradictory, it is highly sensational in that it implicates former generals and suggests that foreign assassins were paid out of State funds and that State structures were used to frustrate the Namibian investigations. This would obviously be sensational newspaper reporting. In my view, Government would have to be properly briefed on all these allegations before any release to the family, but it would only be appropriate for such a briefing to be given once all the outstanding investigations have been clarified.

2009/07/23

All of the above emphasises the need to have finality on these TRC matters and I recommend that you advise the Acting NDPP accordingly

Kind regards

Chris Macadam

Helena Zwart (H)

From: Helena H. Zwart
Sent: 10 December 2008 01:36 PM
To: Silas Ramaite
Cc: Anton R. Ackerman
Subject: TRC matters
Importance: High

Dear Silas

This serves to provide a recap of 2008's issues:

1. No fresh cases requiring investigation were reported after the Lubowski matter in December 2007.
2. The Ginwala Commission report did not make any findings which would justify holding the work on the TRC cases in obedience. The Ginwala report indicates that Government's complaints were confined to the Van der Merwe matter and that Government subsequently indicated that Government elected not to pursue their complaints. The Commission noted Adv Pikoll's statement that the Task Team was there to assist the NPA in making decisions.
3. The constitutional challenge to the Guidelines was argued on 24 November 2008, but judgment has been reserved.
4. As at November 2008, both SAPS and NIA indicated their willingness to again commence work on TRC matters. I recommended an in-house meeting with them prior to the close of business this year, but it would appear that it is impractical that this would take place before 2009.
5. The breakdown of individual cases is as follows:

5.1 ***S v Van Zyl & Koole*** (kidnapping/murder of the Pebco 3):

The accused were indicted in the Port Elizabeth High Court as early as 2004. Their case has now been postponed to late June 2009 for the High Court review of the refusal of amnesty in respect of Van Zyl. We assisted Justice in compiling the record of the review, which was lodged with the Pretoria High Court in July 2008. Van Zyl is seriously ill and may not be in a position to be prosecuted. His co-accused has not applied for a review of the refusal of amnesty and could still be prosecuted provided the two State witnesses are available.

5.2 ***Anton Lubowski Assassination***

This matter has attracted ongoing negative publicity throughout 2008, due to the fact that the complaint laid in December 2007 has not been investigated. The family have gone to the length of appointing counsel to represent them. I have had a number of communications with him. Although Lubowski was murdered in Namibia, a South African Court would have jurisdiction if he was killed in pursuance of a conspiracy formulated in South Africa. The right to prosecute any such conspiracy will prescribe in September 2009. The D'Oliveira Unit conducted an incomplete enquiry suggesting complicity of the CCB in the assassination. Although it would appear unlikely that evidence would be forthcoming to justify a prosecution, the outstanding issues must be investigated and the family given feedback prior to the prescription of the offence. In this regard, SAPS will be required to investigate.

5.3 ***The kidnapping and murder of the Cradock 4***

The victims are applicants in the constitutional challenge and have made a number of public statements concerning the fact that no prosecution has been instituted in this matter. At present, the only available evidence is a statement by De Kock to the effect that Van Zyl, the accused in the Pebco 3 matter, telephonically confessed to him that he was involved in this case and the fact that one of the amnesty applicants made a confession to the family prior to the amnesty hearing. SAPS must investigate these allegations to determine whether either of the two confessions could stand up in court. Another complicating factor is that in the event

of a prosecution being instituted, the accused will apply for their refusal of amnesty to be taken on review.

5.4 The kidnapping and disappearance of *Nokuthula Simelane*

The victims are also applicants in the constitutional challenge and have also appointed counsel to advance their case. Their counsel did call for a prosecution on a charge of kidnapping against a low ranking member of the Security Forces. Adv Mpshe has however authorised that a formal inquest be held so as to get the full picture of the person's disappearance and most likely, murder. SAPS must appoint an investigating officer to locate the witnesses who must testify at the inquest. No arrangements have been made to date for the holding of the inquest.

5.5 The *Heidelberg Tavern and St James Church Massacres*

The father of one of the deceased and a parliamentarian representing other victims have called for the prosecution of the current leader of the PAC. He has not applied for amnesty, but has made a number of public statements to the effect that he ordered the two attacks. We have located the existing Court records relating to the matters, but SAPS will have to conduct a series of investigations.

5.6 Warrant of arrest: *Philip Powell*

In 2008, Powell made representations via a local attorney for the cancellation of a warrant of arrest issued in respect of a possession of arms case going back to 1994. We compiled a memo for the Acting NDPP advising him to take this matter up with the Acting National Commissioner and Acting DG of NIA. We are not aware of what has transpired further in this matter. The background to this matter is the allegation that a large quantity of armaments, removed to KwaZulu-Natal, have not been recovered. In the light of the 2009 general elections, this must clearly raise an issue of national security and it is essential that this matter be dealt with prior to the elections.

5.7 The *Samora Machel* air crash

This matter has to date not been dealt with as a TRC matter, despite the fact that the TRC held a special hearing into the case and no one applied for amnesty. The former Minister for Safety & Security made a statement that SAPS was conducting a full investigation into the matter. The matter periodically surfaces in the media and also affects our country's relationship with Mozambique. Consideration should be given to whether this matter should not be incorporated into the TRC investigations.

5.8 The murder of *Rick Turner*

This also has not been dealt with as a TRC matter. Dr Pretorius however received information regarding the possible whereabouts of the firearm used to assassinate Turner and his daughter has filed a request for access to information. It must also in respect of this matter be decided whether it should form part of the TRC cases.

5.9 The compilation of a data base of TRC material

This matter was not taken forward, because NIA required a hard copy inventory to be compiled prior to scanning onto an electronic data base. Subsequently, the Document Centre has substantially systematically written up the files and consequently, this matter can again be taken forward with NIA.

6. As can be seen from the above breakdown, the majority of matters can only be taken forward with the assistance of SAPS and NIA. There has been general public criticism of the fact that no progress has been made on the cases, aggravated by the fact that victims have in certain cases appointed lawyers and consequently, the prospect of litigation is real. In certain of the matters, there is also the risk of the offences prescribing before they can be decided on, which would also place the NPA in a very bad light. The fact that elections will take place in 2009, most likely in mid-April, must also be taken into consideration, because in the past, the TRC cases have featured prominently on the election agendas of the various political parties.

7. My recommendation is that, as a matter of urgency in 2009, when the parties are available, a meeting should be set up with the Acting NDPP, yourself and myself to obtain his approval on the way forward. As soon as the meeting with the Acting NDPP has taken place, efforts should be made to reconvene the Task Team so that work can commence.

Kind regards

Chris Macadam

3/16/2

MJM 7

MINISTRY OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT
PRETORIA
2009-03-17
PRETORIA
MINISTERIE VAN JUSTISIE EN
STAATKUNDIGE ONTWIKKELING



DEPUTY MINISTRY FOR JUSTICE AND
CONSTITUTIONAL DEVELOPMENT
PRETORIA
2009-03-11
PRETORIA
DEPUTY MINISTRY FOR JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT
PRIVATE BAG X81
2009-03-05
PRETORIA 0001
OFFICE OF THE DIRECTOR-GENERAL

The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi Bo Mzansi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

MEMORANDUM

**TO: MR ME SURTY, MP
MINISTER OF JUSTICE & CONSTITUTIONAL
DEVELOPMENT**

**FROM: ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

SUBJECT: TRC TASK TEAM

DATE: 17 FEBRUARY 2009

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to inform the Minister of my intention to reconvene the TRC Task Team and to advise him of matters relating thereto.

2. BACKGROUND

2.1 The TRC Guidelines provide for the creation of a Task Team made up of representatives from SAPS, NIA and DoJ&CD to, within the scope of their mandates, assist the members of my office to evaluate the TRC material. In terms of the Guidelines, the duty to decide whether or not to prosecute lies with me.

2.2 Since 2007, the Task Team has not sat, due to the fact that matters relating to it were tabled before the Ginwala Commission. The effect thereof was that investigations into TRC matters could not continue.

- 2.3 The victims were dissatisfied with the lack of progress being made in their matters and in certain cases, appointed lawyers who declared the intention to institute legal proceedings against the NPA. Certain interventions from my office were necessary in urgent matters.
- 2.4 The Ginwala Commission did not make any findings which impact on the functioning of the Task Team and consequently, I have deemed it imperative to reconvene the Task Team so that work on the TRC cases can commence.

3. BRIEFING

- 3.1 Members of my office have met with the Divisional Commissioner of the Detective Service of SAPS and the Deputy Director General: Operational Support of NIA. Both agencies have indicated their willingness to again participate in the Task Team and to perform duties within their agencies' mandates.
- 3.2 After I have received feedback from you, I intend submitting written invitations to the relevant Directors General, inviting them to nominate staff members to form part of the Task Team and to arrange a date for the first meeting of the Task Team.
- 3.3 No requests to investigate TRC matters have been received since November 2007 and it is anticipated that once the matters on hand have been dealt with, that the chapter on these cases may be closed. In its report released in 1998, the TRC did in fact recommend that a time limit should be imposed on such prosecutions.
- 3.4 The following matters are on hand at present:

3.4.1 ***S v Van Zyl & Ano***

The accused were indicted in the Port Elizabeth High Court as early as 2004. Their case has now been postponed to late June 2009 for the High Court review of the refusal of amnesty in respect of Van Zyl.

3.4.2 ***Anton Lubowski Assassination***

Although the deceased was murdered in Namibia, the family have requested the NPA to investigate the possibility of the murder being committed in pursuance of a conspiracy formulated in South Africa. Because the enquiry is limited to

a conspiracy charge, this offence will prescribe in September 2009.

3.4.3 The kidnapping and murder of the *Cradock 4*

The victims are co-applicants in the application to have the TRC Guidelines declared unconstitutional. The case was the subject of an inquest presided over by the Judge President of the Eastern Cape Division of the High Court and amnesty was refused in respect of the Security Branch members who came forward, admitting complicity in the murder.

3.4.4 The kidnapping and disappearance of *Nokuthula Simelane*

The victim disappeared in 1983 and no evidence has come forward regarding her suspected murder, nor have her remains been recovered. Some information relating to her kidnapping and torture was obtained by the TRC. I have decided in this matter that it would be most appropriate to hold a formal inquest.

3.4.5 The *Heidelberg Tavern and St James Church Massacres*

The current Head of the PAC has claimed responsibility for ordering these attacks. He has never applied for amnesty and victims have called for his prosecution.

3.4.6 Warrant of arrest: *Philip Powell*

This relates to a receipt of a substantial quantity of armaments by Philip Powell from former Viakplaas Commander de Kock. Powell has made representations that a warrant for his arrest be cancelled. The TRC granted amnesty to De Kock and others in connection with the matter and made findings against Powell.

3.4.7 The *Samora Machel* air crash

This matter has to date not been dealt with as a TRC matter, despite the fact that the TRC held a special hearing into the case and no one applied for amnesty. The former Minister for Safety & Security made a statement that SAPS was conducting a full investigation into the matter. The matter periodically surfaces in the media and also affects our country's relationship with Mozambique. In order to enable

this matter to be effectively investigated, I have decided that this matter must now be dealt with by the Task Team.

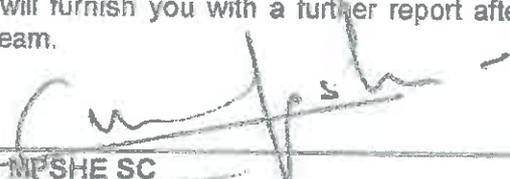
3.4.8 The murder of Rick Turner

Information has been received regarding the firearm which was used in the killing. This information must be followed up by SAPS.

3.4.9 Allegations against Security Branch member, General Basie Smit

When Vlok and others pleaded guilty to the poisoning of Rev Chikane, they implicated General Smit as being involved in the plot. He never applied for amnesty and was not prepared to plead guilty. A case against him based on these allegations has been investigated.

4. All of the above matters, except for the Pebco 3 case, require investigations by SAPS before I can make a decision whether there are sufficient grounds to institute prosecutions or not.
5. Although the Pretoria High Court has declared the Guidelines unconstitutional and an appeal has been noted, there is no reason why the investigations cannot proceed in the interim.
6. Given the unique circumstances surrounding TRC cases, NIA has been requested to compile a threat analysis of the risks attached to such investigations. I will forward the analysis to you upon receipt thereof so that you can brief the affected Ministries.
7. I will furnish you with a further report after the first meeting of the Task Team.


 ADV M J MPSHE SC
 ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
 DATE: 03.03.09.

NOTED


 ADV M SIMELANE

DG: DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT
 DATE:

It may be useful that the Minister first discuss these matters with the JMC Ministers so that the acting NDPP can be advised how to proceed especially on what the mandate of the NPA is on these matters if at all.

I can't find fault with the approach proposed. In fact, in law, NOPP must proceed with prosecutions or not (if requested). To ensure this does not take place in isolation, the Task Team was established, as part of remedial policy. As this is a sensitive matter, I agree with recent

12/3/9
ADV J DE LANGE
DEPUTY MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT
DATE:

consultations
with NEC +
Resident

✓
NOTED

Support Aulis view

~~_____~~
MR ME SURTY, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 2009-07-29

investigations must
proceed!

However, matters can
be raised in IMC
meeting.