



Imtiaz Ahmed Cajee

Statement to the *JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION (TRC) CASES (TRC CASES INQUIRY)* into the alleged failure of the National Prosecuting Authority (NPA) to prosecute TRC cases

October 2025

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AFFIDAVIT OF IMTIAZ AHMED CAJEE

I, the undersigned,

IMTIAZ AHMED CAJEE

do hereby make oath and state:

INTRODUCTION & PERSONAL DETAILS

- 1 I am an adult male, residing in Gauteng. I am a member of the public service and have served as such for 28 years. I depose this affidavit as the nephew of anti-apartheid activist Ahmed Timol (Timol) who was murdered in police detention on 27 October 1971.
- 2 The facts deposed to in this affidavit are, unless I indicate otherwise within my own personal knowledge, are true and correct.

PURPOSE OF THIS AFFIDAVIT

- 3 The purpose of this affidavit is to formally request participation as an interested party in the JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION (TRC)

CASES (TRC CASES INQUIRY) into the alleged failure of the National Prosecuting Authority (NPA) to prosecute TRC cases.

4 I respectfully seek to testify before the Commission and place evidence on record regarding:

4.1 Efforts or attempts made to stop the investigation or prosecution of TRC cases.

4.2 My personal experiences directly related to the failures of the NPA and Directorate for Priority Crimes Investigation (DPCI) to act on evidence and prosecute perpetrators during the period 2003 to 2021. This includes its conduct in the investigations and prosecutions of Security Branch (SB) officers Joao Rodrigues (Rodrigues), Neville Els (Els) and Seth Sons (Sons).

4.3 The impact of these failures on victims' families and South Africa's constitutional promise of justice.

5 My evidence is material to the Commission's mandate because:

5.1 My own investigation into the death of Ahmed Timol (uncle Ahmed) led to the reopening of the inquest in 2016 and the landmark 2017 ruling that he was murdered in detention.

5.2 I was present when my grandmother testified before the TRC on 30 April 1996. I have since then engaged extensively with the NPA and DPCI and can provide first-hand testimony into what I perceive as obstruction, delay, and interference during the period 2003 until TRC cases were removed from the Priority Crimes Litigation Unit (PCLU) in 2021. I specifically refer to the time period referred in the judgment

of *Rodrigues v National Director of Public Prosecutions of South Africa and Others (76755/2018) [2019] ZAGPJHC 159; [2019] 3 All SA 962 (GJ); 2019 (2) SACR 251 (GJ) (3 June 2019)* and *Rodrigues v National Director of Public Prosecutions and Others (1186/2019) [2021] ZASCA 87; [2021] 3 All SA 775 (SCA); 2021 (2) SACR 333 (SCA) (21 June 2021)*.

5.3 I have documented the struggle, not only mine but of other families through books,¹ exhibitions,² archives³ and have assisted other families seeking justice for their loved ones.⁴

BACKGROUND & CONTEXT

6 My uncle died in police detention on 27 October 1971 at John Vorster Square Police Station (now Johannesburg Central). Police claimed he had committed suicide. The original 1972 inquest accepted this version, and despite glaring contradictions, no one was held accountable after the magistrate found that no one was to blame.

WHY MY TESTIMONY IS CRUCIAL

7 My personal journey demonstrates how victims' families have been forced to act as investigators, filling the void left by state institutions that failed to uphold their constitutional duties.

¹ TIMOL: QUEST FOR JUSTICE, STE Publishers, ISBN 1-919855-40-8 and THE MURDER OF AHMED TIMOL, Jacana Media, ISBN 9781431429639

² Apartheid Museum in 2015, Steve Biko Foundation in 2016 and Ditsong Museum in 2017

³ E-TV Indians Can't Fly in 2005, SABC Indians Can't Fly in 2015 and SABC Someone to Blame, the Ahmed Timol Inquest (2018).

⁴ <https://www.ahmedtimol.co.za>

- 8 The recurrence of a familiar pattern of conduct as a result of which I draw the inference of NPA reluctance and deliberate stalling in TRC cases that include:
- 8.1 The premature closure of my uncle's file in 2006.
 - 8.2 Failure by the TRC to subpoena key apartheid officers despite recommendations by the TRC investigating officer (IO), Piers Pigou (Pigou).
 - 8.3 The slow, obstructive handling of prosecutions post-2003.
 - 8.4 My view is that these experiences illustrate a broader systemic suppression of TRC-related investigations and prosecutions with devastating consequences for truth, reconciliation, and justice.

RELIEF SOUGHT

- 9 I respectfully request that the Commission:
- 9.1 To accept me as an interested party to testify.
 - 9.2 Admit into evidence the documentation, correspondence, and testimonies I have compiled.
 - 9.3 Consider my lived experience as illustrative of the pattern of interference and institutional failure at the heart of the Commission's mandate.

BACKGROUND & CONTEXT

- 10 The life and death of uncle Ahmed is well documented. However, for ease of reference and because I will refer to the conduct and shortcomings of NPA, the Directorate of Special Operations (DSO, also known as the Scorpions, a special

NPA investigative unit established by virtue of an amendment to the NPA Act) and DPCI officials who dealt with the matter. It is therefore necessary to set out certain facts in sufficient detail. Uncle Ahmed died in police detention at John Vorster Square Police Station (JVS-renamed Johannesburg Central Police Station) in October 1971. At that stage I was five years old.

11 He was arrested with Saleem Essop (Essop) at a police roadblock on the evening of 22 October 1971. The Security Police (SB) alleged that banned political literature was found in the boot of their car. They were taken to Newlands Police Station and thereafter JVS. The arrest was part of a nationwide crackdown described at the most extensive since Rivonia.⁵ According to the *Sunday Express*, at least 17 persons were to appear in the Supreme Court under the Suppression of the Communism and Terrorism Acts. The state was to argue that they were actively engaging in attempts to undermine law and order and in aiding and abetting subversion. In fact, Magistrate de Villiers in the 1972 inquest went out of his way to express a view in the judgment that uncle Ahmed would not have been harmed since he was regarded as a “*big fish*” and to be of “*inestimable value*” to the SB.⁶

12 Five days later, police claimed that during interrogation and without laying a finger on him and whilst having a cup of tea with his interrogators, uncle Ahmed jumped to his death on Wednesday, 27 October 1971. Essop never testified at the original

⁵ Tim Clarke, ‘Biggest probe since Rivonia’, *Sunday Express*, 31 October 1971, <https://www.ahmedtimol.co.za/downloads/archive/articles/1971NewspaperArticles/19711031SundayExpressBiggestExpressbiggestprobesinceRivonia.pdf>

⁶ <https://www.ahmedtimol.co.za/wp-content/uploads/2020/03/INQUEST-JUDGMENT.pdf>, Page 97, 250

inquest. He remained in custody for the duration of the inquest and was later charged, convicted and on 31 October 1972, he was sentenced to five years imprisonment at Robben Island. He was released on 1 November 1972 and served with a five-year banning order. After serving more than three years of his banning order, he left South Africa and went into exile. As early of the weekend of his arrest with my uncle, Essop was so severely tortured that it rendered him comatose.

- 13 For decades I studied numerous newspaper articles on my uncle's death that were preserved by the Timol family. This along with discussions with my maternal grandmother, Hawa Timol inspired me to conduct my own investigation. This included conducting research, identifying and locating uncle Ahmed's friends who were detained and tortured laying the basis for my first book that was published in 2005. By this stage I had already identified at least two of the interrogators. This contributed to compiling my own dossier to hand over to the Foundation for Human Rights (FHR) Ms Yasmin Sooka (Sooka) and legal representatives decades later.
- 14 In 2016, our team made a comprehensive representation to the former National Director of Public Prosecutions (NDPP) Adv Shaun Abrahams (Abrahams) Thereafter the inquest into the death of my uncle was re-opened. The pitch to re-open the inquest into the death of Dr Neil Hudson Aggett (Aggett) was done simultaneously. The 2017 re-opened inquest of my uncle found that Essop was viciously tortured and was secretly detained in a comatose state at a hospital in 1971. Decades later it emerged that he was not the only detainee that was severely tortured during their arrest at that stage. Similar fact detainees gave harrowing testimony in 2017 of their torture during their arrest and detention in 1971.

- 15 Magistrate de Villiers ruled at the 1972 inquest that uncle Ahmed had committed suicide and that nobody was responsible for his death. The last person allegedly in the room with my uncle, witnessing him committing suicide was SB officer Rodrigues.

TRUTH AND RECONCILIATION COMMISSION (TRC)

- 16 It was due to my persistence that my maternal grandmother Hawa Timol testified during the TRC Hearings on 30 April 1996 at the Central Methodist Church, Johannesburg downtown. Appearing before Chairperson Archbishop Tutu, Vice-Chair Dr Alex Boraine and Commissioners Ms Sooka (Sooka) amongst others. My grandmother cried: *"I ask the Almighty that I will not forget what happened and that I need to know who lodged the complaint and what happened. I will not forget what happened, I need to know".*⁷ **(IAC 1: Page 4, Paragraph 3)**
- 17 Witnessing my grandmother testify, I made a silent vow to myself that from that day onwards, I was no longer just going to just speak about uncle Ahmed, but I was going to do something constructive in memory of my beloved uncle and importantly, ascertain what really happened to him. From April 1996, I embarked on a journey to understand who my uncle was and for the complete truth to be exposed. I concluded that this was my calling. In May 1997, 13 months after testifying before the TRC, my grandmother passed away. Her call for justice remained unanswered.

⁷ <https://www.justice.gov.za/trc/hrvtrans/methodis/timol.htm>,

- 18 None of the SB officers involved in the arrest, detention and death of uncle Ahmed applied for amnesty and neither was anyone subpoenaed to testify at the TRC, despite a note to that effect been endorsed and attached to the effect. **(IAC 2: Paragraph 5)**
- 19 In early 2000, as I was conducting my research for my first book, I reached out to the TRC IO Pigou who handed me the TRC file on uncle Ahmed. The file contained information collated on uncle Ahmed's matter during the investigating phase of TRC matters. In a summary of a document dated 23 April 1997, it lists violation details of victim, Ahmed Timol, and alleged SB perpetrators, Kemp, Vernon and Kleyn, Gloy, Kruger P. and Rodrigues Joao and Van Niekerk. **(IAC 3: Page 1, Para 5; Page 3, Para 3)**
- 20 A note in the file dated 7/5/97 discloses that Pigou met Rodrigues for an interview that lasted approximately 15 minutes. It concludes: ***"it is recommended that Mr Rodrigues be subpoenaed for more detailed questioning along with other officers involved in the case."*** (my emphasis) (IAC 2)
- 21 Another note read, *"Joao (Jan) Rodrigues -He was the SAP member (Warrant Officer), who according to the police version of events was unable to prevent Timol from jumping. Este Stander (nee Rodrigues) daughter of Joao Rodrigues. Was allegedly told by her father at the age of 11yrs that the police version of what happened to Timol was not true."* **(IAC 4: Para 3 and 4)**. Rodrigues was charged in 2021 and pleaded guilty to sexually assaulting or indecently assaulting his

daughter. For almost five decades in his life he had denied sexually abusing her.⁸

(See paragraph 95 of this affidavit).

22 Pigou resigned from the TRC at the end of May 1997. The TRC did not subpoena Rodrigues, or any other officers involved in the Timol case who at that stage, were all living. It is unknown whether the matter was allocated to another IO after Pigou resigned and why Rodrigues or others mentioned in the TRC Report were not subpoenaed, despite a note to that effect been noted. Had the TRC subpoenaed them, we probably would have answers that my grandmother desperately needed.

23 The Final TRC Report states the following on the Timol case: *“The commission finds that the SAP and in particular Colonel Greyling, Captain Bean, Sergeant Rodrigues, Warrant Officer Cloete, Sergeants FJ Ferreira, MC Pelser and DL Carter were directly responsible for the death of Mr Ahmed Timol.”*⁹

(IAC 5: Para 5)

24 I have found no explanation as to why the TRC did not subpoena any of the aforesaid officers who were all living at the time.

25 In my view, the TRC was a vehicle for South Africans to confront the truth about its past and for victims’ and perpetrators to reconcile. For most families, this never materialised. There was no one to reconcile with as the majority of the perpetrators failed to come forward, make full disclosures and apologise for their actions that resulted in the deaths of our loved ones. Moreover, the TRC amnesty process was

⁸ <https://iol.co.za/pretoria-news/news/2021-07-13-joao-rodrigues-apologises-for-sexually-assaulting-daughter/>,

⁹ TRC Final Report: Volume 3, Chapter 6 and Subsection 8;
<https://sabctrc.saha.org.za/reports/volume3/chapter6/subsection8.htm>

as a result of a political compromise made at the “twelfth hour” of gruelling negotiations.¹⁰ If perpetrators failed to apply or were denied amnesty, they were liable for prosecution, if there was evidence to substantiate it.

26 Despite my efforts to locate the list of matters handed over to the NPA, I could not trace the TRC submitting a list of cases to the NPA to investigate further with a view to prosecution. According to affidavits submitted by TRC Commissioners Adv Ntsebeza (SC) and Sooka, on the last day of its official duties in October 1998, a letter had been prepared which contained a list of the cases. A copy of the letter could not be located by them. This was purportedly for the attention of the then NDPP, Adv Bulelani Ngcuka (Ngcuka) with a view for the NPA to investigate. It appears that the TRC and the commissioners themselves do not have a record of the list. However, they claim that the NPA may have this correspondence on record.¹¹ In my view, the TRC was highly organised with seventeen commissioners, trained researchers, staff for data capturers etc. and strangely no record was retained. As for my uncle’s matter, nobody applied for amnesty, nor were they subpoenaed. The TRC findings identified perpetrators directly responsible for his death.

¹⁰ Emily H. McCarthy, *South Africa's Amnesty Process: A Viable Route Toward Truth and Reconciliation*, 3. MICH. J. RACE & L. 183 (1997). Available at: <https://repository.law.umich.edu/mjrl/vol3/iss1/4>. Interview with George Bizos, Director of the Legal Resources Center of Johannesburg South Africa, in Johannesburg, of gruelling negotiations.

¹¹ FA6 para 95 – Adv DB Ntsebeza SC confirmatory affidavit dated 8 November 2024; 365-372 and FA7 para 95 – YL Sooka confirmatory affidavit 18 November 2024 373-380

FOLLOW UP WITH THE NPA / THE PRIORITY CRIMES LITIGATION UNIT (PCLU)

- 27 In 2002, I located one of my uncle's interrogators and alleged perpetrator, Captain Johannes Hendrik Gloy (Gloy) and had three telephonic conversations with him. He was dismissive and unhelpful. He asked me to read the 1972 inquest findings that found that my uncle had committed suicide. He stated that there was no need for him to have applied for amnesty as there was no case against him. Gloy also remarked that my grandparents spoke a bunch of lies about their son being beaten and tortured. He asked that I refrain from calling him and threatened to get a court order against me. **(See Paragraph 35 of this affidavit).**
- 28 In 2003, President Mbeki signed a proclamation creating the Priority Crimes Litigation Unit (PCLU) that was located in the Office of the NDPP. One of its mandates included the managing and directing investigations and prosecutions relating to the TRC process: Prosecutions and Missing persons. From my experience, this elite unit comprised of senior prosecutors with vast experience who worked on high profile matters and were accountable directly to the NDPP. One of the persons Mbeki appointed as a Special Director of Public Prosecutions was Adv Anton Rossouw Ackermann (Ackermann) SC. **(IAC 6: Page 1, para 6 and Page 8)**
- 29 In May 2003, the late Minister Essop Pahad in the Presidency referred me to the Senior Deputy Director of Public Prosecutions, Adv Chris Macadam (Macadam) **(IAC 7)** when I furnished him with an extract from Adv George Bizos' book "No

One to Blame”¹² in a chapter called Indians Can’t Fly, a Sunday Times article written by Ivor Powell¹³ (identified to be the author of the Browse Mole Report (**See paragraph 220.9 of this affidavit**) on the death of uncle Ahmed, transcripts of the TRC hearing, input from detainees and details of SAP members involved in uncle Ahmed’s interrogation and photographs of my uncle’s body. I also informed him that I had the contact details of Essop who was in the United Kingdom and who could assist the investigation. Lastly, I shared the information from Pigou’s file pertaining to Rodrigues daughter with Macadam. Between May 2003 and December 2003, I heard nothing from the NPA.

30 In December 2003, I sent correspondence to Ngcuka informing him that none of the police officers involved in uncle Ahmed’s matter had applied for amnesty. Furthermore, I established that some of them had died, but others were still alive. I appealed to Ngcuka to investigate the circumstances surrounding uncle Ahmed’s case as I believed there was sufficient evidence pointing to murder.

31 I concluded by informing him that I was sending a copy of the letter to Minister Pahad in the Presidency, the Minister of Intelligence, Lindiwe Sisulu and the Minister of Safety and Security, Charles Nqakula respectively, in view of the important issues at stake in this case. Despite me sending the letter to all the above-mentioned parties, no one, including Ngcuka, ever responded to the correspondence.

¹² Publisher David Philip Publishers; Publication date 21 April 1999; ISBN-10: 0864863195

¹³ Ivor Powell dated 6 JUNE 1996;

<https://www.ahmedtimol.co.za/downloads/archive/articles/Undatedarticles/SundayTimesInsideStoryTheKillingofAhmedTimol.pdf>.

32 Nine months later, after following up with him in February 2004, I received a response from Macadam (now a Deputy Head at PCLU) that the information on Rodrigues and his daughter produced “*negative results.*” (IAC 8: Para 2) He invited me to supply him with additional information so that the case could be reconsidered. (IAC 8: Para 5) Contrary to the prosecutor guiding the investigator on investigating the case, the impression I got was that they placed an onus on me to investigate the matter. In the ***Nkadimeng & Others v The National Director of Public Prosecutions & Others***¹⁴ that Judge Legodi in 2008 held at paragraph 16.2.3.3

“Crimes are not investigated by victims. It is the responsibility of police and prosecution authority to ensure that cases are properly investigated and prosecuted.” (IAC 9: Page 34, Para 2)

33 Macadam made no mention of any further investigation pertaining to the leads that I had submitted, i.e., the transcripts of the TRC hearing, input from detainees, details of SAP members involved in uncle Ahmed’s interrogation and photographs of his body that might have been relevant to an expert or specialist forensic pathologist. (IAC 8). Nor was there any mention made of any further investigation that Macadam did or could have directed to obtain to either support or refute the suicide allegation. In my view, the NPA failed me dismally. Working with the NPA / DPCI, I now have a better understanding of how investigations are presently

¹⁴ (TPD case no 32709/07)

undertaken with guidance and accountability from the prosecutor. I have found no evidence that this was done in my uncle's matter.

34 Macadam also made no mention of Essop ever been approached until 2016 when the inquest was re-opened. One would have assumed that as the only other detained person to have last seen uncle Ahmed alive and who was arrested with him, at least a consultation and the obtaining of an affidavit from Essop would have been the first port of call. I believe that Macadam as a prosecutor would have guided the investigator to obtain an affidavit from Essop and other detainees. To the best of my knowledge, this was not done. The onus was on me to investigate the matter further. After Rodrigues died in 2021, I successfully applied in terms of the Promotion of Access to Information Act (PAIA) for a copy of the criminal case docket. After perusing it, I noted how a thorough investigation had been guided before charging Rodrigues. In my view, the effort exhibited by the NPA and DPCI prior to 2017 and before charging Rodrigues was nothing short of disgraceful for those whose core function it was to investigate crime and prosecute criminals.

35 In 2005, uncle Ahmed's interrogators Gloy and Captain Johannes Zacharia van Niekerk (van Niekerk) appeared on an E-TV documentary, *Indians Can't Fly*.¹⁵ Both remained defiant. Gloy commented that uncle Ahmed committed suicide, and nobody was responsible for his death. He had nothing further to say but asked me to look at the court records. He stated with an open heart that uncle Ahmed was not tortured. Gloy asked the crew to leave his premises as he was upset. As for

¹⁵ <https://www.ahmedtimol.co.za/download/3rd-degree-indians-cant-fly/>

van Niekerk, he also had nothing to say and also asked the crew to leave his premises. I have noted that in all our re-opened inquests and trials post-2017, perpetrators continue to rely on apartheid-era inquest findings that vindicated them.

36 I subsequently discovered that 3 years after I had furnished Macadam with the information for further investigation, the Timol file was on 29 November 2006 closed. **(IAC 10; Page 2, 2.2.1)**¹⁶ This emerged from perusal of internal NPA PCLU memorandums filed by Macadam during the 2019 Full Bench hearing in the Rodrigues matter. **(IAC 11)**

36.1 The November 2006 memorandum further reveals that it was drafted by Dr MS Ramaite (Ramaite) who was on 12 October 2006 appointed as a Convenor of a task team. Its mandate was to study all TRC cases that were in possession of the South African Police Service (SAPS) and the PCLU with a view of making recommendations to the National Director Pikoli on whether to prosecute or not. On 25 October 2006, (IAC 11: RCM 12) during its first meeting between SAPS and PCLU, audit reports were presented and discussed. The PCLU report was divided into three categories: (1) Cases finalised in court and excluded from the task team mandate. (2) Matters disposed by PCLU in the form of representations victims or their relatives and (3) Cases identified for prosecution. Under TRC matters closed by the PCLU, the note in the file stated that I had requested that an allegation that one of the police officers who interrogated uncle Ahmed confessed to a journalist,

¹⁶ From Dr MS Ramaite (Convenor of the Task Team on TRC Cases) to Adv VP Pikoli (NDPP) on the Report on the Progress made by the TRC Task Team on TRC Cases dated 29 November 2006

be investigated. The DSO had traced and interviewed the journalist who denied the allegation. Furthermore, there was no evidence to prove that my uncle had definitely been murdered and that all other crimes had prescribed. The note concluded that the matter was therefore closed. Further perusal of the information furnished shows that the NPA chose to close other files alleging that the crime of culpable homicide had prescribed. They chose not to prosecute for murder because murder did not prescribe. In my view, there were no challenges in my uncle's matter around capacity (human resources). It was the task team comprising of the SAPS and PCLU that made the decision to close the Timol file.

- 37 After studying the memorandum, I observed in my view, a concerning pattern showing that there were many other cases closed in a similar manner. An internal memorandum dated 30 October 2006 from Ackermann to Ramaite, Re: Details of TRC Cases closed by the PCLU (IAC 11: – Page 41, 2.2) included the matter of Bantu Stephen Biko (Biko). The memorandum reads that all the doctors who treated Biko were deceased, except the Chief State Pathologist who after consultation conceded that he could not exclude that the injury to the deceased's head could have been accidentally caused. The DPP Eastern Cape had recommended that no prosecution be instituted due to lack of evidence. The police officer in charge of the interrogation who was responsible for making the decisions as to whether the deceased should receive medical treatment himself died after he was denied amnesty by the TRC. According to the memorandum, NDPD Ngcuka made a press statement to the effect that no prosecution was possible. Furthermore, an NGO organization obtained the opinion of Adv Trengrove who

also concurred with the decision. If this was the case, how than does one explain the NPA in September 2025 enrolling the reopening of the inquest into Biko's death?

37.1 As for my uncle's matter, a memorandum dated 5 May 2003 stated that Macadam had requested a Chief Investigating Officer (Leask) of the DSO to conduct investigations into the Timol matter. (IAC 11, Page 12) Leask is currently Afriforum's chief investigator.

38 Another memorandum dated 4 February 2016 revealed that the NDPP Pikoli had directed that the DSO must assist the PCLU with the investigation of TRC matters. According to Macadam, the feedback from the DSO on the Timol matter was that the journalist had been interviewed. However, he denied the allegation and produced the newspaper article which he had written that contained no confession or new evidence. Macadam added that under the circumstances, the DSO deemed it inappropriate to approach Rodrigues or his daughter. He further alleged that I was satisfied with this explanation and the matter was not taken further. (IAC 11, Page 34, 6.1.4) At no point, did I give indication to Macadam that I was satisfied with the explanation provided.

39 After I testified at the 2017 inquest, **(IAC 12)** Macadam deposed to an affidavit **(IAC 13)** asserting that I had not correctly reflected his involvement in the Timol matter. He elaborated that he was not aware of a complaint made to the NDPP, but that he was approached my me directly. This was when Macadam and the PCLU were located in the Office of the NDPP. He further stated that I had informed him that the daughter of Rodrigues had approached a journalist Ivor Powell and

that her father had told her how uncle Ahmed was murdered. According to Macadam, he then immediately reported the allegations to the DSO and a Chief Investigating Officer was sent to interview Powell to establish whether Rodrigues could be charged with murder. He was informed that after investigations were conducted, there were no basis for the allegations to be established because Powell was emphatic that no such approach was made to him.

40 I would have imagined for someone who was at the TRC,¹⁷ Macadam would have studied Pigou's TRC Timol file, (IAC 3) and he would have found the source of information on Rodrigues and his daughter. Moreover, he could have interviewed Pigou. Rather, he stated that that I informed him that Rodrigues' daughter had approached the journalist.

41 What Macadam failed to mention in his affidavit is that Powell at the time of being interviewed, was no longer a journalist, but a Captain in the DSO.¹⁸

42 10 years after the Timol file was closed, it was Rodrigues' daughter that made contact with me resulting in a subpoena to be issued and served on her father to testify at the 2017 inquests. Yet, they decided not to interview her or Rodrigues.

(See paragraph 40 of this affidavit)

43 I believe there was no will on the part of the PCLU / DSO at the time to investigate uncle Ahmed's matter. My own understanding from past and present experiences is that it is the duty of prosecutors to guide extensively on the criminal matters

¹⁷ <https://sabctrc.saha.org.za/hearing.php?id=56250>,

¹⁸ DAILY MAVERICK: Tribute: Ivor Powell, a life lived at the edge of art, journalism, politics, investigations — and a stove; By Marianne Merten 20 Aug 2021; <https://www.dailymaverick.co.za/article/2021-08-20-ivor-powell-a-life-lived-at-the-edge-of-art-journalism-politics-investigations-and-a-stove/>,

requesting expert opinions on wounds, cause of death, trajectory, location of similar fact detainees, witnesses etc. which would enable them to make an informed decision based on the comprehensive investigation undertaken.

44 PCLU was seized with TRC matters from 2003 and they oversaw and dealt with these matters. Under their control, and at that stage, in my view, there was no political interference. Neither was there a lack of logistics or capacity raised as a reason for hindrance to the investigation. It was only during the 2019 Full Bench hearings when the NPA made reference to political interference. This after I had raised this in my affidavit (as advised by my legal counsel). Prior to this, they were silent on the matter. It was only Pikoli who made this allegation in his 2015 affidavit in the Simelane matter. **(IAC 14: Page 3, Para 1)**

45 I am of the view that in my uncle's matter, the extent of the whole investigation included just a cursory interview of Powell. It would be interesting to see Powell's affidavit that would have been obtained in this regard. In my view, a proper prosecution guided investigation would have had included the prosecutor guiding that the statement of Essop be obtained, directing on the obtaining of statements in relation to similar fact evidence of other detainees who were tortured, obtaining expert opinions on pre - post mortem injuries, obtaining an expert opinion on trajectory, reconstruction of the crime scene, locating of the docket and the inquest record, profiling of security police officers involved in the arrest, detention and interrogation of uncle Ahmed, obtaining other witness statements, obtaining of warning statements under certain circumstances etc.

- 46 In preparation for the re-opened inquest, other witnesses were also located at the inspection in loco who disputed the time of the alleged suicide. Had this simple exercise of “basic old police investigation” been undertaken, witnesses could easily have been located. Furthermore, the improbabilities surrounding the alleged suicide version, trajectory and inconsistency of ante-mortem and post- mortem injuries should have been investigated and presented when the persons of interest were all alive. This would have given them the opportunity to dispute / refute the evidence because they all were easily traceable, available and healthy to be prosecuted. Captain Nel (Nel), from Crimes Against the State (CATS) was the investigator who during the inquest testified to having been the investigator in this matter, and later to other matters. More importantly, the TRC had made a finding identifying those directly responsible for uncle Ahmed’s death.
- 47 In my view, had there been a concerted and intentional will on the part of the prosecutor/s to guide the investigator, this evidence could have been presented as early as 2003 when all those involved in my uncle’s matter were alive. In essence, both the NPA’s PCLU and investigators from the DSO who were seized in investigating the TRC matters, shifted the responsibility to me to furnish further information to take the investigation forward despite them having the powers and functions to investigate and prosecute. It is my considered view that they must be held accountable for failing to execute their duties. Without having regard to all available evidence, they took a decision to close the file.
- 48 In January 2008, I wrote a letter to Gloy reminding him that we were all getting older and closer to meeting Our Creator, that we were all human, and all made

mistakes in our lifetime, but it was important to ask for forgiveness and leave our disagreements behind. I begged Gloy that we should meet and that I had no hatred as this was not what God wanted. **(IAC 15)** I received no response from Gloy to my letter. I later heard that he passed away in 2012.

CIVIL SOCIETY

49 After conducting my own investigation in 2009, I made contact with the FHR and former TRC Commissioner Sooka to discuss the re-opening of uncle Ahmed's matter. I also made a public call for an inquest to be re-opened into his death. I later heard during the 2017 inquest from the testimony of Nel that he belonged to CATS that formed part of DPCI. They were mandated to investigate cases relating to the TRC.¹⁹ I found no evidence of them investigating any post-TRC matters. After delaying for a number of years, I returned to the FHR in February 2015. Later, in a meeting with Sooka, Adv Howard Varney (Varney) (who was also involved in the TRC)²⁰ and the late private investigator Frank Dutton (Dutton), I presented my findings that formed the basis of a "docket." This was done to seek the re-opening of uncle Ahmed's inquest and ascertain the truth on how he was killed.

50 In January 2016, a meeting was arranged through FHR with the NDPP Abrahams and his team. FHR presented our new evidence demonstrating that it was in the interest of justice to re-open uncle Ahmed and the Aggett inquests. This included Dutton obtaining statements from Essop and other detainees who were detained

¹⁹ <https://www.ahmedtimol.co.za/wp-content/uploads/2020/03/Transcript-101-2017-VOL-1.pdf>; 101-2017- ec 2017-06-26; Page 19 and 20;

²⁰ <https://www.ictj.org/about/howard-varney>

with uncle Ahmed, as well as others detained in the 1960s who vividly described their torture ordeals. Later, my press releases and evidence led at the re-opened inquest resulted in witnesses coming forward to testify disputing the alleged time of my uncle's death. The police claimed it was late - afternoon around 16:00, when in fact the eye-witnesses testified it occurred in the early parts of the day. We also acquired the services of experts presenting medical evidence on the nature of wounds and injuries inflicted on my uncle's body ante-mortem.

- 50.1 After studying an internal memorandum dated 4 February 2016 from Macadam to Pretorius, *RE: Opinion: Reopening of Timol / Aggett Inquests*, (IAC 11: RCM 8) the following facts emerged: Macadam again referred to my alleged information on Rodrigues, his daughter and Powell stating that I was not only satisfied with the explanation provided, but was now confused with what both journalists Powell and TRC investigator Pigou stated. If Macadam read the Timol TRC file, also interviewed Pigou, he would have had full details of what transpired. Rather, he deflected towards me that I was "supposed to be confused" on the information provided.

Macadam also provided an update on the status of the Timol investigation. Captain Nel was requested to canvas the availability of all the witnesses, i.e., the police officials, medical doctors and members of the deceased's family. It emerged later that the only witness that Nel located was Els. It was Nel who later testified in the re-opened Aggett inquest that he was called a **verraier (sell-out)** by his colleagues for investigating TRC cases (**See paragraph 141 of this affidavit**). Macadam in his memorandum also identified other detainees who were never called as

witnesses to shed more light on the matter. One was a Mr Pahad who was allegedly arrested from my uncle's interrogation. In Macadam's affidavit to the 2017 inquest, he tasked Madeleine Fullard to draw the files of amongst others, Nassim Pahad (*if available*). (IAC 13: Page 6) In Rodrigues' indictment, **(IAC 19: Page 15, 24)**, Pahad was listed as one of the witnesses who was to testify in the matter between ***The State versus Jao Anastacio Rodrigues***.²¹ Details of Pahad's alleged arrest as a result of my uncle's interrogation will not be known as Rodrigues' criminal trial never commenced due to his passing. Fullard had also undertaken to establish whether Gordon Winter who claimed in his book to have first-hand knowledge of the Timol incident was alive and where he was residing. Fullard's findings remain unknown. Macadam states that in my uncle's matter that there were indications that evidence may be located in the UK that would have to be accessed through an Mutual Legal Assistance (MLA) process. It remains unclear as to what evidence in the UK is Macadam referring to?

- 50.2 On the Aggett investigation, Macadam confirmed that the inquest records were available on the Wits website. However, downloading the 8 500 pages ***"would place an extreme burden on the office's printing facilities"***. Aggett's detention file was also uplifted, but it contained no relevant information. Macadam noted that despite Cornwright passing on, Whitehead was still available (Aggett's interrogators) and ***"would clearly be affected by the reopening of the inquest. He would be entitled to legal representation, access to relevant material and***

²¹ Case Number: 798/10/2017

the right to challenge any new evidence.” (See paragraph 110 of this affidavit)

50.3 He also explained that the Timol and Aggett matters were not receiving the attention of the PCLU as a result of operational constraints that commenced since October 2015. Adv Bukau was assigned to an urgent espionage-related case and there was uncertainty around his position due to the NDPP on 8 October 2015, indicating that he had not cancelled his appointment as the OECD Foreign Bribery Prosecutor. Macadam concluded that it was inappropriate at that stage to reopen the Timol and Aggett inquests. It appeared to him on what was place before him that Dutton had conducted a comprehensive investigation that justified all the relevant factors that needed to be taken into consideration by both the NPA and the presiding officers of the inquests. However, Macadam found it to be inappropriate to accede to the request to reopen the inquest prior to the conclusion of the DPCI investigations and the NPA deciding not to prosecute.

51 As for FHR, I was informed that they were representing the Timol family pro-bono. I was also informed that further investigations conducted by the NPA and the South African Police Services (SAPS) DPCI found that all the SB officers involved in uncle Ahmed's case were deceased. On 26 June 2016, it was announced that a decision was taken by the Minister of Justice and Correctional Services (DOJ&CD) Michael Masutha to re-open the inquest into the death of my uncle. The date for commencement of the inquest was set for 26 June 2017. As for the Aggett inquest, it was only re-opened in January 2020 and was also held the Johannesburg High

Court. **(See Paragraph 110 of this affidavit)**. Subsequently, that finding of suicide in the Aggett matter was also later overturned.

52 Despite the NPA / DPCI investigations concluding that the SB officers involved in uncle Ahmed's matter were deceased, I received information from Rodrigues's daughter just three weeks before the inquest was to commence that he was still alive. Subsequently, a subpoena was served on him. Previously, it was alleged that a follow up on Stander (Rodrigues' daughter) produced negative results. **(See paragraph 32 of this affidavit)**. Upon further investigations by Nel, the IO of TRC matters within CATS, located SB officer Els. Information from another SB member led to locating Sons and both were subsequently subpoenaed to testify.

53 My initial collation of information over the decades and subsequent investigation that I conducted produced the evidence presented to Dutton and the team. How then could the NPA sit with the Timol file from 2003 and in 2006 closed the file. In my considered view, the file was closed because the most basics of investigations was not done. In my view, there was enough evidence to conclude that the police officers lied after alleging that all was well with my uncle and that he was seated, having a cup of coffee with his white interrogators during Apartheid, and then suddenly jumped out of the window. Therefore, I am of the view that the NPA, in particular Macadam, failed to guide on the most basic of investigation. Had they simply located Essop, other detainees and Rodrigues, they would have at least had the most important witnesses needed. Moreover, there was no mention of any political interference preventing them from performing their functions and there

was nothing excluding them from following up on accessing the TRC investigation file (IAC 3) which pointed at investigating avenues and persons of interest.

2017 INQUEST

- 54 The 2017 re-opened inquest heard evidence from uncle Ahmed's friends, fellow detainees who were brutally tortured, witnesses who saw his body falling mid-morning (and not afternoon as per Rodrigues's 1972 and 2017 version), pathologists and a trajectory specialist who demonstrated that uncle Ahmed could not have committed suicide. All the evidence put together proved that he was murdered in police detention. Had there been a full and fair investigation from both the NPA and DPCI as early as the commencement and conclusion of the TRC, the evidence adduced could, in my view, have led to a prosecution. At the time, all the security police officers involved in the arrest and detention of uncle Ahmed were living.
- 55 When I testified at the re-opened inquest in 2017, I made it clear that the manner in which the NPA dealt with my matter was cavalier and uncaring. Moreover, on the basis of legal advice obtained from my counsel, I indicated the probability of the suppression of political cases post-TRC. (IAC 12: Page 9 – 11).
- 56 After I testified, Macadam deposed to an affidavit during which he made no reference to any alleged political interference that prevented him from executing his duties. (IAC 13). In fact, there was no mention of any political interference preventing the NPA from executing their functions during the inquest proceedings in 2017.

- 57 In 2019, almost three years after the inquest had concluded and when the issue of alleged political interference was raised, only then did Macadam produce affidavits allegedly supporting the allegations. (IAC 11: Pages 68 - 84). It must be noted that he (Macadam) was in the PCLU since its inception in 2003, and submitted an affidavit outlining his role, even in 2017 during the inquest. Why did Macadam not raise it if he knew about the political interference and was aware of the existence of the alleged evidence in the form of affidavits supporting the same? Moreover, the Full Bench in 2019 made damning findings about how the NPA responded to alleged political interference and the timing thereof. **(See paragraph 84 of this affidavit**
- 58 During my testimony at the 2017 re-opened inquest, my recommendations (IAC 12: Page 13, 35.3) included the creation of a dedicated team of carefully selected investigators and prosecutors to oversee the investigation and prosecution of TRC cases, and for state entities to supply all information at their disposal to this team. It was accepted that there was only one NPA and SAPS in the country and it was only their mandate to prosecute and investigate respectively. I refer to this action plan later in my affidavit.
- 59 On 12 October 2017, Judge Mothle²² reversed the finding of the original inquest that uncle Ahmed committed suicide and found that he was murdered in police detention. *“The Court’s prima facie finding was that members of the Security Branch who were interrogating Timol on the day he died, through an act of*

²² IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA CASE NUMBER: IQ01/2017 In the matter of: THE RE-OPENED INQUEST INTO THE DEATH OF AHMED ESSOP TIMOL JUDGMENT: MOTHLE J

commission or omission, murdered Timol. This they committed through dolus eventualis as the form of intent.” (IAC 16: Page 125, 330)

60 The court found that *“Rodrigues placed himself on the scene as a party to the cover up to conceal the truth. He thereby prima facie, by his conduct became an accessory after the fact of murder. An accessory after the fact is a person who renders assistance to someone else (perpetrator) who has committed an offence.²³ Corbett JA in S v Morgan²⁴ opines that the association of the accessory with the crime should take the form of helping the perpetrator evade justice. This is precisely what Rodrigues, on his own version, did.”* Rodrigues was to be investigated for making contradictory statements whilst under oath. He has a previous conviction on perjury. (IAC 16: Page 125, 334)

61 Moreover, the police on their own version removed my injured uncle Ahmed from where he landed immediately after the fall and without summoning medical assistance. In my view, this was clearly done in order to conceal the crime. The court found that the very act of his removal from the scene as he was alive, may have accelerated his demise due to the police’s reckless conduct at the scene. (IAC 16: Page 119, 1st para)

62 In my view, Gloy and van Niekerk mischievously claimed to have been outside the office during uncle Ahmed’s interrogation in order not to be implicated in his death. Rodrigues on his own version at both inquests confirmed that he was in the room

²³ WA Joubert, “The Law of South Africa”, Volume 6 paragraph 136.

²⁴ 1993 2 SACR 134 (A)

during my uncle's alleged suicide. Moreover, Rodrigues and others are complicit because uncle Ahmed was still alive after his alleged fall because they failed to render medical assistance after the fall illustrates their levels of cruelty.

63 The court ruled that Els should be investigated for ***misleading the court that he only knew of allegations of assaults on detainees through the media.***

(IAC 16: Page 125, 332), despite the fact that they were part of the notorious SB.

64 As for Sons, he too was to be ***investigated for testifying under oath that he heard of detainee's assault only through the media.*** (IAC 16: Page 125, 332).

After Sons testified at the re-opened inquest alleging that he was never involved in assaults or did not know about assaults at JVS, five other witnesses almost immediately filed witness statements in which they exposed his untruths and linked him directly to conduct of assault. This evidence emerged during the re-opened inquest proceedings and formed the basis of the court's adverse finding against him.

65 The conclusive finding that uncle Ahmed did not commit suicide but was murdered was possible because there was a proper investigation conducted, and evidence was presented for the court to make a finding of murder. I struggled to understand how the NPA closed the Timol file, along with countless others in 2006? (IAC 11). The evidence presented in 2017 did not miraculously materialise, but was as a result of a thorough investigation of the most salient points in dispute viz the injuries and the trajectory, coupled with eyewitness and similar fact evidence.

66 In his finding, Judge Mothle held the following:

“It is through the persistent effort of Mr Imtiaz Cajee that this historic sitting of the re-opened inquest occurred. His efforts should be emulated as an example of how citizens have to assert their rights.” (IAC 16: Page 5, 12) In the June 2021 SCA judgment, Cachalia JA stated that *“The Timol family have also been victims of this delay; they have waged what can only be described as a heroic struggle with dogged determination to bring the alleged perpetrators of these crimes to trial.”*

(IAC 17: Page 23, 1st para)

67 The verdict of the overturning of the original inquest finding was unprecedented in a democratic South Africa. This was a major victory not only for the Timol family, but represented a glimmer of hope for all South Africans whose loved ones were killed by the apartheid regime. They too hoped to have history re-written to correctly reflect that their loved ones did not take their lives but were murdered by the apartheid regime. Moreover, SB officers Rodrigues, Els and Sons had to be held accountable for their actions as per the judgment.

68 Judge Mothle in his recommendations stated that there were many more families²⁵ who were seeking closure on the unanswered questions concerning the death of their relative in detention. He added, *“They, like all families whose relatives died in detention, need healing. They need closure.”* Furthermore, the court was of the view *“that the families whose relatives died in detention, particularly those where the inquest returned a finding of death by suicide, should be assisted, at their initiative, to obtain the records and gather further information with a view to have*

²⁵ The Judge’s Registrar, Mr Lesibana Makwela received a number of inquiries from persons who needed assistance to find closure in cases of their relative having died in detention.

the initial inquest re-opened. The Human Right Commission, working in consultation with the law enforcements agencies, should be sufficiently resourced to take on this task."²⁶ (IAC 16: Page 128, 340)

69 One of the families that came forward was that of Matthews Mabelane. Police claimed that on 15 February 1977, he too like my uncle jumped to his death from the 10th floor of JVS. I had subsequently worked closely with Matthew's brother Lasch to re-open the Mabelane inquest. Sadly, Lasch passed away in August 2020 without witnessing the re-opening of his brother's inquest. In March 2025, it was announced that the Mabelane inquest was to be re-opened.

70 During my oral testimony, I mentioned the death in detention of Dr Hoosen Mia Haffejee (Haffejee) who allegedly hung himself in 1977 at Brighton Beach police station. Shortly thereafter, I was contacted by the NPA and an IO was appointed to oversee the investigation of the matter. I assisted the prosecutor and IO extensively with the investigations into Haffejee's death that was subsequently re-opened. **(See paragraph 111 of this affidavit).**

71 Tragically, another family member that never witnessed justice was that of Nicodemus Kgoathe who died in police detention in February 1969. I worked closely with his son Ben to re-open his father's inquest. Ben passed away in 2024 without witnessing his father's inquest re-opened. Also in 1969, Solomon

²⁶ Without being prescriptive, it would assist if the Human Rights Commission and IPID are sufficiently resourced to undertake the task of preparatory work, in consultation with the NPA, for the re-opening of such inquest at the request of the families concerned.

Modipane and Jacob Monnagotla died in police detention. I have been reliably informed that all three matters are currently under investigation by the NPA / DPCI.

POST-2017 INQUEST:

RODRIGUES

- 72 My elation at having the original inquest findings overturned was short-lived. I pursued the NPA to register cases for investigation against Rodrigues, Els and Sons as per Judge Mothe's findings. Dockets were registered for investigation against the three SB members on 20 October 2017.
- 73 However, the initial positive news from Dr Pretorius, (Pretorius) the then Acting Special Director of Public Prosecutions of the PCLU on the cases that had been registered for investigation, turned to frustration. He was also the senior counsel and the evidence leader at the 2017 re-opened inquest. For the next six months that followed, I was given the run around as I enquired about the status of the investigation on Rodrigues. The docket for Rodrigues was investigated by Captain Nel, the same IO who testified at the re-opened Timol and Aggett inquests (**See paragraph 141 of this affidavit**), as were the dockets on Els and Sons. Only later were the dockets of Els and Sons re-allocated. However, even at this stage, the case was dealt with by the PCLU. In my view, all the evidence that was necessary for a prosecution was elicited at the re-opened inquest. To me, it was simply a matter of collating the information from the inquest and once a decision was taken, to have Rodrigues indicted. The Rodrigues docket was eventually given to the Director of Public Prosecutions (DPP) in South Gauteng, Adv Andrew Chauke to

decide on the matter. At the end of the day, the Els and Sons matters remained with Representations until a decision was taken to decline to prosecute in 2022.

(IAC 18)

- 74 In the Rodrigues matter, after Nel was replaced as the investigator on the criminal case, and within three months of the docket been sent to the DPP Chauke's Office in Johannesburg, the newly appointed handpicked investigators and prosecutor conducted further investigations leading to a decision taken for Rodrigues to be criminally charged for murder. Rodrigues made his first court appearance on 30 July 2018 and the State was ready to proceed with the criminal trial.²⁷ (IAC 19). However not a single witness was called to testify in the main trial because of the delays that ensued until Rodrigues died on 7 September 2021. This, almost four years since the historic overturning of the original court finding.
- 75 Rodrigues subsequently made 19 court appearances that were all postponed. **(IAC 20)**. This was due to the multiple undue delays and stalling tactics that continue to be applied in all TRC matters. This includes challenges with legal representation by SAPS, South African National Defence Force (SANDF) or recusal applications etc. In addition, Rodrigues' legal team brought a section 342A Application²⁸ before a Full Bench of the South Gauteng High Court argued on 28 and 29 March 2019. The crux of the application was that he wanted a permanent stay of prosecution as the delay by the NPA to charge him almost fifty years later for murder infringed upon his constitutional rights to a fair trial as provided in section 35(3) read with

²⁷ <https://www.ahmedtimol.co.za/timeline-rodrigues-criminal-trial/>

²⁸ www.ahmedtimol.co.za/wp-content/uploads/2020/10/11.-Rodrigues-Written-Subissions.pdf.

section 12 of the Constitution. His counsel argued that it would also infringe the applicant's right to dignity, to stand trial at the age of 80 following an incident that occurred almost 50 years ago, his failing memory amongst others. **(IAC 21: Page 14, Para 28)** This application was dismissed on 31 May 2019. **(IAC 22)**

76 Just as in the re-opened inquest, all the legal expenses of counsels of Rodrigues, Els and Sons were footed by the SAPS, ultimately from the public coffers. This despite none of them applying for amnesty at the TRC.

77 I made a consistent plea during the court proceedings for Rodrigues to make a full disclosure / full confession and urged the prosecutors to canvass the issue of a plea bargain option. I was hoping that the option of facing the full wrath of the law might urge him to reconsider his position that was dismissed in 2017, and that he might want to tell the truth as to what happened to my uncle.

78 I patiently and persistently pursued the NPA and DPCI to hold Rodrigues, Els and Sons accountable for their actions resulting in the murder of Uncle Ahmed and inflicting torture on other detainees.

PAIA APPLICATION

79 In May 2019, I submitted a PAIA application **(IAC 23)** to the DOJ &CD for the costs incurred by the State Attorney for the 2017 inquest (the cost of an instructing attorney and a senior counsel), the Rodrigues criminal trial appearances (the cost of an instructing attorney and two senior counsels) and for the 342A Application

for a Permanent Stay of Prosecution.²⁹ After following up for a period of six months, I was told that R 3, 585, 205.92 (*Three million five hundred and eighty-five thousand two hundred and five rand, ninety-two cents*) of taxpayers' money had been incurred for legal fees of the instructing attorney, junior and senior legal counsels. My considered view is that Rodrigues failed to apply for amnesty at the TRC and as a result should have been denied the use of taxpayers monies to defend his criminal conduct at the time. This sets a worrying precedent that apartheid-era perpetrators who refused to apply for amnesty before the TRC, are now entitled to legal privileges at the expense of the state, whilst the victims and families continue to suffer and the truth remains hidden.

- 80 The response to my PAIA Application from DOJ&CD (IAC 23: Page 5 - 7) failed to specify the date until which payments were processed. It is unlikely that if the former police officials had to foot their own bills, right from the outset of the trials or inquests, these delay tactics would not have been adopted. It is also doubtful whether the view that the accused were simply exercising their rights by lodging various applications would have been supported if the legal fees were covered by the accused themselves. The approach in all other matters currently on the inquest and court rolls pertaining to former SB members continues unabated. This continues even in matters where members of South African Defence Force (SADF) are involved. In my view, there is something innately wrong. The apartheid security services murdered those who fought for freedom and then failed to accept responsibility when the TRC created the platform for them to do so. In fact, they

²⁹ <https://www.ahmedtimol.co.za/wp-content/uploads/2021/07/PAIA-TIMELINE-27-09-2020-1.pdf>,

continued to lie and not disclose the truth. When subpoenaed to testify during re-opened inquests and trials, they once again exploit the state's coffers to their advantage. This behaviour continues unabated.

81 The R3.5 million paid by the State for Rodrigues' legal fees was not the final amount. My latest PAIA application in September 2019 seeking the final costs was rejected due to bureaucratic issues. (I did not pursue the matter further). The late Judge Monama P, the presiding case manager in the Rodrigues criminal trial, consistently raised his dismay at the Office of the State Attorney for funding Rodrigues' counsel and for the slow pace on challenges in the matter. Judge Monama often referred to the deep pockets of the state and abuse of state resources.³⁰ **(IAC 24)**.

82 Despite my persistent efforts, the total amount paid to Rodrigues' legal counsel remains unknown. I am therefore of the view that representing the apartheid-era accused has become a profitable business proposition for some legal counsels at the expense of abusing State resources. Whilst Rodrigues was represented by an instructing attorney and a junior and senior legal counsel, the Timol family, I was told, was represented *pro-bono* by FHR and Adv Varney.

83 My attempts to ascertain the costs for FHR's legal services is unknown. However, I have read in the lawsuit papers that the pro-bono team's attorney's fees for the Timol re-opened inquest comes to an amount of R 2 685 755.00. (*Two million, six hundred and eighty five thousand, seven hundred and fifty five Rands*). As for the

³⁰ <https://www.ahmedtimol.co.za/judge-seething-in-delay-in-timol-matter/>

litigation in the Rodrigues stay of prosecution, the attorney's fees amount of R 1 401 245.00. (*One million, four hundred and one thousand, two hundred and forty five Rands*) **(IAC 25)**.

83.1 My analysis of the costs are as follows: No reference is made to the costs incurred of the private investigator Dutton for the inquest. As for expert witnesses, I am aware they did not request payment for testifying. The 2017 inquest lasted 20 days in total. This included the opening day, a day for the in-loco inspection and the handing down of the judgment. According to my recollection, there was one witness who travelled from abroad and it is not known who covered his/her travelling costs. I do not recall if any of the expert witnesses were paid for their work as at least one pathologist was employed by the State. Furthermore, the state prosecutor who located and sourced the report for the trajectory expert, also received no payment to the best of my knowledge. As for all other witnesses who testified, they were all local witnesses who according to my experience would have collected witness fees from DOJ&CD. Three other witnesses testified that they saw my uncle's body falling. Mr Matthis was called by the evidence leader from the state and both the witnesses at the petrol station and at the garage lived and worked in Johannesburg. In my view, no additional costs apart from witness fees could have been collected. The same would apply for all the other witnesses, unless I am unaware of it. Therefore, if the total cost of the inquest was R 2 685 755.00, (*Two million, six hundred and eighty five thousand, seven hundred and fifty five Rands*), this would mean that it cost at an average of R 134,287.75 per

day (*One hundred and thirty four thousand, two hundred and eighty seven rands and seventy five cents*) for their *pro-bono* services.

FULL BENCH,³¹ SCA³² & CONSTITUTIONAL COURT³³ RULINGS

84 In my affidavit³⁴ prepared by my legal counsel to the Full Bench in May 2019 and at the SCA³⁵ hearings in November 2020, I referenced alleged political interference in suppressing of TRC cases. At both the hearings, senior NPA officials, Macadam and Pretorius deposed to affidavits on behalf of the First Respondent (The NDPP of South Africa) in the matter alleged political interference. In a rather strange turn of events, at the time they supported the allegation of political interference and even produced documents supporting same.

84.1 Macadam was a Senior Deputy Director of Public Prosecutions in the (PCLU) located in the Office of the NDPP (First Respondent). I ascertained that he was the previous Deputy AG in KwaZulu Natal (KZN) and Head of the KZN DSO before being transferred to become one of PCLU's Deputies.

84.2 Pretorius was the Acting Special Director of PCLU and was also the Evidence Leader for the State at the 2017 re-opened inquest. Neither Macadam nor Pretorius made any disclosure about any political interference during the re-opened inquest proceedings when I stated that the NPA did not perform its functions. **(See paragraph 55 of this affidavit).**

³¹ (Case Number: 76755/18)

³² (Case Number: 1186/2019)

³³ (Case Number: 213/2021)

³⁴ <https://www.ahmedtimol.co.za/wp-content/uploads/2020/10/13.-Cajee-s-Heads-of-Argument.pdf>,

³⁵ <https://www.ahmedtimol.co.za/wp-content/uploads/2020/10/6.-Cajee-s-answering-affidavit.pdf>,

- 84.3 I read that Pretorius had in 1993 penned a personal letter to President FW de Klerk warning him about the “*great insecurity*” that existed in the armed forces about “*a Nuremberg-type scenario*” that could follow the dawn of democracy. In his letter, he went on to caution that those targeted by General Steyn and Goldstone (Commission) had taken out “*insurance policies in the form of documentary evidence*” that they threatened to release in the event they were made “*scapegoats*”. Pretorius went on to remind de Klerk of the President’s words to him and another advocate: “*Kêrels, ons het genoeg probleme soos dit is – julle moet nie vir ons nog probleme gee nie. [Guys, we have enough problems as it is, so please do not give us more.]*”³⁶ It is important to note that this is the same Pretorius that was appointed in the PCLU in the Office of the NDPP and alleged political interference prevented him from prosecuting TRC cases.
- 85 Only after I had filed my affidavit prepared by my counsel before the Full Bench matter of Rodrigues, and only in 2019, two years after the re-opened Timol inquest had commenced and concluded, did the NPA allege that there was political interference preventing them from conducting their work. As prosecutors, they were supposed to serve without fear, favour or prejudice. In Macadam’s affidavit dated November 2018, he attached correspondence between the NPA, SAPS and Ministry of Justice relating to this matter, including a SECRET Amnesty Task Team Further Report. (IAC 11: Pages 68 - 84). These documents formed part of the lawsuit and it was the first time that this document was introduced by Macadam. It

³⁶ Our Poisoned Land; Living in the Shadows of Zuma’s Keepers by Jacques Pauw; ISBN: 9780624090533

is not known whether this secret document was declassified or needed to be declassified.

86 In respect of disclosed documents, the Full Bench dealt with the manner in which the NPA declared the acts of political interference. The NPA's main answering affidavit was signed on 3 December 2018 by Pretorius and filed shortly thereafter. There was no mention made of the political interference that was brought to bear on the NPA. It went on to refer to me as the fourth respondent who then filed an answering affidavit in January 2019 wherein I, through my counsel set out in considerable detail the political interference. This included the affidavit deposed to by Pikoli in the ***Nkadimeng*** matter as well as the memorandum prepared by him in February 2007 expressing his grave misgivings about such interference and his reluctance to go along with it. (IAC 22: Page 26, 66)

87 It was only after Pikoli's affidavit was filed through me on 25 January 2019 that the NPA then revealed the existence of the political interference and then also filed the affidavit of Macadam which further detailed the extent of the alleged political interference the NPA was subjected to. Macadam's affidavit was signed on 1 November 2018, well before the NPA's answering affidavit was signed and filed. The Full Bench judgment reads: *"It begs the question as to why such an important affidavit was not filed as part of the answering affidavit when it was ready and presumably available to being filed."* (IAC 22: Page 27, 67). It further reads "[68] *The suggestion that it was deliberately withheld from this Court is difficult to refute especially given its seriousness and the detailed allegations contained therein of political interference.*" Moreover, this was not how an organ of the State that was

supposed to act without fear, favour or prejudice and in the public interest should be conducting litigation. (IAC 22: Page 27, 69) Cachalia in the SCA judgment also denounced the failure on the part of the NPA and the Minister of Justice for failing to disclose the full extent of the political interference when it filed its first set of answering affidavits. (IAC 17: Page 21, 56)

88 The Full Bench in a 2019 scathing judgment³⁷ ruled that that despite alleged political interference that affected the NPA to properly deal with TRC cases as **the necessary resources were not forthcoming**, the NPA could not portray itself as a victim of the political scheming of the time. Irrespective of what form of alleged political interference occurred, the NPA was enjoined in terms of both its constitutional and legal responsibilities to act on behalf of society and protect the public interest. (IAC 22: Page 27, 69). In any event, the NPA's PCLU continued to exercise control over the TRC matters because it remained in their possession and to a large extent, under their control up until September 2021.

89 The Full Bench also dealt with the matter of how the NPA was required to respond to the high level of political interference. It added that instead of the NPA succumbing to it, it was incumbent upon them to have brought the interference out into the open and into the public domain. Victims of those crimes had the right to know what was happening and why such cases were not prosecuted. Moreover, it was society as a whole who had an ongoing interest in the work of the TRC and

³⁷ <https://www.ahmedtimol.co.za/wp-content/uploads/2020/10/16.-High-Court-Judgment-on-permanent-stay.pdf>, *Rodrigues v National Director of Public Prosecutions of South Africa and Others* (76755/2018) [2019] ZAGPJHC 159; [2019] 3 All SA 962 (GJ); 2019 (2) SACR 251 (GJ) (3 June 2019)

the follow up that the government had committed itself to. Parliament that ultimately represents the legislative authority of the State, had a right to know when the letter and spirit of legislation that it had passed was being deliberately undermined. It found that none of this occurred and therefore the NPA had to accordingly accept the moral and legal consequences of this most serious omission and dereliction of duty on its part. (IAC 22: Page 26, 1st para)

90 The NPA ACT³⁸ provides as follows:

90.1 *“32 Impartiality of, and oath or affirmation by members of prosecuting authority*

(a) A member of the prosecuting authority shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law.

(b) Subject to the Constitution and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.”

91 It was for these reasons the Full Bench ruled that the conduct of the relevant officials and others outside of the NPA at the time should be brought to the attention of the NDPP Adv Shamila Batohi for her consideration and in particular, to consider whether any action in terms of section 41 (1) of the NPA Act is warranted:

92 Section 41 of the NPA Act provides that *1) Any person who contravenes the provisions of section 32 (1) (b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such*

³⁸ 32 of 1998.

fine and such imprisonment. (2) Any person convicted of an offence referred to in section 28 (10) or 29 (12) shall be liable to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment. (3) Any person who is convicted of an offence in terms of a regulation made under section 40, shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

- 93 The onus after the Full Bench Judgment was on the present NDPP Batohi, appointed on 1 February 2019, to consider taking action against NPA officials Macadam and Pretorius. The SCA ruled that the Full Bench had rightly recommended a proper investigation into the conduct of officials involved by the NDPP and a determination was to be made whether any action in terms of section 41(1) of the National Prosecuting Authority Act 32 of 1998 (NPA Act) was necessary.
- 94 The applicant Rodrigues appealed the SCA decision. However, on 22 June 2021, the SCA ruled that his application for leave to appeal against a permanent stay of prosecution was refused, but leave to appeal was granted for the Constitutional Court to decide whether his rights to a fair trial were violated because of the delay.
- 95 In May 2021, Rodrigues appeared on an unrelated matter in court. This matter occurred fifty years prior to the date of his court appearance which is the same time period (50 years) for the death of my uncle. On this occasion, he pleaded guilty in the Pretoria Magistrate court for sexually / indecently assaulting his daughter, who was a minor at the time. **(IAC 26)** He passed away four

months later denying my family and I the right to know what happened to my beloved uncle.

96 Despite the indecent / sexual assault charges been such a serious *crime*, the NPA applied an alternative dispute mechanism reserved for less serious cases. **(IAC 27)** After an apology was given by Rodrigues, the charges were withdrawn against him. It is still difficult to grasp how charges were withdrawn in such a serious matter when statistics for the 2022/2023 fiscal year reveals a total of 43, 037 reported rape offences were committed in South Africa.³⁹ Given the high rate of Gender Base Violence (GBV) related cases and the stance adopted by government, it is strange how the NPA allowed for this process to unfold given its alleged stance to such offences.

97 Rodrigues passed away on 7 September 2021 bringing an end to our attempts to find closure. On 3 November 2021, Ben Minnaar, counsel for Rodrigues requested⁴⁰ the Constitutional Court for the matter to proceed. He argued that there were a number of other cases before various courts in the country, and the same issues would arise that needed to be resolved. **(IAC 28).**

98 On 14 January 2022, the Foundation for Equality Before the Law (FEBL) filed a notice of motion for leave to appeal on behalf of the late Rodrigues. **(IAC 29).** On 24 February 2022, this was dismissed as the applicant Rodrigues was deceased. This unfolded in terms of rule 7(1) and 7(2) of the Rules of the Constitutional

³⁹ <https://www.statista.com/statistics/1400289/number-of-rape-offenses-in-south-africa-by-province/>

⁴⁰ <https://www.ahmedtimol.co.za/wp-content/uploads/2021/11/Rod-Letter-to-Registrar-Con-Court-3-November-2021-1.pdf>,

Court.⁴¹ **(IAC 30)**. It was a grave injustice to the Timol family and myself, that Rodrigues was not held accountable and evaded justice for his role in the murder of uncle Ahmed as per the 2017 inquest verdict.

99 On 27 May 2022, I lodged a complaint with the Office of the Chief Justice (OCJ). **(IAC 31)**. My prayer was for the Office to investigate the prolonged time delay in hearing the Rodrigues appeal. For ease of reference, I indicated a timeline. It took 47 years to overturn the ruling of suicide and another three years for the judiciary to decide on Rodrigues' applications. Inevitably, five decades later, the wheels of justice ground to an abrupt halt and Rodrigues was never held accountable for his actions. My complaint was in view of the inconsistencies that I witnessed on how other matters were prioritised, e.g. matters relating to President Zuma amongst others. From my perspective, important matters relating to our tragic history were not prioritised. In the end, the Rodrigues matter took forever with him dying before his criminal trial could commence.

100 The response received was that due to the case of Rodrigues being dismissed by the Constitutional Court on 24 February 2022 and a Court Order that was issued, the matter was not in the mandate of National Complaints Officer. I was further informed that the mandate of the OCJ was limited to investigating delivery complaints related to the SCA. In addition, I was informed that when a Court Order is issued, the officials of the OCJ cannot investigate matters pertaining to court orders and processes where Presiding Officers, Judges, arrive at decisions they

⁴¹ <https://www.ahmedtimol.co.za/wp-content/uploads/2021/11/doc00030120211110152433.pdf>,

make. In conclusion, the OCJ informed me that they had no mandate to investigate matters where the Constitutional Court made a decision and my complaint was therefore closed. In my view there was something wrong. It has been repeatedly raised that TRC matters are of vital importance given the time period within which it occurred and was investigated and then enrolled for guidance from the highest courts in the land. Given the urgency in dealing with the TRC matters, the matters could not just be placed on the court rolls awaiting decisions and dates.

101 What was most concerning for me was that almost four years had passed since the Judge Mothle 2017 ruling and Rodrigues was never held accountable for his role in the murder of my uncle. I witnessed the slow wheels of justice in a matter of critical significance not only for the Timol family, but for the country in addressing its painful past, grind to an abrupt halt. The raw pain of still not knowing what happened to our loved ones was left untreated. I am therefore of the view that the NPA and DSO, with SAPS, through CATS / DPCI must take full responsibility for their failure to act when they had a constitutional obligation to do so.

102 As for the allegations of political interference, this was introduced by me in my affidavit as advised by my legal counsel. At the time, I believed that it was the correct analysis of what transpired preventing post-TRC investigations and prosecutions. I now hold a different view, which is discussed here under.

ELS AND SONS

103 To add insult to injury, both the NPA and CATS / DPCI failed to again deliver on their constitutional mandates. This as the challenges continued on the Els and

Sons matters. This started from the failure to investigate or causing to investigate the matter properly, to the juggling of the Els and Sons matters between PCLU, the National Office (National Prosecuting Services – NPS Representations) and the DPPS office in Pretoria, in my view, it was a comedy of errors. Judge Mothle recommended that in respect of Sons and Els, that *“their conduct be investigated further with a view to raise appropriate charges”*. (IAC 16: Page 125, 332 and 333)

104 My simple understanding of the law was that the crux of Judge Mothle’s recommendation was in response to Els and Sons, both SB members, denying having any knowledge of detainees been assaulted at JVS. However, the late Professor Naik (Naik) testified at the re-opened inquest that Els was one of his interrogators, and as a result of torture, he lost mobility in his hand. Moreover, Els’s file confirms that Cukula Sidwell⁴² brought a civil suit of assault against Els and Maj A B Cronwright and Warrant Officer (W/O) N J Deetlefs.⁴³ **(IAC 32)**. Cronwright was later implicated with SB Nick Deetlefs in the Aggett matter. Deetlefs also played a role in another re-opened inquest into the death of Mr Ernest Dipale who died approximately six months, after Aggett, also at JVS. Certainly, to me this was not a co-incidence and given that my uncle died in 1971 and the subsequent civil claim was instituted some nine years later, it would not be conjecture to draw the conclusion that assaults and torture were routinely exercised by the SB.

⁴² Siviele Eis: S Cukula Teen Die Minister Van Wet En Orde. Ref: O. W :50969R/8(1). Pages 121 – 129, Neville Els personal file: <https://www.ahmedtimol.co.za/wp-content/uploads/2020/03/J3-Neville-Els%E2%80%99-police-file.pdf>

⁴³ Multiple assault allegations have been made against Cronwright and Deetlefs in the case of Neil Aggett and elsewhere

104.1 Cukula was assaulted and tortured between 6 and 9 May 1980, first at a police station near Baragwanath Hospital and then at JVS. He alleged that he was punched in the head and face, lifted by police and dropped on his back, and he was subjected to electric shocks, including on his genitals.

104.2 As for Sons, who was notorious, there were six additional affidavits of detainees provided at the re-opened inquest which showed he tortured the complainants, confirming that he was lying to the presiding judge about knowing about assaults at JVS. The crux of the issue was that he lied to a judge under oath during the 2017 inquest. The issue was lying to the judge under oath and not the assaults. It was bewildering on what grounds learned prosecutors from the NPA, alleged that assault had prescribed because the issue was never about the assaults. Furthermore, it would seem this “misunderstanding” of the law even effected decision makers at the Head office of the NPA.

105 Despite cases being opened against Els and Sons in October 2017, the NPA DPP North Gauteng made a decision on 21 May 2020, almost three years later, not to charge either of them. **(IAC 33)**. After successfully applying for the Els and Sons docket with a PAIA application, I learnt that this decision was taken without taking any additional statements from any of the named witnesses. In my view, this is also a damning indictment on the investigators as well. This was more difficult to understand because all the witnesses who alleged the assaults, had provided statements during the 2017 inquest.

105.1 On 21 June 2020, Mr Moray Hathorn from Webber Wentzel (WW) represented me by making a submission **(IAC 34)** to NDPP Batohi to review the decision of the

Acting Director of Public Prosecutions (Pretoria) Adv G Baloyi made on or about 21 May 2020 not to prosecute Els and Sons. Our representations responded to four issues that the NPA's Acting DPP Baloyi referred to in his decision to decline to prosecute:

(1) The claim by the NPA that Els was not on duty. The silence on the part of Baloyi on making any reference to or considering the content of the Naik detention file could only be assumed that the NPA did not consult the file.

(2) Old Age and Memory. The most telling on the part of Baloyi was that he made no point to any evidence of ill health or memory loss on the part of Els and Sons. In fact, he also made no reference to any medical records to this effect that were supplied by Els and Sons. The grounds based for not charging was only based on the age of the suspects and the long effluxion of time since 1971. In my opinion, without disclosure, this amounted to speculation on the part of Baloyi.

(3) Claims that Sons was not properly placed under oath. In view of Son's senior rank and long experience in the police, there was absolutely no reason for Judge Mothle to doubt his understanding of the oath or impute any skepticism. Sons took the oath and it was accordingly binding on him throughout his testimony, notwithstanding the judge's reminder to him of the risks involved. In any event the giving of false evidence in courts by SB officers was hardly novel. Indeed, it was the *modus operandi* required of SB officers in inquests under apartheid and it appears that this practice is still routinely pursued by most former SB officers who appear in more recent inquests.

(4) Claims that Els and Sons did not testify at the first inquest. This was incorrect as Els's statement was one of the first exhibits submitted in the first inquest and was also part of the second inquest. In addition, this was available on the internet. Therefore, one has to ask if the Acting DPP and his team consulted the inquest records in any depth over the two-and-half years if it took them to reach the decision not to charge Els and Sons. Regrettably, the inference can be drawn that at best that this decision was a rushed last minute cursory perusal that in turn points to the manifest unreliability of this decision. We reminded the NDPP that respectfully none of the reasons put up by the Acting DPP for declining to prosecute in this matter withstood scrutiny. Regrettably, we came to the conclusion that even after a two-and-half year delay, no serious investigation was launched into these two cases. Lastly, our concern was that the failure to hold former SB officers accountable for misleading the court and lying under oath, would simply invite others to do the same.

105.2 I sent an email reminder to Batohi on 27 May 2022 that we had entered the fifth year of investigations into this matter. This was one of numerous emails that I sent following up on this matter. On the same day, the NPS responded⁴⁴ that the IO was tasked to obtain a sworn statement from Essop and thereafter a decision would be made against Els and Sons.

106 In summary, for every follow up that I sent on the status of the investigation on Els and Sons, a different set of reasons were presented in response.⁴⁵ (IAC 18) It was

⁴⁴ <https://www.ahmedtimol.co.za/wp-content/uploads/2022/06/doc02200620220527114204.pdf>

⁴⁵ <https://www.ahmedtimol.co.za/timeline-neville-els-and-seth-sons/>

unclear as to who oversaw the matter as by September 2021, we were already informed of the set-up of a new TRC component. Correspondence was now coming from an Adv Trish Matkze and I learnt later that she was dealing with representations, appointed as a Special Director. There was no indication that the TRC component had dealt with the matter as it would have been expected. I subsequently did meet her at an Apartheid-era Victim's Family Group (AVFG) meeting with the NPA. What was also peculiar was that Els and Sons were encouraged to make representations. In my view, the NPA either had a case against them or not. Rather, instead of charging them, they invited them to make representations, only then to decline to prosecute them because of age and alleged memory loss.

107 In February 2023, I was notified in a memorandum of a decision to prosecute Els and Sons **(IAC 35)**. However, on 7 July 2023 I was informed that it was no longer "feasible" to prosecute and the matter has subsequently been closed. **(IAC 36)** The explanation provided was that Naik had passed away and they had hoped that Essop's evidence would enable the State to present sound evidence against the accused. Furthermore, such evidence would be supported by circumstantial evidence from other witnesses who would testify about assault and torture they experienced at the hands of security police at JVS. In addition, efforts to obtain a sworn statement from Essop who resided in London were unsuccessful due to his deteriorating health condition. As a result, the State was not in a position to lead evidence of key witnesses in this matter. This was revealed by the NPA after five years and nine months after the case was opened against both. In my view, the

entire point of the investigation and prosecution was missed, deliberately or otherwise. I am inclined to argue how seasoned prosecutors at the Head Office missed this as well. Certainly, prosecutors cannot be ignorant of the law and the elements required to prove a case. From my perspective, these cases were about lying under oath to a high court judge, not so much as it was about the assaults that had prescribed.

108 I am of the view that there was no will on behalf of the NPA to prosecute Els and Sons. Just like the Rodrigues matter, the cases against Els and Sons was the proverbial hot potato tossed from the DPPS office in Pretoria to the National Office and back. Neither wanted to make a decision on the matters and this is an indictment on our criminal justice system. I am given to believe that both Els and Sons are still alive and well, enjoying their freedom. Similar to Gloy, Van Niekerk and others who lived a full life after murdering my uncle.

109 Ultimately, the outcome was that Rodrigues, Els and Sons were not held accountable for their actions resulting in the murder of uncle Ahmed and torture of other detainees. I believe that the Rodrigues matter was prolonged to prevent his criminal case commencing. Similarly, Els and Sons were “protected” and never charged despite my persistent efforts reaching out to the Ministry of Justice, NDPP and DPCI. In my view, it cannot be pure co-incidence that Rodrigues, Els and Sons never faced up to a day of accountability. Moreover, the same role-players, NPA, DPCI were again involved in failing to investigate and prosecute TRC matters.

- 110 Families, like myself were consistently let down. It was no co-incidence that on the 26 April 2019⁴⁶ the former Minister Masutha announced that the Ministry had authorized the NPA's request to re-open the inquest into the death in detention of activist, Aggett. The matter did not include PCLU prosecutors, but rather prosecutors from the DPP's office in Johannesburg. I believe that it was only when these matters were moved out of PCLU, that progress was seen. In the same week of the announcement of Aggett's inquest, one of his interrogators, W/O Stephen Whitehead passed away. **(IAC 37: Page 9, Para 1)** This was a similar trend like the Haffejee matter.
- 111 On 16 August 2019, the former Minister of Justice Lamola issued a Press Release (PR) announcing that the inquests into the death of Haffejee was to be re-opened. Three days later on 19 August 2019, James Taylor, the last surviving member implicated in the death of Haffejee died.⁴⁷ **(IAC 38: Page 20, 53)** In this matter as well, the prosecutors from Johannesburg were involved in guiding and investigating the matter and not PCLU. It was eventually "migrated" to the office of the DPP in KZN when another prosecutor was appointed to lead the evidence, with the same investigator, W/O Kgamanyane. I was extensively involved in eliciting the witnesses in this matter and represented the family as their spokesperson.

ASSISTING OTHER FAMILIES

- 112 I participated in three task teams post-2017 inquest. The purpose of the task teams were to assist other families to get closure and answers on what happened to their

⁴⁶ https://www.justice.gov.za/m_statements/2019/20190816-Inquests.html;

⁴⁷ https://www.ahmedtimol.co.za/wp-content/uploads/2021/08/Opening-Address_Dr-Hoosen-Haffejee-1708.2021-Final.pdf

loved ones. Even though the Timol finding had been reversed, I was of the view that together with families we could collect information and evidence, mirroring my journey of investigation, to show that the loved ones and victims in other families had also died under suspicious circumstances. This was provided at no expense to any person as I believed it was my calling. Furthermore, the manner in which my matter had been investigated was at no cost to my family or myself.

113 The first task team commenced around February 2018 and included representatives of FHR, Legal Resources Center (LRC), Khulumani Support Group, the Legal firm Webber Wentzel (WW) (including foreign interns), Advvs. Varney and Thai Scott, private investigator Frank Dutton and Oryx Media (Benny Gool and Roger Friedman). The task team collapsed around 2018 after one of the attendees from FHR / WW refused to share information with participants of the meeting. Transparency and strategy were important in actioning a plan to expedite TRC matters. No further meetings took place.

114 In March 2018, meetings for the second task team commenced between the NPA, DPCI investigators to investigate TRC matters, and myself and FHR's private investigator, Dutton. The purpose was to guide investigators along the lines that I had conducted my investigation into my uncles' matter by introducing them to different investigative tools to utilise in investigating decade old matters. My role was purely to assist IOs. Together with a single prosecutor, I compiled a training manual accompanied with an investigative template. During the meetings, I consistently raised the concern of allocating white apartheid-era investigators as families did not automatically trust these investigators and prosecutors. Race was

and remains a sensitive subject and given that TRC investigations and prosecutions are sensitive, this needed to be factored in. One of the other major challenges faced by the task team was accessing apartheid-era archives.

115 At the third meeting with the second task team, around April 2018, a senior DPCI official made insensitive remarks about the 10th floor. After raising my concerns about his insensitivity and disparaging remarks in an e-mail, the NPA's Pretorius sent formal correspondence to my legal counsel requesting my removal from the task team alleging that I was conflicted. This despite the fact that General Ledwaba who was involved in these meetings attempted to broker a meeting with me to address the insensitive remarks, accepting that there was insensitivity by her members. I was very aware of the close relationship between some members of CATS who investigated TRC matters in 2018 and the NPA PCLU's officials. Why Pretorius requested for my ejection was beyond me. I raised the issues around DPCI and not the NPA. My counsel regrettably agreed to the request of my removal. **(IAC 39)**

116 The allegations against me that I was conflicted were unfounded as my sole intention was to assist other families. Moreover, I believe what brought on the request of my removal was based purely on the fact that I raised an objection to the insensitivity of the remarks made by a police official about people being "thrown" down from JVS. The issue of the Timol matter was not even the subject at the Task Team meetings because a decision has already been taken. After my removal, Dutton moved to the State Capture Commission as a lead investigator. I am led to believe that there were no further meetings with the task team. To the

best of my knowledge, the team of investigators that was making progress, collapsed. As a result, a model that was created and was effectively implemented, had prematurely ended with the work of the task team as it collapsed.

117 On the subject of preservation of inquests with archives, I had already taken an initiative in June 2018 when I submitted a memorandum to the DOJ& CD to lobby policy makers and government to preserve all inquest records, in particular those relating to persons who died in police custody under the rule of the Apartheid Government.⁴⁸ Amongst those copied were, Minister of Justice, Adv TM Masutha, Deputy Minister John Jeffery, Director Legal Services, Mr B Williams, Ministerial Spokesperson Adv M Mahaga, Parliamentary Liaison Officer and Ms J Tshabalala. No one responded and in my view records continue to be destroyed in line with Justice policy to destroy records after ten years. **(IAC 40)**.

118 I am of the view that all apartheid-era archives must be de-classified and released in the public domain. This must also include all TRC documentation. **(See paragraph 19 of this affidavit)**. It makes no sense for re-opened inquests not to have access to apartheid-era records that remain in possession of government departments who appear to be reluctant to hand over apartheid-era secrets.

119 I was instrumental in the 2019 formation of the Apartheid-era Victim's Family Group (AVFG).⁴⁹ This after families reached out to me to seeking assistance in re-opening their matters. It was an honour and privilege for me to assist and provide

⁴⁸ PROPOSED AMENDMENT TO STANDING DISPOSAL AUTHORITY PERTAINING TO FINALISED INQUEST DOCUMENTS IN POSSESSION OF DEPARTMENT OF JUSTICE AMENDMENT TO ANNEXURE "B" OF THE CODE "ARCHIVES" YOUR REFERENCE 7/2/3 ARCHIVES A10 DATED 13 JUNE 1986, dated 24 June 2018

⁴⁹ <https://www.ahmedtimol.co.za/apartheid-era-victims-family-group-avfg/>

my guidance on my life-long experiences. Again, this was at no cost. Our primary objective was for families to have their own voices and not to be only represented by legal counsels and sit like bystanders in the gallery as the deaths of our loved ones played out in courts, sometimes to the exclusion of loved ones. **(IAC 41)** In my view, progress was been made until the second task team collapsed.

120 A third task team commenced in mid-September 2020 that involved ANC officials from Luthuli House, FHR members and members of the AVFG. The DOJ&CD Minister at the time Ronald Lamola and Deputy Minister Jeffery participated in these meetings. A detailed plan was presented that involved lobbying the support of law students from academic institutions, legal firms in the public domain that included Black Lawyers' Association (BLA), Advocates for Transformation and the Muslim Lawyers Association. It was important to enlist the services of Black legal representation to be involved in these matters. **(IAC 42, Page 8, Para 2)**

121 In one of the meetings, the FHR had tabled the matter of The President's Fund that had a balance of approximately R1.8 billion (at the time). These funds were designated for TRC reparations. An opinion was sought from the Office of the Chief State Law Adviser on whether the President's Fund can cover general administrative costs. The legal opinion was that the funds could not be utilised to cover legal costs for counsels representing families. **(IAC 43)**

- 122 Once again, significant progress was underway when the task team collapsed⁵⁰ after the May 2021 screening of an Al Jazeera⁵¹ documentary, “*My Father Died for This*” in relation to the Cradock Four assassinated by security forces in 1985. The ANC’s task team member Krish Naidoo commented in the documentary that there was no explanation for why there were no successful prosecutions of TRC cases in 27 years of democracy. He elaborated that this could have been lack of focus, bad planning and not being prioritized properly. Naidoo added that he was not aware of any agreement regarding non-prosecution of apartheid-era crimes. Some matters would have slipped through the cracks and the Cradock Four case would have been one of them.⁵² (IAC 42: Page 1, Para 5) After the screening of the documentary, the FHR sent a letter to Naidoo and the Task Team Chair, the late Ms Duarte on 14 May 2021 demanding to know if his views expressed were the ANC’s position or an attempt to mislead the public by protecting the ANC’s members from scrutiny on alleged political interference. (IAC 42)
- 123 According to Naidoo, a former human rights lawyer, it was important to get to the bottom of the alleged political interference and to establish where it came from. If it was public service officials, it needed to be reported to the appropriate officials for further investigation and action. He further added that if it was ANC politicians, then the FHR should name these politicians, and the ANC would act thereupon. Lastly, Naidoo asked that the FHR be forthright about the information it had around

⁵⁰ <https://witsvuvuzela.com/2021/06/11/doubts-raised-over-student-role-in-prosecuting-apartheid-crimes/>; Doubts raised over student role in prosecuting apartheid crimes, by Natasha Joos | Jun 11, 2021

⁵¹ People & Power: *South Africa: My Father Died For This*; <https://www.aljazeera.com/program/people-power/2021/5/6/south-africa-my-father-died-for-this>

⁵² <https://www.ahmedtimol.co.za/no-slipping-through-the-cracks-for-trc-cases/>

political interference so that something could be done quickly. (IAC 42: Page 3, Para 5)

124 Naidoo was of the view that the FHR was not very happy with the government's role and the ruling party in resolving apartheid-era crimes and they were entitled to lament about this. He further added that FHR's main purpose of the meeting **(See paragraphs 120 and 121 of this affidavit)** was to solicit ANC assistance to access the President's fund. Naidoo believed that this would have enabled FHR to pay for legal services and to persuade government to establish a dedicated prosecution unit to expeditiously deal with outstanding cases. (IAC 42: Page 4, Para 2) The result was that after the screening of the documentary, there were no further meetings of the task team.

125 In the end, efforts of the three task teams (2018 – 2020) were highly significant steps towards advancing investigations and prosecutions of TRC cases. I had witnessed the collapse of the task teams that was a life learning experience on how progress in confronting TRC matters were collapsed for serving various reasons.

OPEN LETTER TO NDPP

126 In February 2020, I sent correspondence to NDPP Batohi⁵³ bringing to her attention the scathing ruling of the South Gauteng Full Bench on the Rodrigues

⁵³ <https://iol.co.za/news/opinion/2020-02-18-an-open-letter-to-the-ndpp-shamila-batohi-investigate-trc-cases/>.

matter, dated 03 June 2019. Extracts of my correspondence included the following from the Rodrigues Full Bench Judgment:

“Finally, there must be public assurance from both the Executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again. In this regard, they should indicate the measures, including checks and balances, which will be put in place to prevent a recurrence of these unacceptable breaches of the Constitution.” (IAC 44: Page 2, Para 4)

127 I received no response from Batohi to my correspondence. I found it peculiar for me to remind the NDPP that a finding of the Full Bench needed to be acted upon. Almost three years later, the NPA announced the appointment of Adv D Ntsebeza, SC to look into the matter **(SEE paragraph 151 of this affidavit)**

LETTERS TO PRESIDENT RAMAPHOSA

128 In June 2020, the AVFG penned an open letter to President Ramaphosa⁵⁴ **(IAC 45)** calling for an apology to victims and requested the appointment of a COI to investigate alleged suppression of TRC cases. We reminded the President that a year had passed⁵⁵ since our letter as families and former TRC Commissioners were sent to him and no response was received to date.

129 We added, *“We boldly and frankly state, Mr. President, that the deafening silence of the ANC and the government that leads to our pleas is an insult to us and all the memory of all fallen comrades. Men and women who were callously murdered by*

⁵⁴ <https://www.ahmedtimol.co.za/letter-to-president-ramaphosa-call-for-an-apology/>,

⁵⁵ https://cisp.cachefly.net/assets/articles/attachments/77306_trc_letter_to_the_president_5_02_2019.pdf

the apartheid regime. The country and the democracy that you lead today was not handed to us by Mr. F W de Klerk and his ilk. It was gained through the blood of our martyrs. Men and women who your government has today apparently decided to banish to the dustbin of our history. (IAC 45, Page 7, Para 1)

129.1 *Mr. President, we can no longer continue to remember our martyrs only during the elections cycle or when the anniversaries of their brutal killings roll around or when Presidents confer upon them posthumous awards, or renaming streets. We believe that our loved ones can only be respectably honoured when the truth around their deaths is completely revealed. We ache to know how and why they were murdered and most importantly who ordered their deaths and then murdered them. As far as we their families are concerned, it is the reversal of apartheid-era inquest findings so that those that were complicit in their deaths should be held accountable and whose names should be publicly shamed.” (IAC 45, Page 7, Para 2)*

130 We received no response from Ramaphosa. It required a lawsuit for Ramaphosa to respond to the pleas of families.

131 I also penned an open letter to ANC President Cyril Ramaphosa⁵⁶ on 11 November 2021. I reminded him that 27th October 2021 marked the 50th anniversary of my uncle’s death. On the day of the anniversary of his death, uncle Ahmed’s friends gathered at the Roodepoort Cemetery, and outside Johannesburg Central Police Station, where he was murdered, to commemorate his life and the vindication of the overturned inquest. **(IAC 46)**

⁵⁶<https://www.ahmedtimol.co.za/open-letter-to-president-ramaphosa/>

- 132 I brought to his attention that I did not participate in these events. For me, it has been 50 years of secrets, lies, cover-ups and dead ends – each forward step raising a swirl of new unanswered questions that remain unanswered till this day. I therefore paid tribute to my uncle on my own. (IAC 46: Page 2, Para 1 and 2). At the event hosted by the Ahmed Kathrada Foundation commemorating the anniversary, the organisers were denied access to the police station.⁵⁷
- 133 In attendance were former TRC Commissioners and the Minister of Justice Lamola at the time. I interpreted the decision not to provide access as them not supporting the programme or the efforts to see progress on TRC matters. Many of the overturned inquests had already placed the spotlight on JVS viz Timol, Aggett, Mr Ernest Dipale and others where it was alleged that detainees had hung themselves.
- 134 I also reminded Mr. Ramaphosa that the NPA / DPCI in joint statement dated 27 June 2021 announced the appointment of a dedicated unit to investigate TRC cases earlier in 2021, **(IAC 47)** the FW de Klerk Foundation backed up Rodrigues’ amnesty claim. In an undated press release, the Foundation **(IAC 48)** referred to an *“informal agreement between the ANC leadership and former operatives of the pre-1994 government”*.⁵⁸ (IAC 46: Page 2, Para 11) I added, *“President, as a leader of the historic negotiations, with Roelf Meyer and others, that led to the*

⁵⁷ <https://www.iol.co.za/news/politics/timol-memorial-saps-denies-kathrada-foundation-access-to-joburg-central-police-station-b8e638d6-5691-4a49-b9c9-74f2fb927a4d>; Written by [Loyiso Sidimba](#) Multimedia Journalist, IOL Politics Published Oct 27, 2021; accessed 28 October 2021 (Incorrect caption in the pic that Imtiaz Cajee was laying wreaths at Uncle Ahmed’s grave. I did not attend).

⁵⁸ FW de KLERK FOUNDATION: THE NPA’S DECISION TO PROSECUTE ‘APARTHEID ERA’ CRIMES; <https://fwdeklerk.org/article-the-npa-s-decision-to-prosecute-apartheid-era-crimes/>

advent of democracy in 1994, I beg you for enlightenment on the terms of the secret deal. Not just the families who lost loved ones, but millions of South Africans victimised by the apartheid system deserve to know. We owe it to our martyrs to hold those responsible for their deaths accountable, to know the truth. The late Rodrigues is just one of them". (IAC 46: Page 2, Para 11 and 12) I received an acknowledgement of my correspondence with no response to my letter.

135 It was disheartening for me that the President of the country and the ANC not to respond to correspondence relating to the country's tragic past. Moreover, for someone who was directly involved in the political settlement reached with the apartheid regime, he could have shed valuable information related to post-TRC prosecutions.

AVFG / NPA & DPCI

136 On 11 July 2022, the AVFG sent correspondence to NDPP Batohi seeking a meeting with the NPA. **(IAC 49, Page 2, 8)**. We reminded her that we remained committed to working with her team in the spirit of seeking truth and justice for our families and offered our support to the NPA. We also remain committed to ensuring the continued protection and preservation of the integrity of the investigative and prosecutorial processes. In our view, this was the most viable alternative. We could sit from the sidelines and condemn the NPA and DPCI or choose to assist with accessing families and providing support where we could assist with the investigations.

- 137 The late Deputy National Director of Public Prosecutions (DNDPP), Adv. Rodney de Kock responded to the above-mentioned correspondence and invited us to first meet each of the DPPS, prosecutors and investigators. This was unprecedented. It demonstrated transparency and a commitment to working together to get justice, without prejudicing anyone. For the first time, families were given access to investigators and prosecutors. However, a very clear line was drawn for us to not interfere with the prosecutorial or investigative functions of both institutions. In the end, DPPS, provincial heads, prosecutors and investigators offered us a platform to be heard, without interruption. The pain of been ignored for decades and kept in the dark with no access to justice came to the fore when each division allowed us as families to tell our stories.
- 138 Since September 2021, the newly formed TRC component put in place by de Kock demonstrated commitment to addressing post-TRC prosecutions with a model that is largely based on what I implemented during our 2018 second task team meeting. This was supported by my recommendations made to Judge Mothle during my evidence at the re-opened inquest in 2017 to put together a select team to deal with TRC matters. This included amongst others, creating a dedicated team of carefully selected investigators and prosecutors. This would enable energetic and vigorous investigations of outstanding apartheid-era cases before it was too late. What transpired was that investigators were employed as a result of a request by NPA / DPCI for ex-police officers. (IAC 47)
- 139 The AVFG has conducted historical meetings with the Directors of Prosecutions (DPPs), TRC Nodal points within the divisions, prosecutors and IOs (exclusion of

IOs in Johannesburg Division) in five divisions where AVFG members reside (**IAC 50**) at the invitation and intervention of de Kock. This was aimed at ensuring that AVFG families have direct access and contact with their respective IOs and prosecutors assigned to their cases. When family members are unhappy with the status of their investigations, a mechanism has been developed where their concerns are escalated first to the TRC Nodal Points with each Division and then the DPPS when all else fails. For the first time, families engaged with IOs and prosecutors, without prejudicing anyone's rights and with respect to the Rule of Law. Families continue to receive regular updates on their matters.

140 This is unprecedented as previously, apart from the silo and somewhat strange approach by CATS and PCLU, prosecutors and investigators remained inaccessible to families in the past. This transparent approach adopted by the current TRC component was never followed by PCLU. In my view, it goes a long way in establishing a relationship of trust, mutual respect, dignity and generally a healthy working relationship.

141 I have been critical of the appointment of former apartheid-era officers to investigate TRC cases as they are required to investigate their former colleagues and their loyalty will be tested. I do not regret to have been critical of these appointments as I have been proven to be correct. During the re-opened Aggett Inquest, the IO who had investigated the Timol matter, Nel testified that he was called a "*verraier*" (sell-out)⁵⁹ by his colleagues when investigating TRC cases.

⁵⁹ <https://www.sabcnews.com/sabcnews/aggett-inquest-concluded-judge-moves-to-ernest-dipale-case/>

(IAC 51: Page 2) The question that must be asked is, did this affect Nel's ability to perform investigations into TRC matters? Is this partly why little or no investigations occurred into TRC matters? Moreover, there is no evidence that any other investigator apart from Nel was seized with TRC investigations prior to 2017. As for the current appointments, they cannot be reversed. However, I am of the view that their performances must be assessed before renewing their contracts. It must be noted that IOs appointed by some attorneys are also former apartheid South African Police Force (SAP) employees. I am aware of a re-opened inquest where a witness refused to testify after his statement found its way into the hands of a private investigator who was previously appointed before 1994. It was the fear of this person that resulted in him refusing to testify.

142 Even if one had to argue that there is no evidence to state that the investigation might be tainted by their appointments, police officers cannot be the judge, jury and executioner in their own cases. The same can be said of the NPA where its officials served the system of apartheid diligently before 1994. They supported and entrenched a system that was declared a crime against humanity. They were responsible for prosecuting anti-apartheid activists who opposed apartheid. Some were even responsible for death penalty cases where activists were hanged. After they were groomed and sworn in to serve an apartheid government, post-apartheid, they were to now oversee the decision – making progress on TRC matters. Therefore, I am of the view that there is a conflict of interest for them to be dealing with matters emanating from the TRC when many lost their lives in the fight against apartheid.

- 143 However, as part of the AVFG's current strategy to work with the NPA and DPCI, any undercurrent that could affect a decision is noted and dealt with accordingly. It is encouraging to note that the posts for 19 permanent prosecutors for TRC matters was approved and is underway. **(IAC 52)**. However, it is not known if they are former apartheid-era prosecutors or how the selection process would unfold.
- 144 It is an indictment on SAPS/DPCI and the NPA that three decades post-apartheid, they have failed to create a new pool of younger investigators, police officers and prosecutors appointed post-1994 to be assigned to investigate crimes committed by their apartheid government. It is important for this new pool to build trust and have a working relationship with families.
- 145 Furthermore, the introduction of the AVFG has changed the landscape of how investigations and prosecutions are conducted. Unlike previously, where they were kept abreast of developments in their matters by their legal counsels, if at all, it is unprecedented for families to now have direct access to IOs and prosecutors assigned to their respective cases. Moreover, families are clients and must be treated with respect. They understand the contents of the regular updates they receive from IOs and prosecutors. I am therefore of the view that the option for families to liaise directly with the IOs and prosecutors must be encouraged and not prevented. This is historic that such a platform has been created and must therefore be utilised.
- 146 I re-state for emphasis that **the appointment of former apartheid-era IOs and prosecutors in investigating the crimes committed by their former regime and colleagues raises a potential conflict of interest.** After working with their

colleagues during apartheid, after 27 April 1994 they were now expected to investigate and prosecute them. I raised this in the 2nd task team meetings in 2018, only to be removed. **(SEE paragraphs 114 and 115 of this affidavit).**

147 During the course of conducting my research for my book in attempting to understand how the retaining of public servants from a previous political dispensation, I learnt about how it was addressed during the German unification. A concept of lustration⁶⁰ was introduced for the appointment of civil servants. As a result, the brunt of scrutiny was directed towards the German Democratic Republic (GDR) security apparatus, whilst those in political office were unscathed. Also, the judiciary instituted a special case of lustration for those involved in the Socialist Unity Party of Germany (SED) regime. Hence, state attorneys and judges had to undergo a separate individual eligibility assessment to determine if they were to be employed. Their fate was decided by a selection and appointed committees that determined if they would apply and support Federal Republic of Germany (FRG's) values and legal order, and also in the future.

148 The TRC took a different view on lustration. They took a decision not to disqualify or remove from public office those who were implicated in violations of human rights. Rather, political parties and the state should take into consideration the disclosures made in the course of the work of the Commission when making appointments and recommendations.⁶¹

⁶⁰https://www.nurembergacademy.org/fileadmin/publications_images/transitional-justice-in-germany-after-1945-and-after-1990/Transitional_Justice_in_Germany.pdf

⁶¹ VOLUME 1 CHAPTER 1 Foreword by Chairperson PAGE 3, Para 11

149 During the South African negotiations process, Joe Slovo introduced the option of a sunset clause that led to the formation of a coalition government from 1994 to 1999 following the inaugural 1994 elections. In other words, there would be a phasing out of white rule rather than a democratic handover of power. This led to the jobs of apartheid-era civil servants been protected and they did not lose their pensions. As a result, families were forced to depend on them to thoroughly investigate and prosecute TRC cases with purpose and conviction.

150 I believe that all the personnel appointed in the PCLU Office located in the Office of the NDPP were in service pre-1994. There was no co-incidence that only after September 2021 when the TRC matters were removed from PCLU and a new component was formed reporting directly to the DNDPP de Kock (NPS), that progress was forthcoming. Despite its challenges and shortcomings, slowly but surely, progress is evident on TRC matters. It is important therefore for this new component to be supported to ensure progress as I see no alternative process to move forward.

NPA APPOINTMENT OF SC

151 I believe that my dogged persistence and public utterances played a role in influencing the NPA in the appointing of a Senior Counsel (SC) to address this matter. Amongst the findings of the Full Bench⁶² in the Rodrigues Judgement was that the judges were scathing on the conduct of the NPA. It held that *“Despite the fact that it was stated that resources that were not forthcoming to the NPA to*

⁶² <https://www.ahmedtimol.co.za/wp-content/uploads/2020/10/16.-High-Court-Judgment-on-permanent-stay.pdf>

conduct proper investigations, they could not portray itself as a victim.” (IAC 22: Page 22, 57). (SEE paragraphs 84 to 89 of this affidavit)

152 At par 57, the court held the following: *“In whatever form the alleged political interference occurred, the NPA was mandated in terms of both its constitutional and legal responsibilities to act on behalf of society to protect the public interest. In terms of section 179(2) of the Constitution, it empowered the NPA to institute criminal proceedings on behalf of the State, whilst Section 179(4) requires the NPA to exercise its functions without fear, favour or prejudice and requires the enactment of legislation to give effect to this requirement. (IAC 22: Page 23, 58).*

153 Almost four years after the scathing Full Bench Judgement that was delivered in 2019, the NPA announced in a Press Release (PR) on 13 January 2023, the appointment of Adv D Ntsebeza, SC. **(IAC 53)** The purpose of his appointment was threefold:

(1) to review the measures adopted by the NPA to deal with TRC matters. (2) To assess whether the measures put in place are adequate, and if inadequate to make recommendations to strengthen the measures and lastly, (3) to determine whether there was reason to believe that there was information that amounted to a violation of section 41(1) of the NPA Act and to escalate same to the NDPP to address appropriately. The time frame given was three months. The opinion was sourced by the NPA to evaluate the measures instituted by the NPA’s TRC Component, a separate portfolio created specifically to prioritise TRC matters, in September 2021, two-and-a-half-years after NDPP Batohi was appointed.

- 154 Up until the appointment of the team of Adv Ntsebeza, SC and both his colleagues in early 2023, the NDPP, her PCLU Special Directors and CATS investigators who were mandated to ensure prosecutions or undertaken investigations into TRC matters until September 2021, were silent on the issue. Simply put, in my view, during the period when NDPP Batohi was appointed in early 2019 until September 2021, there was little or no progress. This notwithstanding the fact that I had reached out to the NDPP during our meeting held on 17 April 2019 with families, FHR, TRC Commissioners and lawyers when I implored on her to work with us. The appointment of investigative team of Adv Ntsebeza, SC occurred six years after the overturning of the 2017 judgment. In all this time, (2019 - September 2021), the PCLU in the Office of the NDPP continued to remain exclusively at the helm of the NPA overseeing TRC matters since 2003.
- 155 Ntsebeza's mandate, as per 153 (**above**), included conducting a thorough assessment of the new TRC component, a separate portfolio created specifically to prioritise TRC matters, in September 2021. He had to assess whether the measures put in place to deal with TRC matters were adequate. If the measures were inadequate, recommendations had to be made to strengthen them. And if during the process of review, there was reason to believe that there was information that amounted to a violation of Section 41(1) of the NPA Act, to escalate to the NDPP to address appropriately.
- 156 After reading about the appointment of Ntsebeza SC, I had assumed that he would reach out to me to contribute in executing his task in light of the 2017 Timol

judgement and the scathing Full Bench and SCA judgment. After a few months, when I realised this was not happening, I contacted Ntsebeza SC in June 2023 and I submitted my affidavit to him. Unlike previous occasions where my affidavits were prepared by my legal counsel, this was deposed on my own. **(IAC 54)**

157 The NPA published Ntsebeza's findings on its website on 2 February 2024, "*NPA Opinion TRC matters 2023*" for public access. **(IAC 55)** Its findings included the following:

157.1 The Ntsebeza team received submissions from the NPA, FHR, Tebogo Ramagele and family members of the Ladybrand Four, the Calata affidavit submitted to the Zondo Commission and from me (Cajee).

157.2 There were five key outcomes from the Ntsebeza Report. (1) the public had the reassurance that the NPA had adopted sufficient measures, checks and balances to deal with matters emanating from the TRC. (2) the NPA TRC Component had to be capacitated and resourced adequately. Engagements to occur with SAPS on legal fees for accused, financial resources for the SAPS Forensic Unit and securing from the State Security Agency (SSA) the necessary intelligence files for advancing the investigation and prosecution of TRC matters. (3), the NPA's Missing Task Team (MPTT) to be accountable for its work and for it to share relevant intelligence and/or information with IOs and prosecutors of the TRC Component. (4) creating an interactive website as a central repository accessible to the public. This would include information such as pleadings filed in prosecution, progress updates on matters finalised, human remains that have been successfully identified by the MPTT, an indication of which TRC investigations have been

closed or referred for prosecution and disclose the official contact details for the national office of the TRC Component. I have not found any evidence of the NPA responding to Ntsebeza's recommendation.

157.3 Lastly, Ntsebeza SC supported the call of his former TRC colleague Sooka for an independent COI under either section 84(2)(f) of the Constitution, or the Commissions Act, 1947 to investigate the extent of, and rationale behind, the political interference with the NPA between the period 2003 and 2017. Sooka is also a current board member for the FHR and was also its Executive Director (2000 – 2019).⁶³ Ntsebeza SC also served as an FHR Board Member in 2014 (Period is unknown)⁶⁴ and both served as TRC commissioners. Significantly, the time period highlighted by Ntsebeza was in line with the time period mentioned in the Rodrigues Full Bench and SCA Judgment, namely, 2003 to 2017.

RESPONDING TO NTSEBEZA REPORT

158 The following are my responses to the key recommendations that were also published in an opinion piece published in April 2024:⁶⁵ **(IAC 56)**

158.1 It was reassuring to know from an independent authority that there were sufficient checks and balances in place for the NPA to deal with post-TRC matters. This was unprecedented and had never happened since 2003. In addition, selected capacity and resources must be made available. Stakeholder engagement must not only

⁶³ <https://fhr.org.za/about-us/our-supervisory-board/>

⁶⁴ <https://www.gov.za/news/speeches/deputy-minister-john-jeffery-fifth-agm-supervisory-board-foundation-human-rights-15>

⁶⁵ MERCURY OPINION: Ntsebeza Releases Opinion on TRC Matters: What Next? Opinion, <https://iol.co.za/mercury/opinion/2024-04-12-ntsebeza-releases-opinion-on-trc-matters-what-next/>

be limited to SAPS and the security cluster, but inclusive of all government departments. For example, Public Works has access to building plans for police stations, etc. that are required for investigation purposes. Whilst stakeholders remain important, evidence collection and decision making is to be left to DPCI and NPA respectively.

158.2 I agree with the findings in the opinion with regards to MPTT. In my view, the MPTT cannot function independently, and its duties must be incorporated with TRC investigations and investigators. In a Presentation to the Portfolio Committee on Justice and Constitutional Development, Progress on TRC Cases, 17 September 2024, The Missing Persons Task Team (MPTT)⁶⁶ reported recovering the remains of 180 individuals inside South Africa. The identified remains have been returned to their families at special ceremonies hosted by the Justice Ministry across the country. **(IAC 57)**

158.3 However, there is no evidence of any prosecutions emanating from recovering the bodies that must have been pointed out by someone who had knowledge of how the victim ended up in the grave. This ultimately led to the recovery, exhumation and handing over of the bodies to families. Even more concerning are the comments made by the family of the Ladybrand Four in the Ntsebeza opinion that discussions were held around a negotiated agreement or plea bargain in exchange for complete disclosure. (IAC 55: Page 43, 91) If these allegations have been tested and found to be true, they would contradict the findings of the ***Nkadimeng***

⁶⁶ https://static.pmg.org.za/240917_FINAL_NPA_TRC_and_MPTT_PRESENTATION.pptx

judgment (IAC 9) where one of the criteria put forward by the NPA was amnesty been granted in exchange for pointing out of bodies. Part C, 3 (c) (i)⁶⁷. Those amendments, which included this criterion, was struck down as unconstitutional in 2008. If this is indeed the case, it is no wonder that very little tangible progress transpired until the establishment of the new component. Moreover, MPTT was also part of the PCLU.

158.4 In my view, the scathing judgments by the Full Bench (2019) and SCA (2021) in the Rodrigues matter, the Ntsebeza team had an opportunity to engage with persons of interest who alleged political interference, and as per his mandate, establish if there was evidence that amounted to a violation of section 41(1) of the NPA Act. This was not done. In my view, a less expensive but more effective solution was available. Had a criminal case of defeating the ends of justice been registered, an investigation could have ensued. It would have given attention to Senior prosecutors who alleged that there was political interference. The simple question to be asked was which politician interfered with a prosecutor, what was the nature of the interference and to what extent did it interfere with the functions of the prosecutors which affected the ability of the prosecutors to not pursue the TRC cases with which they were seized. The named prosecutors would have been interviewed by the SAPS and statements taken from them. This would have included Senior NPA officials from former NDPP Vusi Pikoli (resigned), Senior prosecutors in the PCLU that reported to the NDPP, Adv Anton Ackermann

⁶⁷ (i) The degree of co-operation on the part of the alleged offender, including the alleged offenders endeavours to expose—the truth of the conflicts of the past, including the location of the remains of victims;

(resigned), Dr Pretorius (retired) and Adv Macadam (after retirement working at the NPA on a contractual basis) and Dr Susan Bukau (resigned) amongst others. Lastly, if the evidence pointed at former President Mbeki and former Minister Mabandla as alleged, warning statements would have been taken from those accused of alleged political interference. Once these statements were collected, clarity would have been provided on how to proceed. These statements could also have been obtained if Ntsebeza SC interviewed them when the NPA took a decision as per their terms of reference for the Ntsebeza Report.

158.5 I argued in my opinion piece (IAC 56: Page 2, para 4) that as demonstrated in other COI's, all evidence adduced cannot be utilised in subsequent criminal proceedings. In my view, this commission must look at other ways to ensure that admissible evidence is secured. This would entail for SAPS to open an investigation into alleged political interference, running parallel to commissioned COI.

158.6 I am reminded of the 2022 Judicial Commission interview conducted with Justice Madlanga and his interaction with Commissioner Malema whether COIs add value to our judiciary or our democratic society? Malema posed the question if since 1994, has COIs played any significant role which helped ordinary people to receive justice"? To which Justice Madlanga responded, *"of the few that I can think of, I cannot think of something that has tangibly redounded to the benefit of people. I cannot think of any"*.⁶⁸ **(IAC 58: Page 125, Para 1 and 2)**

⁶⁸ JUDGES MATTER: Judicial Service Commission Interviews 1 February 2022 5 Chief Justice Interviews Interview of Justice Mbuyiseli Madlanga; <https://www.judgesmatter.co.za/wp->

RESPONSE TO LAWSUITS

159 Despite initially petitioning support for a COI in 2019 amidst allegations of political interference, I am not one of the litigants in this court matter.

160 For me, it would have made more sense if this litigation would have been embarked upon between 2003 and 2017 when there was little or no progress in post-TRC investigations and prosecutions that resided with the PCLU located in the Office of the NDPP. This would have been the ideal time to have pursued the NPA, DPCI / CATS and DSO vigorously as there was an expectation from the TRC and the country was that perpetrators would be prosecuted, and particularly because two commissioners and an evidence leader relevant in these proceedings, were part of the TRC process. Strangely, this was not done.

160.1 It is noted that the period in the law suit is not specific. In other words, it includes the time period even after September 2021 when TRC matters were now the responsibility of the new TRC component reporting to de Kock. Prior to 2021, there was movement on a few matters such as the Simelane matter (the criminal matter which continues to remain on the roll since 2016), Cradock Four (families launched an application in the Pretoria High Court in 2021 to compel the NPA and SAPS to finalise their investigations and to make a decision whether to prosecute the surviving perpetrators) and Rodrigues' criminal matter. However, very little or no progress was evident on most other matters. I would assume that those who were part of the TRC were well aware that the recommendations it made should have

been implemented, but were not. This after the TRC handed over the TRC Final Report in 2003 and the alleged list of approximately 300 matters. **(See paragraph 26 of this affidavit)**. It is concerning to also note from the affidavits that there seems to be no record of any other list of matters handed to the NPA other than the one allegedly handed over to the NPA. The Rodrigues judgement in the Full Bench (IAC 22: Page 22, 1st para) specifically highlighted three time periods and particularly, the time period between 2003 and 2017 that deserved an inquiry when there was a lull in this time period.

160.2 When the constitutional claim for damages in this matter were served in January 2025, I believe that progress was evident on post-TRC prosecutions. Since 2022, the NPA and DPCI have appeared on several occasions before the Portfolio Committee on Justice and Constitutional Development (PC) to account for the progress made on TRC matters. The PC has oversight over the NPA.

160.3 During the NPAs subsequent appearance before the PC on 20 May 2025,⁶⁹ the FHR made a comprehensive representation claiming little or no progress. Other briefings were also received from stakeholders that included the DOJ&CD, the Directorate for Priority Crime Investigations (Hawks) and Legal Aid South Africa (LASA). The PC responded by issuing a statement **(IAC 59)** that they were *“cautiously optimistic regarding the progress made in relation to prosecutions stemming from recommendations arising out of the Truth and Reconciliation Commission (TRC).”* The Committee Chairperson Mr Xola Nqola further stated:

⁶⁹ <https://youtu.be/irdexcPooSw>;

“We note the positive impact and positive progress. These matters have been delayed for too many years. The committee will closely monitor the commitments that were made, especially with next month’s inquest relating to the Cradock Four.”

Notwithstanding the deafening silence over the decades and not having all the resources, there was in my view a marked departure from the usual “investigations are ongoing.” Co-incidentally, the DOJ also made representations in which it disclosed compensation paid to some litigants.⁷⁰

160.4 What is evident for me is that overall progress had been made on matters, not just matters where FHR are involved. This was accepted by Ntsebeza in his opinion.

161 The progress includes the following matters post-2021: The re-opened inquest of Dr Neil Aggett (2022), Dr Hoosen Haffejee (2023), Mr Ernest Moabi Dipale (2023), Mr Abdullah Haron (2023) amongst others. Ex-apartheid operative Wesley Madonsela was sentenced to 10 years direct imprisonment in November 2023 for murder of UDF activist Sophelele Nxumalo. Johan Maree was sentenced to 15 years imprisonment in July 2025 for the murder of Caiphus Nyoka. The trial against the remaining accused is continuing in the high court and Judgment is expected in December 2025. Judgment is also awaited in the re-opened inquest of Chief Albert Luthuli as well as two other inquests. Matters appearing on the court roll include that of Nokuthula Simelane, COSAS 4, Cradock Four, Griffiths Mxenge and the Highgate Hotel Massacre amongst other matters. Matters where evidence must be led in re-opened and formal inquests include that of the PEBCO Three, Boikie

⁷⁰ <https://youtu.be/irdexcPooSw>; 15:10, Slide 15

Thlapi, Northcrest Five and the recently announced re-opened inquest into the death of Stephen Bantu Biko. In my view, even with the challenges faced by the component, there is noticeably a marked improvement on progress in TRC matters. Therefore, it is difficult to argue that the TRC component is ineffective.

RESPONSE TO PAYMENTS FOR CONSTITUTIONAL DAMAGES

162 The first prayer of the applicants is for payment of “*R115 261 625.00 (one hundred and fifteen million, two hundred and sixty-one thousand, six hundred and twenty-five Rands) over a five-year period for purposes of enabling families and organisations supporting families to advance truth, justice and closure by assisting them to pursue investigations and research, inquests, private prosecutions and related litigation*”;

162.1 My understanding is that this payment of one hundred and fifteen million, two hundred and sixty-one thousand, six hundred and twenty-five Rands is for compensating FHR and other families for assisting the State to execute its duties. FHR assisted the Timol family and others to access justice pro bono. I was therefore taken aback that this was the demand made by FHR and families. **(See paragraph 83.1 of this affidavit).** I have also assisted the State and families to have their cases re-opened because I believe that it is my contribution for all our fallen heroes / heroines and for families to get closure. Personally, it can never be about financial compensation. Moreover, if this is indeed the case, then it will clash with the duties and functions of both the NPA and DPCI who are seized with investigating the matters and taking the matters forward.

163 The second payment request is of “R8 000 000.00 (*eight million Rands*) over a five-year period for purposes of *enabling families and organisations supporting families to play a monitoring role in respect of the work of the policing and justice authorities charged with investigating and prosecuting the TRC cases;*”

163.1 This payment of eight million Rands that is sought for oversight purposes by FHR. I believe that this is the mandate of Parliament and the Parliamentary Committee (PC). In my view, this function cannot be assigned to civil society who are also the family legal representatives on these matters. One has to ask as to whether this is not a conflict of interest and encroaching on the powers and functions of both the NPA and DPCI, in the sense when they want to oversee all TRC matters including the ones where they are representing the family. This can also not be fair to suspects under investigation and in my view may prejudice the impartial investigation and presentation of the case for the prosecutor.

164 The third payment is for an amount R44 000 000.00 (*forty-four million Rands*) that is sought over a ten-year period for purposes of enabling families and organisations supporting families to pursue commemoration, memorialisation and public education activities around the TRC cases, including the holding of public events, publishing of books and making of documentaries.

164.1 In my view, this payment of forty-four million Rands is for funding for memorialisation and legacy projects which is the mandate of the Department of Arts and Culture. Engagements ought to be held with this Department as opposed to been FHR financed for functions mandated to Government Departments.

MY ANALYSIS ON ALLEGED POLITICAL INTERFERENCE

- 165 For the first four years after the April 1994 inaugural elections, the former provincial Attorney-General's (AGs) continued to be responsible for South Africa's prosecuting authority. On 24 June 1998, the National Prosecuting Authority Act⁷¹ was assented. This was followed with the establishment of the NPA replacing the provincial AG' and **the AGs now becoming Directors of Public Prosecution (DPPs)**. (IAC 11: Page 2, 8) The first NDPP appointed was Ngcuka (1998 – 2004). This was followed with the NPA Act coming into effect on 16 October 1998.
- 166 The National Director of Public Prosecutions ("the National Director") in accordance with section 179(5)(b) of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996) ("the Constitution"), and section 21(1)(b) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) ("the NPA Act"), issued Policy Directives that had to be observed in the prosecution process. The Policy Directives first came into operation on 1 November 1999.⁷²
- 167 The TRC commenced and concluded proceedings (1996 – 2002) and on 21 March 2003, the Final TRC Report was handed over to Mbeki.⁷³ It highlighted the need for a *"bold prosecution policy"*.

⁷¹ NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998;
<https://www.justice.gov.za/legislation/acts/1998-032.pdf>

⁷² Prosecution Policy Directives (1999) revised 2012.
<https://www.npa.gov.za/sites/default/files/resources/KBL%20Court%20Preparation%20%20and%20Victim%20Impact%20Satements%20Strategic%20Document%20July%202015.docx>; Revised:
<https://www.npa.gov.za/media/prosecution-policy>

⁷³ <https://www.polity.org.za/article/mbeki-handing-over-of-trc-final-report-21032003-2003-03-21>

- 168 On 23 March 2003, Mbeki signed a proclamation creating the Priority Crimes Litigation Unit (PCLU) that was located in the Office of the NDPP **(See paragraph 28 of this affidavit)**
- 169 During my research, I ascertained that in April 2003, Mbeki⁷⁴ addressed the National Houses of Parliament and the nation on the tabling of the final TRC report. He underlined in practical terms, *“where to from here!”* He added that the TRC had made many detailed observations and recommendations on structures and systems that would be dealt with by relevant Ministers and Departments. **(IAC 60: Page 1, Para 1)**
- 170 On the matter of prosecutions, Mbeki stated that it was the responsibility of the NDPP. However, as part of the national interest, the NDPP working with Intelligence Agencies would leave its doors open for those prepared to divulge information in cooperating in exposing the truth. Moreover, it was critically important that government to continue establishing the truth about networks that operated against our people. He elaborated that this was an obligation linked to national security. Also, some of those networks posed a real threat or a concealed danger against our democracy. (IAC 60: Page 4, Last Para)
- 171 Lastly, Mbeki stated *“that the goals we defined for ourselves a decade ago, as we adopted the Interim Constitution, to pursue national unity, to secure peace and the well-being of all South African citizens, to achieve national reconciliation and the*

⁷⁴ Statement by President Thabo Mbeki to the National Houses of Parliament and the nation, on the occasion of the tabling of the report of the Truth and Reconciliation Commission: Cape Town, April 15, 2003; <https://static.pmg.org.za/docs/2003/appendices/030610presrec.htm>

reconstruction of our society, have not fully been realised, despite the progress we have made." (IAC 60: Page 6, Para 5)

- 172 In my opinion, the direction from Mbeki were clear on the way forward for post-TRC matters. Simply put, the doors were open for perpetrators to come forward encouraging them to speak the truth. They posed a potential national security threat and importantly, it was the responsibility of the NDPP to decide on prosecutions. In my view and in line with the ***Nkadimeng*** judgement, (IAC 9), the NPA had three options, (1) to charge an accused person once the necessary evidence had been collated. (2) the Accused then had the choice to plead guilty or not guilty or be utilised as a witness in terms of section 204 of the Criminal Procedure Act, 51 of 1977 or (3) enter into plea negotiations into section 105A of the Act.
- 173 I have reconstructed a timeline of events as per annexures of internal memorandums (SECRET) and affidavits deposed by NDPP Pikoli, PCLU officials Ackermann, Pretorius and Macadam and provide my analysis thereof on the alleged political interference. The memorandums formed part as annexures filed by Macadam as a supporting affidavit on behalf of the first respondent (The NDPP). They were filed on 1 November 2018 as part of their response to my affidavit alleging political interference as advised by my legal counsel.
- 174 The statement of considering a process of amnesty is where I believe it all went wrong. In Mbeki's address to Parliament in April 2003, he stated, *"Let us start off by reiterating that there shall be no general amnesty. Any such approach, whether applied to specific categories of people or regions of the country, would fly in the*

face of the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past, but also in the creation of a new ethos within our society.” (IAC 60: Page 4, Para 9)

- 174.1 For ease of reference, I list the following salient extracted points from an internal memo about the mandate for investigating the TRC Cases. According to an Internal Memorandum dated 11 November 2003 from Ackermann to Adv. Geoph Ledwaba, *re: Investigation of TRC cases by the DSO: (IAC 11: RCM 5)*, in 2001, the NDPP Ngcuka decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. According to Ackermann, Sonn gave the President a full briefing on the matter.
- 174.2 In 2002, the Special National Projects Unit (SNPU) was formed to investigate the cases. After the final TRC was presented in 2003, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP.
- 174.3 In May 2003, Ackermann made a full briefing to the NDPP Ngcuka and his Deputies on all TRC cases identified for prosecution. According to Ackermann, his prosecution strategy was endorsed. Furthermore, assurance was provided by McCarthy around June 2003 that there would be no problem in having the cases declared in terms of Section 28 of the NPA Act and the NDPP briefed the Minister and Justice Portfolio Committee accordingly. Shortly thereafter and in the same month, Ledwaba (Head Operations) was presented with applications in terms of Section 28 relating to the cases.

- 174.4 Around July 2003, Ledwaba informed Ackermann that he was not prepared to sign the declarations and was proceeding to withdraw the DSO from further investigations of the cases.
- 174.5 Ackermann thereafter held discussions with Divisional Commissioner JF De Beer, Divisional Head of the Detective Service of SAPS and sent him correspondence dated 20 August 2003.
- 174.6 De Beer responded on 26 September 2003 (IAC 11: RCM 4) that it was evident from Ackermann's letter that the investigation and prosecution of these cases were referred to the NDPP by President. SAPS understood this referral to the NDPP as politically inspired due to the large number of cases that were to be investigated were to be those of ex-policemen. According to De Beer, it was understandable the DSO therefore investigate these cases. Furthermore, it was not clear from Ackermann's letter as to why the DSO did not have the legal mandate to investigate cases emanating from the TRC and not possible to obtain a Presidential Proclamation to obtain such a mandate if it was lacking. Ackermann's letter only stated that in March 2002, they had only given consideration to the issue of a Presidential Proclamation and that problems were encountered in this regard. De Beer reminded Ackermann that the capacity created by the D'Oliviera Committee was with the DSO. After the dissolution of the TRC, Dr Jan D'Oliveira SC, the then AG Transvaal, was appointed to head up a team to continue with the work of the Commission and to facilitate the institution of prosecutions. De Beer re-iterated that the President referred the cases to the NDPP and it was common cause that the initial understanding was that they would have been investigated by

the DSO. SAPS was of the opinion that the NDPP should approach the President and obtain confirmation on who he wanted to investigate these cases. If the President wanted SAPS to investigate these cases, this instruction was to be obtained in writing. SAPS would upon receipt of this instruction gladly render assistance. Further discussions would unfold around terms of reference, logistical issues such as number of investigators and all other relevant issues.

174.7 Macadam in his affidavit dated 1 November 2018 (IAC 11, Page 5, 21) confirmed that neither the NDPP nor Ackerman approached the President as recommended. The question must be asked, why not?

175 On 15 February 2007, NDPP Pikoli sent a SECRET INTERNAL MEMORANDUM to Minister Mabandla, *RE: PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES*, (IAC 11: RCM 17) in which he stated that on 23 February 2004, as the former DG of DOJ&CD, he led appointed a TASK TEAM that comprising of Cheryl Gillwald⁷⁵ Director-General (DG) DOJ&CD and was chaired by the Department's Deon Rudman. **(IAC 61: Page2, 2.1.1)**

175.1 It also included NIA representatives Yvonne Mabule and Vincent Mogotloane; the NPA's Advocates Gerhard Nel (it would be insightful to ascertain the identity and whereabouts of Gerhard Nel) and Lungisa Dyosi and Joy Rathebe of the

⁷⁵ South African History Online. (2021, March 15) Deputy Minister of Justice in 1999. South African History Online. <https://sahistory.org.za/people/cheryl-ellen-gillwald>;

Department of Defence, and Commissioner Ray Lalla of the South African Police Service (SAPS). **(IAC 62: 152)**

- 176 Pikoli elaborates that the Task TEAM's mandate was to firstly, accommodate in existing legislation and in the normal execution of justice for the NPA and Intelligence agencies to assist persons divulge information relating to offences of the past. Secondly, consider a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past and lastly, bearing the above-mentioned in mind, whether legislative enactments were required. (IAC 61: Page 5, iii and V)
- 177 Pikoli's secret memorandum reveals that the established Task Team made a recommendation for the formation of a DEPARTMENTAL TASK TEAM that included the DOJ&CD, NIA, SANDF, SAPS, Correctional Services, NPA and Office of the President. *This forum as a collective made a submission to Cabinet for the "AMENDED PROSECUTION POLICY" that was effective as at 1 December 2005.* (IAC 61: Page 4, 2.2.3) After coming into operation in 1999, it is this amended policy that was ruled to be unconstitutional by Judge Legodi in 2008 in the matter of **Nkadimeng & Others**. In my view, despite having an NPA Act which provided for the various options open to a person who wanted to "come clean", it was the same NPA that introduced policy amendments to the Act.
- 178 Furthermore, the memorandum unpacks the working mechanisms of the Task Team that were as follows: The PCLU was responsible for overseeing investigations and prosecutions and assisted by NIA, Detective Division of the SAPS, DOJ&CD and DSO. The NPA was to work with the Intelligence Agencies

who would be accessible to those persons prepared to unearth the truth of the conflicts of the past and who wished to enter into agreements as *per normal standard practice in the execution of justice and the prosecuting mandate as accommodated in legislation*. (My emphasis). The decision to prosecute resided only with NDPP (and the NPA) and it was for the other departments to assist in investigation process and gathering of information in order to assist the NPA to make an informed decision. (IAC 61: Page, 6, 3.3.)

- 179 After the 2003 Hefer Commission dismissed allegations that Ngcuka was an apartheid spy, he resigned as NDPP in July 2004. In February 2005, Pikoli was appointed as NDPP.
- 180 In January 2006, Pikoli issued a statement on the “*Amended Prosecution Policy*”⁷⁶ defining criteria for a uniformed approach in dealing with conflicts of the past. **(IAC 63)** Pikoli was responding to Mbeki’s 2003 tabling of the TRC Report to Parliament. Pikoli’s statement identified four critical aspects: Firstly, no general amnesty. Secondly, establishing another amnesty process would not be a solution. Thirdly, further processes be left with the NPA to pursue as per standard practice. Mbeki clarified that in the national interest, the NPA collaborating with the Intelligence agencies would leave its doors open for those willing to disclose information at their disposal. Moreover, their co-operation would lead to dealing with the truth. Lastly, where legal arrangements were entered upon, between the NDPP and particular perpetrators as proposed, victims’ involvement would be in determining

⁷⁶ <https://www.gov.za/ss/news/v-pikoli-amended-prosecution-policy-and-directives-24-jan-2006;>

the suitable course of action. The onus was on the Pikoli to take the process forward.

181 Pikoli as outlined above fully comprehended the direction provided by Mbeki. During the TRC Amnesty Process, victims had little or no say in the granting of amnesty to perpetrators. Moreover, Pikoli in his statement quoted Mbeki on the role of families: *“In the final instance the President indicated that in each case where any legal arrangements are entered into between the National Director and particular perpetrators as proposed, the involvement of the victims will be crucial in determining the appropriate course of action”*. It was evident that Pikoli understood what was required when he quoted Mbeki.

182 On 22 March 2006, the NPA gave a briefing to the NCOP Security and Justice Forum.⁷⁷ It was presented by its legal advisor, Adv G Nel who reiterated that this policy⁷⁸ was informed by President’s statement to Parliament at the tabling of the report of the Truth and Reconciliation Commission (TRC) in April 2003. **(IAC 64)**. For me, this confirms that the NPA understood the marching orders given by the President. Moreover, this briefing could not have been made to the NCOP without the knowledge of the NDPP.

183 As per Mbeki’s guidelines, it was clear that the onus now resided with the NDPP to initiate the necessary processes. However, as per (IAC 61) problems were encountered in implementing the *“Amended Prosecution Policy”*. A meeting was

⁷⁷ <https://pmg.org.za/committee-meeting/6520/>, accessed 02 February 2025

⁷⁸ <https://static.pmg.org.za/docs/2006/060322prosecution1.pdf>;
<https://static.pmg.org.za/docs/2006/060322prosecution2.pdf>

convened with the Office of the Presidency around mid-2006 to address the challenges. In attendance was the National Commissioner Selebi, Pikoli, DGs of Justice and NIA Mr Manzini and Mr Jafta of the Presidency. The meeting agreed to establish a WORKING COMMITTEE (TASK TEAM) and it also recommended presenting to Ministers in the Cluster. There was consensus for the TASK TEAM to assist the NPA.

184 A subsequent follow up meeting was called by the Pikoli and in attendance were the respective heads of departments and representatives who were to serve on the TASK TEAM. The meeting agreed to a Terms of Reference (TOR) and Ramaite from the NPA was appointed as Chair of TASK TEAM. (IAC 61: Page 7, 4.3.b)

185 On 6 December 2006, correspondence from the National Commissioner Selebi and NIA DG Manzini to Pikoli set out a different understanding of responsibilities of the TASK TEAM. ***They believed that the TASK TEAM would be making collective recommendations to the DG's Forum that would advise the NPA as the decision maker on all matters.*** The NPA viewed this understanding to be unconstitutional and Pikoli declared that there was an expectation from the DOCJ&CD, SAPS and NIA that there would be no prosecutions (IAC 61: Page 8, 4.4.3)

186 The above correspondence dated 6 December 2006 from the National Commissioner and DG NIA was followed up with a letter from DOJ&CD's Minister Mabandla on 8 February 2007 to Pikoli. She indicated that she was caught by surprise to media articles that the NPA would be proceeding with prosecutions.

Also, as per their previous brief discussion, Pikoli had given the assurance that the NPA would not proceed with prosecutions. (IAC 61: Page 8,4.4.1)

187 Macadam's annexures reveal that on 15 February 2007, Pikoli responded to Mabandla and provided background to the establishment of the various task teams and their mandates, background to the "*Amended Prosecuting Policy*" and also highlighting its important features and lastly, problems related to implementing the policy. The contents of this memorandum are the basis for the information provided above. (IAC 61)

188 Pikoli concludes in the above memorandum that the SAPS and NIA were not making dedicated members available to assist the NPA in executing its responsibilities. **Moreover, the SAPS and NIA were of the view that the proposals relating to the original proposed Task Team (that were rejected by Government) must be implemented and that such Task Team should be playing a role in the decision-making progress.** (IAC 61: Page 7, 1st Para)

189 In September 2007, more than a year and a half after the presentation of the amendment policy before the NCOP and seven months after Mabandla's letter to Pikoli, the NDPP Pikoli was suspended.

190 In Pikoli's affidavit dated 6 May 2015, he states, "*I also have reason to believe that my decision to pursue prosecutions of apartheid-era perpetrators who had not applied for amnesty or had been denied amnesty by the TRC contributed*

*to the decision of President Mbeki to suspend me.*⁷⁹ (IAC 14: Page 3, Para 1). I have not seen any evidence to support this allegation.

191 The implementation of the *Amendments to the National Prosecution Policy and Directives* dated 1 December 2005 never materialised. Five applicants and other NGO's⁸⁰ sought relief from the courts for suspending the implementation thereof. They were specifically challenging the NPA's proposed policy amendments declaring that they were inconsistent with the Constitution of the Republic of South Africa, 1996.

192 The case was presented before Judge Legodi in 2007. He ruled in December 2008 that the amendments were unconstitutional. (IAC 9)

192.1 Judge Legodi in his finding stated in 15.5, *"In paragraph 14.3 of this judgment, I quoted paragraph 2.1 of the applicants' written heads of argument. At the risk of repetition, the applicants aver that it is not their case that the policy amendments expressly allow for an amnesty, indemnity or a re-run of the TRC, rather that the application of the policy amendments in relation to a decision not to prosecute will have this effect. This submission should be seen in the light of paragraph C 2 read with C 3 of the policy amendments."*

⁷⁹ <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Vusi-Pikoli-Affidavit-Simelane.pdf>; Page 172/3

⁸⁰ Sister of Nokuthula Simelane, Wives of the Cradock Four, Khulumani Support Group, Centre for Study of Violence and Reconciliation, International Centre for Transitional Justice and International Centre for Transitional Justice. The applicants were represented by the Constitutional Litigation Unit of the Legal Resources Centre.

192.2 Legodi further added that the above proposed policy amendments criteria outlined in A, B and C, allowed the NPA the decision not to prosecute despite the existence of sufficient evidence supporting prosecution.

192.3 Part A dealt with the introduction and the basis for bringing about the policy amendments as outlined in Part C⁸¹ that included provisions amongst others such as (c) the degree of co-operation of the part of the alleged offenders endeavours to expose the truth, including remains of victims and possible clandestine operations during the conflict of the past, including exposure of networks that operated or continued operating especially if they posed a danger against our democracy; (d) personal circumstances of the offender and (f) the extent to which the prosecution or non-prosecution of the alleged offender may contribute our undermine our national project of nation building through transformation and reconciliation.

192.4 As for Part B,⁸² it dealt with the procedures to be adhered to relating to persons wanting to make representations to the NDPP. In addition, even if this was allowed in the policy, this did not exempt them from indemnity from prosecutions.

192.5 In his ruling, Judge Legodi (IAC 11: Page 28; 15.5.2.1) stated that the above policy amendments were not covered and endorsed by the Constitution deeming them to be unconstitutional. There were many factors to be taken into consideration before the NDPP considered entering into negotiations in terms of Section 105A

⁸¹ CRITERIA GOVERNING THE DECISION TO PROSECUTE OR NOT TO PROSECUTE IN CASES RELATING TO CONFLICTS OF THE PAST

⁸² PROCEDURAL ARRANGEMENTS WHICH MUST BE ADHERED TO IN THE PROSECUTION PROCESS IN RESPECT OF CRIMES ARISING FROM CONFLICTS OF THE PAST

that allowed the prosecutor to negotiate a plea and sentence agreement before the accused pleads. Importantly, Section 105A has nothing to do with a decision to prosecute or not. If the amendment was to be understood, it had to be in terms of Section 204 of the Criminal Procedure Act of 1997 (CPA) where a witness who provides incriminating evidence against an accused person in exchange for immunity from prosecution. Over and above that, this provision is only applied in exceptional circumstances when it is in the interest of justice. In addition, Section 105 of the CPA allows the prosecutor and the accused to negotiate a plea and sentence agreement before the accused pleads, known as plea bargaining that must be presented before a court of law.

192.6 It was this amended policy drafted by a DEPARTMENTAL TASK TEAM that was in 2008 declared unconstitutional by Judge Legodi.

193 In my view, very little if anything, happened in the way of progress on TRC matters after this attempt at backdoor amnesty by the NPA was struck down as been unconstitutional. This brought an end to Government addressing TRC matters. Most importantly, TRC matters and its investigations remained within the mandate of PCLU until September 2021.

194 To conclude, the DG's Forum that appointed a Task Team followed by a Departmental Task Team that as a **collective (my emphasis)** made a submission to Cabinet for the "*AMENDED PROSECUTION POLICY*" that was effective as at 1 December 2005 that was ruled to be unconstitutional by Judge Legodi in 2008 in the matter of *Nkadimeng and Others*.

195 I believe that it was a failure on the part of government officials to work out the mechanism to implement the way forward. **Furthermore, this was compounded by issues relating to who was responsible for investigations. The NPA was of the view that the SAPS must conduct investigations. On the other hand, the SAPS were of the view that this was the DSO responsibility and if there was a requirement that SAPS should investigate, then either Ackermann or the NDPP were to approach the President and request him to confirm which agency should be conducting the investigations. Macadam confirmed that neither the NDPP nor Ackerman approached the President as recommended.** (IAC 11: Page 5, 21) One has to ask, if it was this clear that NPA officials were mandated to approach the President to confirm who should investigate, why was it not done? I am also of the view that another contributing factor that affected post-TRC investigations and prosecutions was the tension between Pikoli and former Police Commissioner Jackie Selebi that played out between the SAPS and the NPA (IAC 65). I therefore believe that this resulted in bringing an end to post-TRC investigations and prosecutions. The question must be asked if whether the NPA knew about the secret memorandums since 2003, why was it kept a secret only for it to be disclosed in 2019?

196 The Full Bench were scathing on the conduct of the NPA adding that it had a duty to *“assert its authority and independence and resist the political interference. It cannot be acceptable for it to simply have allowed, as it did, the manipulation of the criminal justice system in the serious manner in which it occurred.”* This is

precisely what the PCLU did until it resided with post-TRC matters until September 2021. (IAC 22: Pages 23 and 24)

- 197 To summarize, it was under Pikoli's tenure as NDPP (1 Feb 2005 – 23 September 2007) that in December 2005, the NPA issued the Amendments to the Prosecution Policy even though there was already in existence an NPA Prosecution Policy. In January 2006, Pikoli issued a statement on the "*Amended Prosecution Policy*" in support of Mbeki's 2003 address to Parliament. During March 2006, the NPA briefed NCOP Security and Justice Forum. Pikoli was suspended on 23 September 2007 and Mokotedi Mpshe was now the Acting NDPP. Sometime around 2007, families filed an application⁸³ opposing the implementation of the "*Amended Prosecution Policy*". Judgment was reserved on 24 November 2008 and handed down on 12 December 2008 deeming it unconstitutional.

GINWALA COMMISSION

- 198 The purpose of the Ginwala Commission (held from 7 May – 1 Aug 2008) was to determine the fitness of Pikoli to hold the Office of the NDPP. It found that Government represented by the State Attorney retained the services of Advocates Kgomotso Moroka SC, Seth Nthai SC, Horace Shoji and Mahlape Sello failed to prove many of these allegations against Pikoli and did not demonstrate that he was no longer fit and proper to hold office as the NDPP. The Commission dealt with government raising concerns around Pikoli's "*handling of the post-Truth and Reconciliation Commission (TRC) cases and not "showing the sensitivity to the*

⁸³ *Nkadimeng & Others v The National Director of Public Prosecutions & Others* (32709/07)

victims and an appreciation of the public interest issues that are mandated by the Prosecution Policy.” (IAC 66: Page 141, 213) It concluded that government did not pursue this matter further.

INVESTIGATION AGAINST PRESIDENT MBEKI

- 199 On 19 August 2007, the *Rapport* newspaper published an article that NDPP Pikoli was on the verge of prosecuting ANC members. **(IAC 67)**. A copy of an office note, allegedly written by Adv Ackermann in 2006, reflected that he was investigating criminal charges against 37 ANC leaders, including President Mbeki.
- 200 According to Ackermann, this note was a fabrication. He confirmed writing the note in 2003, but that it was adjusted **(did not mention by whom)** creating an impression that it was compiled in 2006. Ackerman declared that this was aimed at discrediting him and ultimately halting investigations into TRC cases. He accused the late Commissioner of Police, J Selebi as playing a noticeable role in stating that he was pursuing the ANC leaders. **(IAC 68, Page 17, 35)**
- 201 However, Ackermann also identified another individual targeting President Mbeki. In an internal 2006 NPA memorandum, he outlined how a Superintendent Britz, a former SB member was reappointed to investigate dockets in possession of the SAPS. Prior to the PCLU’s involvement in TRC cases, Britz assisted the DPP Pretoria with cases involving the Liberation Movements. **(IAC 69: Page 10, 2.28.5)**
- 202 Ackermann elaborated that when he and his staff were appointed to take over TRC cases in the DPP Pretoria Office, they gained an impression that Britz was not only sympathetic towards the FEBL, but he was in regular contact with its founder,

former Police Commissioner General Van der Merwe. According to Ackermann, the FEBL was founded to ensure that no further prosecutions of SB members would take place. (IAC 69: Page 10, 2.28.4)

203 According to Ackerman, Britz attempted to persuade him and his Deputy on numerous occasions that there was an incontestable case of terrorism against President Mbeki emanating from the landmine campaign. The context for raising this was that if SB members were to be prosecuted, President Mbeki would also have to be charged. Ackermann added that despite Britz making this claim, he could not present a docket implicating President Mbeki. On one occasion, Britz informed Ackermann that the docket against Mbeki was with General van der Merwe and his legal adviser. Ackermann argued that this raised a very serious question as to how an official police docket could be retained by General van der Merwe who was not to be in possession of police material after his retirement. (IAC 69: Page 10, 2.28.5)

204 On another occasion, Britz also indicated that he was preparing to submit a docket calling for the prosecution of President Mbeki when the subject of prosecuting SB members for the Pebco 3 incident was discussed with their lawyer. Ackerman draws the inference that there was sharing of information that occurred between Britz and Van der Merwe. (IAC 69: Page 10, 2.28.6)

205 In my view, the allegations around the conduct of Britz and his relationship with General van der Merwe are serious. However, there is no evidence of any investigation been conducted on Britz or on General van der Merwe who was also

responsible for the formation of the FEBL that was setup to ensure that no further prosecution of SB members would occur. **(See paragraph 98 of this affidavit).**

206 Ackermann concluded that the matter of prosecuting President Mbeki was raised at the highest levels of Government. Enquiries on the matter were made by Minister Maduna and members of the President's Office. He added that all parties were satisfied that the NPA had no intention of prosecuting President Mbeki and NDPP Ngcuka had provided a report that such case was established in the TRC records. (IAC 11: Page 50, 2.28.7)

207 As for political interference, Ackermann declared that he was *"not specifically aware of an official policy or decision to stop, obstruct or hold back the investigations and possible prosecution of the cases recommended by the TRC."* However, he does confirm that he was effectively stopped from pursuing the investigation and prosecution of the so-called cases arising from the South Africa's past (TRC cases)." Ackermann explained in the Frank Chikane (Chikane) matter how Jan Wagenaar, the attorney of the suspects told him that he would be receiving a phone call (name not disclosed) from the Ministry of Justice advising him that the case against his clients must be placed on hold. Shortly thereafter, he received a call from an official (name not disclosed) from the Justice Ministry informing him that the matter should be put on hold pending the developments on the guidelines to deal with TRC cases. This was followed a few minutes later by the Acting NDPP Ramaite instructing him not to proceed with the arrests. Ackermann therefore concluded that the NDPP was instructed at a political level to suspend these cases. (IAC 68: Page 9 and 10, 17.2, and 17.3)

208 According to the NPA Act (The ACT)⁸⁴ that came into operation in 1998, section 31 of the NPA Act **(See paragraph 91 and 92 of this affidavit)** provides that a prosecutor must serve impartially, and carry out his or her functions and powers in good faith and without fear, favour or prejudice. Further that no organ of the state or member of employee of any organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise or carrying out or performance of its, his or her powers. Section 41 of the Act sets out the penalties.

209 I found no evidence that any of the named prosecutors, not forgetting who were experienced and held senior posts within the NPA and who alleged political interference, had registered any criminal case as empowered by the NPA Act for the irregular, interference, hindrance or obstruction in the exercise of their powers. These sentiments were echoed by the Full Bench and SCA. **(See paragraphs 84 – 89 of this affidavit).**

PRESIDENTIAL PARDONS

210 In November 2007, Mbeki addressed a Joint Sitting in Parliament presenting Processing of some Presidential Pardons declaring utilising legislation in making a decision if a matter deserves prosecution or not. **(IAC 70)**

211 He explained that since 2000, government was confronted with the challenge of bringing to an end the worrying matter of those prisoners who were serving sentences *“for what might be considered to be politically motivated crimes of the*

⁸⁴ National Prosecuting Authority Act 32 of 1998

kind that fell within the brief of the Amnesty Committee of the TRC.” (IAC 70: Page 4, Para 9)

212 In dealing with the challenges, Mbeki outlined, that they had to “*proceed with care, sensitive to the legacy of the TRC.*” Furthermore, it was important that their actions did not in any manner undermine or even suggest to undermine the TRC process and its outcomes. (IAC 70: Page 4, Para 9)

213 Mbeki explained that government was in possession of at least 1062 applications for presidential pardons by persons who were found guilty of offences that were allegedly committed with a political motive arising from the conflicts of the past. (IAC 70: Page 5, Para 1)

214 It was in this context that Mbeki requested convening a Joint Sitting in Parliament to institute a special process to enable him to discharge his constitutional obligations to consider applications requesting pardon from those who were previously convicted for offenses they claimed belonged to the category of offenses considered by the TRC Amnesty Committee. In other words, this process would cover the requests for pardon of those people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC.

215 On the subject of amnesty, Mbeki was clear that government was of the firm belief that this matter “*could not be resolved by setting up yet another amnesty which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations*”. He added, “*We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to*

pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing". President Mbeki elaborated, *"However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation."* Lastly, he authorised a Ministerial Committee to oversee this process. (IAC 70: Page 4, Para 4, Para 5 and 6)

- 216 It therefore seems unlikely in my view that as the person who coined the phrase "TRC Business" in his 2007 addresses to Parliament that Mbeki would be intent on stopping the prosecutions into TRC matters. (IAC 70: Page 3, 2nd last Para)
- 217 In March 2009, civil society organisations brought an urgent application seeking to interdict Mbeki from issuing pardons until victims and other interested parties were in the position to participate in the process and also to make their representation on each pardon application. In papers submitted, they argued that the special dispensation on political pardons amounted to a rerun of the TRC amnesty process.
- 218 On 28 April 2009, Sereti J handed down judgment granting an interdict restraining the President from handing down any pardons under the special dispensation for political pardons. **(IAC 71)**. The above court verdicts in my view brought an end to post TRC investigations and prosecutions.

CONCLUSION

219 The better part of my first 30 years of my life was spent reading newspaper articles on uncle Ahmed trying to understand what happened to him. The years that followed, I have been actively involved in re-opening my uncle's inquest, holding Rodrigues, Els and Sons accountable; participated in task teams that collapsed; working with the NPA and DPCI; establishing the AVFG and assisting families with re-opening their matters.

220 In addition, after revisiting and analysing the following:

220.1 South Africa's negotiated settlement process must be understood and taken into context when addressing post-TRC investigations and prosecutions. There was no victor, but a political settlement to end the conflict ending white minority rule.

220.2 The draft Interim Constitution⁸⁵ states, *"In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past."* There was an opportunity for perpetrators to come forward and make full disclosure to obtain amnesty.

220.3 South Africa's TRC was not welcomed by all and it was opposed by some senior regime security officials. As the TRC legislative processes were unfolding in late 1994 and 1995, attempts were made to influence Mandela to halt the establishment of the TRC or to amend its proposals. The SADF's General

⁸⁵ Volume SIX Section ONE Chapter ONE: The Legal Basis of the Amnesty Process;
https://justice.gov.za/trc/report/finalreport/vol6_s1.pdf

Constand Viljoen argued that the TRC would generally have negative instead of positive consequences causing divisions reliving the “bad things” of both parties. Although unsuccessful, Mandela facilitated for Viljoen to present his case to Cabinet. The amnesty clause made South Africa’s TRC unique.

220.4 In the ***AZANIAN PEOPLES ORGANISATION (AZAPO) AND OTHERS v THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA***,⁸⁶ applicants applied for direct access to the Constitutional Court and for an order declaring s20(7) of the Promotion of National Unity and Reconciliation Act 34 of 1995 unconstitutional. Section 20(7), read with other sections of the Act, permits the Committee on Amnesty established by the Act to grant amnesty to a perpetrator of an unlawful act associated with a political objective and committed prior to 6 December 1993. The Court held that amnesty for criminal liability was permitted by the epilogue because without it there would be no incentive for offenders to disclose the truth about past atrocities. The truth might unfold with such an amnesty, assisting in the process of reconciliation and reconstruction. Further, the Court noted that such an amnesty was a crucial component of the negotiated settlement itself, without which the Constitution would not have come into being. It found that the amnesty provisions were not inconsistent with international norms and did not breach any of the country's obligations in terms of public international law instruments.

⁸⁶ <https://www.justice.gov.za/trc/legal/azaposum.htm>; CCT 17/96; Constitutional Court; 25 July 1996

220.5 Formation of the NPA (1998): Minister Omar appointed Pikoli as a Special Advisor and one of his tasks included assisting with the restructuring of the Department of Justice (DOJ). This involved amalgamating the eleven national departments to a single Central Department. Pikoli would after 1994 later become the second NDPP. This led to the formation of the Office of the NPA, formally established through the National Prosecuting Authority Act⁷¹ on 1 August 1998, the single prosecuting authority in South Africa, replacing the former provincial Attorneys-General. President Mandela appointed the first NDPP, Adv Ngcuka (1998 – 2004).

220.6 Formation of the DSO (1998):⁸⁷ In August 1998, President Mbeki established the NPA. A month later, he announced the launch of initially the Directorate of Special Investigations (DSI) and later formally the Directorate of Special Operations (DSO). They originated from the Investigating Directorate on Organised Crime (IDOC) and the Investigating Directorate of Serious Economic Crimes (IDSEC). The DSO operated in terms of the NPA Act of 1998. A 2000 amendment made provision for the establishment of The Investigating Directorate (ID) to investigate serious criminal activities conducted in an “organised” manner defined in Section 7(1)(b)] and, if warranted, instigate criminal proceedings. The ID operated under the control and directions of the office of NDPP, and was responsible to a ministerial coordinating committee (Section 31). Its powers included search and seizure that may conduct

⁸⁷ THE SCORPIONS: A FRANKENSTEIN MONSTER? THE SCORPIONS: TRIAL BY INNUENDO – AND THE MEDIA? *The Monitor* on August 28, 2003 Reports; <https://violencemonitor.com/2003/08/28/the-scorpions-afrankenstein-monster/>. THE SCORPIONS, CONTINUED: IS THERE MORE TO THE PIKOLI SUSPENSION THAN MEETS THE MEDIA EYE? *The Monitor* on November 30, 2007 Categories Reports

investigations where proceedings take place *in camera*. Section 28 gives the ID wide powers to individual investigating directors, or persons so designated, including insofar as determining procedures followed at investigations, and recordings thereof, are concerned.

- 220.7 Nkambule hoax coup plot (2001):⁸⁸ In 2001, the former ANC Youth League secretary in Mpumalanga identified three ANC members Cyril Ramaphosa, Tokyo Sexwale and Mathews Phosa as plotting to unseat President Mbeki. He admitted *“I realize, with regret, that I was manipulated by some who wanted to serve and achieve certain agendas.”* Nkambule did not provide names, but added that between 12 and 14 people, including senior civil servants, police officers and four ANC politicians who were still in Parliament, provided him with the information. I found no evidence that their identity was ever revealed.
- 220.8 Hefer Commission – allegations of NDPP Ngcuka being an apartheid agent (2003)⁸⁹ President Mbeki appointed Judge Hefer on 19 September 2003 to head a COI to investigate allegations made by Mac Maharaj and Moe Shaik that NDPP was an apartheid agent. Hefer found that the allegations against Ngcuka spying and *“probably never acted as an agent for a pre-1994 government security service.”* Hefer added, *“I have come to the conclusion that he probably never at any time before 1994 acted as an agent for a state security agency,”* the commission chairperson, retired judge Joos Hefer, said in his final report, made public on Tuesday... *“the suspicion which a small number of distrustful*

⁸⁸ [Article](https://www.mg.co.za/article/2004-09-19-mbeki-plot-was-a-lie/) / 19 September 2004 Mbeki plot was a lie By [Staff Reporter](https://www.mg.co.za/article/2004-09-19-mbeki-plot-was-a-lie/); <https://www.mg.co.za/article/2004-09-19-mbeki-plot-was-a-lie/>

⁸⁹ https://www.justice.gov.za/commissions/comm_hefer/2004%2001%2020_hefer_report.pdf

individuals harboured against him 14 years ago was the unfortunate result of ill-founded inferences and groundless assumptions.”⁹⁰

- 220.9 Browse Mole Report – allegations against high-profile politicians in South Africa and the African continent (2007):⁹¹ In January 2006, a report referred to as the “Browse Report” was leaked to journalists and some leaders of the African National Congress (ANC) and later the General Secretary of the Congress of South African Trade Unions. A subsequent investigation into the report was conducted by the Intelligence and Law Enforcement Agencies. Its particular focus was to *“investigate the origins of the report; the sources of the contents thereof; the contributors and their intentions. The agencies were also tasked to establish as to how the report was inserted into the public domain and the intentions thereof.”*
- 220.10 In its findings, it identified those responsible for the leak, their modus operandi and their objectives. It identified Mr Ivor Powell (**See paragraph 29 of this affidavit**) as the person who produced the final consolidated report, known as the Special “Browse” Mole Consolidated Report. It also found that the leaks were orchestrated and timed. It found that the sources for compiling the report as those *“predominantly former members of the present intelligence agencies whose initial background was with the secret services of the apartheid government, the former SB of the South African Police; Military Intelligence of*

⁹⁰ <https://mg.co.za/article/2004-01-20-ngcuka-probably-never-was-a-spy/>

⁹¹ Government Communications on Special Browse 'Mole' Consolidated Report: Statement on the investigation into the document entitled 'Special Browse "Mole" Consolidated Report'; <https://www.gov.za/news/government-communications-special-browse-mole-consolidated-report-28-jul-2007>

the South African Defence Force and the National Intelligence Service. Others are people who had relations or associations with these entities. (IAC 72: Page 4, 3rd last Para).

221 After my experiences in pursuing the Rodrigues, Els and Sons matters, participating in three collapsed task teams working with civil society, engaging directly with families with the NPA / DPCI and conducting my own research (as per 220), I conclude that there was much more than meets the eye regarding post-TRC investigations and prosecutions.

221.1 In my view, the acquittals of the accused in the KwaMakhuta (1996) massacre were not that only of Malan and the Generals, but of the apartheid regime that were brought together via the National Security Management System (NSMS). The acquittals are significant in understanding post-apartheid prosecutions. Their exoneration was not due to lack of evidence, rather on how AG McNally presented substantial the evidence before a court of law.

221.2 In the 2002 matter of the State versus Basson,⁹² the trial of Dr Wouter Basson commenced on 4 October 1999, almost two years after been charged. He now faced 67 charges, including drug possession, drug trafficking, fraud and embezzlement of a total of R36,000,000, (*Thirty six million Rands*) 229 murders and conspiracy to murder and theft. Judge R. Hartzenberg Presided over court proceedings in the Pretoria High Court. On 11 October 1999, the Judge dismissed six important charges, including four charges of murder and possible

⁹² <https://www.saflii.org/za/cases/ZACC/2005/10.html>; S v Basson (CCT30/03A) [2005] ZACC 10; 2005 (12) BCLR 1192 (CC); 2007 (3) SA 582 (CC); 2007 (1) SACR 566 (CC) (9 September 2005)

involvement in 200 deaths in Namibia. He stated that the South African court could not prosecute crimes committed in other countries and Basson was also included in the Namibian amnesty of 1989.

221.3 It was reported that Judge Hartzenberg made comments to the effect that the state was conducting a trial by ambush, the judge was bored with the evidence presented, the counsel for the state was confused, the judge had hurt the ego of the counsels and last, the judge laughed in chambers regarding the failed asset forfeiture application. After 300 trial days that produced 30 000 pages of transcript,⁹³ over 200 state witnesses giving evidence and Basson was the only witness in his own defence, he and the apartheid regime were acquitted despite all the evidence that was presented. It is estimated that over a period of ten years (commencing from the time of Basson's arrest in 1997) the state spent R125 million (*One hundred and twenty five million Rands*) on the trial.⁹⁴

221.4 On 11 April 2002, Judge Hartzenberg acquitted Basson on all 46 charges against him believing his version rather than that of the witnesses. He elaborated that the prosecution had asked him to evaluate the evidence as a jury member and not necessarily accept direct evidence, which he had in fact done. Furthermore, it was mainly superficial intending to convince the court that Basson was guilty. As a result, Judge Hartzenberg found it far short of the standard, "beyond reasonable court."

⁹³ S v Basson 2005 (12) BCLR 1192 (CC), Judgement of 9 September 2005 (hereinafter Basson) para. 40. The court described the trial as a "marathon trial".

⁹⁴ Chandre Gould of the Centre for Conflict Resolution believes this estimate is possible. "The Long and Costly Road to Acquittal", Sunday Times, 14 April 2002

221.5 Lastly, Hartzenberg accused the state of appearing to be certain as to what the truth was, and by urging the court not to believe anything that contradicted the state's version of the truth. In other words, despite compelling evidence available, state prosecutors Ackermann and Pretorius (both alleged political interference in post-TRC prosecutions) presented a substandard case before the courts resulting in Basson's acquittal.

221.6 The acquittal verdict was welcomed and those cheering in court included retired Generals Niel Knobel, Magnus Malan and Joep Joubert, all of whom were instrumental in the regime's covert warfare programmes. They commented that "justice has been done."⁹⁵

221.7 In the ***State v Vlok and Others*** (2007) matter, the High Court accepted a plea and sentence agreement between the NPA former police commissioner Johan van der Merwe et al for their role in the attempted poisoning of Chikane. I found further details of the agreement in Chikane's book⁹⁶ where he describes how the NPA's Ackermann was only interested in a prosecution and making Chikane a witness against the perpetrators. Furthermore, he stated that Ackermann responded to Chikane's consistent position of truth seeking by concluding that he (Chikane) was a hostile witness and threatened to have him charged in terms of the Criminal Procedure Act 51 of 1977.⁹⁷

⁹⁵ IOL: Old guard applauds as 'Dr Death' walks free; Published 11 April 2002; By Zelda Venter; <https://iol.co.za/news/south-africa/2002-04-11-old-guard-applauds-as-dr-death-walks-free/> accessed 11 May 2025

⁹⁶ *The Things that Could Not be Said; From Aids to Zimbabwe*; Picador Africa 2013; ISBN 978-1-77010-225-5;

⁹⁷ <https://www.justice.gov.za/legislation/acts/1977-051.pdf>; CHAPTER 23 WITNESSES (ss 179-207) 179, Process for securing attendance of witness (1) (a) The prosecutor or an accused may compel the

221.8 My analysis of the KwaMakutha and Basson trials demonstrates how the state presented evidence leading to acquittals. As for the Chikane matter, it reveals the contrasting view of the NPA hell-bent on prosecution, whilst Chikane the victim emphasized the opportunity of soliciting information on what happened to victims of gross Human Rights Violation (HRV), especially those who died or disappeared. For Chikane, the intention was to obtain a better understanding of how the apartheid regime's National Security Management System (NSMS) operated.

222 I therefore hold the view that there was no political interference preventing post-TRC prosecutions. Rather, it was the conduct of officials / machinery within the state departments as demonstrated in the KwaMakutha and Basson trials, the closing of my uncle's file in 2006, the lengthy delays resulting in Rodrigues passing without his criminal trial commencing and how Els and Sons were not charged for perjury. The progress on TRC cases post-PCLU in September 2021 is further evidence that progress was hindered due to the conduct of officials. There is an argument made that the attempt by Brits to persuade Ackermann from stopping prosecuting in the Chikane matter was deliberate. If this was done, they would retaliate by pursuing charges against Mbeki and other ANC leaders who were denied amnesty.

223 I am of the view that those who were seized with the prosecution and or guidance and or investigation of TRC matters and failed to do so, must be charged for

attendance of any person to give evidence or to produce any book, paper or document in criminal proceedings by taking out of the office prescribed by the rules of court the process of court for that purpose.

defeating or obstructing the administrative of justice. This includes my uncle's matter.

224 This affidavit is submitted in pursuit of truth, accountability, and justice for victims of apartheid-era crimes whose cases were suppressed. It is my belief that without confronting this history, South Africa cannot meaningfully advance reconciliation or the constitutional promise of equal justice. I therefore respectfully submit this affidavit and offer my full cooperation to the COI.

RECOMMENDATIONS

I respectfully make the following recommendations for the COI to consider:

225 Apartheid-era and TRC records must be de-classified and made accessible to the NPA/DPCI and the public. We have apartheid-era inquests re-opened, yet critical apartheid records remain inaccessible within government departments. This remains a challenge even to investigators. Three decades after apartheid. flimsy excuses are made to prevent access to the files.

226 Almost three decades after the commencement of the TRC, South Africa cannot continue depending on the services of some apartheid-era IOs and prosecutors to investigate and prosecute apartheid-era crimes. The dedicated unit need not be capacitated with large numbers, but a small component of energetic and committed personnel who are unwavering in seeking truth and justice for our loved ones.

227 We also need to enlist the services of Black legal firms to assist with apartheid-era cases. Law students from universities can also assist legal teams with specific

cases. This initiative can become a national conscientisation project for the Departments of Education and Arts and Culture to record the country's history and to serve as a grim reminder of where we come from. This forms part of memorialisation projects.

228 Our freedom was not given to us on a platter by the racist outgoing white minority regime. It was due to the blood and sacrifices of our fallen heroes / heroines who brought the apartheid regime to its knees to negotiate a political settlement. This must serve as a grim reminder to all those holding political office and serving in government departments.

229 Therefore, it is not only the responsibility of the NPA / DPCI to investigate and prosecute TRC cases, but it is a moral obligation on the government of the day to do so. We are reminded by the Preamble of the Constitution: "*We, the people of South Africa, Recognise the injustices of our past, Honour those who suffered for peace and justice in our land...*" Constitution of the Republic of South Africa, 1996.

230 This does not only refer to awarding of posthumous awards; renaming of places, towns, schools, etc. but incorporates exposing those responsible for the deaths of our revolutionaries who refuse to disclose the truth and remain unapologetic of their heinous crimes they committed.

231 The apartheid system dehumanised us. For decades we were indoctrinated that a minority race was superior to us and that we were inferior to them. We have not healed as a nation post-apartheid and our scars are deep. No amount of financial compensation can remedy our heinous history.

- 232 Perpetrators who failed to apply for amnesty before the TRC should not be provided legal counsels at the expense of the State.
- 233 In his opening address at the 2017 re-opened inquest, Judge Mothe remarked: *“There is no doubt in my mind that during these proceedings we, as South Africans are about to enter a door that will rekindle painful memories. A door that invites us to embark on a journey which will cause all of us to confront the sordid part of our history. That door will only close, once the truth is revealed.”* Closure can only emerge once the full truth is revealed of who really prevented the investigations and prosecutions of TRC cases. Those office bearers who failed in executing their constitutional mandates must be identified and punished accordingly.

TIMELINE:

ALLEGED POLITICAL INTERFERENCE

March 2003: Creation of PCLU

April 2003: Mbeki’s address to Parliament. The doors were open for perpetrators to come forward encouraging them to speak the truth. They posed a potential national security threat and importantly, it was the responsibility of the NDPP to decide on prosecutions.

February 2004: DG’s Forum appointed a Task Team followed by a Departmental Task Team. This forum as a collective made a submission to Cabinet for the *“AMENDED PROSECUTION POLICY”* that was effective as at 1 December 2005. It is this policy that was ruled to be unconstitutional by Judge Legodi in 2008 in the matter of

Nkadimeng and Others.

July 2004: Ngcuka resigned

February 2005: Pikoli appointed

January 2006: Pikoli issued a statement on the “*Amended Prosecution Policy*” in support of 2003 address to Parliament by Mbeki

March 2006: NPA briefing to the NCOP Security and Justice Forum

Mid-2006: Meeting convened with office of the Presidency to address challenges in implementing the “*Amended Prosecution Policy*”. The meeting agreed to establish a WORKING COMMITTEE (TASK TEAM) and it also recommended presenting to Ministers in the Cluster. There was consensus for the TASK TEAM to assist the NPA. A subsequent follow up meeting was called by the NDPP Pikoli and in attendance were the respective heads of departments and representatives who were to serve on the TASK TEAM. The meeting agreed to a Terms of Reference (TOR) and Dr Silas Ramaite from the NPA was appointed as Chair of TASK TEAM.

December 2006: Correspondence from SAPS and NIA to Pikoli. They have a different set of understanding on the responsibilities of the TASK TEAM. They argued ***the TASK TEAM would be making collective recommendations to the DG’s Forum that would advise the NPA as the decision maker on all matters.*** The NPA viewed this understanding to be unconstitutional and Pikoli declared that there was an expectation from the DOCJ&CD, SAPS and NIA that there would be no prosecutions

February 2007: Correspondence from Minister Mabandla to Pikoli. Caught by surprise to media articles that the NPA would be proceeding with prosecutions. Also, as per their previous brief discussion, Pikoli had given the assurance that the NPA would not proceed with prosecutions

Pikoli responded to above. provides background to the establishment of the various task teams and their mandates, background to the “*Amended Prosecuting Policy*” and also highlighting its important features and lastly, problems related to implementing the policy. NDPP Pikoli concludes that the SAPS and NIA were not making dedicated members available to assist the NPA in executing its responsibilities. ***Moreover, their interpretation was that they were to be involved in the decision-making processes*** and that the original proposed TASK TEAM rejected by government to be implemented.

August 2007: *Rapport* article that Pikoli was on the verge of prosecuting ANC members. A copy of an office note, allegedly written by Ackermann in 2006, reflected that he was investigating criminal charges against 37 ANC leaders, including Mbeki. Ackermann believes that this note was a fabrication

September 2007: Pikoli suspended

May – August 2008: Ginwala Commission

October 2006: Internal NPA memorandum makes reference to reappointment of Senior Superintendent Britz who was not only sympathetic towards the Foundation for Equality Before the Law (FEBL), but he was in regular contact with its founder, former Police Commissioner General Van der Merwe. Ackermann asserts that Britz attempted to persuade him and his Deputy on numerous occasions that there was an incontestable case of terrorism against Mbeki emanating from the landmine campaign. The context for raising this was that if SB members were to be prosecuted, Mbeki would also have to be charged

November 2007: Mbeki address to Parliament on Presidential Pardons

April 2009: Sereti J granted an interdict halting the President from handing down any pardons

That is all I wish to state.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath as binding on my conscience.

DEPONENT

Thus signed and sworn to at _____ on this ____ day of
_____ 2025

The Deponent having knowledge that he knows and understands the contents of this affidavits, that it is both true and correct to the best of his knowledge and belief, that he has no objection to taking the prescribed oath and that the prescribed oath would be binding on his conscience.

COMMISSIONER OF OATHS