

"SKA2"

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

**THEMBISILE PHUMELELE NKADIMENG**

**Applicant**

and

**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**First Respondent**

**THE NATIONAL COMMISSIONER OF THE SOUTH  
AFRICAN POLICE**

**Second Respondent**

**THE MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES**

**Third Respondent**

**THE NATIONAL MINISTER OF POLICE**

**Fourth Respondent**

**WILLEM HELM COETZEE**

**Fifth Respondent**

**ANTON PRETORIUS**

**Sixth Respondent**

**FREDERICK BARNARD MONG**

**Seventh Respondent**

**MSEBENZI TIMOTHY RADEBE**

**Eight Respondent**

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**SUPPORTING AFFIDAVIT  
ON BEHALF OF THE FIRST RESPONDENT**

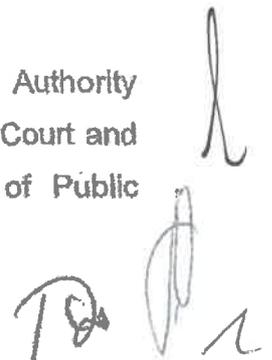
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I,

**RAYMOND CHRISTOPHER MACADAM,**

1.

I am an adult male, employed by the National Prosecuting Authority ("NPA") of South Africa. I am an admitted advocate of the High Court and since 2003, I have served as a Senior Deputy Director of Public



Prosecutions in the Priority Crimes Litigation Unit ("PCLU") of the Office of the National Director of Public Prosecutions ("NDPP").

2.

I am duly authorised to make this affidavit. The facts contained herein are true and correct. Unless otherwise stated or indicated by the context, the facts fall within my personal knowledge.

3.

The PCLU was established in 2003 and shortly after the unit commenced functioning, the then NDPP, Mr BT Ngcuka, directed that the PCLU should be responsible for the institution of prosecutions arising from the process of the Truth & Reconciliation Commission ("TRC").

4.

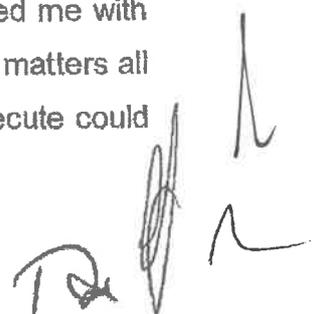
I initially assisted the Head of the unit, Adv Ackermann SC, in identifying cases falling within the NDPP's directive. In 2004 however, I was seized with a major matter relating to an international nuclear weapons proliferation network, which required full time attention for a number of years. As such, I no longer dealt with what I now refer to as "TRC cases."

5.

I am unable to recall an exact date, but I am able to confirm that Adv MJ Mpshe SC, the then Acting NDPP, (I believe that this was shortly before Adv Simelane was appointed as the NDPP.) directed that I should take over the TRC cases from Adv Ackermann SC.

6.

I was aware of the fact that firstly, the Directorate of Special Operations ("DSO") and thereafter the South African Police Service ("SAPS") had declined to investigate TRC cases. Adv Ackermann SC provided me with a list of cases which he had not been able to deal with as these matters all required investigations before decisions whether or not to prosecute could



be taken. The case before this Court was one of these matters. (*"The instant case."*)

7.

I commenced meeting with the then Divisional Head of the Detective Service of SAPS (Commissioner Lalla), aimed at ensuring that the cases would be investigated. I was advised by Commissioner Lalla that a project team would be established to investigate the matters.

8.

Shortly thereafter I was advised by Commissioner Lalla that a decision had been taken to refer the matters to the Directorate for Priority Crime Investigation ("DPCI") and that I should convey my request to the Head: DPCI.

9.

In respect of the instant case, I had requested from the State Archives a complete record of an amnesty hearing, which had been held by the TRC. I was also only able to locate a duplicate police docket missing several statements.

10.

As a result of Commissioner Lalla's advice, I commenced a further set of engagements, aimed at persuading the DPCI to investigate the matters. On 25 March 2010, I had written to the DPCI, requesting that the instant matter be investigated. However, I was informed that the Head: DPCI had decided that investigations would commence only after the conclusion of the 2010 World Cup due to a number of additional operational commitments which had been occasioned by this event. I was informed that the investigations would be done by the Crimes Against the State ("CATS") component of the DPCI.

11.

In October 2010, I was provided with the original docket and on 27 October 2010, I directed extensive further investigations. A copy of my letter has been filed as Annex "TN21.6" to this application.

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## 12.

I deem it important to explain the basis for directing such extensive investigations:

12.1 The applicant's sister had disappeared without trace in 1983.

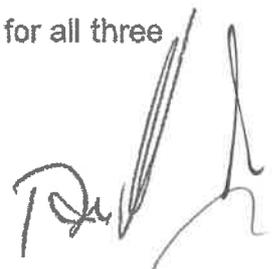
12.2 Only in 1996 did a small number of junior members of the former Soweto Security Branch make statements to the police, implicating themselves and their superiors in her kidnapping and torture.

12.3 The witnesses contradicted themselves as to where and in whose company she was last seen alive and also as to who was involved in the offences. A warning statement was only taken from one suspect (a bare denial).

12.4 In 1997, an amnesty hearing of the TRC commenced involving certain of the State witnesses and three of their superiors. In my view, a number of persons who could have provided crucial evidence regarding the conflicting versions placed before the committee were never called. The judgment was only handed down in 2001.

## 13.

My approach to the case was that I would have to decide whether the circumstantial evidence would be sufficient (in the absence of a body having been discovered or evidence being found relating to the planning or killing of the victim) to justify a prosecution against the persons implicated on a charge of murder. Alternatively, I would have to give consideration to the prospects of a successful prosecution against persons who had been involved in the kidnapping and who had not applied for amnesty. In the event of me concluding that no successful prosecution was possible on either scenario, then in terms of the Inquests Act, No 58 of 1959 ("the Inquests Act"), an inquest would have to be held. A prerequisite for all three options would be a fully investigated police docket.



14.

I was on an ongoing basis consulted by the investigating officer regarding the conduct of the investigation. It was clear to me that he was encountering difficulties in complying with my instructions. At a certain stage however, he resubmitted the docket together with a statement from the 1996 investigating officer (Captain Leask). According to Leask, he had been instructed not to proceed further with the investigation, but to hand his docket over to a Captain Holmes. In this regard, he indicated that the case would be part of a larger investigation against a General Engelbrecht.

15.

I was aware that Captain Holmes was a member of the D'Oliveira Investigation Unit, which had been set up to investigate certain cases falling within the ambit of the TRC. I was however aware that he had been dead for a number of years although in 1996 he was still alive. Certain of the files relating to this unit had been transferred to the NPA and a number of members of the unit had also elected to transfer to the NPA. I made a number of enquiries aimed at establishing what further investigations he had conducted and obtaining the relevant files.

16.

All my enquiries produced negative results. In fact, all I could locate was a report compiled by the then Director of Public Prosecutions ("DPP"), Pretoria to the then NDPP, declining to prosecute General Engelbrecht. Nowhere in the report was reference made to the investigation of the instant case.

17.

Due to the fact that a task team had been set up within the NPA to trace the remains of persons who had disappeared during the period falling within the mandate of the TRC, I requested the task team to assist the investigating officer by establishing whether an exhumation was possible at the farm where the victim was taken to, as well as at any other properties which were in use by the Soweto Security Branch in 1983. I also requested that the

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mortuary records be checked in all areas in which relevant events had taken place.

18.

I continued to advise the investigating officer on matters relating to the outstanding investigations. For example, I perused a number of docket registers looking for the cases relating to the false flag operations which were allegedly conducted as alleged during the amnesty application.

19.

It was a key issue at the amnesty hearing as to whether the victim had agreed to cooperate with the police and provided information leading to the arrest of some 18 members of the Liberation Movement. I perused docket registers trying to locate the relevant police dockets and also requested that security files be obtained from the relevant archives.

20.

In early 2013, the applicant wrote to Dr MS Ramaite SC, the then Acting NDPP, requesting that an inquest be held. In my view, it would be inappropriate to hold an inquest before the investigation had been concluded and before it could be established that there was no prospect of a successful prosecution against any of the persons implicated.

21.

This led to me having several communications with an Adv Palmer during the course of which I pointed out the matters which still required further investigation.

22.

In 2013, I was also advised by the investigating officer that he believed that he had found the skeleton of the victim. I directed the following further investigations in this regard:

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- 22.1 A more comprehensive report from the anthropologist who had examined the skeleton.
- 22.2 DNA testing by a laboratory in Bosnia due to the fact that the local DNA tests were inconclusive.
- 22.3 A facial reconstruction of the skull.

## 23.

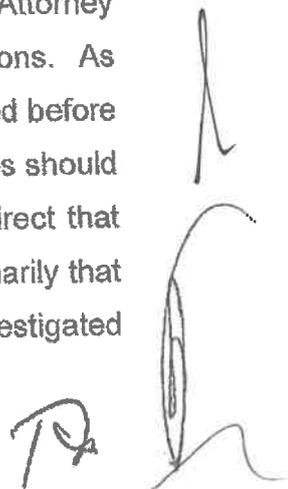
It was however subsequently established that the skeleton was not that of the victim. I continued to assist the investigating officer with the outstanding investigations.

## 24.

As is evidenced in the annexures attached to the application, the applicant later in 2013 instructed the Legal Resources Centre ("LRC") to communicate with the Head: PCLU and/or the NDPP, aimed at having an inquest held without further delay. The responses by the relevant officials in the NPA speak for themselves and require no further elaboration from myself. The responses are filed as Annexes "TN21.4" and "TN21.2" to the application. I am however unaware of how the then NDPP responded to a letter, dated 10 July 2014 from the LRC. My attitude was again that consideration could only be given to the request for an inquest once the investigations had been concluded and it decided that there was no prospect of a successful prosecution.

## 25.

I have previously been a senior member in three offices of the then Attorney General and had dealt with formal inquests on a number of occasions. As such, I was aware that in the case of an inquest, the docket is placed before the presiding officer and it is he/she who determines which witnesses should be called and not the prosecutor. Although the prosecutor may direct that certain witnesses be in fact called, the role of the prosecutor is primarily that of an evidence leader to assist the Court. In my view, if an uninvestigated

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29.

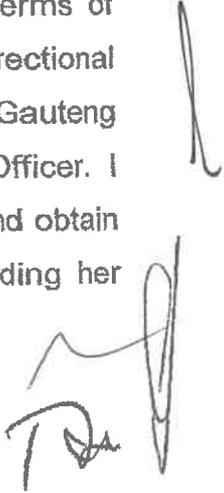
Adv Abrahams advised me that the police had submitted the docket to him for decision on 9 April 2015. Adv Abrahams and I commenced collating all the relevant material and preparing to advise Adv Johnson, who had been appointed as the Coordinator of the PCLU in early 2015, as to the correct decision which she would have to make. A matter that required careful thought was whether a prosecution should be instituted against Sergeant Radebe for kidnapping or whether this should be held in abeyance pending the outcome of a formal inquest. Our view was that the circumstantial evidence would not be sufficient to sustain a conviction on a charge of murder.

30.

On 20 May 2015, this application was served on the NPA. Adv Abrahams and I suspended our deliberations on the decision to be taken on the matter in order to peruse the application (some 471 pages) so as to advise Adv Johnson and other NPA officials as to how the application should be responded to. Had the LRC, instead of launching this application (which, because of its voluminous content would have taken a considerable amount of time to prepare), written to the NPA, it would have been advised that a decision whether to prosecute or hold an inquest would be made within a short period of time.

31.

On 28 May 2015, I provided Adv Johnson with my assessment of the instant case. In a nut shell I recommended that she should provisionally decline to prosecute all the implicated parties and that a formal inquest before a Judge should be held. I pointed out to her that in terms of section 6(d) of the Inquests Act, the Minister of Justice & Correctional Services would have to appoint the Judge President of the Gauteng Division to appoint a Judge of his division to act as the Presiding Officer. I also pointed out to her that she would be obliged to consult with and obtain consensus from the DPPs of Johannesburg and Pretoria regarding her decision. This terminated my involvement in the instant matter.



32.

I have taken notice of the averment repeatedly stated in the applicant's papers to the effect that political interference is delaying the decision in this matter. The allegations are denied insofar as they relate to my involvement in the matter *de facto* commencing in October 2010 (when I was provided with the docket and directed a set of comprehensive investigations) to date. The communications authored either by the Acting NDPPs or the Acting Head of the PCLU, attached to the application, also refute this claim and in fact confirm a commitment to ensuring that the instant matter is properly investigated so that the correct decision could be taken.

33.

Investigations were directed on 27 October 2010 and the final statements filed in the docket on 8 April 2015. The delay in finalising the investigation may be attributed to a combination of the following:

33.1 No investigations at all were conducted at the relative time, i.e. 1983.

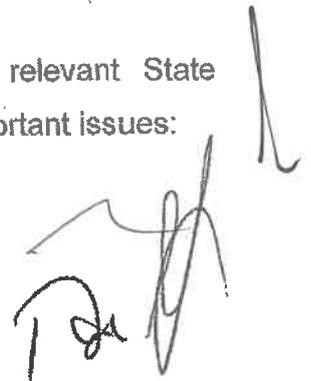
33.2 The 1996 investigation was terminated at an early stage.

33.3 No investigations were conducted from 1996 until October 2010.

33.4 The paucity of the evidence available. It is significant that the primary relief sought by the applicant is not a prosecution, but only a formal inquest.

33.5 The challenge in attempting to investigate a complex matter almost 30 years later.

33.6 Difficulties encountered in trying to locate highly relevant State information. I merely highlight certain of the most important issues:

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34.1 July 2011: The investigating officer submitted his report recommending an inquest.

34.2 22 January 2013: Captain Masegela returns docket and provides report in terms of s4 of the Inquests Act.

34.3 31 July 2014: Captain Masegela and Col Xaba advise that the docket was submitted to the PCLU on 14 July 2014 with the investigations finalised.

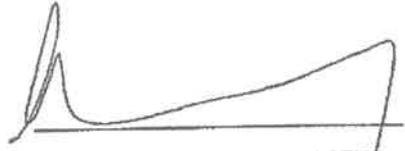
These averments are not correct. At no stage was the docket submitted in either July 2011 or January 2013 with a report recommending that an inquest be held. I attach as Annex "RCM1", an extract from the investigation diary from 29 June 2011 to 26 September 2012, confirming that the investigation was still in progress and witness statements being filed. In similar vein, I attach as Annex "RCM2", an extract from the investigating diary from 8 November 2012 to 25 February 2013, confirming that the investigating officer was in the process of communicating with the NPA's task team regarding its efforts to locate the remains of the victim. Finally, I confirm that no docket was submitted to me on 14 July 2014, let alone a fully investigated one. I attach as Annex "RCM3", the relevant extract from the investigation diary confirming that on 14 July 2014, the investigating officer filed a statement relating to DNA samples and only met with me on 25 September 2014 when he was requested to obtain the contact details of all the witnesses who had been interviewed by a private investigator. This was to enable witness statements to be obtained from them. In fact, the case continued to be under investigation until 8 April 2015 when the final statement was filed.

35.

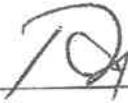
I know and understand the contents of this declaration. I consider the oath binding on my conscience and have no objection to the oath.

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Dated at *Pelkison* on this *6th* day of August 2015 at *09.00.*

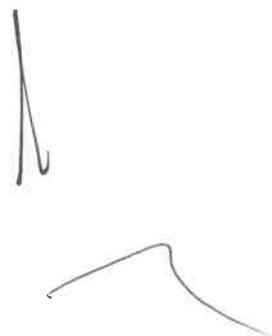
  
DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to before me and the deponent's signature was placed thereon in my presence at *Pelkison* on the *6th* day of August 2015 at *09.00.*



COMMISSIONER OF OATHS

*BENJAMIN NEL*  
*218 VISAGIE STREET*  
*GEN. PET JOUBERT SQUARE*  
*PRETORIA*  
*CAPTAIN*  
*S A POLICE SERVICE*





C37

Tyd, datum  
Time, date

Verwysing  
Reference

08:10  
2011/07/08

Stakes of Capt Masegela is  
being taken per  
introduction

A33  
B28

CAPT  
T.P. MASEGELA

16:00

Donee van by Middel en  
Museum. Meer N/A. Olfant  
goud en  
Laces per

A34

T.P. MASEGELA  
Kaptein/Kaptein  
2 spreke

12:00  
2012/09/26

By uitsig cos eedele  
Steg Smith, hy stoel weg mee  
die die kenner van die  
plaas sy per in en sy per in  
in Mosselbaai. Steg se kontak  
nommer is 0824922112 en  
sy per in het. Het se nommer  
is 0825627701

CAPT  
T.P. MASEGELA

09:00  
2012/09/27

Stakes die omdraai van die  
Plaas Man. Het. Het se  
0825627701. See by weet  
dat ons by sy plaas weet  
het. Hy stoel weg mee  
het. Het se nommer is  
toestemming. Steg se per se pos

CAPT  
T.P. MASEGELA

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C 38

SUID-AFRIKAANSE POLISIE



SOUTH AFRICAN POLICE

"Rcm2"

ONDERSOEKDAGBOEK  
INVESTIGATION DIARY

Tyd, datum Time, date	Stasie/Station	M.R./C.R. No. G.O./INQUEST No.	Verwysing Reference
06:40 2012.09.28	JHB	1469.02-96	B 79
12:10/20 07:30	<p>1. Korte na Nollom, Pleas Uitsig, Smit Trust.</p> <p>2. Demarkeering van pleas, buitegeboue, damme en oshoop.</p> <p>3. Eienskerigheid sal gevra word deur NPA. Dit sal ook in opdragings sal aangegaan.</p> <p>Uitstaende is by die korter ontsig, en krim.</p>		
10:00 2012.11.08	<p>By Priority Crimes Litigation unit, spreek Mankelolu Fickend een by deel van wees dat die rapport was nie reg is nie. Hy se dit was heel die volgende week by</p> <p style="text-align: right;">CAPT T. MASEGELA</p>		
07:10 2012.11.16	<p>Skakel Mankelolu Fickend en by deel van wees dat sy in Durban is en hy sal weg laat weet sodra die rapport reg is</p> <p style="text-align: right;">CAPT T. MASEGELA</p>		



"RCM" 3

6AP 6

C9H

Tyd, datum  
Time, date

Verwysing  
Reference

004100  
All forest removal force  
instructions and instructions  
will be accepted with

10:00  
004107/14  
JPA Samples and  
JPA Sizerio Simelane  
and old records  
New

CAPT  
TP MASEGELA

CAPT  
TP MASEGELA

A188

10:00  
004109/17  
Newly New  
Muzora

A189

Newly New FK Dutton  
Muzora

A190

Muzora  
TP Muzora

10:00  
004109/25  
By Adm Macadam se  
Gantoo, hospice old  
kol Xaba, Brig Gobbert, Macadam  
en uig Jelf.

(2) Dutton moet uig die  
konferensies open en  
die getuie word  
en in verskoning  
goe.

(3) Bred na UKRC getuie  
per

B65

CAPT  
TP MASEGELA

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"SKA3"

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**MINISTERIAL MEMORANDUM**

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**TO:** T.M. MASUTHA, MP (ADV)  
MINISTER: JUSTICE & CORRECTIONAL SERVICES

**FROM:** ADV. S.K. ABRAHAMS  
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

**SUBJECT:** MEMORANDUM TO THE MINISTER IN TERMS OF  
SECTION 33(2)(a) OF THE NPA ACT, NO 32 OF 1998, AS  
AMENDED

REPORT ON INVESTIGATIONS AND PROSECUTIONS  
EMANATING FROM THE TRUTH & RECONCILIATION  
COMMISSION (TRC)

**DATE:** 15 JULY 2015

**REF:** 3/3/1/Ministerial Memoranda – PCLU/TRC(1/2015)

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**1. PURPOSE**

The purpose of this memorandum is to provide the Honourable Minister with a comprehensive report on the investigations and prosecutions of matters emanating from the Truth and Reconciliation Commission (TRC).

**2. BACKGROUND (PRIOR TO THE INVOLVEMENT OF THE PRIORITY CRIMES LITIGATION UNIT (PCLU))**

2.1 The mandate of the TRC was to investigate politically motivated human rights' abuses committed during the period 1 March 1960 to 5 May 1994.



- 2.2 During that period South Africa comprised of an Apartheid State and several self-governing territories, each with its own police force and prosecuting authority, acting independently of each other. In many cases, little or no sincere investigations were conducted into State orchestrated violence directed against the Liberation Movements. Prior to the April 1994 elections, the Apartheid State's Security Forces deliberately destroyed substantial documentation in order to conceal the involvement of State structures in human rights' abuses.
- 2.3 In 1990, the Harms Commission found that there was no basis for the allegations that the Security Forces were operating covert assassination squads. In either 1992 or 1993, the Goldstone Commission was established, which continued probing the existence of these squads. Limited information was received about certain State structures which were in fact involved in covert assassinations. The Commission had no law enforcement powers and was dissolved.
- 2.4 Although a single national police force was established shortly after the 1994 elections, the investigation of TRC cases was dealt with on a fragmented basis. Although the D'Oliveira Unit (a SAPS structure reporting to the then Attorney General: Transvaal) was established to take forward the work of the Goldstone Commission, its mandate limited it only to a small number of cases involving the Apartheid State's security structures. The prosecution of cases remained at the discretion of the Attorneys General which had been in existence prior to the elections.
- 2.5 In 1990, an Indemnity Act came into effect, granting indemnity for certain categories of politically motivated offences. The



scope of the indemnities granted was significantly extended by the Further Indemnities Act of 1992. In 1995, President Mandela issued a blanket indemnity for all contraventions of the Firearms - and Explosives Acts committed before 3 December 1993. The TRC recognised all indemnities granted under the previous legislation.

2.6 The TRC commenced its work in 1996. The TRC Act specifically made provision for investigations and prosecutions to be put on hold pending the hearing of amnesty applications. SAPS decided to suspend investigations in all cases where it was believed that amnesty applications would be lodged. This was to save resources being wasted if in fact amnesty was granted.

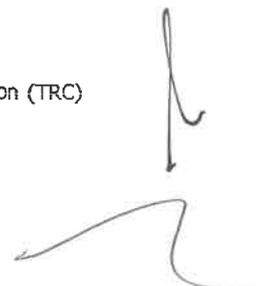
2.7 The TRC in the main had three sources of evidence:

2.7.1 Complaints by victims and hearings conducted by the Human Rights' Violations Committee.

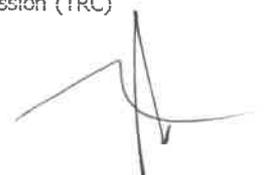
2.7.2 The questioning of persons suspected of having committed human rights' abuses. The TRC Act specifically rendered such interrogations inadmissible in criminal proceedings.

2.7.3 Applications for amnesty from persons involved in human rights' abuses. The TRC Act specifically excluded the amnesty applications and subsequent oral testimony from being used in criminal proceedings.

2.8 In September 1998, the NPA Act came into effect and the country's first NDPP was appointed.

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- 2.9 In October 1998, the TRC tabled its "*Final Report*" in which it recommended that consideration be given to prosecutions in cases where amnesty had either been refused or not applied for and where admissible evidence [my emphasis] was available. The TRC conceded that much of its evidence would be inadmissible.
- 2.10 The NDPP immediately established a Human Rights' Component in his office to address this recommendation of the TRC. Informal meetings took place between members of this unit and members of the TRC. However no evidence was handed over identifying cases for prosecution. The amnesty process had not been concluded and in fact the final amnesty judgments were only delivered in 2002. For obvious reasons decisions whether or not to prosecute could not be taken before it had been established whether persons had received amnesty or not.
- 2.11 The Human Rights Division dissolved in 2000. For a very brief period the DSO was tasked with TRC matters, but since that organisation had itself only just been created, little or no work was in fact done on TRC cases. The D'Oliveira Unit had also dissolved in the same period.
- 2.12 The Directors of Public Prosecution (DPPs) had taken over the functions of the Attorneys General. They continued to deal with matters with which their offices were previously seized. Prosecutions were instituted in cases where amnesty had been refused (e.g. the Bisho massacre). In addition, the DPP: North Gauteng declined to prosecute Security Branch General Engelbrecht in respect of a number of cases where he had been



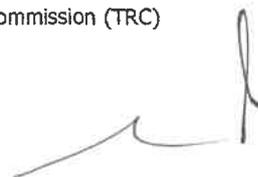
implicated by convicted Vlakplaas Commander de Kock. The then NDPP concurred with this decision.

### 3. **MANAGEMENT BY THE PCLU**

- 3.1 In 2003, the PCLU was established as a special directorate in the office of the NDPP to manage and direct investigations and prosecutions in relation to certain specified offences. The NDPP however had the power to refer additional cases to the PCLU.
- 3.2 Also in 2003, the amnesty process was concluded and consequently the President informed Parliament that prosecutions arising from the TRC process would be dealt with according to the ordinary prosecution principles.
- 3.3 The NDPP directed that the PCLU should be responsible for managing the outstanding TRC cases in respect of which decisions whether or not to prosecute were required. The NDPP had however to confirm all decisions taken. The PCLU was not an investigative unit and was not tasked to evaluate every complaint laid with the TRC and each and every finding made by the various committees thereof.
- 3.4 The PCLU took the following steps to identify such outstanding cases:
- 3.4.1 The Divisional Head of the Detective Service of SAPS was requested to issue an order to all the Provincial Commissioners to report outstanding cases to the PCLU.

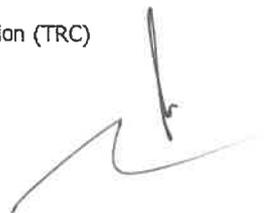


- 3.4.2 A similar request was made to all the DPPs.
  - 3.4.3 Former members of the D'Oliveira Unit and the Human Rights' Component were interviewed.
  - 3.4.4 Two former TRC researchers were employed on contract to work through the TRC data / material located in the State Archives for suitable cases.
- 3.5 In a small number of instances victims contacted the PCLU requesting that their cases be looked into. These requests were accepted even if the criteria specified by the TRC were not meant to enable the victims to obtain closure.
- 3.6 A major challenge was locating the material necessary to make decisions:
- 3.6.1 The Director General: DoJ&CD had after the closure of the TRC issued a directive that all inquests older than 10 years may be destroyed.
  - 3.6.2 Police dockets could not be located either because they had not been returned by the TRC or had been lost during the integration process of the former police forces or due to the closure of police units.
  - 3.6.3 Difficulties were encountered with the location of court records.
- 3.7 The audit process however identified 400 cases which were in the main disposed of on the following basis:



- 3.7.1 Amnesty granted
- 3.7.2 Crimes prescribed: In terms of s18 of the Criminal Procedure Act, No 51 of 1977, crimes such as assault (dealt with as torture by the TRC) culpable homicide, attempted murder, accessory after the fact and defeating the ends of justice prescribe after 20 years. As at July 2015, all such cases falling within the TRC timeframe have prescribed.
- 3.7.3 Persons having been refused amnesty or not having applied having been granted indemnity in terms of s204 of Act 51 of 1977. In addition, in certain circumstances where s204 did not apply, the Competent Prosecuting Authorities at the time declined to prosecute the persons in return for them having supplied useful information for the purpose of investigations.
- 3.7.4 Matters already finalised by the DPPs or Attorneys General.
- 3.7.5 No satisfactory evidence upon which a successful prosecution could be instituted.
- 3.7.6 Insufficient evidence available upon which to assess whether a prosecution could be instituted or not, e.g. previous court records and police dockets not available.
- 3.7.7 Witnesses and/or suspects deceased.

- 3.7.8 Matters falling outside the jurisdiction of the South African Courts, e.g. the murder of Dulcie September in Paris.
- 3.7.9 Persons having been granted indemnity under the two Indemnity Acts.
- 3.8 Prosecutions were however instituted in the following cases:
- 3.8.1 *S v Terre'Blanche*: The leader of the AWB entered into a plea and sentence agreement resulting in a wholly suspended sentence being imposed relating to a series of bombings in the North West Province.
- 3.8.2 *S v Blani*: The accused, a member of the UDF, entered into a plea and sentence agreement resulting in a partially suspended prison sentence for an attack on an elderly couple living on a farm in the Eastern Cape.
- 3.8.3 *S v Nieuwoudt & 2 Others*: The accused, three former Security Branch members, were charged with the murder, kidnapping and assault of three Port Elizabeth activists (the PEBCO 3 incident). Although the accused were indicted in the Port Elizabeth High Court, the case was on an ongoing basis postponed and withdrawn due to lack of evidence after a period of five years.
- 3.9 Approximately 350 of the 400 cases were finalised on the above basis. In respect of the remaining 50, further investigations were



necessary before decisions whether or not to prosecute could be taken.

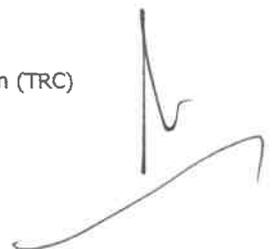
- 3.10 Both the DSO and SAPS were requested to investigate the remaining 50 cases, but declined to do so. The reasons for SAPS not investigating are set out in the letter of 26 September 2003 by the Divisional Commissioner, attached hereto as **Annexure "A"**. The contents of the letter are self-explanatory and in fact the then NDPP elected not to approach the President as indicated by SAPS.
- 3.11 The ANDPP (Dr Ramaite SC) put the management of TRC cases on hold pending the formulation of special guidelines in terms of s179 of the Constitution. This was done shortly after a decision was taken to charge three further Security Branch members. Shortly thereafter the NPA was provided with a copy of an Indemnity Bill, which had been drafted by DoJ&CD. (An extract of the Bill is attached as **Annexure "B"**.) The constitutionality of the Bill was obviously questionable and in fact it was never enacted.
- 3.12 The formulation of the guidelines took a considerable amount of time. Once they entered into law, they placed the decision on making decisions whether or not to prosecute on the NDPP. The PCLU was required to assist the NDPP in making decisions and formed part of a multi-disciplinary task team made up of SAPS, NIA, DoJ&CD and the DSO (the TRC Task Team). The guidelines made provision for the NDPP to grant indemnity to accused if they satisfied the criteria which were applied by the TRC's Amnesty Committee.

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a vertical line and a small flourish at the bottom.

- 3.13 The Task Team first conducted a review of the matters previously dealt with before giving attention to matters requiring investigation.
- 3.14 A plea and sentence agreement was entered into with the former Minister of Police (Vlok), former National Police Commissioner (Van der Merwe) and three former members of the Security Branch relating to the attempted murder of Rev Frank Chikane. The accused all received wholly suspended sentences.
- 3.15 The plea and sentence agreement was widely criticised by civic society and in fact Rev Chikane laid a complaint against the Head of the PCLU with the Minister.
- 3.16 The NDPP (Adv Pikoli) was suspended and the Ginwala Commission was appointed to enquire into the complaints made against him. Rev Chikane lodged a complaint relating to the Vlok/Van der Merwe matter with the Commission.
- 3.17 SAPS notified the ANDPP (Adv Mpshe SC) that it would not continue to investigate TRC cases pending the outcome of the Ginwala Commission.
- 3.18 A group of victims brought an action in the High Court to have the TRC guidelines set aside on the basis that they had introduced a second amnesty process and hence unconstitutional. This application was successful and further delayed the investigation of TRC cases because the then Minister (Mabandla) and NDPP (Mpshe SC) first attempted to take the judgment on appeal, but abandoned such course of action upon legal advice.

- 3.19 By that stage the number of outstanding cases requiring investigation had been reduced to 8. The remaining 40 had been finalised as not justifying the institution of prosecutions.
- 3.20 After the findings of the Ginwala Commission had been handed down, the PCLU commenced negotiating with SAPS for the investigation of the remaining 8 cases. In addition, the PCLU was requested to also attend to the Viyane, Guguletu Seven, Lolo Sono & Shabalala, Japie Maponya and Neil Aggett matters.
- 3.21 Initially the investigation of TRC cases fell within the mandate of the Detective Service and a series of negotiations took place with the Divisional Head. Shortly before a project team was due to be appointed, the responsibility for TRC matters was transferred to the DPCI (the Hawks). The DPCI indicated that the cases would be investigated by a component of its head office, but that such investigations could only commence once the 2010 World Cup had been held due to the fact that its members were committed to security duties.
- 3.22 The Anton Lubowski murder in Windhoek, Namibia was investigated. A decision was taken not to prosecute in respect of an alleged conspiracy, formulated in South Africa by members of a covert military structure on the basis that there was no acceptable evidence to prove the existence of the conspiracy or to identify the conspirators. The murder itself could not be enquired into because it was committed outside the jurisdiction of the South African Courts. The decision not to prosecute was confirmed by Adv Mpshe SC and the Minister was informed accordingly.

#### 4. CASES ON HAND



#### 4.1 ***The Cradock 4 incident***

This matter relates to the kidnapping and murder of Mr Goniwe and three other Eastern Cape activists in Port Elizabeth in 1985. The DPCI investigated two former members of the Port Elizabeth Security Branch as well as a General in Crime Intelligence in relation to their alleged involvement in the crimes. The first suspect died before the investigation against him could be concluded. In respect of the other two suspects, both the PCLU and the DPP: Eastern Cape were of the view that there was no basis upon which a prosecution could be instituted against either of them. The NDPP must however confirm the decision not to prosecute.

#### 4.2 ***Pebco 3 incident***

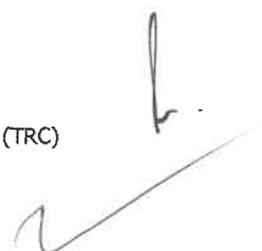
This matter relates to the kidnapping, torture and murder of Mr Hashe and two other members of the Pebco Civic Organisation in 1985 in the Eastern Cape. Although the charges had been withdrawn, the matter nevertheless required further investigation because numerous issues had not been canvassed when the initial decision to institute a prosecution had been taken. The DPCI has still to finalise all the outstanding investigations. Although it is unlikely that a prosecution will be instituted, an inquest will have to be held.

#### 4.3 ***Disappearance of Nokuthula Simelane***

This matter relates to the disappearance of an MK operative in 1983 from the Carlton Centre, Johannesburg. A group of Security Branch members were granted amnesty for her kidnapping, but no evidence was forthcoming relating to her ultimate fate. On the version of certain of the amnesty applicants, the suggestion was that she was in all probability murdered by the other applicants. These applicants however deny those allegations and suggest that she agreed to be an informer and was reinfilitrated into the MK structures in Swaziland. The suggestion is that she was murdered by the ANC. Her remains have never been discovered. An application was brought by the victim's family to compel a decision. The NPA has however decided not to prosecute at this stage and the process is in motion to hold a formal inquest before a Judge of the High Court.

#### 4.4 *The Highgate Hotel incident*

This matter relates to an attack on a hotel in East London in 1993. A number of people were killed and seriously injured. No persons were ever prosecuted or applied for amnesty. Some years after the closure of the TRC the former investigator and the current leader of the PAC alleged that the attack was carried out by unidentified members of the Security Forces. These allegations are under investigation. Although it would appear unlikely that the perpetrators would be identified, nevertheless an inquest will have to be held. The DPCI must still finalise all the outstanding investigations.



#### 4.5 **Murder of *Viyane***

This matter relates to the fatal shooting of a civilian by the police in Northern KwaZulu-Natal in 1993. Although the case was not dealt with by the TRC, the family have requested an investigation because it is alleged that the deceased was killed because of his allegiance to the ANC. The allegations have been investigated and it has been established that the case was not politically motivated. The case was referred to the DPP: KZN to consider reopening the inquest in the light of an additional statement obtained from one of the police officers involved in the shooting. She however has declined to reopen the inquest on the basis that the new statement is untrue and would not result in a different finding were an inquest to be held.

#### 4.6 **Attempted murder of *Rev Frank Chikane***

During the course of the plea and sentence agreement set out above, the accused in that matter implicated former Security Branch General Basie Smit. The DPCI was requested to investigate his involvement. The DPCI conducted a very weak and unsatisfactory investigation, claiming that Rev Chikane could not be traced. Before the matter could be taken further, the crime prescribed, thereby preventing any further probe into the alleged involvement of General Smit.

#### 4.7 **Heidelberg Tavern Massacre**

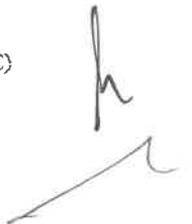
A number of APLA operatives were convicted of having carried out the above attack which resulted in a number of people being murdered and seriously injured. The operatives all received amnesty. However, after the closure of the TRC, a former Head of the PAC made a number of radio interviews in which he claimed responsibility for the attack. The father of one of the deceased has requested that the matter be investigated. Investigations are in progress.

#### 4.8 ***St James Church Massacre***

A number of APLA operatives were convicted of having carried out the above attack which resulted in a number of people being murdered and seriously injured. The operatives all received amnesty. However, after the closure of the TRC, the former Head of the PAC made a number of radio interviews in which he claimed responsibility for the attack. A parliamentarian was approached by a number of survivors of the attack and she has requested that the matter be investigated. Investigations are in progress.

#### 4.9 ***Arms Cache: Philip Powell***

In April 1994, Mr Powell, an IFP senator was linked to arms found in a KwaZulu police camp in Northern KwaZulu-Natal. The then Attorney General of Natal declined to prosecute him. Mr Powell was thereafter implicated as having received a huge consignment of arms in October 1993. A prosecution could not be instituted on that charge because a Presidential Proclamation of 1996 gave blanket amnesty for all firearms offences committed on or before December 1993. In 1998, Mr Powell pointed out a bunker containing arms at Nqutu. The



DPP: KZN declined to prosecute. The NDPP however requested that the matter be fully investigated. This investigation established that not all the arms had been recovered and that Mr Powell's version regarding the April 1994 cache was untrue. The official who made the decision not to prosecute indicated that in the light of the new evidence, he would have favoured a prosecution. The NDPP therefore gave Mr Powell notice of his intention to set aside his decision not to prosecute relating to the April 1994 case. Mr Powell emigrated to the United Kingdom and a warrant for his arrest was issued. The issue of extradition was taken up with the UK authorities but it emerged that the offence would be classified as political by the UK and therefore extradition was not applied for. Representations were received from Mr Powell seeking the cancellation of the warrant. The matter was investigated further in order to establish whether the evidence on which the warrant was obtained, was still available. The DPCI indicated that it was difficult to confirm the availability of the evidence and the offence prescribed in April 2014.

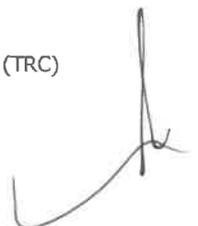
#### 4.10 **Murder of *Sono and Shabalala***

This matter relates to the activities of the Mandela United Football Club. The two persons disappeared having last been seen in the company of members of this club. Investigations by both SAPS and the TRC failed to locate either the remains of the two persons or any evidence relating to their deaths. In 2013 however, the Missing Persons' Task Team located two mortuary records containing photographs which were positively identified by the families as being the two persons. Medical evidence suggested that they had been brutally murdered. Their remains have now been exhumed and are undergoing DNA and forensic

testing. The TRC and SAPS investigations are being revisited in order to establish whether the perpetrators of the two murders can be identified and a successful prosecution instituted. In the event of no such evidence being forthcoming, the Magistrate: Johannesburg will be requested to reopen the original inquests in order to receive the new evidence relating to the identities of the deceased and their causes of death. The Head of the PCLU had earlier declined to prosecute, because of unsatisfactory evidence.

#### 4.11 *Guguletu Seven*

This matter relates to the fatal shooting of seven MK operatives by the police in Cape Town in March 1986. A member of the public has requested the Minister to confirm whether the case is under investigation. This matter was not one of the cases identified for investigation because an inquest found that no one was responsible for the deaths of the deceased and amnesty was granted to two members of the Security Branch involved in the incident. The TRC material has however been re-evaluated and the conclusion reached that the initiation of an investigation would not lead to a successful prosecution. The TRC granted amnesty to the senior member of the Security Branch on the basis that the deceased had initiated the shooting by throwing a hand grenade and that the member had attempted to arrest them. The TRC further found that neither the Murder & Robbery nor the Riot Units' senior officials had given any instructions that the deceased should be killed. Although a junior member of the Security Branch had testified that a sergeant in the Riot Unit had shot one of the deceased after he had surrendered, he was adamant that he was not able to identify this person. In addition, he admitted that he had not mentioned this incident in previous



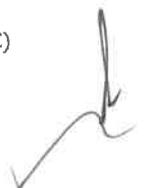
statements. An askari who had originally alleged that the deceased had been murdered and that false evidence had been placed before the inquest was found to be an unsatisfactory witness by the Amnesty Committee.

#### 4.12 *Dr Neil Aggett*

The above person was an activist, who committed suicide in detention in 1982. An inquest found that the police were not responsible for his death. No one applied for amnesty for his death. The TRC's Human Rights' Committee however found that the police were responsible for his death on the basis of the circumstances under which he was detained. In 2012, the Mail & Guardian alleged that one of the persons responsible for Dr Aggett's interrogation now held a number of contracts with Government. This led to the matter being raised by the Justice Portfolio Committee. Any charge of assault or culpable homicide has prescribed in 2002. The matter is being investigated solely on the basis of whether the persons involved in his detention foresaw that he would commit suicide and persisted with their actions reckless as to whether suicide resulted. This could be the basis for a charge of murder. There is however no evidence to suggest that his interrogators killed him.

#### 4.13 *Japie Maponya*

This is one of the matters in respect of which De Kock was convicted and refused amnesty. The remains of the deceased were never recovered. As a result of the Missing Persons' Task Team, it was in 2014 established that one of the persons involved in the offence had not applied for amnesty and



consequently the possibility of being able to prosecute him for his involvement in the case is being considered.

## 5. COMMENTS

5.1 It is a fact that there are very few cases arising from the TRC process which warrant investigations and decisions to prosecute. As appears from the breakdown of the cases above, it would appear unlikely that successful prosecutions could be instituted in many of the cases.

5.2 Unfortunately a perception has been created with the media and the public by former members of the TRC that the TRC supplied the NPA with volumes of evidence justifying numerous prosecutions. This is unfortunately not the position and to date the record has not been publicly set straight.

5.3 The correct position is as follows:

5.3.1 The TRC did not supply the NPA with volumes of evidence. It has been established that all that transpired was that the TRC supplied lists of amnesty applicants' names to the component in the NDPP's office referred to above. This component had to in turn request the DPP: Cape Town to retrieve the amnesty judgments from the TRC.

5.3.2 Prior to the TRC a number of prosecutions were in fact instituted. These include the prosecution of former Vlakplaas Commander de Kock, Military Doctor Wouter Basson, CCB operative Ferdi Barnard, Magnus Malan (the former Minister of Defence) and a



large number of Defence Generals, as well as a number of key prosecutions linked to the political violence in KwaZulu-Natal. Where convictions were obtained, it would be irrelevant that subsequently amnesty was refused (as was the case with the De Kock and Barnard matters). Where acquittals resulted (as in the case of Basson and Malan), there would be no incentive to apply for amnesty and no opportunity for further persons to be implicated. It is a matter of fact that many of the amnesty applications related to persons who had already been convicted.

- 5.3.3 The granting of amnesty in a number of significant cases which commanded high public interest. Such matters include the murder of Griffiths Mxenge, the poisoning and murder of Simphiwe Mtimkulu, the kidnapping and murder of the Mamelodi 10, the majority of the killings committed by Vlakplaas and other Security Branch structures, etc.
- 5.3.4 The granting of amnesty to certain perpetrators making the prosecution of other persons difficult, e.g. the *Guguletu Seven* matter referred to above and the granting of amnesty to the Head of the Eastern Cape Security Branch, who ordered the murders in the *Pebco 3* matter.
- 5.3.5 The impact of prescription, e.g. the death and detention of Steve Biko and all the other cases relating to torture and culpable homicide.



- 5.3.6 The absence of credible investigations at the time when the crimes were committed and the destruction and loss of documentation.
- 5.3.7 The age of the cases. Many of the witnesses and suspects were deceased before decisions could be taken to institute prosecutions.
- 5.3.8 Many of the cases are dependent on perpetrators being prepared to testify against their co-conspirators. Unfortunately a number of accomplices have been discredited in previous proceedings to such an extent that no reliance can be placed on their credibility.
- 5.3.9 The acquittals in the high profile *Magnus Malan*, *Wouter Basson* and *Bisho massacre* cases do not serve as an incentive for perpetrators to come forward.

## 6. MATTERS OF CURRENT CONCERN

- 6.1 There are therefore currently only eight cases in respect of which final decisions whether to prosecute or not must be taken. (In respect of the Nokuthula Simelane matter, the decision not to prosecute will be considered after the holding of an inquest.) Although the finalisation of these cases is a priority for the NPA, it is dependent on the DPCI to conclude the investigations.
- 6.2 Unfortunately the quality of investigations is very poor and is having a negative impact on being able to finalise the cases quickly.



- 6.2.1 In the Rev Chikane matter, no investigations were conducted, despite a lengthy directive being issued by the prosecutor and in fact, it was even suggested that Rev Chikane could not be traced.
- 6.2.2 In the Heidelberg Tavern and St James Church cases, the DPCI claimed that the police dockets and court records could not be located although it has now been established that for many years the relevant material was in fact in the possession of the DPCI.
- 6.3 The failure for the matters to be investigated from 2003 until 2011 has prevented prosecutions being instituted in cases that could possibly have resulted in convictions. This is because by the time the cases were eventually investigated, the suspects and/or witnesses were already deceased. (The Cradock 4 and Pebco 3 cases are examples thereof.)
- 6.4 The consequences of the failure to investigate will be placed in the public domain once inquests are held in certain matters or when the decisions not to prosecute are announced that interested parties request access to the material in terms of PAIA.
- 6.5 A particular case in point is the Nokuthula Simelane matter where a formal inquest before a Judge will be held. It is a fact that evidence will be led of key witnesses being dead and key evidence being unable to be located. It is only to be expected that the Judge would require an explanation as to why this matter was not investigated prior to 2011. In this regard, I attach as **Annexure "C"**, a copy of the affidavit of former NDPP, Adv Vusi Pikoli, and as **Annexure "D"**, a copy of the affidavit of the then



Head: PCLU, Adv Anton Ackermann SC.

Both advocates alleged high level political interference aimed at preventing the investigation of TRC cases in their affidavits. These affidavits were filed as part of the application to compel a decision and it is not inconceivable that the victim may call these advocates as witnesses if this issue is in fact raised.

- 6.6 It is only to be expected that once the decisions are publicly announced and the failure to investigate exposed, that allegations will be made that Government deliberately waited for all the witnesses and accused to die before giving attention to the cases.

## 7. CONCLUSION

It is recommended that the Honourable Minister note the contents of this memo. I will inform the Minister of the outcome of the individual cases once the investigations have been concluded and decisions made on them.

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**ADV. S.K. ABRAHAMS**  
**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**  
**DATE:**

**NOTED**

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**MS. N. SINDANE**  
**DIRECTOR GENERAL FOR JUSTICE & CONSTITUTIONAL DEVELOPMENT**  
**DATE:**

**NOTED**

MR. J. JEFFERY, MP  
DEPUTY MINISTER FOR JUSTICE & CONSTITUTIONAL DEVELOPMENT  
DATE:

NOTED

T.M. MASUTHA, MP (ADV)  
MINISTER FOR JUSTICE & CORRECTIONAL SERVICES  
DATE:

## Kim Benjamin

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**From:** Shaun SK. Abrahams  
**Sent:** 02 September 2015 04:52 PM  
**To:** Kim Benjamin  
**Subject:** FW: Nokuthula Simelane  
**Attachments:** Nkadimeng Draft Consent Order v4.DOCX

Kim

Please print and give it to me. Both Mail and attachment.

Thank you.

Adv. Shaun K Abrahams  
 National Director of Public Prosecutions  
 Republic of South Africa  
 Email: skabrahams@nppa.gov.za  
 Tel: +27 12 845 6454 Fax: +27 12 843 1066



Executive Assistant: Ms. Kim Benjamin  
 Email: kbenjamin@nppa.gov.za Tel: +27 12 845 6758 Cell: +27 82 490 5237

**From:** Shaun SK. Abrahams  
**Sent:** 21 August 2015 02:05 PM  
**To:** Kim Benjamin  
**Subject:** FW: Nokuthula Simelane

Dear Kim

Please print.

Thank you.

Adv. Shaun K Abrahams  
 National Director of Public Prosecutions  
 Republic of South Africa  
 Email: skabrahams@nppa.gov.za  
 Tel: +27 12 845 6454 Fax: +27 12 843 1066



Executive Assistant: Ms. Kim Benjamin  
 Email: kbenjamin@nppa.gov.za Tel: +27 12 845 6758 Cell: +27 82 490 5237

**From:** Moray Hathorn [<mailto:moray.hathorn@webberwentzel.com>]  
**Sent:** 21 August 2015 09:51 AM  
**To:** Shaun SK. Abrahams  
**Subject:** Nokuthula Simelane

Dear Advocate Abrahams

I have instructions from my client to place before you the attached draft consent order for your consideration.

I have further been instructed to request a 2 to 3 hour meeting with you at any time in the week of 14 September 2015 at which we wish to place before you the evidence for kidnapping and murder charges as contemplated in the attached draft consent order. Our client wishes to attend the meeting with her legal team and Frank Dutton.

In order to allow time for due consideration of the issues at stake our client is willing to postpone the date for the filing of the answering affidavit to 30 September 2015.

Yours sincerely

Moray Hathorn  
Partner

**WEBBER WENTZEL**

in alliance with > **Linklaters**

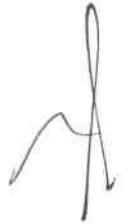
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FA5  
SAT

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 76755/18

In the matter between:

JOAO RODRIGUES

Applicant

and

THE NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS OF SOUTH AFRICA

First Respondent

MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES

Second Respondent

THE MINISTER OF POLICE

Third Respondent

---

SUPPORTING AFFIDAVIT ON BEHALF OF FIRST RESPONDENT

---

I, the undersigned,

**RAYMOND CHRISTOPHER MACADAM,**

do hereby make oath and state that:

1.

I am an adult male employed by the National Prosecuting Authority (NPA). I am an admitted advocate and since 2003 to date serve as a Senior Deputy Director of Public Prosecutions in the Priority Crimes Litigation Unit (PCLU) located in the Office of the National Director of Public Prosecutions (NDPP) (First Respondent).

2.

I depose to this affidavit solely to comment on the averment made by the Applicant that the NDPP acted improperly in not dealing with the matter which forms the scope of this application in either 1996 or 2003 (the Timol-case). I was not involved in making the decision

to institute the current criminal proceedings against the Applicant and the processes which flowed therefrom.

3.

It is necessary to provide certain background information to give context to my account.

4.

The Truth and Reconciliation Commission (TRC) was established to ascertain the fullest extent of politically motivated human rights' abuses committed between 1 March 1960 and early May 1994. I shall refer to these crimes as TRC cases. The TRC was mandated to grant amnesty to perpetrators who made a full disclosure of their involvement in human rights' violations.

5.

TRC cases were originally dealt with by the Attorneys-General in the Provinces and Self-Governing Territories.

6.

A further development was however the appointment of a Commission of Enquiry headed by Judge Richard Goldstone to investigate some of the most serious cases.

7.

When the Commission dissolved Dr Jan D'Oliveira SC, the then Attorney-General Transvaal, was appointed to head up a team to continue with the work of the Commission and to facilitate the institution of prosecutions.

8.

When the **NPA Act 32 of 1998** came into effect in October 1998 an NDPP (Mr BT Ngcuka) was appointed and the Attorneys-General became Directors of Public Prosecution (DPPs). The DPPs were seized with certain matters, many of which were put on hold pending applications for amnesty lodged by the accused with the TRC. When the TRC released a report calling for the prosecution of persons who had either been refused or not applied for amnesty provided that there was sufficient evidence, Ngcuka set up a TRC unit in his Office to deal with TRC cases not being already dealt with by the DPPs.

9.



LC  
NGI

This unit however dissolved because the amnesty process had not been concluded and therefore it was unclear which cases should be considered for prosecution. Furthermore it also lacked an investigative capacity.

10.

The unit headed by Dr D'Oliveira had ceased to function once the **NPA Act** came into effect.

11.

In March 2003 the PCLU was established by **Presidential Proclamation** as a Special Directorate in the Office of the NDPP. The **Proclamation** authorised the NDPP to refer priority crimes to the PCLU. Adv AR Ackerman SC (Ackerman) was appointed as Special Director and I was transferred from a component of the Directorate of Special Operations (DSO) to serve as one of his Deputies.

12.

Shortly after the establishment of the unit Ngcuka summoned Ackerman and I to his Office and informed us that he had decided that the PCLU should take over the TRC cases which had not been finalised either by the DPPs or by the defunct TRC unit. He further advised that the DSO would conduct any investigations which may be necessary. The DSO was a special NPA investigative unit established by virtue of an amendment to the **NPA Act**.

13.

In order to establish what cases required attention Ackerman and I took the following steps:

- 13.1 All the DPPs were visited and invited to handover any TRC cases which they were not in a position to finalise themselves.
- 13.2 We met with the Divisional Head of the Detective Services of the South African Police Services (SAPS) who issued an instruction to his Provincial Heads to refer all outstanding TRC dockets to the PCLU.
- 13.3 Two former TRC researchers were appointed to trawl the TRC archives in order to identify cases warranting attention.
- 13.4 Interviews were conducted with former members of the TRC and D'Oliveira units.

14.

This exercise did not result in the **Timor**-case being identified as one which warranted further attention.

15.



LC  
NGI

Ackerman and I however also entertained requests for investigations from victims and other members of civil society. This resulted in the **Timol**-matter being brought to my attention by a member of his family.

16.

This led to me on 5 May 2003 requesting a Chief Investigating Officer (Leask) of the DSO to conduct investigations into the matter. I attach herewith as **Annexure RCM1** a copy of my letter to Leask setting out the information which had been brought to my attention and outlining what investigative steps should be taken.

17.

On 15 May 2003 I submitted a report setting out the cases which had been identified as a result of the outreach programme described above. The **Timol**-case was identified as a matter which required investigation. This report was addressed to the NDPP, the Head of the DSO and his Head of Operations as well as Ackerman. It is attached as **Annexure RCM2**.

18.

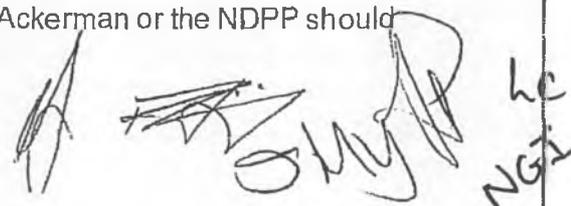
In terms of the DSO's legislative mandate it was for the Special Director of the DSO and not the Head of the DSO to issue declarations to investigate certain matters. At that stage the Special Director was Adv MG Ledwaba (Ledwaba).

19.

Ackerman and I met with Ledwaba to arrange for the DSO to conduct the investigations specified in **Annexure RCM2**. The meeting was unpleasant as Ledwaba made it clear in no uncertain terms that the DSO would not investigate any TRC matters and that these should all be referred to SAPS. A copy of a letter addressed by Ledwaba to Leask dated 15 July 2003 reflecting this decision is attached hereto as **Annexure RCM3**.

20.

As a result of the decision by Ledwaba Ackerman and I met with Commissioner De Beer (De Beer), the Divisional Head of the Detective Service of SAPS, and requested SAPS to take over the investigations. On 26 September 2003 De Beer replied to Ackerman informing him that the request had been discussed with the National Commissioner (Selebi). The letter was further to the effect that the investigation of the matters was a DSO responsibility and that if it was required that SAPS in fact investigate then either Ackerman or the NDPP should



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approach the *President* and ask him to confirm which agency should conduct the investigations. A copy of the letter is attached hereto as **Annexure RCM4**.

21.

I can confirm that neither the NDPP nor Ackerman approached the *President* as recommended.

22.

Ackerman and I however made a number of attempts aimed at persuading Ledwaba to reconsider his decision not to investigate. These are set out in a copy of a letter written to Ledwaba by Ackerman dated 11 November 2003 appealing to him to appoint investigating officers and pointing out that, in the absence thereof, the PCLU would not be able to deliver on its mandate. Both the NDPP and Head: DSO were copied in the letter which is attached as **Annexure RCM5**. The NDPP shortly thereafter resigned and Dr Ramaite SC was appointed as the Acting National Director of Public Prosecutions (ANDPP).

23.

The DSO however did not appoint investigators as requested and consequently none of the TRC matters requiring investigation could be taken further.

24.

In 2004 I was assigned a case relating to an international nuclear weapons syndicate which required my attention on a full-time basis until late 2007.

25.

I therefore no longer continued to deal with TRC matters but Ackerman regularly discussed these cases with me.

26.

At a certain stage Ackerman informed me that he intended prosecuting three former Security Branch members for their role in the poisoning of Reverend Frank Chikane. This was because all the evidence implicating them had already been led in the prosecution of Wouter Basson and no further investigations were necessary. He indicated that he had contacted the suspects' attorney to arrange for them to appear in court.

27.



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Shortly thereafter he informed me that the ANDPP had put the prosecution on hold pending the formulation of special TRC Guidelines. He further indicated that there was now a moratorium on the investigation and prosecution of TRC cases pending the adoption of the Guidelines.

28.

Neither Ackerman nor myself were involved in the drafting of these Guidelines. At a certain stage Ackerman showed me a copy of the Guidelines. We were both of the view that they were unconstitutional in that they made provision for the NDPP not to prosecute perpetrators if they met the criteria for granting amnesty as had been applied by the TRC.

29.

Subsequently an application was brought by members of civil society in the High Court sitting in Pretoria which resulted in the Guidelines being declared unconstitutional for that reason.

30.

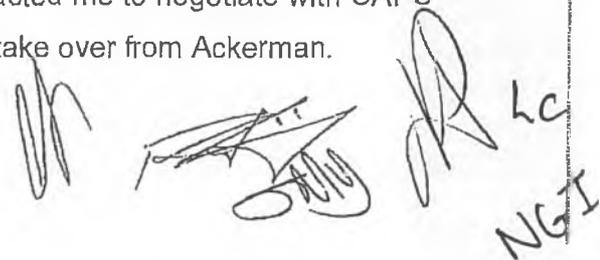
Adv Pikoli (Pikoli) was appointed as the NDPP. I was informed by Ackerman that Pikoli had set up an inter-departmental task team which would advise Pikoli on making decisions in TRC matters. Ackerman and Ramaite were the NPA representatives in the task team. On one or two occasions I stood in for Ackerman in meetings of the task team when he was not available. I noticed that the task team was predominantly comprised of members of the intelligence community who were more intent on cross-examining me as to why matters should be investigated rather than addressing the issue of all the outstanding cases.

31.

At a certain stage Pikoli was suspended and fired despite the Commission which enquired into his fitness to hold office in fact finding that he was competent to be the NDPP. Adv Mpshe SC (Mpshe) was then appointed as the ANDPP.

32.

If memory serves me correct in early 2009 Mpshe summoned me to his office and showed me a letter written by SAPS indicating that it was withdrawing from the task team. This would mean that again TRC matters would not be investigated because at that stage a decision had already been taken to disband the DSO. Mpshe instructed me to negotiate with SAPS to agree to investigate the matters which he said I should take over from Ackerman.



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33.

Ackerman informed me that he had already disposed of a number of matters which had not required investigation and gave me a list of small number of cases (I estimate no more than ten (10)) which I had to attend to. The **Timol**-case was not one which he had indicated should be investigated.

34.

I attach as **Annexure RCM6** a trail of emails between myself and various role-players showing my efforts to try and have these matters investigated. I initially had a series of meetings with Rayman Lalla, the then Divisional Head of the Detective Service of SAPS. He however informed me that the National Commissioner had decided that the cases had to be investigated by the Directorate Priority Crimes Investigation (DPCI). I therefore made a number of unsuccessful attempts to secure a meeting with Commissioner Dramat, Head: DPCI.

35.

Ultimately I met with Assistant Commissioner Lebeya (Lebeya) on 26 November 2009 where the issue of conducting investigations was positively discussed resulting in me writing a letter on 18 January 2010, attached hereto as **Annexure RCM7**.

36.

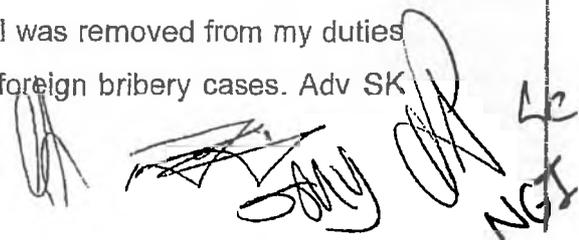
As a result thereof Senior Superintendent Bester was appointed to oversee the investigations of the ten (10) cases I had identified.

37.

Adv Menzi Simelane (Simelane) was appointed as the NDPP and he instructed me to guide a series of serious corruption investigations being conducted by the DPCI in the Northern Cape. He thereafter appointed me to represent the NPA in two (2) civil matters where decisions not to investigate / prosecute international crimes were being challenged. I was thereafter seized with a number of cases where complaints had been made calling for the arrests of current or former Heads of State for war crimes or crimes against humanity. This made it very difficult for me to focus on the ten (10) TRC matters. I did however increase the number of investigations due to representations being received in new matters.

38.

When Mr Nxasana (Nxasana) was appointed as the NDPP I was removed from my duties in the PCLU in order to act as a dedicated prosecutor for foreign bribery cases. Adv SK



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Abrahams (Abrahams), then a Senior State Advocate, was appointed to take the TRC matters over from me.

39.

In June 2015 Abrahams was appointed the NDPP and the issue as to whether I should continue as the dedicated foreign bribery prosecutor arose. I had meetings with him in which I indicated that if he did not wish me to continue with that responsibility I would again be willing to do TRC matters. He however informed me that he was thinking of taking all TRC cases away from the PCLU and did not make a decision on terminating my appointment as the foreign bribery prosecutor.

40.

Due to the fact that another business unit of the NPA had instructed the DPCI to take all the foreign bribery files away from me I could no longer work on those matters. The TRC cases had however become important due to complaints about delays in finalising certain matters. I therefore decided to again give attention to the matters. One of the matters which I had decided should be investigated was the **Aggett**-matter which also related to a death in detention. At that stage the **Timol**-matter was receiving attention in the media and I recall specifically a TV interview with Adv Bizo SC (Bizo) in which he alleged that **Mr Timol** had been murdered. I therefore considered it appropriate to request the DPCI to re-open the matter and gave various instructions (dealt with hereunder) regarding the further investigation of the case.

41.

Adv Johnson (Johnson) who was at that stage acting as the Head of the PCLU informed me and a Senior State Advocate who was assisting me with the cases that we should not continue to work with TRC cases as they were going to be removed from the PCLU. I was however concerned that this would result again in the cases being neglected resulting in me drafting a Memorandum in January 2016 requesting the NDPP to confirm whether the TRC cases would be dealt with by the PCLU or the DPPs. I did not receive a reply to this Memorandum and at this stage cannot locate my copy thereof.

42.

On 4 February 2016 I was approached by Dr Pretorius SC (Pretorius) who had then taken over from Johnson as the Head of the PCLU. He informed me that a request had been received to re-open the inquests in the **Aggett**- and **Timol**-matters and required an opinion

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from me. I attached as **Annexure RCM8** a copy of my opinion of even date in which I expressed the opinion that both matters should be fully investigated and that consideration to re-opening inquests should only be given once a decision whether or not to prosecute had been taken. I emphasise para 12 of my opinion in which I indicated that it was imperative that the NDPP should decide whether TRC cases should remain with the PCLU or not.

43.

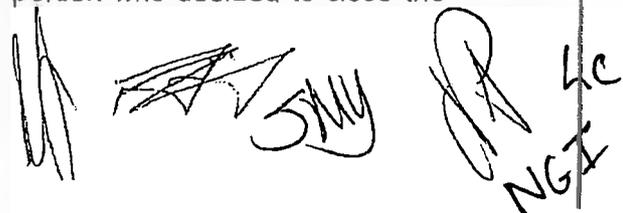
Subsequently I was informed by Pretorius that a decision had been taken to re-open the **Timol**-inquest. While the inquest was in progress Pretorius gave me a copy of a letter which I had written on 25 February 2004 to Mr Cajee, the nephew of **Mr Timol**. This letter is attached hereto as **Annexure RCM9**. He also showed me a report addressed by Ackerman to *inter alia* Ramaite and Pikoli dated 30 October 2006. I attach this report hereto as **Annexure RCM10**. He requested me to provide him with an affidavit responding thereto. I attach as **Annexure RCM11** a copy of the affidavit which I subsequently signed and which was commissioned. I have not attached the annexures referred to therein as they have either been attached elsewhere in this affidavit or are no longer relevant for the purpose of this application.

44.

At the time of deposing to this affidavit I was not in possession of **Annexure RCM1**. At this stage when I have now had sight of both this document and **RCM9** I recall that **RCM9** was written after both the DSO and SAPS had refused to investigate TRC cases. If memory serves me correct Leask had informed me that as a result of the decision taken by Ledwaba that the DSO would not investigate TRC cases he was unable to comply with my original request for investigations. Since he was however traveling to Cape Town on other investigations he contacted Ivor Powell and questioned him regarding the confession apparently made by the Applicant in this matter. The allegation was however denied by Powell and Mr Cajee was informed accordingly. I did not hear anything further from Mr Cajee and was shortly thereafter assigned other work.

45.

In order to depose to this affidavit I tried to locate such TRC files as may still be available resulting in me finding a report of 24 October 2006 addressed by Ackerman to Ramaite which is attached hereto as **Annexure RCM12**. This report identifies the advocates dealing with various TRC matters and reflects that I was not the person who decided to close the **Timol**-matter.



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46.

In December 2017 I was contacted by the NDPP's Office Manager who requested me to collect certain of Pikoli's documents which he had found in a strongroom. I collected the documents from him and perused the contents. The documents included the following:

- 46.1 A second draft of an Indemnity Bill making provision for the President to grant indemnity to persons committing politically motivated crimes from 1 March 1960 (**Annexure RCM13**).
- 46.2 The terms of reference of the Amnesty Task Team dealing with the criteria which the NPA applies relating to TRC cases, the formulation of Guidelines and whether legislative enactments are necessary. The document (**Annexure RCM14**) concludes by referring to the views of the intelligence agencies.
- 46.3 The further report of the Amnesty Task Team (**Annexure RCM15**) *inter alia* looking into whether private prosecution and civil litigation can be eliminated where a decision not to prosecute is taken and whether a person aggrieved with a decision not to prosecute can approach the International Criminal Court (ICC).
- 46.4 A letter dated 8 February 2007 (**Annexure RCM16**) addressed to Pikoli by the then Minister of Justice expressing her concern that the NPA was proceeding with TRC prosecutions as she was under the impression that the NPA would not.
- 46.5 A Memorandum (**Annexure RCM17**) addressed to the Minister by Pikoli setting out in considerable detail what he construed to be interference with the dealing of TRC matters by other Government departments and concluding:

"I have now reached a point where I honestly believe that there is improper interference with my work and that I am hindered and / or obstructed from carrying out my functions on this particular matter. Legally I have reached a dead end."

47.

These documents speak for themselves and go a long way in explaining why from 2003 the PCLU constantly struggled to have TRC cases investigated. The first three documents appear to have been authored by the Justice Department during the period when a moratorium was placed on TRC cases pending the formulation of Guidelines. The last two documents were authored by or addressed to Pikoli.

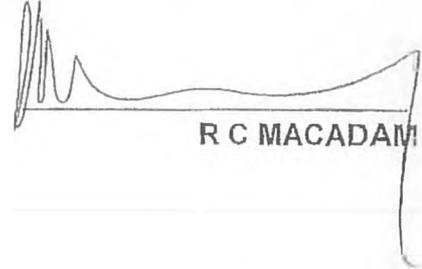
48.



NGI

On the limited occasions when I was seized with TRC matters I always believed that such matters including the **Timol**-matter should be properly investigated so that decisions whether or not to prosecute could be taken.

I know and understand the contents of this statement.  
I have no objection to taking the prescribed oath.  
I consider the prescribed oath to be binding on my conscience.

  
R C MACADAM

Date: **1 November 2018**  
Time: **09:15**  
Place: **PRETORIA**

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to before me and the deponent's signature was placed thereon in my presence

at **PRETORIA** on **1 NOVEMBER 2018** at **09:20**

  
: (RANK)  
COMMISSIONER OF OATHS

Full names: **ALBERTUS MARTHINUS MATHYS FLYNN**

Rank: **COLONEL**

Address: **218 VISAGIE STREET, PRETORIA**  
Ex Officio: **SA Police Service**



  
NGI

er/timol



Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

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## INTERNAL MEMORANDUM

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### SCORPIONS

P. O. Box 752,  
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0001

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Weavind Park  
0001  
Pretoria  
South Africa

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

TO: DEPUTY HEAD  
CC: CIO A G LEASK  
FROM: HEAD SNPU  
DATE: 5 MAY 2003 REF: A/INV/5/03 TRC  
RE: INQUEST: AHMED TIMOL

*CPM do both  
5/5/03*

1. On 2 May 2003 I was requested to investigate the above matter by the deceased's nephew Imtiaz Timol (082 445 2086) after he had been referred to my office by Minister Pahad in the President's Office.
2. The following documentation has been made available:
  - (i) Extract from George Bizoz's Book;
  - (ii) Article by Ivor Powell;
  - (iii) TRC hearing; and
  - (iv) Details of the SAPS members involved in the interrogation.
3. Imtiaz further informed me that:
  - (i) the inquest record has been destroyed;
  - (ii) he has the contact details of a fellow detainee now in England who can assist;
  - (iii) he has *photographs of the body of the deceased*; and
  - (iv) Ivor Powell informed him that Sgt Rodriguez had told his daughter what had really happened.

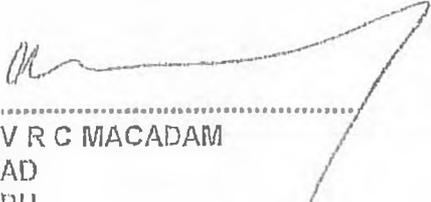
*JMU*

*2*

*[Handwritten signature]*

*rc  
NGI*

4. The following investigation focus areas are identified:
- (i) George Bizoz must be interviewed to establish whether he has the post mortem report and any other information;
  - (ii) Ivor Powell (DSO Cpt) must be interviewed re 3(iv);
  - (iii) Researchers to establish whether there is any additional TRC material and whether the policeman involved after linked to any other human rights abuses;
  - (iv) the other detainee will have to be interviewed; and
  - (v) once all the evidence has been obtained the Chief State Pathologist will have to be requested for an opinion on the injuries and the claim that the witness fell from a 10 storey building.



.....  
ADV R C MACADAM  
HEAD  
SNPU



2  
hc  
NGI

sl/ audit trc cases



Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

**INTERNAL MEMORANDUM**

**SCORPIONS**

P. O. Box 752,  
SILVERTON  
0001

VGM Building  
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Pretoria  
South Africa

Tel: (012) 845 6431

Cell: 082 498 6033

TO: NDPP REF: TRC GENERAL  
CC: HEAD DSO  
HEAD OPERATIONS  
ADV ACKERMANN  
FROM: HEAD SNPU  
DATE: 15 MAY 2003  
RE: AUDIT OF TRC CASES

A. CASES BEING PREPARED FOR PROSECUTIONS:

1. MOTHERWELL BOMBING

(a) Leg One

The accused were all refused amnesty. On review however the High Court ordered that their applications be reheard because the TRC failed to lead evidence. Investigations conducted by my office indicate that the accused supplied a false motive for killing the deceased. Evidence will be made available to the TRC so that amnesty can be refused on a proper basis. This will open the way for legs two and three.

*[Handwritten signatures and initials]*  
NGI

(b) Leg Two

The three accused convicted in the 1996 prosecution were granted leave to appeal against their convictions to the SCA. I have taken over the argument of the appeal from the DPP Eastern Cape due to the fact that the prosecutor has retired.

(c) Leg Three

The prosecution of SAP General van Rensburg for ordering the killing of the Motherwell Four.

2. BRIAN NGULUNGA

The prosecution of SAP General van Rensburg for ordering the killing of Brian Ngulunga.

3. PEBCO 3

The prosecution of the Security Branch members responsible for the kidnapping of the deceased at Port Elizabeth Airport.

4. WAUGHOPE

Prosecution of AZAPO leader George Wauchope for murder and other related charges. I am awaiting the Minister's response to representations by the accused that he not be prosecuted.

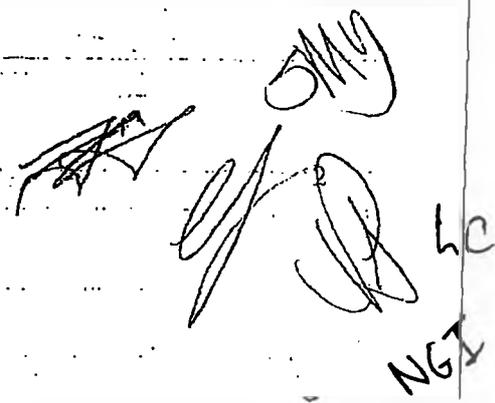
5. POWELL

The prosecution of Phillip Powell for possessing hand grenades in April 1994. The matter is with the NDPP.

6. NQUTU ARMS CACHE

The prosecution of J. M. Ngcobo and others for the concealment of the weapons found in the Nqutu Bunker in May 1999.

7. The prosecution of the CCB members responsible for the bombing of the Early Learning Centre (it must however be established that the accused did not receive indemnity in terms of the Indemnity Act of 1990).

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**B. POTENTIAL FURTHER PROSECUTIONS ARISING FROM THE ABOVE**1. **Murder of the PEBCO 3**

There is currently no reliable evidence on the murder charge. If the accused are however convicted of kidnapping it is likely that at least one of them may supply information as to the killings in order to obtain a lesser sentence.

2. **Gradock 4**

There is no reliable evidence on this case. The TRC however established that the crime was committed by the same people who were involved in the Motherwell and PEBCO 3 cases. The successful prosecution of these cases could lead to some of the perpetrators coming forward also to obtain lesser sentences.

**C. NEW CASES BEING EVALUATED FOR PROSECUTION PURPOSES**1. **Murder of the COSAS 4**2. **Murder of Askari Strongman Sambo**3. **Murder of detainee on the East Rand by "Timol" Goetzee**4. **Murder of Askari Dan Maboto**5. **Allegations by IFP sentenced prisoner to have knowledge of murders in the East Rand from 1988**6. **447 dockets relating to APLA handed over by SAPS Crimes Against the State Unit**7. **6-8 dockets linking AWB to Pre election bombings previously dealt with by Advocate Fick****D. HIGH INTEREST CASES WHICH REQUIRE ATTENTION IRRESPECTIVE OF THE NATURE OF AVAILABLE EVIDENCE**1. **Murder of Victoria Mxenge**2. **Kidnapping, torture and murder of Ntombi Khubeka**3. **Kidnapping, torture and murder of Nokutulu Simelane**4. **Decision by DPP Pretoria not to prosecute SAP General Engelbrecht**5. **Uninvestigated allegations against SAP General Bassie Smit**6. **Ciskei Coup De AT**7. **Transkei Coup De AT**

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8. Pre Election Train Violence in Gauteng
9. Murder of Reggie Hadebe
10. Murder of Dulcie September
11. Refusal of Amnesty to 37 High Ranking ANC officials
12. Decision by DPP KZN not to prosecute IFP hit squads

**E. REPRESENTATIONS TO INVESTIGATE SPECIFIC CASES**

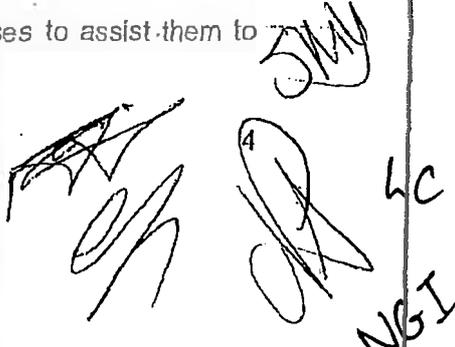
1. Death in detention Ahmed Timol
2. Murder of UDF activist Nelson Sithole
3. Murder of Pro Jack
4. Murder of IFP families in Table Mountain by A. M. Zulu
5. Murder of ANC supporter Batondo
6. False Conviction of Skouldies
7. Assault on A. Bult
8. Vlakplaas member Piet Snyders
9. Murder of Castro Khumalo

**F. CASES IN THE PROCESS OF BEING CLOSED**

1. Assault on Carl Niehaus- complainant does not desire a prosecution
2. APLA murder Mphahlela attacks on police stations: lack of reliable evidence
3. Mphahlela murder charges- lack of admissible evidence against him
4. Winnie Mandela- lack of reliable evidence
5. Steve Biko- crime prescribed in 1997
6. Smit Murders- perpetrators deceased
7. Ermelo Black Cats- lack of reliable evidence
8. IFP Murders Chadwick- accused in a mental institution in the United Kingdom

**G. ASSISTANCE TO OTHER AGENCIES**

1. Police Intelligence supplied with a breakdown of AWB amnesty hearings to assist in profiling of persons currently involved in Right Wing Activities
2. TRC supplied with material relating to IFP human rights abuses to assist them to oppose IFP application to have findings against it set aside

  
HC  
NGI

H. REPARATIONS RELATED ACTIVITIES

- 1. Exhumation of bodies of Mamelodi 10
- 2. Reparations of remains of victims in the Kwaggasnek incident in Lesotho
- 3. Representations by members of the public to locate their missing relatives
- 4. Partnership with SA Disappearance Foundation

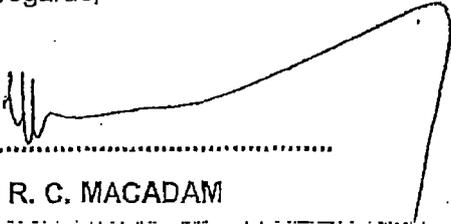
I. INVESTIGATION PUT ON HOLD PENDING THE APPEAL IN THE BASSON CASE RELATING TO JURISDICTION FOR CONSPIRACY TO COMMIT CRIMES OUTSIDE THE RSA

- 1. Murder of Anton Lubauwski
- 2. Lesotho Raid
- 3. Botswana Raid
- 4. Swaziland Raid

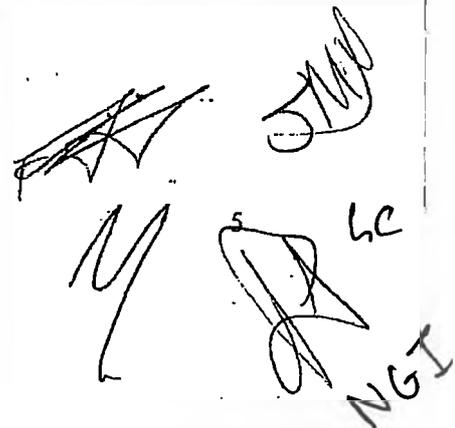
J. POLICY CONSIDERATIONS

- 1. Prosecutions not to be conducted on a piecemeal basis except where special circumstances (e.g. witness on point of death, accused about to leave RSA or engaged in current criminal activities)
- 2. Once all the cases earmarked for prosecution have been investigated a presentation will be given to the NDPP in order for him to confirm the prosecution strategy. Thereafter prosecutions will be instituted
- 3. After convictions have been obtained attention will be given to cases which currently had evidence since convictions may act as incentive for perpetrators to come forward

Kind regards,



ADV. R. C. MAGADAM  
 HEAD  
 SNPU



Investigations

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Office of the Head  
Priority Crimes Litigation Unit  
VGM Building  
PRETORIA

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**INTERNAL MEMORANDUM**

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TO : CIO Leask  
FROM : Adv M G Ledwaba  
DATE : 15 JULY 2003

SUBJECT : SNPU INVESTIGATIONS

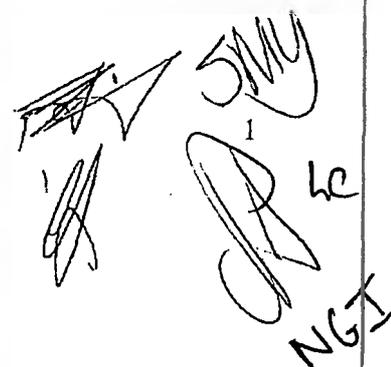
1. Due to the recent creation of the PCLU it has become necessary to re-define the mandate and operations of the SNPU as follows:

(i) TRC cases

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

(ii) Operation Sunflower

Advocate **MACADAM** will continue to oversee the disruptive action with the Consumer Council with your assistance. Once the SAPS report is received and evaluated, I will make a decision on the final disposal of the case.

  
NGI

(iii) **Operation Black Widow**

Adv TONGWANE must oversee the finalization of the investigation and conduct the prosecutions which may arise.

(iv) **Operation Final Curtain**

SAPS must continue with the investigations under the direction of the prosecutor arranged by Adv ACKERMANN. You may give limited assistance to SAPS and the prosecutor on specific aspects when necessary.

(v) **Foreign Mercenaries**

Adv PRETORIUS has been delegated to assess all cases currently being investigated by both SAPS and the DSO. (I have communicated separately to the Regional Head Gauteng in this regard). I will make a decision as to the involvement of the DSO in such investigations once I have received a report from Adv ACKERMANN.

Adv M G Ledwaba  
HEAD : OPERATIONS

/tp

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301

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DIV COMM DET SERVICE

PAGE 01/02

RCM 4

01-5-002-0111

SAP 21

SUID-AFRIKAANSE POLISDIENST



SOUTH AFRICAN POLICE SERVICE

Privaatsake/Private Bag X302

Verwysing Reference	3/9/9/1(93)
Navraag Enquiries	Div Comm De Beer
Telefoon Telephone	(012) 393 2191
Faksnommer Fax number	{ 012 } 393 2193

Afdelingskommissaris/Divisional  
Commissioner  
Speurdiens / Detective Service  
Hoofkantoor / Head Office  
PRETORIA  
0001

2003-09-26

Advocate AR Ackermann, SC  
Special Director  
Head: Priority Crimes Litigation Unit  
National Prosecuting Authority  
Church Square  
PRETORIA  
0001

Dear Advocate Ackermann

**INVESTIGATION OF TRC CASES**

Your letter dated 20 August 2003, as well as the preceding discussion between ourselves, have reference.

As agreed at our meeting, I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations(DSO).

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: "In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard."

You are aware of the fact that the capacity created for the D'Oliveira Committee is presently with the DSO.

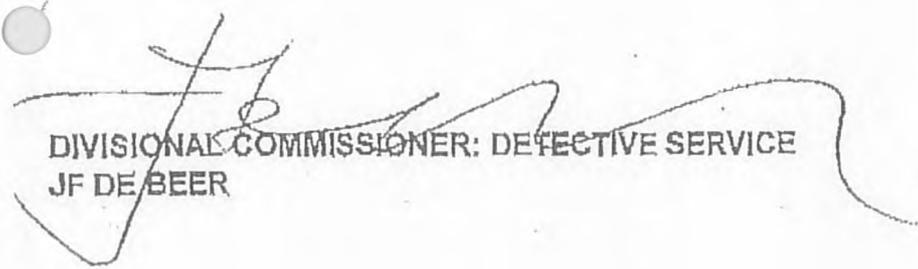
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In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seem to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

If the President indicates that the South African Police Service should be involved in the investigations, the instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues.

You are therefor requested to approach the President on the matter, where after we can take the matter further, if necessary.

Kind regards.

  
DIVISIONAL COMMISSIONER: DETECTIVE SERVICE  
JF DE BEER

  
lc  
NGI

er/memo

Office of the Head  
Priority Crimes Litigation Unit  
HEADQUARTERS

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## INTERNAL MEMORANDUM

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**TO:** ADV GEOPH LEDWABA

**CC:** 1. NDPP  
2. DR S RAMAITE SC  
3. ADV LF MCCARTHY SC

**FROM:** ADV A R ACKERMANN SC

**SUBJECT:** INVESTIGATION OF TRC CASES BY THE DSO

**DATE:** 11 NOVEMBER 2003

P. O. Box 1511  
SILVERTON  
PRETORIA  
0127

VGM Building  
123 Westlake Str  
Weavind Park  
0184

Tel: (012) 845 6431  
Fax: (012) 845 7224



Dear Geoph

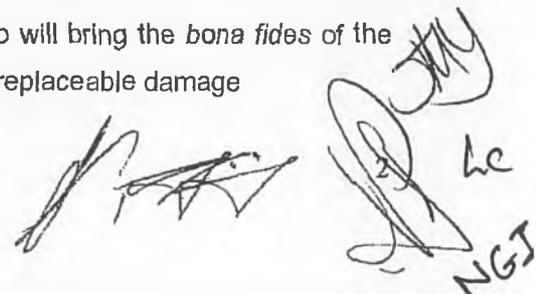
1. In the light of current developments, I am constrained to document the history of the above saga.
  - i) In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In addition Advocate Sonn gave the President a full briefing on the matter.
  - ii) In 2002 the SNPU was established in order to investigate the cases.
  - iii) In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP
  - iv) In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC cases identified for prosecution.

JMY  
lc  
NG

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

- v) Shortly thereafter and in the same month you were presented with applications in terms of Section 28 relating to the cases.
- vi) In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you. (Copy attached)
- vii) In response thereto I requested Commissioner De Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of De Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate experience to the DSO in order to capacitate it to conduct these investigations.
- viii) After receipt of De Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.
- ix) On 3 November 2003 you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigations.
- x) On 6 November 2003 Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.
- xi) On 10 November 2003, Adv Macadam presented you with Section 28(i)(b) declarations. You informed him:
  - a) That you are not prepared to sign any declarations
  - b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigation and familiar with all the witnesses and the facts of the cases.
  - c) That during the course of 10 November 2003 another investigator will be appointed.
  - d) The President should not be approached to involve SAPS

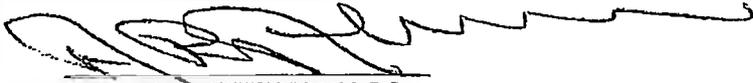
2. As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted. There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the *bona fides* of the National Prosecuting Authority into serious dispute and do irreparable damage



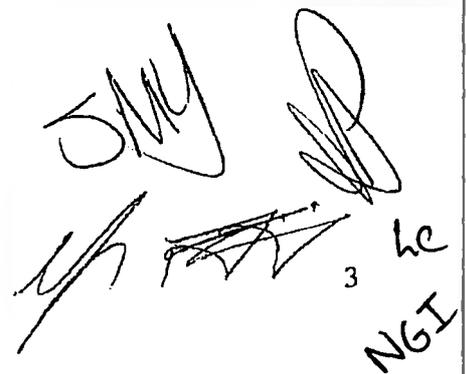
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Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in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

Kind regards



ADV AR ACKERMANN SC  
SPECIAL DIRECTOR  
HEAD: PCLU



SMY  
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NGI

RC 176

**Helena Zwart (H)**

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**From:** Sibongile Mzinyathi  
**Sent:** 20 May 2009 07:50 AM  
**To:** Willie Hofmeyr (WA); Helena Zwart (H); Aubrey T. Mngwengwe  
**Cc:** Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman  
**Subject:** RE: Investigators for TRC cases

Thanda

This is for your information/attention.

Kind regards

S Mzinyathi

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**From:** Willie Hofmeyr (WA)  
**Sent:** 19 May 2009 08:56 PM  
**To:** Helena Zwart (H)  
**Cc:** Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman; Sibongile Mzinyathi  
**Subject:** RE: Investigators for TRC cases

Hi

It sounds like a good idea, but let me do some consultation in the DSO on the issue.

Regards

Willie

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**From:** Helena Zwart (H)  
**Sent:** Mon, 18 May 09 13:23  
**To:** Willie Hofmeyr (WA)  
**Cc:** Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman  
**Subject:** Investigators for TRC cases

Dear Willie

I met this morning with Commissioner Lalla concerning the appointment of SAPS investigators to investigate the TRC cases where victims have asked the NPA to look at prosecutions. We have been taking quite a beating due to the fact that nothing has been done on these matters for a number of years and in fact, in certain cases, the victims are threatening us with *mandamus* applications. In this regard, Commissioner Lalla asked me to provide him with the names of three/four investigators who had the necessary experience. We are only looking at a small number of cases, plus-minus nine. Obviously, no progress at all will be made if the investigators do not have previous knowledge of the relevant Apartheid security structures and role players therein.

The only persons I could think of off-hand, were CSI Marlon and three/four of his KZN DSO investigators, who were previously involved with the Goldstone Commission and ITU. All these persons have indicated their willingness to transfer to SAPS. Commissioner Lalla indicated that the TRC investigations would constitute a special tasking and the investigators would be permitted to finalise these cases before taking on other commitments. He also indicated that he would pay the costs of the investigations from his budget. This would ensure that they could deal with these matters irrespective of whether they are located in DPCI or any other police structure. He asked me to communicate directly with you on this issue.

Kind regards

Chris Macadam

2009/07/22

*Handwritten signatures and initials:*  
JMY  
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NGT

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**From:** Bezuidenhout Colla - Superintendent [mailto:BezuidenhoutColla@saps.org.za]  
**Sent:** 07 July 2009 08:56 AM  
**To:** Helena Zwart (H)  
**Subject:** RE: TRC cases

Hallo Helena,

Comm Lalla agreed to the meeting but requested that we involved Deputy National Commissioner Dramat. Welma will speak to his office and let you know. We are currently looking at the week of the 20<sup>th</sup> July.

Regards,

Colla

Superintendent Colla Bezuidenhout  
Staff officer; Divisional Commissioner: Detective Service  
Tel : +27 12 393 1024  
Fax : +27 12 393 2193  
Cell : +27 82 778 3694

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**From:** Helena Zwart (H) [mailto:hzwart@npa.gov.za]  
**Sent:** 01 July 2009 11:34 AM  
**To:** Bezuidenhout Colla - Superintendent  
**Subject:** TRC cases

Dear Colla

Can you set up a short meeting with the Commissioner when he is available to discuss the TRC matters? We are under intense pressure and have been called upon to report on progress to the Minister and the Justice Portfolio Committee. The one matter which requires investigation prescribes on 12 September 2009 and this case must be fully investigated and the family afforded an opportunity to exercise their right to a private prosecution before the crime prescribes.

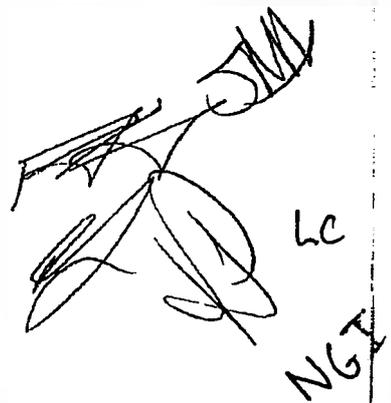
Our previous discussions on this topic did not materialise due to the fact that Willie Hofmeyr was not appointed as the head of DPCI.

Kind regards

Chris Macadam

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[www.npa.gov.za/ReadContent458.aspx](http://www.npa.gov.za/ReadContent458.aspx)



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Helena Zwart (H)

From: Lalla Rayman - Divisional Commissioner [LallaR@saps.org.za]  
Sent: 14 July 2009 08:32 AM  
To: Helena Zwart (H)  
Subject: RE: TRC cases requiring investigation

Dagse Helena

Kommissaris Dramat se kantoor het nou net geskakel hy wil die vergadering uitstel na Augustus. Hy is nie beskikbaar volgende week nie.

Ek sal die nuwe datum met jou kommunikeer.

Groete

Welma

-----Original Message-----

From: Helena Zwart (H) [mailto:hzwart@npa.gov.za]  
Sent: 13 July 2009 04:08 PM  
To: Lalla Rayman - Divisional Commissioner  
Subject: TRC cases requiring investigation  
Importance: High

Beste Welma

Aangeheg vind asb. 'n lys van die TRC-sake wat by die vergadering bespreek gaan word. Sal jy asb. so vriendelik wees om dit aan te stuur na die twee Kommissarisse, aangesien ons nog nie Kommissaris Dramat se kontakbesonderhede het nie?

Het Colla die dringendheid van die Lubowski-saak met jou bespreek?

Baie dankie en groete!

Helena Zwart  
NPA

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OK  
hc  
NGI

**Helena Zwart (H)**

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**From:** DPCI:Head [dpci.head@saps.org.za]  
**Sent:** 28 August 2009 02:02 PM  
**To:** Helena Zwart (H)  
**Subject:** FW: TRC/Nuclear matters

Good day Mr Macadam,

We wish to acknowledge receipt of your e-mail. DNC Dramat is unable to meet with you presently but will revert back to you in due course.

Thank you

Secretary : Pumla N Mphothulo  
The Head : Directorate for Priority Crime Investigations  
6th Floor Koedoe Building  
Tel : 012 393 5463  
Fax : 012 393 5079  
Cell : 082 778 3684  
E-mail : (internal) DPCI : Head  
(external) dpci.head@saps.org.za

---

**From:** Bezuidenhout Colla - Superintendent  
**Sent:** 27 August 2009 07:18  
**To:** Helena Zwart (H)  
**Cc:** DPCI:Head  
**Subject:** RE: TRC/Nuclear matters

Good morning,

Commissioner Dramat's office is at room 627, 6<sup>th</sup> floor, Koedoe building (opposite Police Head office in Pretorius str). His office number is 012 393 5463 and email [dpci.head@saps.org.za](mailto:dpci.head@saps.org.za) His secretary is Pumla.

I will ask Comm Lalla about joining the meeting and will inform Helena.

Regards,

Colla

Superintendent Colla Bezuidenhout  
Staff officer: Divisional Commissioner: Detective Service  
Tel : +27 12 393 1024  
Fax : +27 12 393 2193  
Cell : +27 82 778 3694

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**From:** Helena Zwart (H) [mailto:hzwart@npa.gov.za]  
**Sent:** 26 August 2009 12:19 PM  
**To:** Bezuidenhout Colla - Superintendent  
**Subject:** TRC/Nuclear matters

Dear Colla

2009/08/16

*[Handwritten signature]*  
OWM  
LC  
NGI

I recently had a telcom with your Commissioner in which he advised that the TRC and the nuclear matters which we have previously discussed would now have to be attended to by Commissioner Dramat. Is it possible to provide me with Commissioner Dramat's address and fax number so that I can set up a meeting with him? Would your Commissioner be amenable to facilitate the meeting, as it might help if the two of us can inform Commissioner Dramat of the history of these matters.

Kind regards

*Chris Macadam*

Deputy Director of Public Prosecutions  
Office of the National Director of Public Prosecutions  
National Prosecuting Authority of South Africa  
Tel: (012) 845 6431  
Fax: (012) 845 6337  
Mobile: 082 498 6033

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*SMY*  
*[Signature]*  
*[Signature]*  
he  
NGI

**Priority Crimes Litigation Unit**

The National Prosecuting Authority of South Africa  
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**HEAD OFFICE**

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18 January 2010

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Assistant Commissioner Lebeya  
Directorate for Priority Crime Investigations  
South African Police Service  
Private Bag X302  
PRETORIA  
0001

Dear Commissioner Lebeya

**INVESTIGATION BY SAPS OF CRIMINAL OFFENCES ARISING FROM THE TRC**

My letter dated 13 July 2009, addressed to Deputy National Commissioner Dramat and Divisional Commissioner Lalla, and our meeting of 26 November 2009 have reference.

The issue related to the appointment of investigators to investigate the 11 matters identified by the NPA, which were itemised in my letter of 13 July 2009. Subsequently, the Acting National Director of Public Prosecutions declined to prosecute in the Lubowski matter and consequently, only the remaining 10 cases on the list required attention.

Senior Superintendent Bester of your office attended our meeting and informed you that he was in possession of a number of further dockets which he felt also required investigation. On 6 December 2009, I had a meeting with Senior Superintendent Bester and established that these dockets related to cases against the Liberation Movements in respect of which a decision was taken in 2004 by the then National Director not to prosecute. It should be noted that in the main, all the suspects implicated in the dockets had applied for and received amnesty. I therefore informed Senior



Superintendent Bester that there was no basis upon which these cases could be reopened.

Consequently, only the remaining 10 cases on the list require attention. Since you raised the sensitivity of the matters with me, the National Director of Public Prosecutions was given a full written briefing on the matters. I had a meeting with him today and he indicated that SAPS should in fact investigate all the matters which required investigation. The matters should be referred to my office once the investigations have been concluded. Should you require any guidance as to how the matters should be investigated, you are at liberty to approach me for any such assistance which you might require.

Given the nature of the cases, it may be desirable that we meet to discuss the issues in person and in this regard, I would be grateful if you could indicate when you would be available to meet with me.

Yours sincerely



ADV RC MACADAM  
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS  
PRIORITY CRIMES LITIGATION UNIT  
OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS



Handwritten notes and signatures at the bottom right of the page, including the name 'JMY' and 'NGI'.

/Z56 forms

Office of the Head  
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0001

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Weavind Park

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Pretoria

South Africa

## INTERNAL MEMORANDUM

TO : DR JP PRETORIUS SC  
ACTING SPECIAL DIRECTOR OF PUBLIC  
PROSECUTIONS: PCLU

FROM : ADV RC MACADAM  
SDDPP: PCLU

DATE : 4 FEBRUARY 2016 (Opinion requested on even  
date)

SUBJECT : OPINION: REOPENING TIMOL/AGGETT  
INQUESTS

REF : 10/3/1/PCLU

Dear Torie

Tel: X126431

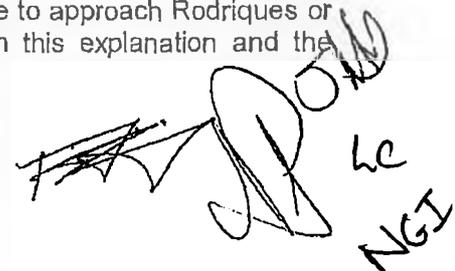
1. This opinion is provided arising from a meeting between members of the NPA and Messrs Varney, Dutton and others. An oral presentation was given, motivating the reopening of both inquests.
2. In order to address the request, it is necessary to briefly refer to the relevant provisions of the Inquest Act:
  - 2.1 Section 5 requires that an inquest be held in respect of each natural death where the deceased is suspected of having died of unnatural causes.
  - 2.2 Section 16 requires the inquest Magistrate to make findings as to:
    - 2.2.1 the identity of the deceased
    - 2.2.2 the date and cause of death
    - 2.2.3 whether the death was caused by a criminal act on the part of any person
  - 2.3 Section 17 requires the Magistrate to refer the inquest to the DPP in the event of either not being able to determine the death or in the event of a finding of criminal liability. He is also required to refer the matter to the DPP irrespective of his findings if so requested.

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he  
NGT

- 2.4 Section 17(2) empowers the DPP at any time [my emphasis] after receipt of the inquest request the Judicial Officer to reopen the inquest and take further evidence.
- 2.5 Section 17A(1) also empowers the DPP to request the Minister to request the Judge President to appoint a Judge to reopen the inquest.
3. Sections 17(2) and 17A(1) both empower the DPP to cause inquests to be reopened on the basis of further evidence. The sole difference is whether the Minister and the Judge President must be involved and whether the inquest would be reopened by the original Inquest Court or by a Judge appointed by the Judge President. The invocation of section 17A(1) would be a more time-consuming process and would also place a burden on the High Courts which are under pressure with their existing civil and criminal rolls.
4. In my view, it would be appropriate to invoke section 17(2) where the new evidence would lead to certain of the original findings being amended, but would have no other public interest consequences, e.g. a prosecution or in a transparent manner to test the new evidence orally. Section 17A(1) would in my view be appropriate if there was high public interest in the new evidence, but the DPP was of the view that it should first be tested before instituting a prosecution.
5. It has to be stated that if the DPP is of the view that new evidence justifies the institution of a prosecution, then there is no need to first reopen the inquest before instituting the said prosecution.
6. The background to the two cases is as follows:

#### 6.1 Achmed Timol

- 6.1.1 He died in detention in Johannesburg in October 1971 while under interrogation by the Security Branch having been arrested on charges linked to his involvement with the SACP.
- 6.1.2 The then Attorney General declined to prosecute and a formal inquest was held in the Johannesburg Regional Court, which handed down a verdict that he had committed suicide and that the police were not responsible for his death.
- 6.1.3 Shortly after the establishment of the PCLU in 2003, Mr Timol's nephew (a member of the NIA) approached the unit and indicated that he had established that the inquest record and docket were not available. (Governmental archive directives require the destruction of documentation after a certain period.)
- 6.1.4 He however alleged that the daughter of Sergeant Rodriques (who had been alone with the deceased immediately before he fell to his death) had approached Ivor Powell (then a journalist) and informed him that her father had confessed to her that the deceased had been murdered. The NDPP had directed that the DSO must assist the PCLU with the investigation of TRC matters. The DSO reported that the journalist had been interviewed, denied the allegation and produced the newspaper article which he had written, which contained no confession or new evidence. In the circumstances the DSO deemed it inappropriate to approach Rodriques or his daughter. The nephew was satisfied with this explanation and the matter was not taken further.

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NGI

6.1.5 In late 2015, I however asked the DPCI to register an enquiry due to extensive publicity given to the matter by the media and as a result of statements made by Adv Bizos SC and the family.

## 6.2 Neil Aggett

- 6.2.1 Dr Aggett died in police custody in Johannesburg in 1982 after a lengthy period of detention and interrogation by the Security Branch.
- 6.2.2 The then Attorney General declined to institute a prosecution and a formal inquest was held before a Regional Court Magistrate in Johannesburg. He handed down a verdict to the effect that the deceased had committed suicide and that the police were not responsible.
- 6.2.3 In 2013, a group of Dr Aggett's friends submitted a petition to the President and Minister of Justice, calling for the prosecution of the police officials responsible for his death.
- 6.2.4 As a result of this petition, the PCLU requested the DPCI to open an enquiry.

## 7. The status of the PCLU/DPCI investigations:

### 7.1 Achmed Timol (I/O Captain Ben Nel)

- 7.1.1 It has been established that the original inquest and docket are not available.
- 7.1.2 A copy of the inquest donated by the family attorney to Wits has been downloaded. It is missing 652 pages, which include the evidence and cross-examination of all the police officers involved. However, on the remaining evidence it was possible to establish who the witnesses were and what the issues in dispute were.
- 7.1.3 Captain Nel has been requested to canvas the availability of all the witnesses, i.e. the police officers, medical doctors and members of the deceased's family.
- 7.1.4 It has been established that other detainees who were never called as witnesses could possibly shed light on the matter. The first is a Mr Mohammed Essop, who was arrested at the same time as Timol. The second is Quentin Jardine, whose identity, it is alleged, led to the deceased deciding to commit suicide. The third is a Mr Pahad, whom it is alleged was arrested arising from Timol's interrogation. Ms Fullard has been tasked to uplift the detention files from DoJ&CD so that Captain Nel can conduct the necessary investigations in this regard.
- 7.1.5 It has been established that the TRC appointed a journalist, Piers Pigou, as an investigator and he dealt with the Timol matter. He has indicated that he is available for an interview when he returns to the country. As a matter of interest, it was in fact he who approached Sergeant Rodriques and not Ivor Powell. His notes reflect that Rodriques stood by his original statement. It may therefore be that Timol's nephew confused the two journalists and what Rodriques said.

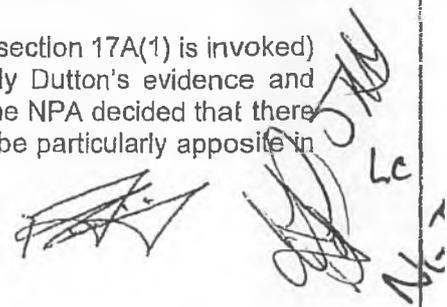
  
  
hc  
NGI

- 7.1.6 It has been established that Gordon Winter published a book in which he claimed to have first-hand knowledge of the Timol incident. Ms Fullard has undertaken to establish whether he is alive and where he is residing.
- 7.1.7 A Methodist priest in the UK made public statements to the effect that when Timol's body was viewed in the mortuary, it showed signs of gross mutilations. This claim would have to be followed up although it is in conflict with the evidence of the three doctors who testified at the inquest, including a pathologist, appointed by the family.
- 7.1.8 What also has to be followed up is whether the police, who were involved in the incident, were involved in other cases, which could have a bearing on their version in this matter. It would also have to be established whether there were other incidents involving detainees which would be relevant.
- 7.2 Neil Aggett (I/O Col Sam Mahlangu)
- 7.2.1 Col Mahlangu indicated that he was unable to locate the original inquest and docket.
- 7.2.2 He however established that a copy of the inquest was available on the Wits website and requested the PCLU to peruse it and to thereafter indicate whether further investigations were required.
- 7.2.3 The record is in the regional of some 8 500 pages and has been uploaded in blocks, which makes online reading time-consuming. Obviously downloading 8 500 pages would place an extreme burden on the office's printing facilities.
- 7.2.4 It has however been established that Adv Bizos SC, who acted for the family, conceded that there was no evidence to justify the conclusion that the deceased had been murdered. (Adv Bizos SC was assisted by a private pathologist and other medical experts.) He however submitted that Whitehead and Cornwright (the two officers responsible for Aggett's interrogation) should be prosecuted for culpable homicide. If the learned advocate is in fact correct, then the crimes prescribed in 2002 and no prosecution is feasible as requested by the deceased's friends.
- 7.2.5 The matter is however complicated by the fact that the former Deputy Judge President of the KZN High Court (Nicholson DJP) has published a book, alleging that the facts of the Aggett matter demonstrate unequivocally the crime of murder by induced suicide. If the learned Judge is correct, then the NPA would still have jurisdiction to prosecute on a charge of murder.
- 7.2.6 It has been established that Goosen, Pollock and Erasmus applied for amnesty on charges relating to breaking into the house of Aggett's parents, looking for evidence to support the claim that he had committed suicide. The TRC material has been uplifted and has been perused.
- 7.2.7 Aggett's detention file was also uplifted, but it contains no relevant information.
- 7.2.8 Deborah Quin was given the list of witnesses, who testified at the inquest and was requested to establish their availability, present whereabouts and

T.A.  
W.B.M.  
NGI

also whether any of them were connected to other incidents which would be relevant. She is also looking into the issue of whether there were other deaths in detention at the same time, which could be relevant. She has already indicated that Cornwright is deceased and that Auret van Heerden, who was in detention in close proximity to Aggett, is currently in an old age home in the USA.

8. Currently the two matters are not receiving the attention of the PCLU due to firstly, operational constraints which arose since October 2015. (Adv Bukau was given an urgent espionage-related case and uncertainty surrounded Adv Macadam's position due to the NDPP on 8 October 2015, indicating that he had not cancelled his appointment as the OECD Foreign Bribery Prosecutor.) In a meeting with Adv Macadam in September 2015, the NDPP raised the issue as to whether the TRC matters should be taken away from the PCLU. As a result of all these uncertainties, a memorandum was prepared in January 2016, requesting the NDPP to confirm whether the PCLU should continue to deal with TRC cases or whether they should be referred to the DPPs. A response to this memorandum is still outstanding.
9. In my view, a decision on the request made by Messrs Dutton *et al* cannot be taken solely by the NPA.
  - 9.1 Both are the subject of enquiries being conducted by the DPCI and clearly the views of the relevant senior managers within the DPCI should be canvassed.
  - 9.2 In the Aggett matter a group of his former colleagues has formed an association, "Friends of Neil Aggett", which has called for the prosecution of the police officials involved. The request to reopen the inquest runs contrary to the group's position. The group has a direct interest in the matter and its view should be consulted.
  - 9.3 Also in regard to the Aggett matter, although Cornwright is dead, Whitehead is still available and would clearly be affected by the reopening of the inquest. He would be entitled to legal representation, access to relevant material and the right to challenge any new evidence.
  - 9.4 In the Timol matter, it still has to be established whether any of the police involved in his interrogation are still alive and whether any new evidence could result in a prosecution of them on a charge of murder.
10. In my view, it would be inappropriate at this stage to reopen the two inquests. On what has been placed before me it would not appear that Mr Dutton has conducted a comprehensive investigation which would justify all the relevant factors which would have to be taken into consideration by both the NPA and the presiding officers of the inquests.
  - 10.1 The original inquests are not available and consequently the NPA would have to request Wits to make available its originals and to pay for all the relevant copies to be made.
  - 10.2 A decision would have to be taken as to whether to invoke section 17(2), 17A(1), which would require a determination as to whether the witnesses and suspects are available, whether a charge of murder is feasible, whether a *viva voce* hearing, which would involve having to provide the suspects with legal representation, is necessary.
  - 10.3 In my view, a Presiding Officer and the Judge President (if section 17A(1) is invoked) would be reluctant to reopen the inquests, to receive only Dutton's evidence and before the police have concluded their investigations and the NPA decided that there are no prospects of a successful prosecution. This would be particularly apposite in



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the Aggett matter where there are 8 500 pages of evidence to be perused, numerous witnesses who would be required to be recalled and where Whitehead could still be prosecuted.

11. In my view therefore, it would be inappropriate to accede to the request prior to the conclusion of the DPCI investigations and the NPA deciding not to prosecute. I am of the view that even if a decision not to prosecute is taken, then there would be new evidence which would justify the reopening of the inquests. At this stage it is not possible to predict what the consequences of this new evidence would be and therefore it cannot be predicted:
- 11.1 whether the additional statements should simply be placed before the Regional Court, which could in chambers consider them and elect to amend the original Magistrate's findings
- 11.2 whether a Judge should be appointed to hear the additional evidence *viva voce*
12. Having said that, it has to be, in the strongest possible terms, stated that it is imperative that the NDPP make a decision as to whether the TRC cases must remain with the PCLU or not. It will serve no purpose to decline the request, but to be placed in the position that two or more years down the line the cases have not been finalised because either the DPCI or NPA or both are unable to commit the necessary resources to finalise the matters timeously. It has to be emphasised that the Aggett matter requires a considerable amount of work due to the volume of evidence to be assessed, which may include an MLA request to the USA to interview Van Heerden. In the Timol matter there are also indications that evidence may be located in the UK, which would also have to be accessed through an MLA process.
13. Currently a member of the PCLU could give almost fulltime attention to the two matters. However, it is only to be anticipated that this will not be the case when shortly the unit's current workload will increase.
14. It is recommended that you:
- 14.1 advise the NDPP not to accede to the request to reopen the inquests until the investigations have been concluded and a decision taken not to prosecute
- 14.2 request the NDPP to, as a matter of urgency, make a decision as to whether the TRC matters must remain with the PCLU.

Kind regards

ADV RC MACADAM

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Office of the  
National Director of Public  
Prosecutions



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

25 February 2004

Victoria & Griffiths  
Mxenge Building,  
123 Westlake Avenue,  
Weavind Park, Silverton

A/INV/5/03/TRC

Imtiaz C ajee  
P O Box 1888  
GARSPONTEIN EAST  
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P/Bag X752

Pretoria

0001

Tel: (012) 045-6000

www.npa.gov.za

Dear Sir

INVESTIGATION INTO TIMOL CASE

I acknowledge receipt of your fax of 18 February 2004 and have to inform you that the case is registered under the above reference number. Last year investigations were conducted into the allegations that former security branch officer Rodrigues had confessed to his daughter who in turn informed IVOR POWELL.

The investigations produced negative results. I confirm that you furnish me with the following documents:

- i) Extract Bizos' book
- ii) Article Powell
- iii) TRC transcripts
- iv) INPUT Detainee
- v) Photographs

The testimony of a detainee who was held out of the window was not included.

I would be grateful if you would furnish me with a copy of it as well as any other relevant material, which you may have. The case will again be considered the light thereof.

Kind regards

  
RC MACADAM  
DEPUTY HEAD: PCLU



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Office of the Head  
Priority Crimes Litigation Unit  
VGM Building  
PRETORIA

P. O. Box 752,  
PRETORIA  
0001

INTERNAL MEMORANDUM

VGM Building  
Hartley St.  
Weavind Park  
0001  
Pretoria  
South Africa

TO: DR MS RAMAITE  
CC: ADV VP PIKOLI  
CC: ADV K PILLAY  
FROM: ADV AR ACKERMANN SC  
SUBJECT: 1. DETAILS OF TRC CASES CLOSED BY THE PCLU  
2. REAPPOINTMENT OF SENIOR SUPER-INTENDENT BRITZ  
DATE: 30 OCTOBER 2006

Tel: (012) 845 6474

1. On 25 October 2006, the PCLU was requested by the "TRC Committee" to furnish more details regarding all the cases which the PCLU had declined to prosecute. The PCLU was also requested to furnish the background which led to the prosecution of one Blani.
2. TRC CASES CLOSED
  - 2.1 Death in detention Ahmed Timol
    - 2.1.1 This death in detention matter goes back to 1971.
    - 2.1.2 The nephew of the deceased requested that an allegation that one of the police officers who had interrogated the deceased had confessed to a journalist be investigated.
    - 2.1.3 The DSO traced and interviewed the journalist who denied the allegation. There was no other evidence to prove that the

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deceased had definitely been murdered and all other crimes had prescribed.

2.1.4 The matter was therefore closed.

## 2.2 Death in detention of Steve Biko

2.2.1 Mr Ngcuka asked that this matter be investigated because of its high profile.

2.2.2 The DPP: Eastern Cape had recommended that no prosecution be instituted due to lack of evidence.

2.2.3 It was established that all the doctors who had treated the deceased were dead, except for the Chief State Pathologist, who, when consulted, conceded that he could not exclude that the injury to the deceased's head could have been accidentally caused.

2.2.4 The police officer in charge of the interrogation who was responsible for making the decisions as to whether the deceased should receive medical treatment himself died after he was denied amnesty by the TRC.

2.2.5 The evidence against the remaining police officers only established culpable homicide which had prescribed in 1997.

2.2.6 The NDPP made a press statement to the effect that no prosecution was possible. An NGO organization obtained the opinion of Adv Trengove who also concurred with the decision.

2.2.7 Subsequent to this decision, the police officer who transported the deceased to Pretoria also died.

## 2.3 Carl Niehaus

2.3.1 A member of public asked for a prosecution after the media published an interview with Carl Niehaus in which he alleged that he had been tortured during detention.

2.3.2 Mr Niehaus was consulted and did not desire prosecution.

2.3.3 File closed.

## 2.4 Skoulides

2.4.1 Skoulides had been convicted of murder.

2.4.2 After his release from prison, his sister alleged that he had been framed by the CCB. There was no evidence to substantiate this claim and it was suspected that the purpose of the allegation was made so as to have the convict's criminal record deleted so that he could emigrate to Greece.

2.4.3 The file was closed.

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## 2.5 Nelson Sithole

2.5.1 The deceased was a Cape Town activist. He was killed outside his home. No perpetrators were identified and arrested by SAPS.

2.5.2 His lawyer alleged that the perpetrators were known to SAPS.

2.5.3 The DSO interviewed the eyewitnesses, perused the SAPS docket and interviewed a convicted prisoner whom the lawyer claimed knew about the case. The prisoner denied all knowledge of it. The witnesses had not identified the attackers. SAPS were of the view that the deceased was the victim of a criminal gang which was terrorizing that area. An identification parade had been held to see if the victims could identify members of the gang who were in custody on other charges but with negative results.

2.5.4 File closed.

## 2.6 Pro Jack

2.6.1 A person was refused amnesty for the murder of a Western Cape activist.

2.6.2 The TRC asked that this matter be looked into.

2.6.3 The DSO investigated the matter and came to the same conclusion as the TRC's Amnesty Committee, to the effect that the amnesty applicant had lied in respect of each and every material aspect relating to the murder of the deceased. There was no acceptable evidence to prosecute him or any other person and the file was closed.

## 2.7 AM Zulu

2.7.1 A convicted prisoner was refused amnesty for his role in the killing of a number of people in the Table Mountain area.

2.7.2 The TRC: KZN recommended that this matter be looked into further.

2.7.3 The convicted prisoner was an unreliable witness in his amnesty application and there was no other acceptable evidence implicating the persons whom he alleged had taken part in the attack with him.

2.7.4 The file was therefore closed.

## 2.8 Bult

2.8.1 Representations were made to the NPS by Bult, who alleged that he had been assaulted by the police during the Apartheid Era.

2.8.2 His allegations were however not serious enough to warrant investigation by the TRC unit which had been mandated by the NDPP only to consider serious human rights

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abuses.

2.8.3 The file was therefore closed.

2.9 Castro Khumalo

2.9.1 The victims requested that a prosecution be instituted.

2.9.2 The deceased was a member of a group of activists who had been killed by the Security Branch.

2.9.3 The perpetrators had however all received amnesty, but the bodies of the deceased had not been traced.

2.9.4 The case was therefore referred to the Missing Persons' Task Team for further action.

2.10 Winnie Mandela

2.10.1 She was implicated in the kidnapping of a youth in Soweto.

2.10.2 These allegations had been investigated by a component of the D'Oliveira Investigation Unit. It was established that all the relevant witnesses had been extensively interviewed and all had been found to be unreliable. Various allegations as to the location of the body of the missing person had been followed up with negative results.

2.10.3 There was therefore no reliable evidence to institute a prosecution against Mrs Mandela. It was noted that she had been convicted on another charge. The allegations that she was involved in the murder of Dr Asvat were also investigated with negative results. The allegations of Falati, Cebenkulu and Richardson were also looked into and it was found that these three persons were thoroughly unreliable and had strong motives to falsely implicate Mrs Mandela.

2.10.4 The file was therefore closed.

2.11 Ermelo Black Cats

2.11.1 The D'Oliveira Investigation Unit had charged members of an IFP grouping called the Black Cats for various crimes committed in the Ermelo area.

2.11.2 The investigations had been put on hold pending the finalization of the TRC.

2.11.3 The main 204 witness was interviewed by the DSO and found to be thoroughly unreliable.

2.11.4 The TRC had refused to grant him amnesty and the DPP: KZN had also rejected similar allegations made by him relating to activities in KZN.

2.11.5 The witness also indicated that he would not testify unless he was released from prison



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first. There was therefore no evidence to prosecute and the file was closed.

2.12 Chadwick

2.12.1 The accused was a UK citizen who absconded to the UK after being indicted for the murder of two suspected IFP supporters.

2.12.2 The DPP: Pretoria applied for his extradition which he resisted in the UK for a period of almost eight years.

2.12.3 When his final appeal against extradition was exhausted, the UK authorities requested an undertaking from the NPA that the evidence available was sufficient to ensure this conviction.

2.12.4 A key witness had retracted his statement and there were other evidential problems. The original extradition application had to be abandoned although a new witness had been found. The UK authorities indicated that a fresh extradition application would have to be lodged before extradition could be granted on his version. Given the fact that the accused had been in custody for several years, combined with the fact that there was medical evidence suggesting that he could have been insane at the time of the crimes, it was not considered worth bringing a fresh application.

2.12.5 The Acting NDPP confirmed this decision.

2.12.6 Interpol has been requested to establish whether there is truth to the rumours that the accused might try and return to South Africa. If he were to voluntarily come to South Africa, the extradition problems would not apply.

2.13 Anton Lubowski

2.13.1 The original TRC unit was looking into this matter which related to the murder of a Swapo leader in Namibia.

2.13.2 A South African Court would only have jurisdiction in the event of evidence of a conspiracy to murder the deceased formulated in South Africa.

2.13.3 All the available evidence was perused. The most likely candidate to have killed the deceased was an Irish citizen, Aitcheson, who was arrested in Namibia, but skipped bail.

2.13.4 There was no reliable evidence against any other parties and the file was closed.

2.14 Ciskei coup d'etat

2.14.1 The original TRC unit was looking into this matter.

2.14.2 It was established that although certain former Military Intelligence members had indicated their intention to apply for amnesty on the basis that the coup had been

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orchestrated so as to ensure the murder of ANC supporters, they had withdrawn their applications.

2.14.3 The former Head of State of Ciskei had been prosecuted for ordering the killing of two alleged coup conspirators, but had been found not guilty by the Bisho High Court.

2.14.4 There was no other evidence available to justify a prosecution of any person and the file was closed.

2.15 General Basie Smit

2.15.1 Mr Ngcuka asked that this matter be looked into as a result of media attention.

2.15.2 The available evidence as gathered by the D'Oliveira unit was considered and found to be inadequate to base any prosecution for a human rights abuse. The suspect was a former Head of the Security Branch.

2.15.3 The file was therefore closed.

2.16 S v Bongani Wana

2.16.1 This matter relates to the murder of Zolile Sangoni, Zonwabele Mayapi and an MK cadre Gift Mgibe who were killed by Vlakplaas operatives in 1988 in Umtata.

2.16.2 Mr Wana had applied for amnesty but later withdrew his application.

2.16.3 After a careful perusal of the TRC transcript and consulting with all relevant potential witnesses it became clear that there was no sufficient evidence upon which prosecution of Mr Wana can be instituted.

2.16.4 The matter was then closed.

2.17 Representation by Mr SM Mavuya

2.17.1 Mr Mavuya claimed to have been an informer during 1984 and was applying for amnesty and requested protection from members of his community.

2.17.2 We however informed him that we have no such authority and that TRC committee has disbanded. His activity did not amount to any criminal offence thus we could not even consider it in terms of prosecution guidelines.

2.18 Representation by Mpho Masemola

2.18.1 This matter arose from a representation by Mr Masemola, a former ANC who claimed to have been arrested and subsequently tortured in 1985.

2.18.2 He also claimed that in 1991 members of the Counter Insurgency Unit shot at him during a march he had organised. We however informed him that in as far as the

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torture in 1985 the matter has since prescribed and in respect of 1991 shooting there was no evidence to support his allegations as he bases his accusations on assumptions.

2.19. Representation by Mr N Dlamini

2.19.1 Mr Dlamini had made allegations against Swaziland police whom he claimed to have sold out some MK cadres during 1985 to 1986. Unfortunately he could not supply us with any proof apart from a newspaper article from Times of Swaziland which we did not receive.

2.19.2 Apart from lack of substance in his allegations the NPA does not have jurisdiction in crime committed in Swaziland. He could not indicate to us his interest in the matter when requested to do so.

2.20 Thabo Armando Sithole

2.20.1 The mother of Thabo requested the NPA to investigate death of his son who died in police custody after being arrested for robbery in 1976.

2.20.2 They received a report from Greytown police that he committed suicide by hanging himself.

2.20.3 The PCLU could not find any records of the inquest and the police in Greytown police station could not assist us as they could not find any records of Thabo though they remember that he was indeed detained there. The PCLU therefore decided to close the file as there was no further action contemplated.

2.21 Murder of Michael Mcetywa

2.21.1 The matter arises from a representation by Zolile Mcetywa who is the son of the deceased who was an ANC chairperson in Pongola and murdered in 1993.

2.21.2 A man called Mavuso is currently serving 25 years for the murder.

2.21.3 During his amnesty application which was refused, he implicated a number of IFP leaders.

2.21.4 The family of the deceased requested the PCLU to consider prosecution of the implicated IFP leaders.

2.21.5 After reading various documents and consulting with Mavuso it transpired that he is the only witness who can be used but he demanded that the NPA secures his release before he can testify against the IFP leaders.

2.21.6 Apart from his evidence there was nothing to corroborate him. We therefore closed the file as there was no further action contemplated.

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2.22 Smit murders

2.22.1 Perpetrators all deceased except one suspect who apparently lives in Australia.

2.22.2 Insufficient evidence to apply for extradition.

2.22.3 Matter closed.

2.23 Refusal of amnesty to the President and other high-ranking ANC officials

2.23.1 The TRC refused amnesty to the President and plus-minus 37 other high-ranking ANC members certain of whom held Ministerial positions or other key positions in Government.

2.23.2 The TRC found that they had not disclosed that they had committed specified crimes.

2.23.3 There was no evidence implicating them in criminal offences and the file was closed.

2.23.4 The NDPP, Mr Ngcuka, made a media statement to this effect as the DA was making an issue of the matter.

2.24 IFP Hit Squads (allegations of Luthuli, Mbambo, Mkhize and Hlongwane)

2.24.1 The DPP: KZN asked that this matter be looked into as a result of the controversy which the allegations had caused in the province.

2.24.2 Certain IFP supporters, e.g. Luthuli, Mbambo, Mkhize and Hlongwane had made various allegations against high-ranking IFP officials.

2.24.3 Luthuli had been used as a witness in one case, but the accused had been acquitted and Luthuli was found to be an unreliable witness by the Court.

2.24.4 A Deputy in the DPP's Office: KZN had considered all the allegations and had declined to prosecute as a result of the discrepancies between the versions of the accomplice witnesses.

2.24.5 After their release from prison, Mbambo and Mkhize were interviewed and indicated that they did not want to testify in any matters. Hlongwane had been refused amnesty and indicated that he was not prepared to testify unless released from prison. He had a poor reputation for reliability.

2.24.6 There were therefore no reliable grounds upon which the decision of the DPP: KZN not to prosecute could be reversed and the file was closed.

2.25 Bombing of Early Learning Centre and other Western Cape CCB activities

2.25.1 A request was received from the Legal Resources Centre in Cape Town requesting that CCB members who had been refused amnesty for the above case be prosecuted.

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2.25.2 It was established that the main perpetrators had either been granted Indemnity under the Indemnity Act or in terms of section 204 of the Criminal Procedure Act, arising from their testimony in the Wouter Basson and Ferdi Barnard prosecutions.

2.25.3 The only persons who could be prosecuted were Ferdi Barnard and the whistle-blower who had assisted the victims.

2.25.4 In the case of Ferdi Barnard, he was serving a lengthy gaol sentence in C-max. Were he to be charged, he would have to be transferred to Cape Town, posing a burden on Correctional Services. Any sentence he would have received for this case would run concurrently with his current sentence. No useful purpose would therefore be achieved by prosecuting him.

2.25.5 The prosecution of the whistle-blower would undermine reconciliation.

## 2.26 Plus-minus 80 cases against members of the Liberation Movement

All these cases were investigated by SAPS and closed by Ackermann for a number of reasons, i.e. offences were not of a serious nature, amnesty had been granted to the perpetrators or the perpetrators could not be traced.

## 2.27 S v Blani

2.27.1 The two deceased were an elderly married couple who resided on the farm, Enhoek.

2.27.2 The accused was associated with an organization known as the "Addo Youth Congress".

2.27.3 At a certain stage the accused conspired with other members of the organization to attack the farm of the deceased.

2.27.4 On the night of 17 June 1985, the accused and his co-conspirators armed themselves and travelled to the farm of the deceased.

2.27.5 Upon arrival, the group cut the telephone connection to the farm and proceeded to the farmhouse.

2.27.6 The group then broke into the house despite attempts by the deceased to defend himself with a firearm.

2.27.7 Both deceased were assaulted and killed inside the house.

2.27.8 The group ransacked the house and removed certain items.

2.27.9 The Murder & Robbery Unit in Port Elizabeth originally investigated this matter.

2.27.10 The suspect was linked to the crime by fingerprint evidence.

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2.27.11 A warrant for his arrest was obtained but not executed, because he could not be traced. This warrant was never cancelled by SAPS.

2.27.12 As a result of Commissioner Fivaz's instruction of 7 November 1996, namely that all cases be referred to Dr D'Oliveira's Unit, the docket came into possession of Britz. The investigation diary of the docket confirms that on 18 July 2003, Director Nel received it for further investigation. Director Nel established that certain suspects were still outstanding on warrants and thereafter traced them. He thereafter furnished the Serious & Violent Crimes Unit in Port Elizabeth with copies of the witness statements with instructions to trace the suspects and witnesses.

2.27.13 In 2003, Britz referred the docket to the PCLU, requesting a prosecution of Blani on the basis that he had been traced by SAPS and had not applied for amnesty. This case is reflected as case No 266 in the SAPS register.

2.27.14 On 25 January 2005, the accused pleaded guilty and received a partially suspended term of imprisonment.

#### 2.28 The reappointment of Senior Superintendent Britz

2.28.1 At its last meeting, the Committee was informed by Assistant Commissioner Jacobs that Senior Superintendent Britz would be reappointed to investigate the dockets in possession of SAPS.

2.28.2 I wish to express my concern at this. Britz was a former member of the Security Branch, who, prior to the PCLU being involved with TRC cases, assisted the DPP: Pretoria with cases involving the Liberation Movement.

2.28.3 Former Police Commissioner General van der Merwe had formed an organization entitled "*The Foundation for Equality before the Law*" which was intended to ensure that no further prosecutions of Security Branch members would take place.

2.28.4 When I and my staff were appointed to take over the TRC cases in the DPP Office: Pretoria, we gained the firm impression that Britz was not only very sympathetic towards this organization, but had regular contact with General van der Merwe.

2.28.5 In particular, Britz tried to persuade me and my Deputy on numerous occasions that there was a provable case of terrorism against President Mbeki arising from the landmine campaign. This was raised in the context that were Security Branch members to be prosecuted, the President would also have to be charged. It was clear that he was against prosecutions of Security Branch members. Despite his claims, he could never produce a docket implicating the President. At one stage, he informed me that the docket was with General van der Merwe and his legal advisor. This raises a very serious question as to how an official police docket could be retained by General van der Merwe, who was not entitled to possess police material after his retirement from SAPS.

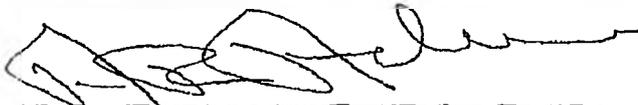
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2.28.6 When the issue of prosecuting Security Branch members for the Pebco 3 incident was raised with their lawyer, he immediately indicated that he was preparing to submit a docket calling for the prosecution of the President. I can only draw the inference that sharing of information took place between Britz and Van der Merwe.

2.28.7 The issue of the prosecution of the President was raised at the highest level of Government and resulted in enquiries being conducted by Minister Maduna as well as members of the President's office. All parties were satisfied that the NPA had no intention of prosecuting the President. In fact, Mr Ngcuka had been provided with a report that no such case had been established in the TRC records.

2.28.8 This highly embarrassing incident caused Mr Ngcuka to instruct that Britz vacate the offices of the DPP and that all the relevant SAPS dockets be removed. Britz was subsequently relocated in the SAPS Crimes Against the State Unit. He requested the PCLU to provide written confirmation of the fact that the decision had been taken not to prosecute the President. When he received the letter, he tried to persuade the PCLU to reconsider its decision.

2.28.9 I therefore believe that Britz lacks the necessary objectivity to be of assistance to the Committee and that his reappointment may lead to further controversy as well as the potential leaking of information to General van der Merwe.

  
ADV AR ACKERMANN SC

  
NGI  
SC

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, PRETORIA

In the matter of:

Case Number: 01/17

RE-OPENED INQUEST: MRAHMED TIMOL

---

AFFIDAVIT OF ADV. RAYMOND CHRISTOPHER MACADAM

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1.

I am a Senior Deputy Director of Public Prosecutions in the office of the National Director of Public Prosecutions.

2.

Since 2003 I have been a member of the PCLU.

3.

My attention has been drawn to paragraphs 27 to 30 of an affidavit made by Mr Imtiaz Cajee, which was placed before this Honorable Court on 14 August 2017. In my view this creates the impression that I had investigated a complaint made to the then National Director that the police officers involved with the death of Mr Timol be charged with murder and had advised Mr Cajee that my investigation had produced "negative results". This is not a true reflection of my involvement in the matter.

4.

I was not aware of a complaint made to the National Director but was approached directly by Mr Cajee who informed me that the daughter of Sgt. Rodrigues had approached a journalist Ivor Powell and informed him that her father had told her how the deceased was murdered. I immediately reported the allegations to the DSO ("The Scorpions") A Chief Investigating Officer was sent to interview Mr Powell and establish whether Sgt. Rodrigues could be charged with murder. I was informed that after

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investigation no basis for the allegations could be established. Mr Powell was emphatic that no such approach had been made to him.

5.

On 25 February 2004 I wrote to Mr Cajee informing him that this investigation had produced negative results. I did however invite him to supply me with additional information so that the case could be reconsidered. I did not however hear anything further from him. I attach a copy of my letter addressed to him as RCM1.

6.

Shortly thereafter, I was assigned a very lengthy prosecution relating to an international nuclear weapons syndicate and was no longer involved in TRC cases.

7.

I have had sight of the letter dated 29 November 2006 entitled "Report of the progress made by the Task Team on TRC Cases" which was attached as Annexure "A" to Mr Cajee's affidavit. I was not the author of the report. As the report clearly indicates it related to the work of a task team. I was not a member of this task team. As the report also reflects it was the decision of this team to close the matter relating to the deceased.

8.

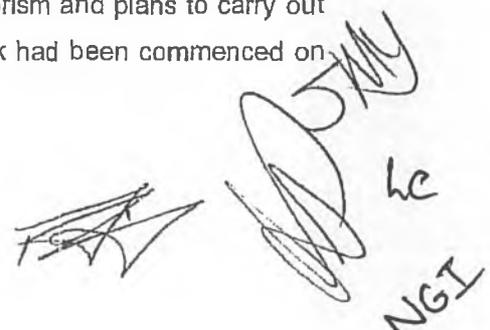
At a later stage I was again instructed to deal with TRC cases. The investigation of these matters was now the responsibility of the DPCI. In late 2015 I looked into this matter and was of the view that it should be investigated. I therefore requested the DPCI to open an investigation into the matter.

9.

I downloaded the copy of the inquest record which was held by Wits and requested the police to establish the whereabouts of the implicated parties, witnesses and medical experts. I also contacted Mr Piers Pigou who had dealt with the matter at the TRC. I also requested a researcher to obtain the detention files of persons who were detained at the same time as the deceased. Copies of my communications are attached hereto as RCM2 and RCM3.

10.

I was however assigned a very urgent matter relating to international terrorism and plans to carry out terrorist attacks in South Africa. I briefed Adv. Pretorius SC on what work had been commenced on



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the matter of the deceased. He informed me that he would monitor the police investigation and later advised me that he had decided that it would be appropriate to hold a formal inquest.

\_\_\_\_\_  
DEPONENT

Thus signed and sworn to at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2017

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

\_\_\_\_\_  
COMMISSIONER OF OATHS

FULL NAME: \_\_\_\_\_

BUSINESS ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CAPACITY: \_\_\_\_\_

AREA: \_\_\_\_\_

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Office of the Head  
Priority Crimes Litigation Unit  
VGM Building  
PRETORIA

P. O. Box 752,  
PRETORIA  
0001

**INTERNAL MEMORANDUM**

VGM Building  
Hartley St.  
Weavind Park  
0001  
Pretoria  
South Africa

TO: DR MS RAMAITE  
FROM: ADV AR ACKERMANN SC  
SUBJECT: AUDIT OF CASES EMANATING FROM TRC PROCESS  
DATE: 24 OCTOBER 2006

Tel: (012) 845 6474

**1. HISTORICAL BACKGROUND**

- 1.1 After the closure of the Goldstone Commission in 1993/94 the government of the day decided that its work in investigating human rights abuses relating to conflicts of the past should continue under the supervision of the then Attorney General of Pretoria, Dr J D'Oliveira. A team of the South African Police Service was seconded to his office to conduct the necessary investigations.
- 1.2 The team was divided into two groups. One focusing on offences committed by security force members and the other group on offences committed by Liberation Movements and the Right Wing.
- 1.3 This latter team comprised of Director Nel and Senior Superintendent Britz.
- 1.4 The Attorney General decided that Deputy Attorney General Flick would supervise all the investigations conducted by the two police officers while he would deal with cases involving security force members.
- 1.5 On 7 November 1996 the National Commissioner at the request

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of Dr D'Oliveira instructed all his Provincial Commissioners to submit all outstanding and unsolved cases pertaining to the entire political spectrum of the conflicts of the past to Dr J D'Oliveira's office. Such instruction also related to cases where not all the accused had been prosecuted.

- 1.6 With the appointment of the NDPP the cases dealt with by D'Oliveira were transferred to his office while Fick continued to deal with the cases originally allocated to him i.e. the Liberation Movement cases. He continued to be assisted by the SAPS members, Nel and Britz. Their contracts were routinely extended by SAPS.
- 1.7 The NDPP however instructed Fick not to institute any prosecutions without his authorisation and no prosecutions were therefore instituted.
- 1.8 With the creation of the DSO in 2001 the cases with the NDPP were transferred to the DSO Head Quarters. Fick however continued with his cases assisted by the two police officers.

( No prosecutions were instituted because the TRC's final report and the President's response thereto were outstanding.
- 1.10 With the creation of the PCLU In March 2003, the NDPP assigned all TRC matters to it after the TRC had tabled its final report and the President had mandated the NDPP to institute prosecutions where appropriate, arising from the TRC process.
- 1.11 The PCLU was not an investigative agency and was therefore dependant on SAPS and the DSO for investigations. The PCLU reports monthly to a Deputy National Director and the NDPP approved all its decisions to institute TRC prosecutions and, in certain high profile cases, certain decisions not to prosecute.
- 1.12 The DSO policy guidelines for prosecutions in these matters were accepted by the PCLU. In essence, these were to the effect that prosecutions should only be instituted for serious human rights abuses, based on reliable evidence while accepting that humanitarian factors and the interests of reconciliation could also be taken into consideration.

( 3 It was decided that Ackermann would take over Fick's cases and Macadam would take over the DSO cases.
- 1.14 The PCLU conducted an audit of all the cases in both offices.
- 1.15 In this auditing process it was established that the police officers at Fick's office at the DPP Pretoria had registered 395 police docketts.
- 1.16 During 2003/2004, Ackermann declined to prosecute in +- 80 of the abovementioned cases.
- 1.17 Similarly +- 50 cases from the DSO were finalised by Macadam and Ackermann.



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- 1.18 The audit process further identified a small number of cases warranting prosecution which are dealt with hereunder.
- 1.19 The 395 police docketts which were in the possession of Nel and Britz were returned to SAPS and the NDPP informed Commissioner Tim Williams that these docketts were police property and that the NPA had no interest in them except if SAPS desired prosecutions in which case they could be re-submitted for these purposes. The then Director General of Justice, Mr V Pikoli and other high ranking officials were present when this discussion between the NDPP and Williams took place. As of the date of this memo, no such docketts have been submitted to the NPA for decision.

## 2. CASES FINALISED IN COURT

### 2.1 S v Khwezi Ngoma and Others (Mhaga)

This matter involved four APLA cadres who attacked Willowvale police station in 1994 resulting in the death of a policeman and another injured. They didn't apply for amnesty. They made representation through their attorneys requesting a withdrawal of the charges but it was rejected and entered into plea bargain and received suspended sentences.

### 2.2 S v Aron Tyani & Another (Mhaga)

The matter relates to the attempted murder and murder of Stembele Zokwe an MK cadre during 1987 and 1988 by the Transkei security police. They were convicted and sentenced to direct terms of imprisonment in 2005.

### 2.3 S v Eugène Terre'blanche (Ackermann)

In November 2003 the accused pleaded guilty to several charges of terrorism, linked to 1994 pre-election bombings. He was sentenced to 6 years wholly suspended.

### 2.4 S v Blani (Macadam and Ackermann)

The accused was convicted on two counts of murder in Grahamstown High Court and sentenced to a partially suspended sentence.

## 3. MATTERS CLOSED BY PCLU

### 3.1 Death in detention Ahmed Timol

3.1.1 This matter relates to the death of Ahmed Timol who died in police detention on 27 October 1971 during interrogation by the Apartheid Security Police.

3.1.2 There was an allegation that one of the interrogators had confessed to a journalist that Timol had been murdered and that was followed up but was later denied by the said journalist.

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3.1.3 The matter was therefore closed.

3.2 Death In detention of Steve Biko

The matter prescribed in 1997 as evidence only proves culpable homicide which according to our criminal law prescribes after 20 years.

3.3 Carl Niehaus (Macadam)

3.3.1 Victim tortured during detention.

3.3.2 Victim does not desire prosecution.

3.3.3 File closed.

3.4 Skoulides (Macadam)

3.4.1 Victim's sister alleged that her brother had been framed for a murder committed by the Security Forces.

3.4.2 No evidence to substantiate this claim.

3.4.3 File closed.

3.5 Nelson Sithole (Macadam)

Closed – no evidence as to perpetrators.

3.6 Pro Jack (Macadam)

Closed – no reliable evidence as to perpetrators.

3.7 AM Zulu (Macadam)

No admissible evidence arising from TRC.

3.8 Bult (Macadam)

Offence not serious – assault common.

3.9 Castro Khumalo (Macadam)

Matter was referred to Missing Persons' Task Team.

3.10 Winnie Mandela (Macadam)

No reliable evidence.

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3.11 Ermelo Black Cats (Macadam)

No reliable evidence to prosecute IFP members in Mpumalanga linked to this incident.

3.12 Chadwick (Macadam)

Extradition request withdrawn because of a lack of evidence.

3.13 Anton Lubowski (Macadam)

No evidence.

3.14 Ciskei coup d'etat (Macadam)

No evidence.

3.15 General Basie Smit (Macadam)

No evidence.

3.16 S v Bongani Wana (Mhaga)

3.16.1 This matter relates to the murder of Zolile Sangoni, Zonwabele Mayapl and an MK cadre Gift Mgibe who were killed by Vlakplaas operatives in 1988 in Umtata.

3.16.2 Mr Wana had applied for amnesty but later withdrew his application.

3.16.3 After a careful perusal of the TRC transcript and consulting with all relevant potential witnesses it became clear that there was no sufficient evidence upon which prosecution of Mr Wana can be instituted.

3.16.4 The matter was then closed.

3.17 Representation by Mr SM Mavuya (Mhaga)

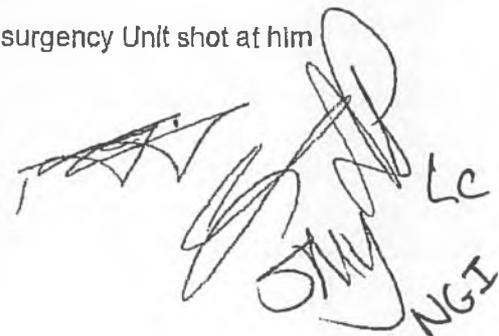
3.17.1 Mr Mavuya claimed to have been an informer during 1984 and was applying for amnesty and requested protection from members of his community.

3.17.2 We however informed him that we have no such authority and that TRC committee has disbanded. His activity did not amount to any criminal offence thus we could not even consider it in terms of prosecution guidelines.

3.18 Representation by Mpho Masemola (Mhaga)

3.18.1 This matter arose from a representation by Mr Masemola, a former ANC who claimed to have been arrested and subsequently tortured in 1985.

3.18.2 He also claimed that in 1991 members of the Counter Insurgency Unit shot at him



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during a march he had organised. We however informed him that in as far as the torture in 1985 the matter has since prescribed and in respect of 1991 shooting there was no evidence to support his allegations as he bases his accusations on assumptions.

3.19 Representation by Mr N Dlamini (Mhaga)

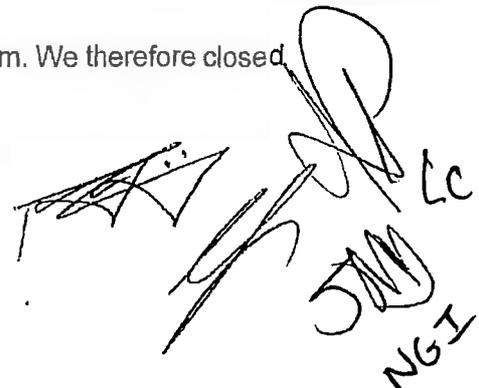
- 3.19.1 Mr Dlamini had made allegations against Swaziland police whom he claimed to have sold out some MK cadres during 1985 to 1986. Unfortunately he could not supply us with any proof apart from a newspaper article from Times of Swaziland which we did not receive.
- 3.19.2 Apart from lack of substance in his allegations the NPA does not have jurisdiction in crime committed in Swaziland. He could not indicate to us his interest in the matter when requested to do so.

3.20 Thabo Armando Sithole (Ackermann)

- 3.20.1 The mother of Thabo requested the NPA to investigate death of his son who died in police custody after being arrested for robbery in 1976.
- 3.20.2 They received a report from Greytown police that he committed suicide by hanging himself.
- 3.20.3 The PCLU could not find any records of the inquest and the police in Greytown police station could not assist us as they could not find any records of Thabo though they remember that he was indeed detained there. The PCLU therefore decided to close the file as there was no further action contemplated

3.21 Murder of Michael Mcetywa (Mhaga)

- 3.21.1 The matter arises from a representation by Zolile Mcetywa who is the son of the deceased who was an ANC chairperson in Pongola and murdered in 1993.
- 3.21.2 A man called Mavuso is currently serving 25 years for the murder.
- 3.21.3 During his amnesty application which was refused, he implicated a number of IFP leaders.
- 3.21.4 The family of the deceased requested the PCLU to consider prosecution of the implicated IFP leaders.
- 3.21.5 After reading various documents and consulting with Mavuso it transpired that he is the only witness who can be used but he demanded that the NPA secures his release before he can testify against the IFP leaders.
- 3.21.6 Apart from his evidence there was nothing to corroborate him. We therefore closed the file as there was no further action contemplated.



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3.22 Smit murders (Dr Pretorius)

3.22.1 Perpetrators all deceased except one suspect who apparently lives in Australia.

3.22.2 Insufficient evidence to apply for extradition.

3.22.3 Matter closed.

3.23 Refusal of amnesty to the President and other high-ranking ANC officials

No evidence that specific crimes had been committed, which attracted personal criminal liability could be found. Consequently, the case was closed.

3.24 IFP Hit Squads (allegations of Luthuli Mbambo and Mkhize)

No reliable evidence upon which to overturn the decision of the DPP: KZN not to prosecute.

3.25 Bombing of Early Learning Centre and other Western Cape CCB activities (Macadam)

The perpetrators were all granted indemnity in terms of the Indemnity Act or in terms of section 204 of the *Criminal Procedure Act, 1977 (Act 51 of 1977)*.

3.26 Plus-minus 80 cases against members of the Liberation Movement (Ackermann)

All these cases were investigated by SAPS and were all closed.

4. POTENTIAL PROSECUTIONS IDENTIFIED BY PCLU

4.1 S v Otto & 2 Others (poisoning of Rev. Chikane) (Ackermann)

4.1.1 Indictment already drafted in 2004 – prosecution was put on hold pending approval of guidelines.

4.1.2 In February 2006, NDPP authorized prosecution.

4.1.3 In terms of the guidelines, representations were received from the accused which were considered by the NDPP.

4.1.4 On 19 September 2006, Ackermann was directed to proceed with the prosecution against the accused.

4.1.5 Beginning of October 2006, it was decided to put prosecution on hold, pending the obtaining of a legal opinion on whether the accused have received indemnity or not in terms of the Indemnity Act, 1990.



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4.2 Pebco 3 (Ackermann)

4.2.1 In February 2004, the three accused were charged in the High Court on three counts of kidnapping and murder.

4.2.2 The matter is currently on review.

4.2.3 Next court appearance of accused is August 2007.

4.3 Cradock 4 (Ackermann)

4.3.1 Potential prosecution.

4.3.2 Legal obstacles.

4.3.3 Extensive investigations required.

4.4 S v Botha and Others (kidnapping of Ntombi Kubheka) (Ackermann)

4.4.1 Priscilla Ntombi Kubheka was an MK operative who lived in KwaMashu township in Durban.

4.4.2 She was kidnapped by Askaris, interrogated, tortured and subsequently killed by members of the Security Branch C1 Unit in 1987.

4.4.3 Seven members applied for amnesty for kidnapping, killing and disposing of the body of Kubheka. Only Baker and Radebe received amnesty while Botha, Du Preez, Van der Merwe and Visagie were refused. Docket in possession of PCLU.

4.5 S v Coetzee and Others (Nokuthula Simelane Kidnapping) (Ackermann)

4.5.1 Nokuthula Simelane was an underground MK operative acting as a courier and had been a major communication link between an MK base in Swaziland and SA.

4.5.2 She disappeared in 1983 after being sent on a mission in SA.

4.5.3 Docket in possession of PCLU.

4.6 Cosas Four (Ackermann)

4.6.1 The matter relates to the killing of Eustice Blimbo Madikela, Ntshingo Mataboge, Fanyana Nhlapo and attempted killing of Zandisile Musi (collectively referred to as the Cosas Four) in an explosion at Krugersdorp on or about 15 February 1982.

4.6.2 The four officers and an Askari who were involved in the incident applied for amnesty and were refused.

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4.6.3 The PCLU is not in possession of the docket.

4.7 Murder of Askari Strongman Sambo

The matter had been identified as a potential prosecution case but a decision has already been made by the DPP in Pretoria not to prosecute.

4.8 Matter of SAP General Engelbrecht

The matter had also been identified for prosecution but a decision was made by the DPP in Pretoria not to prosecute General Engelbrecht.

4.9 Death of George Mashele and Lilian Magosha (Mhaga)

4.9.1 This office received representation from Joseph Yende who claims to be the son of Lillian and brother of George.

4.9.2 George and his mother died during a raid by the SAP at his home in July 1992.

4.9.3 According to the police statements and post-mortem reports, the two died as a result of hand grenade explosion.

4.9.4 There is no evidence to rebut that version but Yende claims that there are witnesses who claim to have seen otherwise.

4.9.5 The PCLU is currently arranging consultations with them to verify these allegations. The family was compensated by the TRC for the incident.

4.10 Nicolas Boykie Thlapi (Disappearance in police custody) (Mhaga)

4.10.1 ANC branch in Klerksdorp submitted a memorandum demanding investigation into the disappearance of Boykie in March 1986 after being arrested by police with other members of Ikakgeng Youth Congress.

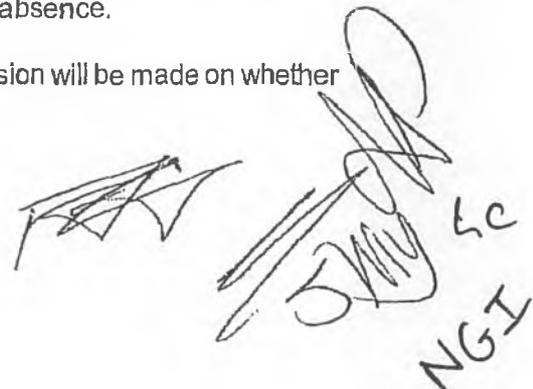
4.10.2 The matter is currently investigated by Capt Mathi of Klerksdorp serious and Violent Crimes Unit.

4.11 Lethlapa Mphahlele (Heidelberg Tavern and St James Massacre)

4.11.1 A representation was received by PCLU from Democratic Alliance and the father of Lynn Fourie who was killed during the attack.

4.11.2 A number of APLA cadres involved in the attack applied for and received amnesty after serving sentences. Mr Mphahlele applied for amnesty but later failed to appear before the commission resulting in his application refused in his absence.

4.11.3 As soon as an investigator is appointed for the case a decision will be made on whether



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to prosecute or not.

4.12 Bathandwa Ndondo (Murder by Vlakplaas operatives in 1985) (Ackermann)

4.12.1 Bathandwa Ndondo was an MK underground cadre operating in Transkei after his expulsion from the University of Transkei for his political involvement.

4.12.2 He was wanted by the Security police in Transkei and the Vlakplaas operatives and subsequently murdered in 1985. We received a representation from Adv Dumisa Ntsebeza requesting prosecution of the police officer who did not receive amnesty.

4.12.3 A decision had been made by the former NDPP not to prosecute him, we are therefore still considering the request as this will require overturning the previous decision if we decide to prosecute.

4.13 Moss Morudu (kidnapping and murder) 1987

4.13.1 Moss Morudu was a Cosas member in Mamelodi and had been politically active during 1986.

4.13.2 He was alleged to be a member of the underground unit of Umkhonto Wesizwe under the command of Obet Masango.

4.13.3 He disappeared from his home during October 1986 after the Security police had been looking for him in connection with a landmine explosion.

4.13.4 He was kidnapped by three security operatives under the pretence that they were MK cadres taking him to exile for military training. He was never seen again by his family.

4.13.5 The three officers who kidnapped Moss received amnesty for kidnapping and others did not apply for amnesty. As soon as an investigator is appointed a decision will be made on whether to prosecute or not.

4.14 Kidnapping and murder of Betty Boom, Mashiya and Selamane

The perpetrators were refused amnesty by the TRC.

4.15 Kidnapping and murder of Mbulelo Ngono

The perpetrators were refused amnesty by the TRC

4.16 Gaberone raid

The perpetrators were refused amnesty by the TRC

4.17 Maseru raid (General Johan van der Merwe implicated)

The perpetrators were refused amnesty by the TRC

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4.18 Samora Machel (Dr Pretorius)

This matter was reopened in 2005.

4.19 Philip Powell (Macadam/Ackermann)

4.19.1 NDPP directed that the PCLU apply for the extradition of Powell.

4.19.2 However, accused indicated that he wished to make representations.

4.19.3 Representations are awaited.

4.20 Victoria Mxenge (Macadam)

Allegations of an amnesty applicant must be investigated.

4.21 George Wauschope (Macadam)

4.21.1 The accused is a former leader of AZAPO. He was indicted to stand trial in the Johannesburg High Court in 1989 on charges of murder and attempted murder.

4.21.2 He absconded and took up exile in Zimbabwe.

4.21.3 The TRC rejected his application for amnesty, because he denied that he had admitted any crime.

4.21.4 In 2003, representations were made on his behalf to Minister Maduna to withdraw the charges.

4.21.5 The DSO evaluated the case in order to enable the Minister to respond.

4.21.6 The victims, who were also the eyewitnesses, were traced and they confirmed their allegations against the accused and also requested that he be prosecuted.

4.21.7 On their version, it would appear that the accused shot the deceased in the mistaken belief that he was a member of COSAS and in the process wounded an innocent bystander.

4.21.8 The former NDPP and the Minister decided that the prosecution should proceed.

4.21.9 The case was referred to the DPP: Johannesburg, who has in turn requested SAPS to conduct investigations.

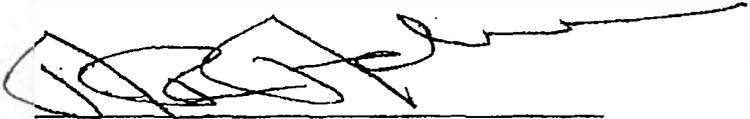
4.21.10 These investigations are in progress.

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4.22 Eugène de Kock

4.22.1 De Kock's legal representative has indicated that he has laid a wide ranging number of charges with SAPS relating to matters which were not put before the TRC or in respect of which false testimony was presented to the TRC.

4.22.2 These allegations must be considered insofar as they are relevant to the TRC processes.



ADV AR ACKERMANN SC



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ANNEXURE "B"

REPUBLIC OF SOUTH AFRICA

INDEMNITY BILL

-----  
(Second Draft)  
-----

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B - 2003]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP VRYWARING

-----  
(Tweede Konsep)  
-----

(MINISTER VIR JUSTISIE EN STAATKUNIDGE ONTWIKKELING)

[W - 2003]

  
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## B I L L

To provide for the granting of indemnity by the President to persons who make full disclosure of all relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the period from 1 March 1960 to the cut-off date; for the said purpose to establish a Committee on Indemnity to consider and investigate applications for indemnity and to make recommendations to the President; and to provide for matters connected therewith.

## P R E A M B L E

SINCE the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provided for a law to be adopted by Parliament in terms of which amnesty should be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past;

AND SINCE that law was adopted and the mechanisms and procedures established by that law have run their course and have been concluded;

AND SINCE there remains a need for reconciliation and reconstruction as contemplated in that Constitution;



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RCM 14

TERMS OF REFERENCE OF THE AMNESTY TASK TEAM

The Task Team is to consider and report on the following:

1. What criteria does the National Prosecuting Authority apply in deciding on current and impending prosecution of cases flowing from the conflict of the past.
2. The formulation of guidelines that will inform current, impending and future prosecution of cases flowing from the conflict of the past.
3. Bearing the above-mentioned guidelines in mind, whether legislative enactments are required.
4. Whether any of the two Bills that have already been formulated can be proceeded with, bearing in mind the views of our intelligence agencies.

DRAFT

Leon Radman  
0824582621

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SC  
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# AMNESTY TASK TEAM

## FURTHER REPORT

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## FURTHER REPORT: AMNESTY TASK TEAM

## 1. Background Information

1.1 On 3 March 2004 the Amnesty Task Team submitted a Report to a Heads of Department Forum for consideration.

1.2 The Heads of Department discussed the Report with members of the Task Team, whereafter they deliberated the Task Team's proposals and recommendations *in camera*. Following these deliberations, the Heads of Department indicated that they prefer the Task Team's recommendations relating to the establishment of a Departmental Task Team (hereinafter referred to as Option 1). They, however, requested the Task Team to give further consideration to the following aspects relating to Option 1:

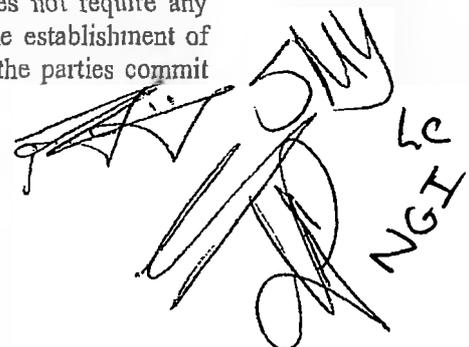
- (a) Parallel structures in order to assist the proposed Departmental Task Team, are not acceptable. In performing its functions the proposed Task Team must make use of existing structures.
- (b) Consider whether there is a way in which private prosecution and civil litigation can be eliminated if the National Director of Public Prosecutions decides not to prosecute? Investigate the possibility and desirability of legislation, if required.
- (c) The proposed Task Team should work under the direct supervision of an Inter-Ministerial Committee.
- (d) It is important that the proposed Task Team, the Inter-Ministerial Committee and the National Director, in performing their functions and reaching decisions, should take national interest into account.
- (e) Advise the Forum on whether a person who is aggrieved by a decision of the National Director may approach the International Criminal Court.
- (f) Advise the Forum on a time line for the completion of the work of the proposed Task Team. Twelve months was mentioned as a possibility.

## 2. Discussion

## 2.1 The establishment of a Departmental Task Team

Before discussing the above aspects, the Task Team once again considered the question whether legislation is required to establish the proposed Departmental Task Team. The Task Team met with two senior State Law Advisers of the Office of the Chief State Law Adviser. They confirmed the Task Team's conclusion in paragraph 3.4 of its Report, namely, that the recommendations pertaining to the establishment of a Departmental Task Team is an administrative process and does not require any legislation. They, however, recommended that the process and the establishment of the proposed Task Team be put into writing and suggested that the parties commit

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themselves to the process in a Memorandum of Understanding. The Task Team supports this proposal of the State Law Advisers

**2.2 Ad paragraph 1.2(a): The involvement of existing structures**

The Task Team supports this proposal of the Forum. However, in order to ensure the effective cooperation of such existing structures it is important that the existing structures, prior to the implementation of the proposed structure, commit themselves and give their full support and cooperation to the proposed process. It is proposed that such existing structures should be parties to the Memorandum of Understanding contemplated in paragraph 2.1 *supra*.

**2.3 Ad paragraph 1.2(b): Consider the possibility and desirability of eliminating private prosecution and civil litigation in cases of no prosecution**

2.3.1 The question whether it is possible or desirable to eliminate private prosecution and civil litigation elicited much debate within the Task Team. The Task Team obtained a written legal opinion from Adv JH Bruwer (attached hereto as Annexure "A") and also discussed the question with the two State Law Advisers referred to in paragraph 2.1 above. They are all in agreement that any legislation eliminating private prosecution and civil litigation will at least affect a person's right to equality (section 9(1) of the Constitution) and the right of access to courts (section 34). They also indicated that it is doubtful whether the motivation for such legislation would meet the requirements of section 36 (limitation clause) of the Constitution, and in case of the enactment of such legislation, an amendment of the Constitution would be required.

2.3.2 The State Law Advisers referred to in paragraph 2.1 above, indicated that they would advise against the enactment of any further legislation, since it would limit the rights of the victims or other interested parties. They further agreed with the Task Team that the proposed legislation, eliminating private prosecution and civil litigation, might be seen as a further amnesty process, which would be inconsistent with the Heads of the Department's view that Option 2 (a further amnesty process) is not an option at all.

2.3.3 In the final instance we wish to draw the Forum's attention to an article in *Rapport* of 7 March 2004 relating to the question of amnesty. During an interview with Archbishop Desmond Tutu, he expressed the view that every person who has not received amnesty through the TRC-process may be prosecuted and any new agreement to stop prosecutions is undesirable, since it will, among others, have the effect of negating the amnesty process of the TRC.

2.3.4 In the light of the above, the Task Team is of the view that private prosecution and civil litigation can only be eliminated by way of legislation and a Constitutional amendment. The Task Team is of the view that such a step would not be desirable.

**2.4 Ad paragraph 2.1(c): The establishment of an Inter-Ministerial Committee**

The Task Team supports this proposal. However, it wishes to point out that the State Law Advisers are of the view that the establishment of such a further structure may constitute a cumbersome process and increase the possibility of conflicting views

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between the various role-players and structures. Furthermore, they pointed out that the process might be seen as an attempt by the Government to put undue pressure on the National Director of Public Prosecutions in reaching an independent decision.

2.5 Ad paragraph 2.1(d): National interest should be the paramount objective

The Task Team wholeheartedly agrees with this viewpoint of the Forum.

2.6 Ad paragraph 2.1(e): The involvement of the International Criminal Court

This question was also referred to Adv JH Bruwer for his advice. In paragraph 3 of Annexure "A" he comes to the conclusion that, taking into account the provisions of section 5(1), read with section 5(6) and the definitions of the relevant crimes of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), "it is not inconceivable that a complainant who is prohibited by legislation contemplated in paragraph 1(a) from instituting a private prosecution in the national court may approach the International Criminal Court for relief". The Task Team agrees with this viewpoint.

2.7 Ad paragraph 2.1(e): Setting a time line for the Task Team to complete its work

The Task Team is hesitant to propose a specific time line at the stage when the process is to be announced. The setting of a time line in respect of the TRC process led to expectations and the subsequent extension of the TRC process, although justified and unavoidable, led to fierce criticism. It is proposed that the President should rather indicate that it is expected that the Task Team will finalise its work within a specified period and that such period will be determined taking into account the extent to which its objectives are achieved.





MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
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Adv Vusi Pikoli  
National Director of Public Prosecutions  
Private Bag X752  
PRETORIA  
0001

8 February 2007

Dear Adv Pikoli

RE: TRC MATTERS

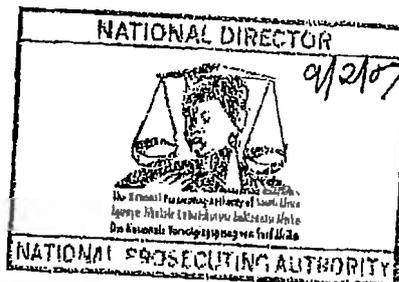
Our discussion in the above matter on Tuesday 6 February 2007 refers.

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

I trust that you find the above in order.

With warm regards

MRS B S MABANDLA  
MINISTER



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RC 17



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

SECRET INTERNAL MEMORANDUM	
TO	MS BS MABANDLA, MP MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT
FROM	ADV VP PIKOLI NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
SUBJECT	PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES
REF NO.	3/2P (PCLU)
DATE	15 FEBRUARY 2007

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to—

- (a) inform the Minister about the National Prosecuting Authority's (NPA) understanding and interpretation of the policy and guidelines relating to the prosecution of offences emanating from conflicts of the past which were committed on or before 11 May 1994;
- (b) inform the Minister about the problems the NPA is experiencing in the implementation of this policy and guidelines; and

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(b) propose a way forward.

## 2. BACKGROUND INFORMATION

### 2.1 Background relating to initial proposals

2.1.1 On 23 February 2004, a Director-General's Forum, under the chairpersonship of the former Director-General: Justice and Constitutional Development (Adv Vusi Pikoli) appointed a Task Team to consider and report on, *"the nature of the 'arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation' that the NPA and intelligence agencies may come up with in assisting persons who divulge information relating to offences committed during the conflicts of the past."*

2.1.2 In its deliberations, the Task Team took cognisance of the fact that in terms of section 179(1) and (2) of the Constitution, the NPA is an independent constitutional institution and the National Director has full discretion on whether a particular prosecution should or should not be instituted. The Task Team's recommendations should therefore be consistent with this constitutional requirement.

2.1.3 In its Report, the Task Team recommended the establishment of a Departmental Task Team comprising members of the following Departments or institutions:

- The Department of Justice and Constitutional Development
- The Intelligence Agencies (NIA)
- The South African National Defence Force
- The South African Police Service (SAPS)
- Correctional Services
- The National Prosecuting Authority
- Office of the President

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2.1.4 It was proposed that the functions of the proposed Task Team should, among others, be the following:

"(a) *Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard.*

(b) *To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—*

(i) *the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;*

(ii) *the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision." (Emphasis added)*

## 2.2 Background relating to Amended Prosecution Policy

2.2.1 As the Minister is aware, the abovementioned recommendations were not implemented, since many held the view that the proposed functions of the Task Team could be unconstitutional in view of the provisions of section 179 of the Constitution. Subsequently, Government decided that it was important to deal with these matters on a uniform basis in terms of a specifically defined prosecutorial policy and directives.

2.2.2 Therefore, it was proposed that the National Director, with the concurrence of the Minister, should issue amended Prosecutorial Policy and Directives in terms of section 179(5)(a) of the Constitution, read with section 21 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (NPA Act), and that such

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Policy and Directives should be submitted to Parliament in terms of section 21(2) of the NPA Act.

2.2.3 Following discussions with all the relevant stakeholders and a submission to Cabinet, the Prosecution Policy and Directives relating to the prosecution of offences emanating from conflicts of the past which were committed on or before 11 May 1994 (hereinafter referred to as the "Amended Prosecution Policy"), were approved and came into operation on 1 December 2005. The Amended Prosecution Policy was also duly tabled in Parliament and is binding on the prosecuting authority.

### 3. IMPORTANT FEATURES OF AMENDED PROSECUTION POLICY

3.1 For purposes of this memorandum, it is important to refer the Minister to the under-mentioned features of the Amended Prosecution Policy:<sup>1</sup>

- (a) The Amended Prosecution Policy emanates from and is based on the statement of President Thabo Mbeki to the National Houses of Parliament and the Nation, on 15 April 2003, when he gave Government's response to the final report of the Truth and Reconciliation Commission (TRC).
- (b) The President, among others, stated that the question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.<sup>2</sup>
- (c) The President further stated that as part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearth the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.<sup>3</sup>
- (d) It is important to note that the President made it clear that—

<sup>1</sup> Attached hereto as Annexure "A".

<sup>2</sup> See paragraph A.1(b) of Appendix A to Amended Prosecution Policy.

<sup>3</sup> See paragraph A.1(c) and (d) of Appendix A.

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- (i) the decision to be taken by the NPA (whether to prosecute or not) should be in accordance with the normal legal process;
- (ii) in order to reach a well-considered decision, the NPA should work together with the Intelligence Agencies, which include the NIA and the SAPS;
- (iii) the agreements entered into between the NPA and those persons who are prepared to unearth the truth of the conflicts of the past, should be in accordance with standard and normal execution of justice;
- (iv) such agreements should be in accordance with the NPA's prosecution mandate; and
- (v) such agreements should be in accordance with existing legislation.

3.2 Furthermore, it is important to note that the Amended Prosecution Policy expressly states that the prosecuting policy, directives and guidelines are required to reflect and attach due weight to, among others, the following:

- (a) The *dicta* of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid. (See *The State v Wouter Basson CCT 30/03*).<sup>4</sup>
- (b) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).
- (c) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.
- (d) The existing prosecuting policy and general directives or guidelines issued by the National Director to assist prosecutors in arriving at a decision to prosecute or not.

<sup>4</sup> See paragraph A.2 (h) to (k) of Appendix A.

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3.3 In respect of procedural arrangements, which must be adhered to in the prosecution process, the Amended Prosecution Policy provides, among others, in particular that—

- (a) the Priority Crimes Litigation Unit (PCLU) in the Office of the National Director shall be responsible for overseeing investigations and instituting prosecutions in all such matters;
- (b) the PCLU "shall be assisted in the execution of its duties" by a senior designated official from the following State departments or other components of the NPA:
  - (i) The National Intelligence Agency.
  - (ii) The Detective Division of the South African Police Service.
  - (iii) The Department of Justice & Constitutional Development.
  - (iv) The Directorate of Special Operations.

3.4 From the above, it is clear that in relation to the relevant offences—

- (a) the decision whether to prosecute or not vests in the prosecuting authority and in terms of the Amended Prosecution Policy, in particular, the National Director;
- (b) such decision must be exercised in accordance with the Constitution and existing legislation;
- (c) the abovementioned State Departments only have a role to play insofar as they must assist the NPA in the investigation process and the gathering of information so as to assist the NPA in reaching a well-considered decision whether to prosecute or not.

4. PROBLEMS RELATING TO IMPLEMENTATION OF AMENDED PROSECUTION POLICY

4.1 Since the coming into operation of the Amended Prosecution Policy, the NPA has experienced various problems relating to the implementation thereof. These problems are hindering and obstructing the NPA in fulfilling its constitutional

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mandate, namely, to institute criminal proceedings without fear, favour or prejudice. On the one hand, the NPA is experiencing problems investigating cases to ascertain whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution, since the SAPS and NIA had not made dedicated members available to assist the NPA in this regard. This was subsequently dealt with by the setting up of a "Task Team". On the other, the NPA is now experiencing problems relating to the interpretation of the role of the other State Departments in the process. As indicated hereunder, it seems as if the SAPS and NIA hold the view that the proposals relating to the original proposed Task Team (that were rejected by Government), must be implemented and that such Task Team should play a role in the decision-making process.

- 4.2 During the middle of 2006, a meeting was held at the Office of the Presidency to attend to the abovementioned problems. The National Commissioner, the National Director, the Directors-General of Justice and NIA, and Mr Jafta of the Presidency, attended this meeting. It was agreed that a Working Committee should be established. This recommendation was taken to the Ministers in the Cluster. At a subsequent meeting attended by the Minister for Safety and Security, the Minister of Social Development and Minister Thoko Didiza (as Acting Minister for Justice and Constitutional Development), it was agreed that such Working Committee (now referred to as a Task Team), should be established to assist the NPA.
- 4.3 Following the above agreement, the National Director called a meeting at the Office of the NPA. The Heads of Department as well as representatives of all relevant State Departments to serve on the Task Team were invited. All Departments were represented at this meeting. At this meeting—
- (a) the terms of reference of the Task Team were explained and agreed to;
  - (b) it was agreed that Dr Silas Ramaite (Deputy National Director of Public Prosecutions) would chair the meetings of the Task Team.

JULY  
NGI

Furthermore, on an issue raised by the representative of NIA, the National Director was explicit in explaining that the mandate of the Task Team would not entail making any recommendations on a decision whether to prosecute or not to prosecute and that the National Director would not be dependent on receiving such a recommendation before he could make a decision. The Task Team should be responsible for overseeing that the NPA obtain the necessary information or to give inputs so as to assist and enable the National Director to reach a well-considered decision whether to institute criminal proceedings or not. Furthermore, the Task Team should deal with all relevant matters identified by the PCLU and the SAPS.

4.4.1 Subsequently, on 6 December 2006, the Office of the PCLU received the e-mail marked "B" from Dr PC Jacobs of the SAPS. Furthermore, the National Director received letters from the National Commissioner and the Director-General: NIA, dated 6 February 2007 and 8 February 2007, respectively. (Attached hereto as Annexures "C" and "D", respectively)

4.4.2 According to Dr Jacobs, his understanding is that the Task Team must submit a final recommendation to a Committee of Directors-General in respect of each case. He also points out that the National Commissioner is of the view that this procedure should be followed in respect of each investigation that has been finalised. However, he does not elaborate on the role of the Committee of Directors-General.

4.4.3 In his letter dated 6 February 2007, the National Commissioner points out that he has been briefed regarding the meeting of the "Task Team set up in terms of the Cabinet guidelines on the outstanding Truth and Reconciliation Commission (TRC) matters". According to the National Commissioner his understanding is that the officials designated on the Task Team "will provide recommendations to the Directors-General who will, as a collective, advise the National Prosecuting Authority as the decision maker of prosecutions". The Director-General: NIA

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indicates that he had a discussion with his representative on the Task Team and he received a copy of the National Commissioner's letter. He concurs with the views of the National Commissioner.

4.5 In the first instance, it is important to note that as far as the NPA is concerned, this Task Team was not set up in terms of the Amended Prosecution Policy, which include the guidelines on TRC matters, but in terms of internal agreement between the relevant stakeholders. Furthermore, the NPA is not aware of any agreement or arrangement in terms of which the Task Team must submit a report to a Committee of Directors-General and which Committee must advise the NPA regarding prosecution decisions. Reading the e-mail of Dr Jacobs and the letter of the National Commissioner in context, it seems as if the above process is a proposal by the National Commissioner and not an agreement reached by the Task Team. For example, Dr Jacobs points out that—

- the National Commissioner is of the opinion that it must be established what disclosures were made...";
- "the National Commissioner is of the opinion that such process need to be followed in each case...".

In the same vein, the National Commissioner writes as follows:

- "I have insisted that the complainant be consulted ...on the basis that the Directors-General will have a opportunity to provide input before a decision on prosecution is taken."
- "In my view a comprehensive report...should be discussed by the Directors-General".

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NGI LC

- "Although I do not insist on a meeting of the Directors-General after each meeting of our officials, I deem it necessary that the substantive reports and recommendations of the officials should be discussed by the Directors-General before a decision is made." (Emphasis added)

4.6 The NPA cannot agree to the above proposal. The effect thereof might be that the National Director would be obliged (as is suggested by the National Commissioner) to wait for the finalisation of the proposed process before he may make a decision whether to prosecute or not. If the Task Team or the Committee of Directors-General, in spite of a "reasonable prospect of a successful prosecution", unnecessarily delays the process, the National Director would be prevented from complying with the prosecuting authority's constitutional obligation. Therefore, such a process would be unconstitutional.

## 5. CONCLUSION AND WAY FORWARD

5.1 There is clearly a misunderstanding regarding the role of the Task Team and the role of the relevant State Departments referred to in the Amended Prosecution Policy. In accordance with the approved Amended Prosecution Policy<sup>5</sup>, the NPA is of the view that the duty of the Task Team or the relevant State Departments is to assist the NPA "in the execution of its duties". However, nothing prevents such a Task Team or Departments (whether individually or collectively) to make recommendations to the National Director, provided that the National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a Task Team or relevant Department. Such a procedure would be unconstitutional.

<sup>5</sup> See paragraph B.6 of Appendix A.



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5.2 I have now reached a point where I honestly believe that there is improper interference with my work and that I am hindered and/or obstructed from carrying out my functions on this particular matter. Legally I have reached a dead end.

5.3 It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took, does not allow that.

5.4 Based on the above, I cannot proceed further with these TRC matters in accordance with the "normal legal processes" and "prosecuting mandate" of the NPA, as originally envisaged by Government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the State, I am awaiting Government's direction on this matter.

*VP*  
15102+2007

Adv VP Pikoli  
National Director of  
Public Prosecutions

Ms BS Mabandla, MP  
Minister for Justice and  
Constitutional Development

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## Report for the Office of the National Director of Public Prosecutions

Since the meeting with the above office in early February 1999, the Commission has begun a process of establishing mechanisms for identifying potential cases. The following is a report on progress thus far.

### A: Categories of violations

In discussing possible prosecutions, we have identified a range of categories and/or issues around which we believe prosecutions can be considered. We would recommend that there be some discussion around these categories to determine viability as well as prioritisation.

#### 1. Torture:

Much of the Commission's data on torture is to be found in HRV statements. However, the 'private' nature of torture and absence of witnesses frequently makes corroboration difficult. Bearing this in mind, the Commission has begun to draw up an initial list of all security force members implicated in torturing more than three victims. This list is extensive and includes many rural cases.

Another possible approach is to look at amnesty applications and hearings where torture was conceded and to identify the names of co-perpetrators who have not applied for amnesty. Such a list could then be checked against our HRV statements for further evidence. This figure would considerably reduce the potential number of cases. It would however be more difficult to extract as few security force members applied specifically for torture. Rather, evidence of torture often only emerges during amnesty hearings and is thus embedded in transcripts rather than on the TRC database.

#### 2. Post-Capriivi hitsquads:

The Commission has a fairly rich seam of data and information on this category. It is also one which we believe would be relatively easy to proceed on immediately given that at least one case was previously prepared by the ITU but not prosecuted [also see KZN report].

#### 3. Cases involving a cover-up by the security forces:

There are a number of potential cases in KZN including the cover-up by senior policemen of the Trust Feeds massacre. Another potential case would be the cover up of the Ribeiro killings by senior military personnel, but this may already be an AG case.

#### 4. Destruction of Documents

The Commission conducted a lengthy enquiry and investigation, assisted by the National Archives and the Human Rights Commission, into the destruction of literally scores of tons of documentation relating to state security in the early 1990s. Much of this destruction, authorised by the former government and overseen by the National Intelligence Service, clearly constituted unlawful destruction. In the course of this investigation, much documentation was collected and an overall report was drawn up, as well as comprehensive reports dealing with the SAP, the SADF and the NIS. Verne

Harris of the National Archives was centrally involved in this investigation and would be prepared to provide assistance.

5. **Gun-running**

The Commission conducted an investigation into gun-running and received several amnesty applications in this regard. While the investigation was inconclusive, a comprehensive report and other documentation is available. This area is seen to be significant in its capacity to begin to unravel networks involved in fomenting violence in the 1990s.

6. **Assassinations**

The Commission has received amnesty applications in respect of several of the high profile assassinations. Not all implicated persons applied in all of these cases and thus possible prosecutions could arise. In other cases such as the assassination of Joe Gqabi in Zimbabwe and Victoria Mxenge, no amnesty applications were received. We are currently assembling information on the Gqabi case.

7. **Winnie Madikizela-Mandela**

Extensive documentation has been collected around Mrs Madikizela-Mandela and the MUFC and a comprehensive investigative report was compiled. [We need to establish whether this is currently being pursued by the AG's office]

8. **Samora Machel**

Also a possible AG matter.

9. **Target Identification**

The Commission investigated the process whereby the security forces identified targets the purpose of which included, inter alia, physical elimination. This included a range of structures, sometimes involving more than one arm of the security forces/ intelligence structures. Such evidence is primarily contained in amnesty applications and section 29 hearings. While there was insufficient time to conclude this investigation, there is evidence regarding the establishment in the mid-1980s of a target identification centre within, firstly military intelligence and subsequently the project section of Special Forces.

However, much of the evidence given to the TRC, while acknowledging the existence and purpose of such target identification groups, refers to planned but subsequently cancelled operations. In other words the gaps in our evidence are in directly linking specific processes of target identification with specific killings. One possible exception would be cross-border raids which are discussed below.

10. **Cross-border raids**

While difficulties clearly exist in bringing charges for the execution of cross-border activities, there are no doubt possibilities of conspiracy to murder charges relating to the planning of such operations, which invariably took place on SA soil.

The Commission did receive several amnesty applications relating to cross border activities from former Security Branch members, but virtually none from the SADF, although SADF members are cited in a number of the Security Branch applications.

Clearly, the possibilities of extradition to a large degree influenced the willingness to disclose involvement in such activities and would presumably be a factor to be considered.

## **B: Other Regional Cases**

In addition to the above, we have asked personnel in regions to identify possible cases for prosecution. This process is logistically difficult owing to the fact that regional offices have closed and documentation has been transferred to the national office in Cape Town. Further, regional staff except for those servicing the Amnesty Committee are no longer in the employ of the Commission. Despite this, we have received some feedback:

### **1. KZN**

The KZN region has begun to identify cases where people who did not apply for amnesty have been implicated. The KZN region also has a number of HRV statements implicating perpetrators where such information was not previously disclosed during investigations due to perceived police partiality.

This is a mammoth task and needs to be weighed up in relation to:

- The likely unwillingness, given the current climate in KZN, of amnesty applicants to testify against their leadership
- The capacity of Chris McAdam's office to deal with new cases considering his involvement in Richmond;
- The mooted Commission of Inquiry into political violence in KZN.

Nonetheless, some preliminary work has been done and a report is attached.

### **2. Eastern Cape**

A former researcher in this region has been approached to identify potential cases. Her report is attached and deals primarily with cases in East London and the western part of the Eastern Cape. A further report is awaited dealing with the eastern side of the Eastern Cape (primarily Ciskei and Transkei regions).

It should be noted that the list of cases drawn up here differs from the KZN one in the sense that it takes as its starting point HRV statements where specific concerns were raised by deponents regarding the failure of the criminal justice system in investigating and successfully prosecuting such cases. Given pressure on resources, a policy of low level corroboration was adopted for most HRV cases and thus most of such cases were not comprehensively investigated by the Commission. This would mean that such cases would still require extensive ground work and investigation. However, such cases may well be important in ensuring that justice is seen to be done in cases that are not well known and do not involve profiled people.

There is a need for some discussion around such issues before proceeding as a different and lengthier modus operandi is required to identify such cases more broadly.

### **3. Western Cape**

A very preliminary list is attached.

#### 4. Gauteng

Former and current investigators have similarly been approached and a report is awaited.

#### 5. Free State

The former Orange Free State fell under the Commission's KZN office. There are a number of potential cases here, but given the pressure on time, KZN personnel have requested assurance that some capacity exists (or will be established) to deal with such cases before they proceed.

### C: Section 30 notices and S29 investigative enquiries

A preliminary spreadsheet of section 30 notices sent out is available. This list only reflects Section 30 notices sent out during the preparation of the TRC Report and does not include all S30 notices arising from individual HRV statements or those sent out by the Amnesty Committee following an amnesty hearing.

Also available is a table of all Section 29 investigative enquiries that were held, reflecting person, issue and whether amnesty applications were received.

### D: Analysis of indemnity and amnesty applicants

We are also currently engaged in a process of identifying whether perpetrators implicated either via HRV statements or in amnesty applications previously applied for indemnity. In this regard our IT department has devised a programme whereby lists of those on the various indemnity lists in the 1990 to 1994 period have been correlated with amnesty data. This spreadsheet is currently being analysed. The IT department are engaged in a similar exercise in relation to HRV data.

### E: Further issues

1. It needs to be emphasised that the Commission has very limited resources at present. The Commission itself is in suspension; the remaining HRV component consists of one Commissioner and one researcher; regional offices have closed and documentation transferred to the national office; and the Amnesty Committee is hard-pressed to complete the amnesty process on schedule.

Further, it needs to be understood that our HRV material is currently archived according to victims and not perpetrators. Similarly, amnesty material is filed according to applicant and information regarding co-perpetrators is thus potentially scattered across numerous files or embedded in transcripts of amnesty hearings. While our database provides an initial tool for identifying cases to which individual perpetrators may be linked, the task of retrieving all statements and documentation is a lengthy and painstaking one.

Given this, it is suggested that a fairly limited focus is worked out that would enable existing staff to begin feeding cases/ material through, without engaging in what would virtually mean copying the entire TRC archive.

We further propose that in determining a more limited focus, the resources of the TRC Task of the NDPP is taken into consideration. Thus, for example, if the current capacity in KZN is already stretched, it is questionable as to how productive it would be to involve

already over-burdened TRC staff in assembling numerous dossiers around KZN cases.

*We recommend that a draft plan or framework that prioritises specific categories or regions is drawn up.*

2. In view of the extremely limited resources, a line of communication needs to be developed that prevents potential duplication of tasks. Thus for instance, the request forwarded to Advocate Coetzee on 4 March 1999 in many respects duplicates work arising from the meeting in Cape Town.
3. We still urgently require a list of cases already being pursued by the various AG offices.

**7 March 1999**

**INDEX FOR THE STATEMENT OF RAYMOND CHRISTOPHER MACADAM IN  
RESPONSE TO A NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE  
JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING  
EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION  
OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES**

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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS  
REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE  
INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION  
COMMISSION CASES**

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

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**INTRODUCTION**

- 1 I am a 69-year-old pensioner.
  
- 2 I obtained a BA.LLB in 1979 and joined the Department of Justice (“**DOJ**”) as a prosecutor in 1980. I was admitted as an advocate in 1981. I was promoted to the rank of Deputy Attorney General for the then Province of Natal in 1992.
  
- 3 I served as a Director in the South African Truth and Reconciliation Commission (“**TRC**”) from May 1996 until August 1998, providing witness protection and conducting specific investigations.
  
- 4 In September 1998, I was appointed Deputy Director of Public Prosecutions in the National Prosecuting Authority (“**NPA**”), serving in the Investigating Directorate, Organised Crime and Public Safety (“**IDOC**”). Thereafter, in January 2001, I was appointed to the Directorate of Special Operations (“**DSO**”) but required to oversee the Witness Protection Programme. In early 2002, I returned to my position in the DSO.

- 5 In June 2003, I was transferred to the Priority Crimes Litigation Unit (“**PCLU**”) and remained in the PCLU until my retirement as an Acting Special Director and Head of PCLU in October 2021.
- 6 The purpose of this statement is to respond to Rule 3.3 I received from the Justice Khampepe Commission and to address matters relating to an affidavit deposed to by Mr. Imtiaz Cajee.
- 7 I will below do the best I can to describe the issues as accurately as possible, but I am at times constrained by less than perfect memory due to the passage of time, compounded by the fact that, despite the NPA's best efforts, not all the documents I required could be found. In addition, certain documents are either incomplete or available only in draft form.

#### **NDPP MR BULELANI NGCUKA’S TERM OF OFFICE (1998-2004)**

- 8 When Mr. Bulelani Ngcuka became the National Director of Public Prosecutions (**NDPP**) in 1998, he established a unit within his head office, the Human Rights Investigative Unit (“**HRIU**”), specifically to review and assess TRC matters so as to establish which TRC matters were ready for prosecution or required investigation.
- 9 At the time, I was the head of the Investigating Directorate, Organised Crime and Public Safety, in KwaZulu-Natal, which focused on political violence in that province. Mr Ngcuka appointed me to this role on 1 September 1998. Prior

to this, from 1 May 1996 to 31 August 1998, I was a national portfolio director at the TRC.

- 10 After a year or two, the HRIU was dissolved for two reasons: first, the TRC amnesty process had not concluded; and second, it had no investigators and could not conduct investigations. I was still the head of the Investigating Directorate, Organised Crime and Public Safety in Kwa-Zulu-Natal when the Human Rights Investigative Unit was dissolved.
- 11 In January 2001, the DSO was established to investigate organised crime. When the DSO was established, various Directorates, including the Investigating Directorate, Organised Crime and Public Safety in Kwa-Zulu-Natal, of which I was the head, were dissolved to be incorporated into DSO.
- 12 Following the dissolution of my IDOC, Mr. Ngcuka requested that I join the DSO Unit's head office. I understand that he brought me in because of my experience as a national portfolio director at the TRC. When I joined the DSO unit, Mr. Tongwane was its only member.
- 13 At the DSO, my role included investigating TRC cases and prosecutions, as required. Mr. Tongwane and I were the only two members of staff. The DSO unit experienced operational difficulties due to a lack of investigators and administrative support.
- 14 Within a day or two of my joining the DSO, Mr Ngcuka instructed me to leave that portfolio and take over the witness protection programme from the

Department of Justice. The reason for my move was the murder in their safe house of two key witnesses who were due to testify in prosecutions instituted against the People Against Gangsterism and Drugs (“**PAGAD**”), in very serious cases in the Western Cape.

- 15 I then acted as the head of the witness protection programme from January 2001 until early 2002. Thereafter, I returned to the DSO, where a new component, the Special National Projects Unit (“**SNPU**”), had been established. Its mandate was to conduct investigations into matters deemed too complex for the four regional DSO offices. This included addressing TRC cases and to organise projects related to ongoing criminal activities.
- 16 The SNPU was also afflicted by a lack of resources. Its only staff members were Mr. Tongwane and I.
- 17 In May 2002, the head of the DSO, Mr. Sonn, appointed a chief investigating officer and four investigators to the unit. However, they could only assume their duties in November 2002, as they had to be drawn from the DSO's regional offices and therefore required time to finalise their outstanding investigations at the DSO.
- 18 In December 2002, the head of the DSO authorised me to employ two former TRC researchers and Mr Prior, who had served as an evidence leader at the TRC. Shortly after that, however, Mr. Prior returned to private practice.

- 19 With the assistance of the two researchers and the investigators, I compiled a report dealing with 41 TRC matters, which included cases that required investigation. These investigations were identified through various means, including requests for investigations from members of the public. The list of the 41 cases was then presented to Mr Leonard McCarthy, who had replaced Mr Sonn as the Head of the DSO, in February 2003. The report to Mr McCarthy is attached as annexure "**AD1**".
- 20 In all of these matters, I had identified the need for extensive investigations before any decisions could be taken about whether to initiate prosecutions.
- 21 On 2 May 2003, I was directly approached by Mr Imtiaz Cajee, the nephew of the late Mr Ahmed Timol, who had died in detention in 1971. Mr. Cajee introduced himself as a member of the intelligence agency and stated that he had been referred to me by Cabinet Minister Mr. Pahad. He provided me with the background of a private investigation he had conducted and the documentation he had obtained during the investigation. He drew my attention to the fact that he had information that the daughter of Sergeant Rodrigues (one of the policemen involved in the case of his uncle, Mr Timol) had made disclosures to a journalist, Ivor Powell. He emphasised the need to approach Mr Powell in this regard. Under the DSO's legal framework, I could not commence an investigation myself, as it required approval by the investigating director. My responsibility was to place information before the investigating Director by way of a formal application in terms of Section 28 of the National Prosecution Authority Act, 1998 ("**NPA Act**"). In this regard, reliable information had to be obtained to justify the investigation.

- 22 On 5 May 2003, I instructed Mr Andrew Leask, the Chief Investigating Officer at the SNPU, to not only follow up on the issue relating to Mr Powell but also to gather other relevant information so as to enable me, once the information had been obtained, to apply for the authorisation of an investigation in terms of section 28 of the NPA Act. I instructed Mr. Leask in writing, and the memorandum addressed to him is attached as annexure “**AD2**”.
- 23 In May 2003, Mr. Anton Ackermann SC invited me to serve as his deputy in the newly established PCLU, which was established in March 2003 by Presidential Proclamation, a copy of which is attached as annexure “**AD3**”.
- 24 Mr. Ackermann was appointed as a Special Director and Head of the PCLU. Unlike the DSO, the PCLU had no investigative capacity and would have to rely on either the DSO or the police for any matters requiring investigation. The mandate of the PCLU was to deal with serious crimes specified in the Presidential Proclamation and any other priority crimes referred to it by the NDPP.
- 25 On 15 May 2003, while still at the DSO, I addressed an internal memorandum to the NDPP, the Head DSO, the Head DSO Operations, and Mr Ackermann SC, which provided details of an audit of TRC cases I had dealt with while at the DSO. The audit sets out cases ready to proceed to prosecution, provided investigations were finalised, as well as cases identified for investigation, including the Timol case. A copy of the memorandum is attached as annexure “**AD4**”.

- 26 On 22 May 2003, as a result of identifying certain TRC cases as having prosecution potential, I submitted applications in terms of section 28 of the NPA Act for investigations into five TRC matters. I also submitted my national project proposal, as required by the DSO, which stated that investigations could be approved only in terms of section 28 of the NPA Act on the basis of an approved project proposal and a budget. A copy of my internal memorandum is attached as annexure **“AD5”**.
- 27 These applications and project proposals were referred to Mr. Malala Godfrey Ledwaba, the investigating director of the DSO. In terms of section 28 of the NPA Act, only he was authorised to approve investigations and to designate investigators to conduct such investigations.
- 28 On 23 May 2003, Mr Ackermann addressed an internal memorandum to the NDPP, requesting a meeting to discuss TRC matters, specifically the progress made by my office. A copy of the memorandum is attached as annexure **“AD6”**.
- 29 On 26 May 2003, Mr Ackermann submitted an internal memorandum to the NDPP, Mr McCarthy, and Dr Ramaite, the Deputy National Director of Public Prosecutions, under whose portfolio the PCLU fell. It set out operational challenges experienced by both Mr. Fick and I. The proposal was to transfer Mr. Fick’s cases to the PCLU and to transfer Dr. Pretorius and I from the DSO to the PCLU. It also proposed an office structure that included the secondment from the DSO Headquarters of six investigators to conduct the identified investigations. A copy of this memorandum is attached as annexure **“AD7”**.

30 Shortly thereafter, a meeting was held between Mr Ngcuka, Mr Ackermann, and I (and possibly Mr McCarthy and Dr Ramaite).

30.1 Mr Ngcuka accepted the proposal insofar as it related to Mr Fick's cases and the transfer of Dr Pretorius and I, from the DSO to the PCLU.

30.2 Mr Ngcuka directed that the PCLU should apply for leave to appeal to the Constitutional Court for the acquittal in the *State v Wouter Basson* case to be set aside.

30.3 Mr Ngcuka directed that I continue working on the TRC cases I had handled at the DSO. The request to second six DSO investigators to the PCLU was not approved, but Mr. Ngcuka made it clear that the investigations should be conducted by DSO members.

30.4 At the meeting, Mr. Ngcuka did not refer the TRC cases to the PCLU as required by its Presidential Proclamation. This, however, was done on 21 October 2003. I attach a copy of the referral signed by Mr. Ngcuka as annexure "**AD8**".

31 In June 2003:

31.1 while I was at the PCLU, I assisted Mr Anton Ackermann with identifying material from the case record in *Wouter Basson* so as to enable the private counsel briefed by the NPA, Mr Wim Trengove SC and Mr Alfred Cockrell SC (who at the time was not yet senior counsel), to determine whether the evidence supported the grounds upon which the application for leave to appeal to the Constitutional Court, would

be based. It was a protracted process that included drafting and presenting an application to the court *a quo* for additional grounds of appeal, which had been identified by the private counsel team. Because Mr Ngcuka had indicated that TRC investigations should be conducted by DSO, I was still required to have the National project proposal approved and to submit applications under Section 28 in respect of all matters I required to be investigated.

31.2 I was approached by the legal advisors of the South African National Defence Force (“**SANDF**”), who informed me of an agreement between them and the Office of the State Attorney that refusals of amnesty to current and former members of the military would only be taken on review to the High Court if they were due to be prosecuted. They requested that I give them timeous notice of any intended prosecution so that they could take the necessary steps to have any refusal of amnesty reviewed in the High Court. I acceded to their request. Instituting criminal proceedings before finalisation of the review proceedings would have unduly delayed the criminal trials, as doing so would inevitably have resulted in the postponement of the criminal prosecutions. I duly informed Mr. Ackermann of the discussion with the SANDF and the undertaking I had given. Mr. Ackermann decided to adopt the same process in cases where the former police's Security Branch were identified as having prosecution potential and involving former Police Security Branch Members. The suspects in these cases were represented by an attorney, Mr. Wagenaar, who also represented

former Minister of Police, Mr Adriaan Vlok, and former Commissioner of Police, Mr Johan van der Merwe.

31.3 Mr. Ackermann did, in fact, meet Mr. Wagenaar and advised him accordingly. Upon his return from meeting Mr. Wagenaar, Mr. Ackermann informed me that Mr. Wagenaar had stated that any prosecution of his clients would lead to the prosecution of the leadership of the ANC, who had been refused amnesty.

31.4 Mr. Ackermann commenced reviewing the 400 ANC docket, which were prior to April 1994 investigated by the police.

31.5 On 24 June 2003, I wrote to Commissioner Rayman Lalla, the Divisional Head of the SAPS's Crime Intelligence Unit, requesting assistance with the two matters set out in my letter. A copy of my letter is attached as annexure "**AD9**".

32 I could not make any progress on my cases because Mr. Ledwaba's approval of my project proposal, as well as the four applications for authorisation of investigation, were still outstanding. This led to Mr. Ackermann and I meeting with Mr. Ledwaba on 15 July 2003 to discuss the matter. At the meeting, Mr. Ledwaba informed Ackermann and I that he had decided that SAPS must assume responsibility for all TRC investigations previously under the DSO's purview. At this stage, the Timol matter had been identified as a case requiring investigation. A copy of Mr. Ledwaba's written instruction to Mr Leask dated 15 July 2003 as annexure "**AD10**".

- 33 As at 15 July 2003, Mr Leask had not complied with my instructions to him, given on 5 May 2003, relating to the Timol matter. This was because he was still engaged with other matters at the time, including the TRC cases in respect of which I had applied for authorisations to Mr. Ledwaba, as well as organised crime matters that had been allocated to him.
- 34 As a result of Mr. Ledwaba's decision, either in late July or early August 2003, Mr. Ackermann and I approached Commissioner De Beer, the Divisional Head of the Police Detective Service, to ask the South African Police Service ("**SAPS**") to take over the TRC investigations from the DSO, including the Timol matter.
- 35 Commissioner De Beer required that our request be put in writing, and we did this on 20 August 2003.
- 36 On 26 September 2003, Commissioner De Beer wrote to Mr Ackermann giving various reasons why the SAPS would not take over the investigations unless certain conditions were met: that either Mr Ackermann or Mr Ngcuka approach the President (at the time President Mbeki) and obtain an instruction from the President for the SAPS to take over the investigations. I attach a letter dated 26 September 2003 from Commissioner De Beer to Mr Ackermann as annexure "**AD11**".
- 37 To my knowledge, this approach did not occur.

- 38 In the meantime, due to the refusal of the SAPS to take over the cases from the DSO, no further investigations could be conducted into those matters (which were limited to the TRC cases) because the PCLU lacked its own investigative capacity. The PCLU relied on the DSO or the SAPS. The PCLU's hands were tied particularly given the refusal by the SAPS to assist.
- 39 On 11 November 2003, Mr Ackermann wrote to Mr Ledwaba (copying Mr Ngcuka, Dr Ramaite, the DNPP to whom the PCLU reported, and Mr McCarthy, the head of the DSO). In the letter, Mr. Ackermann set out the steps he and I had taken to persuade Mr. Ledwaba to again take over the investigations of the TRC cases after the refusal of SAPS to do so. This also included a request for Mr. Ledwaba to make two DSO investigators available and to sign the declarations in terms of section 28, which had already been submitted in May 2003. The letter of 11 November 2003 is attached as annexure "**AD12**". No response was received to Mr. Ledwaba's letter.
- 40 On 8 December 2003, NDPP Mr Ngcuka, acting in terms of section 28(1)(b) of the NPA Act, instructed Mr. Ledwana to have the 4 (four) TRC cases specified in the referral investigated by the DSO. The referral included 3 (three) of the cases I had previously submitted for authorisation of the investigations to Mr. Ledwaba in May 2003. I attached a copy of the referral by Mr. Ngcuka as annexure "**AD13**".
- 41 Sometime before February 2004, Mr. Leask informed me that, due to Mr. Ledwaba's decision not to investigate, he had been unable to comply with my instructions regarding the investigation of the Timol matter. However, because

Mr. Powell was now a member of the DSO, Mr. Leask had asked Mr. Powell about the alleged disclosure by Sergeant Rodrigues's daughter. Mr Leask informed me that Mr Powell had denied all knowledge thereof and had supplied Mr Leask with an article he had published relating to the Timol matter, which contained no such disclosures.

42 In February 2004, I received a fax from Mr. Cajee inquiring about the request he made to me in May 2003.

43 On 25 February 2004, I informed Mr. Cajee that the allegations relating to Mr. Powell had, in fact, been followed up with negative results. I confirmed that he had supplied certain documents at the time he made his request, but requested that he provide the document in his possession relating to a detainee, which I did not have. I also asked him to provide any additional materials he may have. My letter of 25 February 2004 is attached as annexure **"AD14"**.

44 I did not receive a response to my letter from Mr. Cajee.

45 On 26 February 2004, Mr Ngcuka referred two further TRC cases to Mr. Ledwaba in terms of section 28(1)(b) of the NPA Act. I was now confident that the issue of investigations would be resolved. However, shortly thereafter, I was assigned duties that took me away from TRC matters; I had to deal with an international nuclear weapons syndicate case and numerous other responsibilities. I attached hereto Mr Ngcuka's referral as annexure **"AD15"**.

**NDPP MR VUSI PIKOLI'S TERM (1 FEBRUARY 2005 - SEPTEMBER 2007)**

46 Mr Vusi Pikoli became the NDPP on 1 February 2005. At that stage, I was still fully occupied with the nuclear weapons case, which remained the position until September 2007, when the prosecution was successfully concluded.

47 After the completion of the prosecution of the nuclear weapons case, I was not immediately assigned to TRC matters.

48 In October 2006, Mr Pikoli established the TRC Committee (also known as the Task Team) the purpose of which was to focus exclusively on TRC matters.

49 The Task Team was established pursuant to an amended NPA Prosecution Policy, which had come into effect on 1 December 2005. I was not involved in the process, except for attending 2 to 3 meetings on Mr Ackermann's instructions. I acquired documentation relating to the composition of the task team and the minutes of its first meeting on 12 October 2006. I attach a copy of the list of members as well as the minutes of the first meeting as annexure "AD16" and "AD17" respectively.

50 Mr Pikoli was suspended in September 2007.

**ACTING NDPP MR MOKOTEDI MPSHE'S AND NDPP MR MENZI SIMELANI'S TERMS OF OFFICE**

51 Mr Mpshe was appointed as the Acting NDPP following Mr Pikoli's suspension.

- 52 When Mr. Mpshe was appointed, I was completing the nuclear weapons case and not involved in any TRC matters. Even after I completed the prosecution of the nuclear weapons case in September 2007, I did not immediately become involved in TRC matters.
- 53 I next became involved in TRC cases in September 2008, when Mr Ackermann, the head of the PCLU at the time, informed me that I would be assuming his responsibilities on a task team established by Mr Pikoli to address all TRC matters. My instructions for taking over from Mr. Ackermann are recorded in a memorandum addressed to Dr. Ramaite dated 5 June 2008. A copy of the memorandum is attached as annexure “**AD18**”.
- 54 My instruction from Mr. Ackermann was to continue with the cases that had not been finalised by the Task Team and with the Pebco Three Case (three black South African anti-apartheid activists – Sipho Hashe, Champion Galela, and Qaqawuli Godolozzi), where a prosecution had been instituted, but no trial had commenced. The cases I took over from Mr. Ackermann did not include the Timol matter.
- 55 After taking over Mr. Ackermann’s responsibilities, I discovered that the TRC Committee (the Task Team) was not meeting, nor were any investigations being conducted. The fact that investigators had not been appointed did not prevent me from tasking two advocates to review existing material, and in order to identify aspects requiring investigations. I attach as annexure “**AD19**” an email I sent to Mr. Ackermann dated 09 July 2008, requesting him oversee the work of the two advocates while I was away from the office for a week.

- 56 On my return, I engaged with Police Commissioner Jacobs, who was a member of the TRC Committee (also known as the Task Team), and Mr. P. Richer, a Deputy Director General in the NIA, who was also in attendance at the TRC Committee meetings I had attended. Both Commissioner Jacobs and Mr. Richer agreed with me that investigations should progress, subject to approval by their principals and under the same auspices that the TRC Committee had operated.
- 57 In early 2009, my discussions with Commissioner Jacobs and Mr. Richer had progressed to a stage where I was confident that the TRC Committee (also known as the Task Team) would reconvene. In this regard, the acting NDPP, Mr. Mpshe, reported accordingly to the Minister. A copy of the ministerial memo is attached as annexure “**AD20**”.
- 58 The TRC Committee (also known as the Task Team), however, never reconvened.
- 59 During this period, I was also appointed to a project established by the Financial Action Task Force (**FATF**). South Africa was a member of FATF and was obliged to comply with all FATF’s directives relating to money laundering and the financing of money laundering.
- 60 As a result of the nuclear prosecution, FATF established a project to determine whether to issue directives on nuclear proliferation financing. Due to my prosecution of the nuclear weapons case, I was appointed to represent South Africa in the FATF project.

61 In order to ensure that TRC cases would be investigated, and at the specific request of Mr. Mpshe, I commenced engaging directly with Commissioner Lalla, who was now the Divisional Head of the Detective Services of the SAPS. After a series of meetings, he agreed to set up a project team composed of former Police officers who had joined the DSO but were now returning to SAPS as a result of the DSO's dissolution. All these members had prior experience with investigating TRC Cases. I attach as annexure "**AD21A**" a trail of emails between myself and Mr. Mpshe, Dr. Ramaite, and Mr. Ackermann, and Mr. Mgwengwe of the NPA from 18 May 2009 to 20 May 2009 confirming an agreement with Commissioner Lalla that he would appoint a project team of former DSO investigators who had experience with TRC matters.

62 I was thereafter informed by Commissioner Lalla that the National Commissioner of Police has decided that, with the establishment of the Directorate of the Priority Crimes Investigations ("**DPCI**"), the investigation of TRC cases should be the responsibility of DPCI.

63 Commissioner Lalla informed me that he would facilitate a meeting with General Anwa Dramat to arrange for the DPCI to conduct the investigations. I attach as annexure "**AD22A**" an email dated 1 July 2009 addressed to the Superintendent, Colla Buzuidenhout, who was Commissioner Lalla's staff officer, in which I requested a meeting with Commissioner Lalla. I attach hereto as annexure "**AD22B**" her email of 07 July 2009, in which it was advised that Commissioner Lalla had agreed to the meeting but that Commissioner Dramat should be present. It was also advised that the meeting would be on 20 July 2009. Also on 07 July 2009, I sent an email to Dr. Ramaite, copying Mr.

Ackermann, confirming the meeting of 20 July 2009 with Commissioners Lalla and Dramat. I, however, advised that I requested Commissioner Dramat to appoint an investigating officer for the Lubowski case, because the matter was due to prescribe shortly, which is attached hereto as annexure “**AD22C**”. I attach herein as annexure “**AD22D**” an email sent by Ms. Zwart of the PCLU to Superintendent Colla Buzuidenhout, emphasising the urgency. On 14 July 2009, Commissioner Lalla’s office advised that Commissioner Dramat was no longer available for the meeting, which would now have to be moved to August 2009. Attached hereto as annexure “**AD22E**” is an email dated 15 July 2009 informing Dr. Ramaite that I had agreed to the meeting being postponed to August 2009, but insisting that an investigating officer be immediately appointed to investigate the Lubowski matter. In fact, an investigator was appointed on 27 July 2009. I attach as annexure “**AD22F**” an email addressed to Mr. Hofmeyr and Dr. Ramaite, again dealing with the urgency of the Lubowski matter. I attach as annexure “**AD22G**” a trail of emails dated 26 August 2009 to 28 August 2009 between myself, Commissioners Lalla, and Dramat is staff officers calling for a meeting with the two Commissioners to discuss TRC investigations. Commissioner Dramat’s secretary, however, advised that he was unable to meet with me.

64 I, however, secured a meeting with Assistant Commissioner Lebeya (“Commissioner Dramat’s deputy”). In 26 November 2009. At that meeting, Assistant Commissioner Lebeya agreed that the Crimes Against the State (CATS) component of the DPCI would conduct the investigations. Due to security operations related to terrorist threats aimed at disrupting the 2010

World Cup, he advised that the investigations would commence only after the World Cup concluded. On 18 January 2010, I wrote to Commissioner Lebeya confirming his undertaking regarding TRC cases. I attach hereto as annexure “**AD23**” a copy of the letter. I note that I have not been able to locate page two of the Letter.

65 In March 2010, I nevertheless tasked out the investigations to the DPCI so that, when they were ready to investigate, they would already know what was required of them. After the conclusion of the World Cup, the investigations commenced; however, only three investigators were allocated to conduct the investigations. In addition, the investigators had no previous experience in TRC matters and also had other responsibilities relating to the investigation of State Security matters.

66 I was also tasked with other responsibilities, including an instruction from the NDPP, Mr. Simelane, to guide investigations into corruption cases in the Northern Cape.

#### **ACTING NDPP MS NOMGCOBO JIBA’S TERM**

67 When Mr. Simelane was placed on special leave, Ms. Nomgcobo Jiba commenced acting as NDPP. She acted as NDPP until the appointment of Mr Nxasana was appointed as NDPP in October 2013. During this period, I continued guiding the TRC investigations in addition to carrying out substantial non-TRC related work.

**NDPP MR MXOLISI NXASANA'S TERM (OCTOBER 2015 - MAY 2015)**

68 In October 2013, Mr Mxolisi Nxasana was appointed as the NDPP. Following his appointment, Mr Nxasana removed me from the PCLU and assigned me to manage investigations into corruption offences within the scope of the Organisation for Economic Co-operation and Development (“**OECD**”). Given the complexity of the OECD matters, Mr Nxasana determined that I would be best suited to manage them.

69 I was in the OECD from 2014 until June 2015. Whilst at the OECD, I was not involved in TRC cases, except to furnish an opinion on one matter in which an application to compel a decision had been brought.

**NDPP MR SHAUN ABRAHAM'S TERM (JUNE 2015 - AUGUST 2018)**

70 Mr. Abrahams was appointed as NDPP in June 2015. He decided that I should continue with the OECD portfolio, but this was being frustrated because I no longer had access to the dockets, as another colleague, Mr. Mwrebi, had taken the dockets from my control.

71 In October 2015, Dr. Pretorius was appointed as the Head of the PCLU. Due to the impasse with the OECD, I offered to assist Dr. Pretorius with the TRC matters should he require it.

72 Prior to me being involved in the OECD matters, I had requested the police to investigate the death in detention case of Dr. Neil Aggett. During October

2015, I had become aware of a television interview with Mr George Bizos SC, the counsel who had represented the Timol family in the original inquest into Mr Timol's death.

- 73 During the interview, Mr Bizos stated that Mr Timol had been murdered and that the police had lied at the inquest. I was aware that the police were already investigating the Dr. Aggett matter. I, on 30 October 2015, emailed the DPCI requesting that they investigate the Timol matter. A copy of this email is an annexure to my supporting affidavit filed in *Rodrigues v NDPP 2019 (2) SACR 251 (GJ)* matter, which is already filed with the Commission.
- 74 I also started assisting the DPCI with the investigation of both the Timol and Aggett matters by locating documentation, identifying witnesses, and requesting Ms. Fullard, the head of the NPA Missing Persons Task Team (“**MPTT**”), to retrieve archival material. Ms. Fullard had previously worked as a researcher at the TRC and was in a better position to access the material than the police.
- 75 On 4 February 2016, Dr Pretorius informed me that he had a meeting with Advocate Varney and his team, Webber Wentzel Attorneys, and the Foundation for Human Rights, who were requesting that the NPA reopen the inquests into the deaths of Mr Timol and Dr Aggett. On the same date, I provided Dr. Pretorius with an opinion on the work done on both matters and recommended that a decision on reopening the inquests should only be taken when both cases had been fully investigated to determine whether murder

charges could be instituted. A copy of my opinion is attached as annexure “**AD24**”.

76 I continued to work on both the Timol and Aggett matters until I was instructed by Dr Pretorius to lead a DPCI investigation into terrorist activities occurring in the Johannesburg area. Dr Pretorius assumed control not only of the Aggett and Timol matters but also of the entire TRC Portfolio.

77 In paragraph 7.2.3 of my above opinion and in relation to the Aggett matter, I complain of the difficulty in the online reading of the electronic inquest on the Wits website. I, however, point to the burden of printing 8,500 pages on the office printer. Mr. Cajee cites this as displaying a lack of interest. The true position is that the PCLU staff shared a single printer, not suitable for bulk printing. As a result, arrangements were made to have the digital record emailed in small batches. Thereafter, approval was obtained to get a printing office to print two copies of the record. I attach as “**AD25**” the email exchange between the PCLU admin officer and the Wits official.

78 In 2017, Dr. Pretorius decided to apply to reopen the Timol inquest. I was still working on the terrorism cases at this time. I, however, was aware that the inquest was reopened. As a result of the findings of the Court, a prosecution on the charge of murder was instituted against Sergeant Rodrigues.

79 In late 2018, I was informed by Dr. Pretorius that Sergeant Rodrigues had applied for a stay of prosecution. My assistance was sought in responding to the allegations made in the application.

80 On 1 November 2018, I deposed to a supporting affidavit on behalf of the NDPP, the first respondent to the application. As indicated above, a copy of this affidavit has already been filed with the Commission.

**NDPP MS SHAMILA BATOHI'S TERM (1 FEBRUARY 2019 - 31 JANUARY 2026)**

81 Ms. Batohi became NDPP on 1 February 2019.

82 In March 2019, she informed me that she was appointing me as the Head PCLU and nodal point for the State Capture Commission. I was also required to exercise oversight over the MPTT. The Minister appointed me as an acting Special Director in April 2019.

83 By virtue of my appointment as Acting Special Director, I became seized with the TRC matters. In this capacity, I handled and oversaw TRC matters until September 2021, when the decision was made to remove the TRC cases from the PCLU.

84 I commenced with an audit of all cases falling within the PCLU mandate. I discovered that there was a backlog, which I attributed to trying to manage cases across the country with a small staff based in Pretoria. At that stage, the PCLU was staffed by Dr. Pretorius, Ms. Bukau, one admin officer, and I.

85 In respect of TRC cases, Brigadier Xaba of the CATS unit provided me with details of approximately 30 cases under investigation, which included some of those I had referred to the DPCI in 2010. I established that only four of the

cases were receiving dedicated attention from a prosecutor. Shortly thereafter, Brigadier Xaba's commander, General Ledwaba, requested me to appoint prosecutors for all the cases.

86 Reviewing the dockets, I had concerns regarding the quality and pace of the investigations, which in part I attributed to the absence of any research capability and other resource challenges. As stated above, some of the cases referred to in 2010 were still not finalised. I expressed my concerns in this regard in an email dated 3 May 2019 to the NDPP, copying Mr Mzinyathi, who was the DNDPP and head of NPS. The NPS was the component under which the PCLU and all other prosecution units fell, including all the DPPs. A copy of the email is attached as annexure "**AD26**".

87 This led to a discussion with the NDPP, who agreed to set up a meeting with General Lebeya, the Head of the DPCI.

88 In May 2019, I submitted a proposal to the NDPP that the PCLU adopt a decentralised model, with cases being managed by the DPPs in the areas where the crimes were committed. The PCLU would exercise an oversight and support function. This proposal was adopted by the NDPP and her Executive Committee at the end of May 2019.

89 As a result of this policy, the DPPs were required to appoint senior staff members to serve as nodal points between the PCLU and their offices. I would be required to refer cases to the nodal points, who would allocate them to individual advocates. The nodal points would manage the work of the

advocates and report progress to me monthly. I would consolidate the reports and add work done by the PCLU. The report would be submitted to the Head of NPS.

90 The nodal points were appointed in June 2019 and received a week's training in July of the same year.

91 Ms. Bukau of my office opened a file for each TRC case. I copied her on all my emails regarding the cases. Every morning, she would print emails from the day before and file them. All other documents relating to the cases were put in the files as soon as they were received. Brigadier Xaba was informed to submit the police dockets to the nodal points.

92 Shortly thereafter, in 2019, the nodal points in offices far from the investigators (who were all based in Pretoria) complained that the investigators were not readily accessible to them. As a result, in 2019, I met with General Ledwaba and requested that she appoint investigators in the DPCI regional offices for the DPP offices outside Gauteng. This request was refused.

93 As to research capability, I approached the NPA's research office, which made two researchers available. They conducted research but were constrained by a lack of relevant historical knowledge of TRC matters. This made it difficult to locate and evaluate material. I then initiated the process of appointing a former TRC researcher on a contract basis to conduct part-time research. With the onset of COVID-19 in early 2020, it was not possible to secure the

appointment. I then used the MPTT because its staff included two former TRC researchers with the necessary expertise.

94 As a result of the nodal point system, progress started to be made on the cases. Several cases in different provinces could be addressed simultaneously. There was, however, still a problem with having all the cases being investigated by investigators based in Pretoria.

95 In January 2020, Ms. Batohi, Mr. Mzinyathi, and I met with General Lebeya and explained our concerns regarding investigations. The General agreed to obtain approval to appoint experienced retired police officers on 3-year contracts to work full-time on TRC cases. As an interim measure, he also agreed to use regional investigators when appropriate. Due to the COVID-19 pandemic, the appointment of contract investigators only took place in mid-2021.

96 Beginning in March 2020, a series of lockdowns was imposed to contain the spread of COVID-19. This impacted negatively on the work. Offices, archives, and other record centres were closed, and travel restrictions were imposed. I, however, remained at the office seven days a week. When the office closed due to infections, Mr. Mzinyathi and I met in the parking lot to discuss urgent work matters.

97 I took advantage of the initial lockdowns to identify all deaths in detention matters reported by the TRC and other organisations. After removing the cases already under investigation, I was left with about 59 cases. With the

promise of extra investigators and the ability to distribute the cases across the provinces, I was confident they could all be investigated.

98 In April 2020, Mr. De Kock replaced Mr. Mzinyathi as Head of NPS.

99 On 25 May 2020, I furnished him with a breakdown of investigations and alerted him that I wanted a number of further cases investigated, which would require additional police capacity. A copy of my report is attached as annexure **“AD27”**.

100 Shortly thereafter, Mr. De Kock wrote to General Lebeya, informing him of the additional cases and that this would require additional investigators. A copy of the letter is attached as annexure **“AD28”**.

101 The requested meeting took place, and the General undertook to address the issue of additional investigators but noted constraints due to COVID.

102 By this time, the effects of COVID were taking their toll. At least one investigator and prosecutor died. Many more were seriously affected. There were, in addition, frequent changes in DPPs, nodal points, and prosecutors. In certain instances, certain nodal points failed to show progress in their monthly reporting, and some even failed to report at all. This was referred to in my reports to Mr. de Kock, and the two of us raised this in the DPP meetings.

103 COVID also affected the reopening of the Dr. Haffee and Dr. Aggett inquests, but ultimately, they began with virtual hearings. Microsoft Teams also enabled

me to communicate directly with prosecutors in the regions. This, however, was impacted by Eskom's load shedding.

104 Notwithstanding these challenges, as at 30 November 2020, 53 cases had been referred to the DPPs, while a further 46 were awaiting additional resources before referral. Another 10 cases were awaiting more information about where the crimes had been committed before they could be referred. There were also three foreign cases, bringing the total to 112. I attach herewith as annexure “**AD29**” the report by Ms. Bukau dated 30 November 2020.

105 In December 2020, a workshop was held between the DPCI and NPA to address issues impeding progress with the cases. It was accepted that using prosecutors who were seized with other duties was no longer practical. It was therefore decided to apply for permission to employ prosecutors on contract to work full-time on TRC cases, as the police were trying to do with investigators.

106 In January 2021, I requested the DPPs to indicate how many new prosecutors they each required. Once this information was received, the NPA's human resources section was requested to obtain the necessary financial approvals, which required permission from the Department of Public Service Administration. Due to the Department of Public Service Administration's reluctance, financial approvals were obtained only in September 2021.

- 107 Also in 2021, the Ernest Dipale inquest was reopened, and the DPP in Johannesburg instituted the prosecution of the Cosas 4 case. Work on other cases progressed.
- 108 In mid-September 2021, Mr. De Kock informed me that the decision had been taken to immediately take the TRC cases away from the PCLU. They were now to be managed by the NPS. I then signed off my files, and Ms. Bukau compiled a report detailing all cases as at 20 September 2021. A copy of the report is attached as annexure **AD30**. The total number of cases now stood at 114.
- 109 The report showed that the DPP Eastern Cape failed to report on a number of the referred cases. It must be said, however, that the office was fully occupied with the Cradock 4 case, which also included a civil action.
- 110 In my view, progress was made under difficult conditions by prosecutors and investigators working on the cases, despite their other responsibilities. I did not take a single day's leave in 2021.
- 111 I tried to assist the prosecutors and investigators as much as possible by providing advice and locating documentation they did not have access to. I noted that the case of Mr. Bayempini Mzizi was linked to that of Dr. Haffejee and advised the prosecutor accordingly. I attach as annexure "**AD31**" a copy of my email dated 24 June 2021, which provides all the necessary guidance. I also detected that the case of Mr. Ernest Dipale was linked to that of Dr. Aggett. I located all the relevant material. This case was not dealt with by the

TRC. I attach as annexure “**AD32**” the exchange of emails between the prosecutor and I of 26 February 2021, in which the prosecutor updates me on developments with the inquest, and I give further advice.

112 I also instructed that the Griffiths Mxenge, and Rick Turner cases be reopened after I learned that a witness in another case claimed to have new information. I assisted the MPTT in locating the records of an exhumation of the body of Ms. Ntombi Khubeka, which had been done by the TRC. The MPTT re-exhumed the body, and DNA testing established that the wrong body had been exhumed by the TRC.

113 The MPTT made a significant contribution to progress in investigating cases by retrieving archived material, drawing links between cases, and tracing witnesses whose whereabouts were unknown to the investigators. This was all done over and above their primary duties.

114 On 31 October 2021, I retired from the NPA.

#### **THE ALLEGATIONS MADE BY MR CAJEE RELATION TO ME**

115 In relation to the allegations made by Mr Cajee about me, I deny that I was reluctant or unwilling to prosecute TRC matters, or that I failed to seek to have the cases investigated by the investigative agencies. I also deny that, at the time he met me in May 2003, he informed me that the disclosures made by the daughter of Sergeant Rodrigues had been made to Piers Pigou, and that he gave me a TRC file compiled by Mr Pigou relating to the matter. Mr Pigou

was well known to me as we had both been in the TRC, and I would never have confused him with Ivor Powell.

116 The allegation of reluctance on my part to prosecute the Timol matter is revealed to be untrue when regard is had to the facts I have set out above. I believe my energy and efforts to advance TRC related matters despite the challenges which I have mentioned above speaks for itself. I had no wish nor motive not to advance the Timol.

117 From January 2001 to July 2009, the investigation of crime rested with the DSO and the police. My short stint in the DSO was as a prosecutor and not as an investigator. From July 2009 to September 2021, the responsibility for investigating crime rested exclusively with the police. My duty as a prosecutor was confined to giving guidance to such investigations and performing prosecutorial functions. In this affidavit, I have set out all my efforts to have TRC cases investigated.

118 I appreciate Mr. Cajee's frustrations and pain over his uncle's case not being investigated in a timely manner. I deny any dereliction of duty on my part and further deny any need or attempt to conceal the alleged dereliction of duty. I also reject his further allegation that I, as a prosecutor prior to April 1994, protected my former colleagues from prosecution. I have demonstrated all my efforts and the extent to which I went to have the matters prosecuted.

119 I wish to draw the Commission's attention to an email I received from Mr. Cajee on 16 April 2022 informing me that I had discovered important information

relating to his uncle's death, of which he was unaware, and asking that I share it with him, which I did. The email correspondence is attached as annexure "AD33".

120 I further deny any political interference in any decisions I had to make in regard to the prosecution of the matter. To the extent that the Mr Cajee alleges that the notion of political interference was introduced by me, I deny this. I must say, however, that it is not entirely clear to me what Mr Cajee ultimately contends - that is whether he suggests that there was political interference or that there was no political interference, but this notion introduced to conceal what he believes to be a dereliction of duty.

121 As is apparent from what I have set out above, I further deny:-

121.1 that I failed to earnestly follow up on the leads that Mr Cajee furnished;

121.2 that I unlawfully placed the burden of investigating his uncle's death on him.

122 The logistical and resource-based constraints that we iopperatedunder has been set out in detail in earlier parts of my statement. At no stage did I place any onus on Mr Cajee. Whilst I probably invited him to supply any additional information to assist with the case this in no way shifted the ultimate investigative responsibility on to him.

123 The finalisation of this statement has been somewhat rushed due to the endeavour to meet the agreed filing date with the Commission. I may wish to supplement this statement in a further statement or when I testify before the Commission.

**RAYMOND CHRISTOPHER MACADAM**

3 March 2026

er/breakdown



Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

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## INTERNAL MEMORANDUM

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TO: ACTING HEAD, DSO

FROM: HEAD: SNPU REF: A/INV/TRC

DATE: 10 FEBRUARY 2003

RE: BREAKDOWN OF TRC INVESTIGATIONS

### SCORPIONS

P. O. Box 752,  
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0001

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0001  
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### TRC INVESTIGATIONS

1/02

### MAMELODI 10 AND OTHER CASES - CHARGE: MURDER

#### Referral

Request by DNDPP that the DSO honour an undertaking given to the Mamelodi community that the bodies of the deceased would be located in return for co-operation by the community in the investigations.

#### Nature of Case

Security forces targeted the comrades in Mamelodi. Three separate murders were committed in different parts of the country. The TRC held separate amnesty hearings for different groups of perpetrators causing confusion as to the identities of all the perpetrators.

#### Nature of Investigators

(i) Location of original police docket and mortuary related documents;

- (ii) Verification of D'Oliveira Investigating Unit section 204 witness's allegations;
- (iii) Identification of all perpetrators;
- (iv) Identification of witnesses;
- (v) Identification of alleged burial site of victims;
- (vi) Location of original inquest records;
- (vii) Exhumation process;
- (viii) Identification of remains by DNA analysis;
- (ix) Re-opening of inquests and possible prosecution of section 204 witness (if original statement proved false) and perpetrators who did not receive amnesty.

### Role Players

- (i) Researchers to trace all TRC material;
- (ii) SAPS DNA laboratory to conduct DNA tests;
- (iii) Chief State Pathologist to conduct exhumation and fresh **post mortems**;
- (iv) SAPS Services and Violent Crime to provide expertise in exhumation;
- (v) Khumani support group to liaise with victims' families.

2/02

### CCB Western Cape Activities

#### Referral

Legal Resources Cape Town request for prosecution of unsuccessful amnesty applicants for the following crimes:

- (i) Bombing of Early Leading Centre;
- (ii) Conspiracy to kill Dullah Omar;
- (iii) Conspiracy to kill Glavin Evans.

#### Nature of Investigations

- (i) Identify certain amnesty applicants as section 204 witnesses and others as accused;
  - (ii) Identify the strongest of the three cases;
  - (iii) Establish the links between these charges and the Wouter Basson trial where the same role players were involved;
  - (iv) Locate the original police dockets and the initial investigation done by the DPP Cape Town;
  - (v) Locate the TRC material;
- 

- (vi) Liaise with Legal Resources Centre for access to their material and victims who may be used as state witnesses;
- (vii) Locate evidence in the possession of the original firm of Attorneys of the victims;
- (viii) Institute a prosecution.

#### Role Players

- (i) Researchers to locate all background material;
- (ii) Dr Pretorius to assist with the Wouter Basson related issues;
- (iii) SAPS and DPP to advise on their investigations;
- (iv) Legal Resources and other legal firms to make available their material.

3/02

#### **CARL NIEHAUS - CHARGE ASSAULT**

##### Referral

Investigation by Head DSO to investigate allegations that Niehaus was tortured in detention.

##### Nature of Investigation

Background information and victim traced. Victim however did not desire a prosecution and file closed. Report submitted to Head, DSO.

4/02

#### **THO HANDGRENADE ATTACKS**

##### Charge

Possession of Grenades and Terrorism.

##### Referral

DPP Free state requested decision to be made on former APLA Commander.

##### Investigation

Evidence thoroughly perused and opinion furnished that there were no prospects of a successful prosecution. Charges were withdrawn and reports furnished to Head DSO and NDPP. Case closed.

4

5/02

**SKOULIDES - CHARGE MURDER****Referral**

Victim's sister alleged that her brother had been framed for a murder committed by the security forces.

**Nature of Investigation**

- (i) Locate original murder docket and court record;
- (ii) Locate TRC investigation which alleged that the wrong person had been convicted;
- (iii) Establish if any other persons were responsible and if so whether a prosecution can be instituted.

**Other Role Players**

- (i) Researchers to obtain all the relevant background material;
- (ii) DPP and SAPS to furnish details of original trial;
- (iii) Former TRC investigator to explain the nature of his investigation.

6/02

**KWAGGASNEK LESOTHO INCIDENT - CHARGES MURDER****Referral**

NDPP instructed that the remains of PAC members murdered in Lesotho be brought back to RSA.

**Nature of Investigation**

- (i) Trace next of kin of victims;
- (ii) Locate burial site in Lesotho;
- (iii) Establish exhumation and repatriation requirements from SA Foreign Affairs and Lesotho Government.
- (iv) Repatriate remains.

**Role Players**

- (i) Victims next of Kin;
  - (ii) Lesotho Government;
  - (iii) SA Foreign Affairs.
- 

7/02

**TABLE MOUNTAIN MASSACRES - CHARGES MURDER****Referral**

DNDPP Hofmeyer requested that the matter be looked into.

**Nature of Investigation**

- (i) Provisional Head of Detective Service informed that the docket had been lost, the investigating unit disbanded and the investigating officer had left the force;
- (ii) The DPP KZN confirmed that her records had been destroyed and the prosecutor had resigned and emigrated;
- (iii) The TRC's final report will have to be awaited before any further action can be taken.

8/02

**BATONDO / TRANSKEI - CHARGE MURDER****Referral**

Refusal of amnesty by TRC.

**Nature of Case**

An ANC supporter was shot dead by members of the Transkei police. They absconded before a prosecution could be instituted. It later emerged that they were hidden at Vlakplaas and given new identities.

**Investigation**

- (i) Locate original police docket;
- (ii) Locate original DPP's file;
- (iii) Locate TRC material (amnesty and Vlakplaas);
- (iv) Trace role players and consider prosecutions.

**Other Agencies**

- (i) Researchers
  - (ii) DPP Umtata
- 

9/02

**SAP GENERAL VAN RENSBURG. MOTHERWELL/BRIAN NGULUNGA KILLINGS****CHARGES: MURDER****Referral**

Refusal of Amnesty

**Nature of Case**

It is alleged that General Van Rensburg ordered the killing of five security force members to prevent them from revealing how he was involved in third force activities. In the Motherwell matter three other security force members were convicted but have noted an appeal against their convictions. They have also applied for amnesty. Van Rensburg was refused amnesty but has noted a review with the High Court. In the Ngulunga matter Van Rensburg never applied for amnesty but was implicated by the applicants.

**Investigations**

- (i) DPP Grahamstown has requested the unit to take over the SCA appeal;
- (ii) TRC and Justice have requested to assist in setting up the new amnesty hearings;
- (iii) Locate original inquests;
- (iv) Police dockets;
- (v) Trace original witnesses;
- (vi) Conduct new investigations arising from amnesty hearings;
- (vii) Extract the relevant positions from the De Kock trial;
- (viii) Locate criminal records and civil material in possession of the State Attorney and Registrar;
- (ix) Prepare for prosecution after amnesty process completed.

**Other Agencies**

- (i) Researchers;
  - (ii) DPP Grahamstown;
  - (iii) State Attorney Cape Town
  - (iv) TRC
  - (v) Department Law Enforcement Justice
  - (vi) Registrar Cape Town, Port Elizabeth and Bloemfontein.
- 

10/02

**SAP GENERAL VAN DER MERWE / LESOTHO RAID - CHARGE: MURDER****Referral**

Amnesty Refused

**Nature of Case**

Raid by security forces on ANC base in Lesotho.

**Investigations**

- (i) Awaiting outcome of state appeal in S versus Basson on jurisdiction on conspiracy to commit crimes. In the light of the Basson judgment the RSA courts have no jurisdiction;
- (ii) Locate TRC material;
- (iii) Locate State Security Council material;
- (iv) Locate material in possession of Lesotho Government;
- (v) Locate material in ANC possession.

**Other Agencies**

- (i) Researchers;
- (ii) State Archives;
- (iii) ANC;
- (iv) Adv Pretorius.

/02

**IFP / ERMELO BLACK CATS - CHARGES: MURDER****Referral**

Refusal of Amnesty

**Nature of Case**

Series of attacks on ANC supporters by IFP Investigation originally conducted by D'Oliveira Unit. Section 204 witnesses however refused amnesty. Several accused however were arrested and continue to appear in court.

**Nature of Investigations**

- (i) Locate original investigation;
- 

8

- (ii) Locate Registers records;
- (iii) Locate Goldstone Commission Investigation;
- (iv) Locate TRC material;
- (v) Trace witnesses;
- (vi) Decide whether to prosecute.

#### Other Agencies

- (i) Researchers;
- (ii) State Archives;
- (iii) Register and DPP Pretoria.

2/02

#### **IFP VERSUS TRC - CHARGE: CIVIL APPLICATION**

##### Nature of Case

IFP brought an application to have the TRC's findings that it committed Human Rights Abuses set aside.

##### Nature of Investigations

- (i) Request by both the TRC and Justice that this unit make its material implicating the IFP available.
- (ii) Watching brief on the proceedings declares since it impacts on investigations involving the IFP;
- (iii) On 29 January 2003 the matter was settled on the basis that the TRC's findings would stand;
- (iv) File closed.

13/02

#### **NTOMBI KHUBEKA - CHARGE: KIDNAPPING MURDER**

##### Referral

Refusal of Amnesty

##### Nature of Case

ANC supporter kidnapped and tortured. Applicants members of KZN SAP Security Branch denied killing her. Medical evidence however established that she was shot to death.



**Nature of investigations**

- (i) Locate TRC material;
- (ii) Locate medical expert brought in by TRC from United Kingdom;
- (iii) Locate D'Oliveira investigation;
- (iv) Trace witnesses and in particular section 204 ones;
- (v) Prepare for prosecution.

**Other Agencies**

- (i) Researchers;
- (ii) Medical expert.

1/02

**PHILIP POWELL - CHARGE: POSSESSION OF HAND GRENADES****Referral**

NDPP

**Nature of Case**

Powell received 70 tons of weapons from Vlakplaas Commander De Kock prior to 1994 election.  
Powell fled to UK prior to NDPP deciding to prosecute him.

**Nature of Investigations**

- (i) Locate D'Oliveira investigation;
  - (ii) Extract relevant portions of De Kock trial;
  - (iii) Locate ITU investigation and KZN Government documentation;
  - (iv) Locate Goldstone Commission enquiry;
  - (v) Locate DPP KZN's files;
  - (vi) Locate witnesses;
  - (vii) Obtain military expert to identify origin of explosives;
  - (viii) Follow up Police Intelligence allegations that Powell returned to RSA;
  - (ix) Establish Powell's whereabouts in UK;
  - (x) Advise NDPP to set aside DPP KZN's decision not to prosecute.
- 

**Other Agencies**

- (i) Researchers
- (ii) State Archives;
- (iii) NIA;
- (iv) Police Intelligence
- (v) Defence Intelligence
- (vi) Nick Rowell (UK involvement)
- (vii) DPP KZN

**15/02****PIET SNYDERS - CHARGE: MURDER****Referral**

DSO Chinese Syndicate Investigation.

**Nature of Case**

Subject was a member of Vlakplaas who was involved with De Kock. DSO has advised that he is actively involved in current organized crime and is interested to know whether he can be charged for a TRC case so as to disrupt his activities.

**Nature of Investigations**

- (i) Trace TRC material;
- (ii) Interview De Kock and other Vlakplaas operators;
- (iii) Establish if there is a strong case in respect of which he was refused or failed to apply for amnesty.

**Other Agencies**

Researchers

**16/02****KZN IFP HIT SQUADS - CHARGE: MURDER****Referral**

Failure to apply for amnesty by perpetrators.



**Nature of Case**

KwaZulu-Natal Police officers implicated several high ranking IFP officials as ordering a series of murders. None of the implicated parties applied for amnesty however the DPP KZN declined to prosecute. The persons implicating them were all granted amnesty.

**Nature of Investigations**

- (i) Locate ITU investigation;
- (ii) Locate Goldstone Commission Enquiry;
- (iii) Locate original KZN Police dockets;
- (iv) Locate TRC material;
- (v) Locate High Court record of State versus Hlongwane and two others;
- (vi) Trace witnesses;
- (vii) Advise NDPP whether DPP KZN's decision can be overturned.

**Other Agencies**

- (i) Researchers
- (ii) State Archives
- (iii) DPP KZN

17/02

VICTORIA MXENGE - CHARGE: MURDER

**Referral**

In Public Interest

**Nature of Case**

The subject was the wife of Griffiths Mxenge the ANC lawyer who was murdered by Dirk Coetzee and other Vlakplaas operatives. Her murder however remains unsolved.

**Nature of Investigations**

- (i) Locate original inquest and police docket;
  - (ii) Locate TRC material;
  - (iii) Follow up information relating to Askaris and former KZN security branch member;
  - (iv) Establish if the crime can be solved.
- 

**Other Agencies**

Researchers

18/02

**MPHAHLELA APLA KILLINGS - CHARGE: MURDER**

**Referral**

High Public Interest / Failure to apply for Amnesty

**Nature of Case**

The subject was a senior member of APLA and suspected of orchestrating many of APLA's murders in the early 1990's. He did not apply for amnesty and has never been charged.

**Nature of Investigations**

- (i) Locate original SAP investigations into APLA attacks;
- (ii) Debrief original SAP investigators;
- (iii) Debrief SAP Intelligence operators;
- (iv) Locate original court records where prosecutions of subjects' subordinates instituted;
- (v) Trace witnesses;
- (vi) TRC material;
- (vii) Goldstone Commission Enquiries;
- (viii) Establish if there are grounds to prosecute on any charges.

**Other Agencies**

- (i) Researchers
- (ii) SAPS Detective Service
- (iii) SAPS Intelligence Service
- (iv) DPP's
- (v) NGO organizations with a special interest in APLA.

19/02

**STEVE BIKO - CHARGE: MURDER**

**Referral**

Refusal of Amnesty

**Nature of Case**

Subject died in police detention. Amnesty refused DPP Grahamstown declined to prosecute.

**Nature of Investigations**

- (i) Locate original inquest;
- (ii) TRC material;
- (iii) Material in possession of Legal Resources Centre;
- (iv) Locate sole surviving medical expert;
- (v) Advise NDPP whether DPP Grahamstown's **nolle prosequi** should be overturned.

**Other Agencies**

- (i) Researchers
- (ii) Medical experts
- (iii) Legal Resources Centre
- (iv) DPP Grahamstown

20/02

**PEBCO 3 - CHARGE: KIDNAPPING/MURDER**

**Referral**

Refusal of Amnesty

**Nature of Case**

1985 the PEBCO 3 disappeared without trace. The TRC refused amnesty to members of the Eastern Cape Security Branch for their Kidnapping and murder. The DPP Grahamstown refused to prosecute.

**Nature of Investigations**

- (i) Locate original SAP investigation;
  - (ii) Locate civil claims instituted by deceased's family;
  - (iii) Goldstone Commission Enquiries;
  - (iv) Relevant positions of State versus De Kok;
  - (v) TRC material;
  - (vi) Re-evaluate original section 204 witness;
  - (vii) Trace witnesses;
- 

- (viii) Determine whether DPP's decision should be overturned.

#### Other Agencies

- (i) Researchers
- (ii) State Attorney, Port Elizabeth
- (iii) State Archives
- (iv) Dr D'Oliveira

21/02

#### **CRADOCK 4 - CHARGE: KIDNAPPING / MURDER**

#### Referral

Refusal of Amnesty

#### Nature of Case

Cradock activists were kidnapped and murdered. A formal inquest before the Judge President ECD found that unknown members of the Security Forces were responsible. Amnesty was refused to members of the Eastern Cape Security Branch.

#### Nature of Investigations

- (i) Locate original police docket;
- (ii) Locate formal inquest before regional court President;
- (iii) Locate formal inquest before Judge President;
- (iv) Locate Goldstone Commission Enquiry;
- (v) TRC material;
- (vi) Locate witnesses;
- (vii) Determine whether there are grounds to prosecute.

#### Other Agencies

- (i) Researchers
  - (ii) NGO's
  - (iii) State Archives
  - (iv) Register Port Elizabeth
- 

22/02

**WINNIE MANDELA - CHARGES: MURDER / KIDNAPPING****Referral**

High Public Interest: Failure to apply for Amnesty

**Nature of Case**

The DPP Johannesburg prosecuted the subject on a charge of kidnapping. In a HRV hearing of the TRC a large number of other serious charges were levelled at her. She never applied for amnesty. Commissioner Fivaz directed that these allegations be investigated.

**Nature of Investigations**

- (i) Locate original court record;
- (ii) Locate investigation by Commissioner Fivaz;
- (iii) TRC material;
- (iv) Trace witnesses;
- (v) Establish if there are grounds to prosecute.

**Other Agencies**

- (i) Researchers
- (ii) DPP Johannesburg
- (iii) SAPS Detective Service

23/02

**SAP GEBNERAL ENGELBRECHT - CHARGE: DEFEATING THE ENDS OF JUSTICE****Referral**

High Public Interest / Failure to apply for Amnesty

**Nature of Case**

De Kok implicated the subject as assisting in covering up Vlakplaas killings. He did not apply for amnesty however the DPP Pretoria declined to prosecute him.

**Nature of Investigations**

- (i) Locate Haarms Commission;
  - (ii) Locate Goldstone Commission;
- 

- (iii) Locate inquest records of all killings;
- (iv) Extract relevant positions of De Kok's trial;
- (v) Access DPP report
- (vi) Trace witnesses;
- (vii) TRC material;
- (viii) Determine whether DPP's decision can be overturned.

#### Other Agencies

- (i) Researchers
- (ii) DPP Pretoria

24/03

**SAP GENERAL SMIT - CHARGE: DEFEATING THE ENDS OF JUSTICE**

#### Referral

High Public Interest / Failure to apply for Amnesty

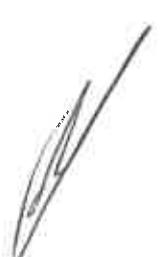
#### Nature of Case

Similar allegations as against Engelbrecht however none of these have ever been investigated.

#### Nature of Investigations

- (i) Interview De Kok and other Vlakplaas operatives;
- (ii) Locate Haarms Commission;
- (iii) Locate Goldstone Commission Enquiry;
- (iv) TRC material;
- (v) Determine whether there are grounds to prosecute.

#### Other Agencies

- (i) Researchers
  - (ii) State Archives
- 

17

25/02

**ANC HIERARCHY - CHARGES: TREASON****Referral**

Refusal of Amnesty

**Nature of Case**

Amnesty was refused to 37 prominent ANC members including the President and several Cabinet Ministers who claimed to have been collectively responsible for the ANC's campaign of violence.

**Nature of Investigations**

- (i) TRC material;
- Establish if there are any grounds upon which to prosecute.

**Other Agencies**

Researchers

26/02

**SMIT MURDERS - CHARGE: MURDER****Referral**

High Public Interest

**Nature of Case**

1977 a prominent Cabinet Minister and his wife were murdered in highly suspicious circumstances. The crimes remain unsolved.

**Nature of Investigations**

- (i) Locate all existing material;
- (ii) Trace witnesses;
- (iii) Identify the perpetrators and determine whether there are sufficient grounds for prosecution.

27/02

**NELSON SITHOLE - CHARGE: MURDER****Referral**

Request by deceased's family.

**Nature of Case**

Deceased was a prominent activist in Cape Town. He was murdered by unknown persons. The family however believe that he was murdered by known perpetrators and the killing covered up by police.

**Nature of Investigations**

- (i) Locate original docket and inquest record;
- (ii) Locate DPP Cape Town's file;
- (iii) Investigate material in possession of victims attorney;
- (iv) Trace alleged eye witnesses;
- (v) Determine if there are grounds to prosecute.

**Other Agencies**

- (i) Researchers
- (ii) SAPS
- (iii) DPP Cape Town
- (iv) Family Attorney

28/02

**CASWELL CASTRO KHUMALO - CHARGE: MURDER**

**Referral**

Request by Deceased's next of kin for remains of deceased to be traced.

**Nature of Case**

Deceased murdered by members of Soweto Security Branch. Perpetrators granted amnesty however remains of deceased never found.

**Nature of Investigations**

- (i) TRC material;
- (ii) Interview perpetrators;
- (iii) Locate original SAPS investigation;
- (iv) Attempt to trace remains

.19

**Other Agencies**

- (i) Researchers
- (ii) Institute for Violence and Reconciliation
- (iii) SAPS

**29/02****ANTOR LUBOUWSKI - CHARGE: MURDER****Referral**

High Public Interest

**Nature of Case**

Suspect was a high ranking member of SWAPO murdered in Namibia. Suspicion is that he was murdered by the CCB Crime remains unsolved.

**Nature of Investigations**

- (i) Haarms Commission
- (ii) Goldstone Commission;
- (iii) D'Oliveira Investigation;
- (iv) Evidence in possession of Namibian Government;
- (v) Outcome of State appeal in S v Basson relating to jurisdiction for conspiracy;
- (vi) Trace witnesses and TRC material;
- (vii) Determine whether there are grounds to prosecute (see (v)).

**Other Agencies**

- (i) Researchers
- (ii) State Archives
- (iii) Namibian authorities

**30/02****RIGHT WING AMNESTY APPLICATIONS - CHARGE: TERRORISM****Referral**

Divisional Headquarters SAPS Intelligence

**Nature of Case**

Request by SAPS to assist in profiling of right wing involvement in current wave of terrorism.

**Nature of Investigations**

SAPS furnished with a complete breakdown of each and every right wing amnesty application.

Investigation complete.

**Other Agencies**

- (i) Researchers
- (ii) Police Intelligence

02

**BOTSWANA CROSS BORDER RAID / SOWETO SECURITY BRANCH - CHARGE: MURDER**

**Referral**

High Public Interest

**Nature of Case**

Soweto Security Branch involved in a series of attacks which were not fully investigated by TRC.

**Nature of Investigations**

- (i) TRC material;
- (ii) Original D'Oliveira Unit Investigations;
- (iii) Outcome of State appeal in S v Basson relating to conspiracy;
- (iv) Trace witnesses;
- (v) Trace evidence in possession of Botswana Government;
- (vi) Determine whether there are grounds to prosecute.

**Other Agencies**

- (i) Researchers
- (ii) SAPS
- (iii) Botswana Government

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**32/02****TRANSKEI COUP DE AT - CHARGE: MURDER****Referral**

High Public Interest / Failure to apply for Amnesty

**Nature of Case**

An attempt was made to overthrow Bantu Holimisa's Transkei Government. The plot failed and it is alleged that the conspirators were murdered by the Transkei security forces.

**Nature of Investigations**

- (i) Existing evidence in possession of the former Transkeian authorities;
- (ii) TRC material;
- (iii) Trace witnesses;
- (iv) Determine if there are grounds to prosecute;

**Other Agencies**

- (i) Researchers
- (ii) DPP Eastern Cape
- (iii) SANDF

**33/02****CISKEI COUP DE AT - CHARGE: MURDER****Referral**

High Public Interest

**Nature of Case**

Two prominent Ciskei leaders attempted to overthrow Oupa Quoza's Government and were killed in the process. Allegations have been made that they were murdered and that South Africa's Military Intelligence was involved.

**Nature of Investigations**

- (i) Locate formal inquest in Ciskei High Court;
  - (ii) Locate record of prosecution of Quoza in Ciskei High Court;
  - (iii) TRC material;
- 

- (iv) Trace witnesses;
- (v) Determine whether there are grounds to prosecute.

#### Other Agencies

- (i) Researchers
- (ii) DPP Ciskei
- (iii) SANDF

34/02

**CHADWICK - CHARGE: MURDER**

#### Referral

High Public Interest

#### Nature of Case

The subject was charged by the DPP Johannesburg for killing a number of persons in order to advance the cause of the IFP. He absconded to the United Kingdom before the trial commenced. Upon arrival there he claimed to be mentally ill and has been committed to an institution. Interpol has raised the issue as to whether his extradition is warranted.

#### Nature of Investigations

- (i) Confirm availability of original witnesses;
- (ii) Confirm current mental status of accused;
- (iii) Establish whether extradition can be effected.

#### Other Agencies

- (i) DPP Johannesburg
- (ii) Interpol
- (iii) SA Foreign Affairs
- (iv) British Authorities

35/02

**TRAIN VIOLENCE - CHARGE: MURDER**

#### Referral

High Public Interest



**Nature of Case**

It has been alleged that the high levels of train violence in the early 1990's were orchestrated by the security forces. The TRC never properly investigated the allegations.

**Nature of Investigations**

- (i) Trace and interview security forces members who has been suspected of orchestrating the violence;
- (ii) Determine whether there are sufficient grounds to prosecute.

36/02

**REGGIE HADEBE - CHARGE: MURDER****Referral**

High Public Interest

**Nature of Case**

Prominent ANC leader killed in Richmond. TRC unable to find any evidence as to the perpetrators.

**Nature of Investigations**

- (i) Locate ITU investigations;
- (ii) TRC material;
- (iii) Identify perpetrators and determine if there are grounds to prosecute.

**Other Agencies**

Researchers

37/02

**DULCIE SEPTEMBER - CHARGE: MURDER****Referral**

High Public Interest

**Nature of Case**

The subject was a high ranking ANC official killed in France. The allegation is that she was murdered by the CCB. The TRC's investigations were seized by NIA because of their sensitive nature.

**Nature of Investigations**

- (i) Locate TRC material in possession of NIA;
- (ii) Identify perpetrators and determine if there are grounds to prosecute;
- (iii) Locate evidence in possession of French authorities;

**Other Agencies**

- (i) Researchers
- (ii) NIA
- (iii) French Government

**38/02****RIGHT WAY BOMBINGS - CHARGE: MURDER****Referral**

Failure to apply for Amnesty

**Nature of Case**

Several right wingers convicted of bombings implicated high ranking officials of the AWB in their amnesty applications. The implicated parties failed to apply for amnesty.

**Nature of Investigations**

- (i) TRC material;
- (ii) Original police dockets and court records;
- (iii) Interview amnesty applicants;
- (iv) Determine whether there are grounds to prosecute perpetrators.

**Other Agencies**

- (i) Researchers
- (ii) DPP's
- (iii) SAPS

**39/02****REVEREND GEORGE WAUSCHOPE - CHARGE: MURDER****Referral**

Minister of Justice and Constitutional Development

**Nature of Case**

The subject absconded from the High Court Johannesburg in 1989 when facing a charge of murder. The PAC has requested the Minister to grant the subject immunity from prosecution in order for him to return to the RSA.

**Nature of Investigations**

A comprehensive separate report has been compiled and the Minister advised not to accede to the PAC's request.

**Other Agencies**

- (i) DPP Johannesburg
- (ii) SAPS

40/02

**SOUTH AFRICAN DISAPPEARANCE PROJECT - CHARGES: UNKNOWN****Nature of Case**

Request by NGO organization to trace persons who disappeared during the TRC period as a result of violence. It was agreed that they would channel all their queries to our researchers and would also make available to us information in their possession relevant to our investigations.

**Other Agencies**

- (i) Researchers
- (ii) NGO organization

41/02

**PRO JACK - CHARGE: MURDER****Referral**

Refusal of Amnesty

**Nature of Case**

Murder of ANC member by other ANC members. Amnesty refused.

**Nature of Investigations**

- (i) TRC material;
- 

- (ii) Original police investigation;
- (iii) Trace witnesses;
- (iv) Determine if there are grounds upon which to prosecute.

#### Other Agencies

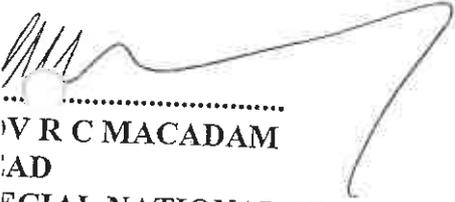
- (i) Researchers
- (ii) SAPS

#### **GENERAL COMMENTS**

1. It is anticipated that the successful investigation of the above will lead to the detection of further unsolved crimes.

Now that researchers have been appointed the TRC material is being evaluated on a systematic basis which will also lead to further investigations being registered.

Due to the small number of staff members the investigations are prioritised according to their degree of urgency however it remains the policy of my office to deal with the matters holistically once the final report of the TRC has been received and analysed.

  
.....  
V R C MACADAM  
AD  
ECIAL NATIONAL PROJECTS

er/timol

**SCORPIONS**

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South Africa

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Cell: 082 498 6033

Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

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**INTERNAL MEMORANDUM**


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TO: DEPUTY HEAD *copy to booth 5/5/03*

CC: CIO A G LEASK

FROM: HEAD SNPU

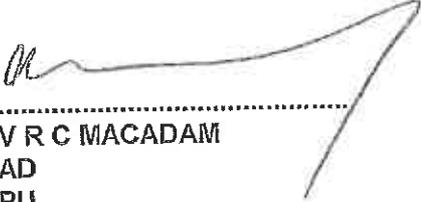
DATE: 5 MAY 2003 REF: A/INV/5/03 TRC

RE: INQUEST: AHMED TIMOL

1. On 2 May 2003 I was requested to investigate the above matter by the deceased's nephew Imtiaz Timol (082 445 2086) after he had been referred to my office by Minister Pahad in the President's Office.
2. The following documentation has been made available:
  - (i) Extract from George Bizoz's Book;
  - (ii) Article by Ivor Powell;
  - (iii) TRC hearing; and
  - (iv) Details of the SAPS members involved in the interrogation.
3. Imtiaz further informed me that:
  - (i) the inquest record has been destroyed;
  - (ii) he has the contact details of a fellow detainee now in England who can assist;
  - (iii) he has photographs of the body of the deceased; and
  - (iv) Ivor Powell informed him that Sgt Rodriguez had told his daughter what had really happened.



4. The following investigation focus areas are identified:
- (i) George Bizoz must be interviewed to establish whether he has the post mortem report and any other information;
  - (ii) Ivor Powell (DSO Cpt) must be interviewed re 3(iv);
  - (iii) Researchers to establish whether there is any additional TRC material and whether the policeman involved after linked to any other human rights abuses;
  - (iv) the other detainee will have to be interviewed; and
  - (v) once all the evidence has been obtained the Chief State Pathologist will have to be requested for an opinion on the injuries and the claim that the witness fell from a 10 storey building.



ADV R C MACADAM  
HEAD  
SNPU



MINISTRY OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT  
CAPE TOWN  
  
2003-03-25  
  
KAAPSTAD  
MINISTERIE VAN JUSTISIE EN  
STAATKUNDIGE ONTWIKKELING

PROCLAMATION  
BY THE  
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

No. ...., 2003

NATIONAL PROSECUTING AUTHORITY ACT, 1998

Determination of Powers, Duties and Functions of a Special Director of Public Prosecutions

under section 13(1)(c) of the National Prosecuting Authority Act, 1998(Act No. 32 of 1998), I, hereby confer, impose and assign the following powers, duties and functions on or to Advocate ANTON ROSSOUW ACKERMAN SC, a Special Director of Public Prosecutions, appointed in terms of the said provisions:

To exercise the powers, carry out the duties and perform the functions necessary, within the Office of the National Director of Public Prosecutions as directed by the National Director and—

- (a) in particular, to head the Priority Crimes Litigation Unit and to manage and direct the investigation and prosecution of crimes contemplated in the Implementation of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), and serious national and international crimes, which include acts of terrorism and sabotage committed under the Internal Security Act, 1982(Act No. 74 of 1982), high treason, sedition, foreign military crimes committed by mercenaries, or such other priority crimes to be determined by the National Director; and
- (b) generally, giving such advice or rendering such assistance to the National Director as may be required to exercise the powers, carry out the duties and perform the functions which are conferred or imposed on or assigned to him by the Constitution or any other law.

Given under my Hand and the Seal of the Republic of South Africa at.....PRETORIA.....on this.....24th.....day of.....MARCH.....Two Thousand and Three.

*T. M. Mbeki*  
T. M. MBEKI  
President

*P. M. Maduna*  
P. M. MADUNA  
Minister of the Cabinet

AD 457

Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

sl/ audit trc cases



## INTERNAL MEMORANDUM

TO: NDPP REF: TRC GENERAL

CC: HEAD DSO  
HEAD OPERATIONS  
ADV ACKERMANN

FROM: HEAD SNPU

DATE: 15 MAY 2003

RE: AUDIT OF TRC CASES

### SCORPIONS

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#### A. CASES BEING PREPARED FOR PROSECUTIONS:

##### 1. MOTHERWELL BOMBING

###### (a) Leg One

The accused were all refused amnesty. On review however the High Court ordered that their applications be reheard because the TRC failed to lead evidence. Investigations conducted by my office indicate that the accused supplied a false motive for killing the deceased. Evidence will be made available to the TRC so that amnesty can be refused on a proper basis. This will open the way for legs two and three.

(b) Leg Two

The three accused convicted in the 1996 prosecution were granted leave to appeal against their convictions to the SCA. I have taken over the argument of the appeal from the DPP Eastern Cape due to the fact that the prosecutor has retired.

(c) Leg Three

The prosecution of SAP General van Rensburg for ordering the killing of the Motherwell Four.

2. **BRIAN NGULUNGA**

The prosecution of SAP General van Rensburg for ordering the killing of Brian Ngulunga.

3. **PEBCO 3**

The prosecution of the Security Branch members responsible for the kidnapping of the deceased at Port Elizabeth Airport.

4. **WAUCHOPE**

Prosecution of AZAPO leader George Wauchope for murder and other related charges. I am awaiting the Minister's response to representations by the accused that he not be prosecuted.

5. **POWELL**

The prosecution of Phillip Powell for possessing hand grenades in April 1994. The matter is with the NDPP.

6. **NQUTU ARMS CACHE**

The prosecution of J. M. Nqobobo and others for the concealment of the weapons found in the Nqutu Bunker in May 1999.

7. The prosecution of the CCB members responsible for the bombing of the Early Learning Centre (it must however be established that the accused did not receive indemnity in terms of the Indemnity Act of 1990).

**B. POTENTIAL FURTHER PROSECUTIONS ARISING FROM THE ABOVE****1. Murder of the PEBCO 3**

There is currently no reliable evidence on the murder charge. If the accused are however convicted of kidnapping it is likely that at least one of them may supply information as to the killings in order to obtain a lesser sentence.

**2. Cradock 4**

There is no reliable evidence on this case. The TRC however established that the crime was committed by the same people who were involved in the Motherwell and PEBCO 3 cases. The successful prosecution of these cases could lead to some of the perpetrators coming forward also to obtain lesser sentences.

**C. NEW CASES BEING EVALUATED FOR PROSECUTION PURPOSES**

1. Murder of the COSAS 4
2. Murder of Askari Strongman Sambo
3. Murder of detainee on the East Rand by "Timol" Coetzee
4. Murder of Askari Dan Maboto
5. Allegations by IFP sentenced prisoner to have knowledge of murders in the East Rand from 1988
6. 447 dockets relating to APLA handed over by SAPS Crimes Against the State Unit
7. 6-8 dockets linking AWB to Pre election bombings previously dealt with by Advocate Fick

**D. HIGH INTEREST CASES WHICH REQUIRE ATTENTION IRRESPECTIVE OF THE NATURE OF AVAILABLE EVIDENCE**

1. Murder of Victoria Mxenge
2. Kidnapping, torture and murder of Ntombi Khubeka
3. Kidnapping, torture and murder of Nokutulu Simelane
4. Decision by DPP Pretoria not to prosecute SAP General Engelbrecht
5. Uninvestigated allegations against SAP General Bassie Smit
6. Ciskei Coup De AT
7. Transkei Coup De AT

8. Pre Election Train Violence in Gauteng
9. Murder of Reggie Hadebe
10. Murder of Dulcie September
11. Refusal of Amnesty to 37 High Ranking ANC officials
12. Decision by DPP KZN not to prosecute IFP hit squads

**E. REPRESENTATIONS TO INVESTIGATE SPECIFIC CASES**

1. Death in detention Ahmed Timol
2. Murder of UDF activist Nelson Sithole
3. Murder of Pro Jack
4. Murder of IFP families in Table Mountain by A. M. Zulu
5. Murder of ANC supporter Batondo
6. False Conviction of Skouldies
7. Assault on A. Bult
8. Vlakplaas member Piet Snyders
9. Murder of Castro Khumalo

**F. CASES IN THE PROCESS OF BEING CLOSED**

1. Assault on Carl Niehaus- complainant does not desire a prosecution
2. APLA murder Mphahlela attacks on police stations: lack of reliable evidence
3. Mphahlela murder charges- lack of admissible evidence against him
4. Winnie Mandela- lack of reliable evidence
5. Steve Biko- crime prescribed in 1997
6. Smit Murders- perpetrators deceased
7. Ermelo Black Cats- lack of reliable evidence
8. IFP Murders Chadwick- accused in a mental institution in the United Kingdom

**G. ASSISTANCE TO OTHER AGENCIES**

1. Police Intelligence supplied with a breakdown of AWB amnesty hearings to assist in profiling of persons currently involved in Right Wing Activities
2. TRC supplied with material relating to IFP human rights abuses to assist them to oppose IFP application to have findings against it set aside

**H. REPARATIONS RELATED ACTIVITIES**

1. Exhumation of bodies of Mamelodi 10
2. Reparations of remains of victims in the Kwaggasnek incident in Lesotho
3. Representations by members of the public to locate their missing relatives
4. Partnership with SA Disappearance Foundation

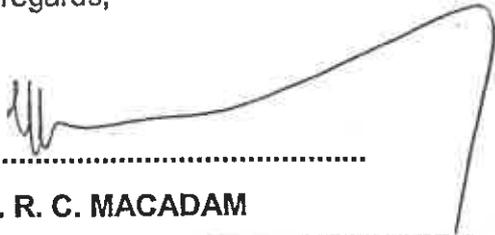
**I. INVESTIGATION PUT ON HOLD PENDING THE APPEAL IN THE BASSON CASE RELATING TO JURISDICTION FOR CONSPIRACY TO COMMIT CRIMES OUTSIDE THE RSA**

1. Murder of Anton Lubauwski
2. Lesotho Raid
3. Botswana Raid
4. Swaziland Raid

**J. POLICY CONSIDERATIONS**

1. Prosecutions not to be conducted on a piece meal basis except where special circumstances (e.g. witness on point of death, accused about to leave RSA or engaged in current criminal activities)
2. Once all the cases earmarked for prosecution have been investigated a presentation will be given to the NDPP in order for him to confirm the prosecution strategy. Thereafter prosecutions will be instituted
3. After convictions have been obtained attention will be given to cases which currently had evidence since convictions may act as incentive for perpetrators to come forward

Kind regards,



.....

**ADV. R. C. MACADAM**

**HEAD**

**SNPU**

er/trc



Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

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## INTERNAL MEMORANDUM

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### SCORPIONS

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South Africa

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

TO: HEAD OPERATIONS  
ADV G LEDWABA

FROM: HEAD SNPU

DATE: 22 MAY 2003 REF: A/INV/TRC

RE: TRC INVESTIGATIONS

1. As discussed earlier with you it has been decided to incorporate all the TRC cases as a national project with a budget. Individual investigations will be declared as legs of the national project and not treated as individual projects:
2. I enclose herewith:
  - (i) The National Project Proposal;
  - (ii) Application for a section 28 declaration - Motherwell
  - (iii) Application for a section 28 declaration - Brian Ngulunga
  - (iv) Application for a section 28 declaration - PEBCO 3
  - (v) Application for a section 28 declaration - Nelson Sithole
  - (vi) Application for a section 28 declaration - Mamelodi 10.
3. The Nqutu Arms Cache A/INV/14/02 TRC has already been referred to you and your decision is still outstanding.

  
.....  
ADV R C MACADAM  
HEAD  
SNPU



er/portfolio



Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

## INTERNAL MEMORANDUM

### SCORPIONS

P. O. Box 752,  
PRETORIA  
0001

VGM Building  
Hartley St.

Weavind Park  
0001  
Pretoria  
South Africa

Tel: (012) 845 6431

Cell: 082 498 6033

TO: NDPP  
FROM: ADV A R ACKERMAN SC  
SPECIAL DIRECTOR  
DATE: 23 MAY 2003 REF:  
RE: REQUEST FOR MEETING: MY NEW PORTFOLIO

1. I hereby request as a matter of urgency a meeting to discuss the following agenda:

- 1.1 TRC Matters - 40 minutes
  - (a) Progress made by Advocate Macadam's Office;
  - (b) Progress made into ANC/AWB investigations supervised by Advocate Fick; and
  - (c) Proposal for the further management of cases by my Office and the DSO.

1.2 Office Accommodation/staff - 10 minutes

1.3 Report Back Wouter Basson Appeal - 5 minutes

1.4 Rome Protocol/Hague Convention - 5 minutes

2. The meeting should be attended by the following persons:

- (a) Yourself;
- (b) DNDPP Auxiliary Services;
- (c) DNDPP DSO;



- (d) Myself;
- (e) Advocate R C Macadam;
- (f) Advocate O M Tongwane; and
- (g) CIO Leask.

3. Kindly request your secretary to advise Advocate Macadam (8456431) of the date and place of the meeting.

  
.....  
**ADV A R ACKERMAN SC**  
**SPECIAL DIRECTOR**

er/trc cases



### SCORPIONS

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Office of the Head  
Special National Projects  
Directorate of Special Operations  
HEADQUARTERS

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## INTERNAL MEMORANDUM

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TO: NDPP  
CC: DR RAMAITE  
ADV MCCARTHY  
FROM: ADV A R ACKERMAN SC  
SPECIAL DIRECTOR  
DATE: 26 MAY 2003 REF: A/INV/TRC  
RE: TRC CASES

A. CASES AS MANAGED BY THE NDPP/DSO

1. From 1998 to 2000

Advocate Brink Ferreira was appointed to head a team of advocates and fell directly under the NDPP.

2. From 2001 to 2003

In January 2001 Advocate Macadam was appointed to replace Advocate Ferreira and the portfolio transferred to the Head DSO. Macadam was however almost immediately transferred to the Witness Protection Office and thereafter a task team was set up under the Head of Operations.

3. From March 2002 to date

(i) In March 2002 Macadam took over the unit which eventually became the Special National Projects Unit of the DSO Headquarters. He established that:

- (a) there was no filing system;
- (b) no investigations had been conducted;



- (c) no cases identified for prosecution;
  - (d) no investigators were attached to the unit;
  - (e) all the professional staff had left except Advocate Tongwane;
  - (f) there was no proper administrative component; and
  - (g) all that appears to have been done since 1998 was for various amnesty judgements to be closed off.
- (ii) In May 2002 a CIO and 3 Senior Special Investigators were appointed. They however were not released of their other duties until November 2002.
- (iii) He conducted an audit of existing work and identified 21 cases worthy of investigation. The state of the cases was such that the prospect of successful prosecutions was poor.
- (iv) He drafted detailed proposals indicating how the situation could be improved. He identified additional resources in particular the need to appoint people with TRC expertise. The majority of his requests have not been supplied.
- (v) On 1 June 2002 Advocate Sonn suspended all further work on TRC cases.
- (vi) Advocate McCarthy instructed that priority be given to TRC cases in mid August 2002.
- (vii) The following steps were undertaken:
- (a) urgent attention was given to cases where there were outstanding criminal proceedings or representations had been received from victims or human rights groups;
  - (b) existing amnesty applications were classified and cases identified which had prosecution potential;
  - (c) a business plan was completed and delegations as required by the NPA Act made;
  - (d) the DPP's were requested to complete an audit of all cases relating to the TRC dealt with by their offices;
  - (e) SAPS were requested to complete a similar audit;

- (f) protocols were entered into with all relevant stake holders; and
- (g) efforts were made to get resources.
- (viii) On 1 December 2002 two part time researchers and a Senior State Advocate were appointed and an audit of the TRC data base commenced. These cases relate primarily to the former security forces. See annexure.
- (ix) As a result of the three audits in February 2003 41 cases were identified for investigation, registered and the focus areas of each investigation defined.
- (x) The 41 investigations have been incorporated into a National Project and budgeted. Cases are being registered on Eagle Eye.
- (xi) Six applications for declarations in terms of section 28(1)(a) have been lodged.
- (xii) As at May 2003 the status of the cases is:
- |   |   |    |
|---|---|----|
| (a) Investigations completed                      | : | 7  |
| (b) Investigations closed                         | : | 6  |
| (c) Investigations being prepared for prosecution | : | 7  |
| (d) Investigations put on hold lack of resources  | : | 17 |
| (e) Investigations put on hold Basson appeal      | : | 4  |
- (xiii) The unit in addition carries the National Sunflower Oil Project and Operation Black Widow.
- (xiv) The Office is functioning properly and is only hampered by lack of resources.

**B. CASES DEALT WITH BY ADVOCATE FICK**

1. SAPS appointed a retired SAPS members to investigate cases against the ANC and also the AWB for pre election bombings.
2. A number of dockets were collected but investigations suspended due to an instruction from your office in January 1999.

3. Certain cases were closed because amnesty was granted.
4. I will personally make a decision on the case of the President and 36 prominent ANC members who were refused amnesty.

**C. CASES RESULT WITH BY ADVOCATE PRETORIUS**

Advocate Pretorius is currently attached to DSO HQ and is dealing with an enquiry into the death of Samora Machel a question of law in terms of section 333, Act 51 of 1977 arising from State versus Basson and allegations relating to mercenary activities.

**D. PROPOSAL FOR FURTHER MANAGEMENT OF CASES**

1. That Advocate Fick's cases be transferred to my unit so that a full audit may be conducted in order to establish whether any of them have prosecution potential. All such cases will further be managed by myself. On 22 May 2003 I instructed that investigations be reopened on matters identified by myself.
2. That Advocates Macadam and Pretorius be transferred to my office but retain their delegations as members of the DSO.
3. That I assume personal responsibility for all cases currently being handled by Macadam, Fick and Pretorius. Since I am directly managing cases which are being investigated by the DSO it is suggested that it be expedient and prudent that I be given an appointment in terms of section 7(4)(a)(1)(aa) and authorized to perform the powers of a Director in terms of sections 27, 28 and 29 of the NPA Act for these cases. Your guidance in this matter is sought.
4. That urgent attention be given to the outstanding resources identified by Advocate Macadam.
5. That I report monthly to:
  - (i) You;
  - (ii) Dr Ramaite; and
  - (iii) Advocate McCarthy (in so far as DSO matters are concerned).



**E. PERFORMANCE CONTRACTS, BUSINESS PLAN AND IMPLEMENTATION THEREOF AND OFFICE STRUCTURE**

These matters are receiving attention. I enclose herewith a proposal for the immediate Office Structure for your approval.

*AA*  
.....  
**ADV A R ACKERMAN SC**  
**SPECIAL DIRECTOR**



er/structure

# OFFICE STRUCTURE

## LEGAL

- |    |  |   |  |
|----|--|---|--|
| 1. | Head   | : | Special Director<br>AR Ackerman SC                                     |
|    | Deputy Director Public Prosecutions                          | : | R C Macadam  |
|    | Deputy Director Public Prosecutions                          | : | J P Pretorius  |
|    | Deputy Director Public Prosecutions                          | : | O M Tongwane /<br>To be appointed                                      |
| 2. | <b><u>Administrative</u></b>                                 |   |  |
|    | 1. Executive Secretary                                       | : | To be appointed<br>(Ms T Pienaar acting<br>in a temporary<br>capacity) |
|    | 2. Senior Administrative Officer                             | : | To be appointed  |
|    | 3. Dictaphone/Litigation Typist                              | : | To be appointed  |
|    | 4. Administrative Assistant                                  | : | To be appointed  |
| 3. | <b><u>Investigators</u></b>                                  |   |  |
|    | Seconded from the DSO HQ to finalize existing investigations |   |  |
|    | CIO Leask  |   |  |
|    | SSI Maangwaale   |   |  |
|    | SSI Jonker   |   |  |
|    | SSI Van der Merwe  |   |  |
|    | SSI Piet Pieterse  |   |  |
|    | SSI N de Lange   |   |  |



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

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**National Director of Public Prosecutions  
VGM Building  
National Prosecuting Authority  
21 October 2003**

The Head:

Priority Crimes Litigation Unit

**RE: PROSECUTIONS EMANATING FROM THE TRUTH AND  
RECONCILIATION COMMISSION**

In terms of the powers given to me under the Presidential Proclamation of 24 March 2003 I hereby direct that your unit assumes responsibility for the investigation and prosecution of all cases emanating from the Truth and Reconciliation Commission.

  
B.T. Ngcuka

National Director of Public Prosecutions

Annexure "D"

AD9 1472 C

AD9

er/lalla

The Divisional Commissioner  
Crime Intelligence  
South African Police Service  
PRETORIA

Date: 4 June 2003

**ATTENTION: COMMISSIONER LALLA**

Dear Commissioner Lalla

**ASSISTANCE INVESTIGATION OF CASES ARISING FROM THE TRC**

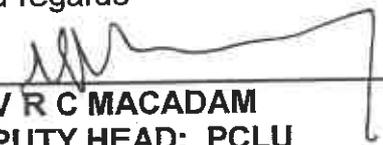
The National Director has created the Priority Crimes Litigation Unit in his office to deal with the investigations and prosecutions of cases arising from the TRC.

The assistance of your office is sought in connection with the following matters:

- (i) Allegation that Ms Mandela took part in the killing of Chris Hani. An intelligence report was provided by your Pietersburg office to me. I requested your Director Hankel to assist in identifying the informant in order to assess the reliability of his allegations. He has in turn referred the matter to you. The National Director has expressed his desire that a speedy final decision be made concerning whether Ms Mandela should be prosecuted for TRC related matters.
- (ii) Motherwell Bombing / Brian Ngulunga / De Kock / General Nick van Rensburg.

A number of investigations are in progress concerning allegations that General Van Rensburg ordered De Kock to kill various security branch members in order to prevent them from defecting to the ANC. If the records maintained by the former security branch relating to the incidents are still available these might contain valuable information which can shed more light on the allegations. I have been informed that your office is now the custodian of these records and would be grateful if agreement could be reached to gain access thereto.

Kind regards

  
ADV R C MACADAM  
DEPUTY HEAD: PCLU



Investigations

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Office of the Head  
Priority Crimes Litigation Unit  
VGM Building  
PRETORIA

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## INTERNAL MEMORANDUM

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TO : CIO Leask  
FROM : Adv M G Ledwaba  
DATE : 15 JULY 2003

SUBJECT : SNPU INVESTIGATIONS

1. Due to the recent creation of the PCLU it has become necessary to re-define the mandate and operations of the SNPU as follows:

(i) TRC cases

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

(ii) Operation Sunflower

Advocate MACADAM will continue to oversee the disruptive action with the Consumer Council with your assistance. Once the SAPS report is received and evaluated, I will make a decision on the final disposal of the case.

/tp

Adv M G Ledwaba  
HEAD : OPERATIONS

Adv PRETORIUS has been delegated to assess all cases currently being investigated by both SAPS and the DSO. (I have communicated separately to the Regional Head Gauteng in this regard). I will make a decision as to the involvement of the DSO in such investigations once I have received a report from Adv ACKERMANN.

(v) Foreign Mercenaries

SAPS must continue with the investigations under the direction of the prosecutor arranged by Adv ACKERMANN. You may give limited assistance to SAPS and the prosecutor on specific aspects when necessary.

(iv) Operation Final Curtain

Adv TONGWANE must oversee the finalization of the investigation and conduct the prosecutions which may arise.

(iii) Operation Black Widow

29/09/2003 11:03 27123392193

DIV COMM DET SERVICE

PAGE 01/02

G.P.S. 002-0222

SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X302

Verwysing Reference	3/9/9/1(93)
Navrae Enquiries	Div Comm De Beer
Telefoon Telephone	(012) 393 2191
Faksnommer Fax number	{ 012 } 393 2193

Afdelingskommissaris/Divisional  
Commissioner  
Speurdiens / Detective Service  
Hoofkantoor / Head Office  
PRETORIA  
0001

2003-09-26

Advocate AR Ackermann, SC  
Special Director  
Head: Priority Crimes Litigation Unit  
National Prosecuting Authority  
Church Square  
PRETORIA  
0001

Dear Advocate Ackermann

**INVESTIGATION OF TRC CASES**

Your letter dated 20 August 2003, as well as the preceding discussion between ourselves, have reference.

As agreed at our meeting, I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations(DSO).

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: "In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard."

You are aware of the fact that the capacity created for the D'Oliveira Committee is presently with the DSO.

29/09/2003 11:03 27123392193

DIV COMM DET SERVICE

PAGE 02/02

2

In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seem to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

If the President indicates that the South African Police Service should be involved in the investigations, the instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues.

You are therefor requested to approach the President on the matter, where after we can take the matter further, if necessary.

Kind regards.



DIVISIONAL COMMISSIONER: DETECTIVE SERVICE  
JF DE BEER



er/memo

Office of the Head  
Priority Crimes Litigation Unit  
HEADQUARTERS

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## INTERNAL MEMORANDUM

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TO: ADV GEOPH LEDWABA

CC: 1. NDPP  
2. DR S RAMAITE SC  
3. ADV LF MCCARTHY SC

FROM: ADV A R ACKERMANN SC

SUBJECT: INVESTIGATION OF TRC CASES BY THE DSO

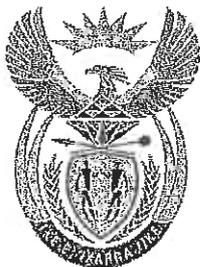
DATE: 11 NOVEMBER 2003

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PRETORIA  
0127

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Weavind Park  
0184

Tel: (012) 845 6431  
Fax: (012) 845 7224



Dear Geoph

1. In the light of current developments, I am constrained to document the history of the above saga.
  - i) In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In addition Advocate Sonn gave the President a full briefing on the matter.
  - ii) In 2002 the SNPU was established in order to investigate the cases.
  - iii) In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP
  - iv) In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC cases identified for prosecution.



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

- v) Shortly thereafter and in the same month you were presented with applications in terms of Section 28 relating to the cases.
  - vi) In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you. (Copy attached)
  - vii) In response thereto I requested Commissioner De Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of De Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate experience to the DSO in order to capacitate it to conduct these investigations.
  - viii) After receipt of De Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.
  - ix) On 3 November 2003 you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigations.
  - x) On 6 November 2003 Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.
  - xi) On 10 November 2003, Adv Macadam presented you with Section 28(i)(b) declarations. You informed him:
    - a) That you are not prepared to sign any declarations
    - b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigation and familiar with all the witnesses and the facts of the cases.
    - c) That during the course of 10 November 2003 another investigator will be appointed.
    - d) The President should not be approached to involve SAPS
2. As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted. There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the *bona fides* of the National Prosecuting Authority into serious dispute and do irreparable damage

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

Kind regards



**ADV AR ACKERMANN SC  
SPECIAL DIRECTOR  
HEAD: PCLU**

Office of the Head  
Priority Crimes Litigation Unit  
HEADQUARTERS

## INTERNAL MEMORANDUM

**TO:** HEAD OF OPERATIONS: DSO  
**FROM:** NDPP  
**DATE:** 8 DECEMBER 2003  
**RE:** INVESTIGATION OF TRC CASES BY THE DSO

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I have decided in terms of section 28(1)(b) of Act 32 of 1998 that the following three cases arising from the TRC be investigated by the DSO.

- (i) Kidnapping, assault and murder of the PEBCO 3;
- (ii) Murder of Brian Ngulunga;
- (iii) Murder of Motherwell 4; and
- (iv) Attempted murder of Reverend Frank Chikane.

Kind regards



*B T Ngcuka*  
.....  
**B T NGCUKA**  
**NATIONAL DIRECTOR OF**  
**PUBLIC PROSECUTIONS**

*24/02/04*

2

*J*

AD14

Office of the  
National Director of Public  
Prosecutions



The National Prosecuting Authority of South Africa  
Isony Jikelele Labetsuhishi boAzantsi Afrika  
Die Nasionale Vervolgingsgesog van Suid-Afrika

25 February 2004

Victoria & Griffiths  
Mxenge Building,  
123 Westlake Avenue,  
Weavind Park, Silverton

P/Bag X752

Pretoria

0001

Tel: (012) 845-6000

www.npa.gov.za

A/INV/5/03/TRC

Imtiaz Cajee  
P O Box 1888  
GARSFONTEIN EAST  
0060

Dear Sir

**INVESTIGATION INTO TIMOL CASE**

I acknowledge receipt of your fax of 18 February 2004 and have to inform you that the case is registered under the above reference number. Last year investigations were conducted into the allegations that former security branch officer Rodrigues had confessed to his daughter who in turn informed IVOR POWELL.

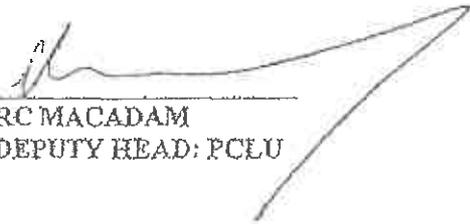
The investigations produced negative results. I confirm that you furnish me with the following documents:

- i) Extract Bizos' book
- ii) Article Powell
- iii) TRC transcripts
- iv) INPUT Detainee
- v) Photographs

The testimony of a detainee who was held out of the window was not included.

I would be grateful if you would furnish me with a copy of it as well as any other relevant material, which you may have. The case will again be considered the light thereof.

Kind regards

  
RC MACADAM  
DEPUTY HEAD: PCLU





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

Office of the Head  
 Priority Crimes Litigation Unit  
 VGM Building  
 PRETORIA

er/trc (ns)

# Office of the National Director of Public Prosecutions

*PD*

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P/Bag X752

Pretoria

0001

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www.npa.gov.za

TO : ADV M G LEDWABA  
 HEAD OF OPERATIONS

FROM : NDPP

DATE : 26 FEBRUARY 2004

REF: A/INV/25/02 TRC  
 A/INV/18/02 TRC

RE : REFERRAL OF TRC CASES TO THE DSO IN TERMS OF  
 SECTION 28(1)(b) OF ACT 32 OF 1998

I have decided to refer the following matter to the DSO for investigation in terms of section 28(1)(b) of Act 32 of 1998. Crimes of murder, attempted murder and conspiracy or incitement to commit murder committed in an organized fashion by Letlapa Mphahlela with reference to the APLA attacks on the St James Church and Heidelberg Tavern situated in Cape Town.

*[Signature]*  
 B T NGCUKA  
 NATIONAL DIRECTOR OF  
 PUBLIC PROSECUTIONS



*[Handwritten mark]*

AD16

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<b>TRC COMMITTEE MEMBERS</b>				
NAME	DEPT.	CONTACT No.	EMAIL	
Anton Ackermann	NPA (PCLU)	012-845 6474	arackermann@npa.gov.za	
Mthunzi Mhaga	NPA (PCLU)	012-845 6398	mcmhaga@npa.gov.za	
Dr S Ramaite	NPA (NSSD)	012-845 6765	msramaite@npa.gov.za	Convenor
Marlyn Raswiswi	Justice	012-315 1730 0826600463		
Yvonne Mabule	NIA	012-427 4498 0827872853	yvonnen@nia.gov.za	
Philip Jacobs	SAPS	012-395 0063	jacobspc@saps.gov.za	
Josias Lekalakala	SAPS	0825745870	mjlekalakal@telkomsa.net	
Brian Koopedi	NIA	012-4262602 0824168357	bkoopedi@nia.gov.za	
AT Mngwengwe	NPA(DSO)	012-845 6470	atmngwenwe@npa.gov.za	
NVE Ngidi	NPA(DSO)	012-845 6401	nvengidi@npa.gov.za	
		<b><u>PRINCIPALS</u></b>		
Adv Vusi Pikoli	NPA(NDPP P)	012-845 6758		
Kalyani Pillay	NPA	012-845 6749		
Loyiso Jafta	Presidency	012-300 5458		
M Simelane	DG justice	012-315 1730		
ME Manzini	NIA			




MINUTES OF TRC COMMITTEE MEETING 12 October 2006Members Present:

- |                          |                  |
|--------------------------|------------------|
| 1. Adv Vusi Pikoli       | (NPA)            |
| 2. Adv Kalyani Pillay    | (NPA)            |
| 3. Mr ME Manzini         | (NIA)            |
| 4. Mr Loyiso Jafta       | (PRESIDENCY)     |
| 5. Mr Simelane           | (DG JUSTICE)     |
| 6. Dr Ramaite            | (NPA & Convenor) |
| 7. Adv Anton Ackermann   | (NPA)            |
| 8. Comm. Philip Jacobs   | (SAPS)           |
| 9. Mr Brian Koopedi      | (NIA)            |
| 10. Mr NVE Ngidi         | (DSO)            |
| 11. Mr AT Ngwengwe       | (DSO)            |
| 12. Ms Yvonne Mabule     | (NIA)            |
| 13. Ms Marilyn Raswiswi  | (JUSTICE)        |
| 14. Mr Josias Lekalakala | (SAPS)           |
| 15. Mthunzi Mhaga        | (NPA)            |

Apologies : none— National Commissioner

1. Opening Remarks by the NDPP who gave a detailed background of the cases emanating from the conflict of the past with particular reference to TRC matters. He indicated that the establishment of the committee is derived from the policy guidelines which were approved by parliament in December 2005 on prosecution of all TRC matters. The NDPP had attended a meeting with DGs from SAPS, NIA, justice and a representative from the office of the Presidency where it was decided that a committee should be established. Cases in possession of PCLU and SAPS have to be identified and an update on their status is also required. SAPS has to provide investigating officers for all cases identified for prosecution. The NDPP emphasised the fact that he will decide on each prosecution and not the committee. The role of the committee will be to make recommendations to the NDPP on each case.
2. Mr Manzini indicated that these cases need to be prioritised and the process needs to be fast tracked.
3. Dr Ramaite indicated that there is a need for a task team of investigators to work on these cases.
4. The NDPP further indicated that Dr Ramaite is the convenor for the committee and the PCLU will report to Dr Ramaite directly.




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

Committee Meeting

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

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

*Prof. FN*

**Helena H. Zwart**

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

Dear Dr Ramaite

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

Regards

Helena

6/5/2008



/Z56 forms

Office of the Head  
 Priority Crimes Litigation Unit  
 VGM Building  
 PRETORIA

P. O. Box 752,  
 PRETORIA  
 0001

VGM Building  
 Hartley St.  
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## INTERNAL MEMORANDUM

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

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

**SUBJECT:** TRC TASK TEAM

**DATE:** 5 JUNE 2008

Dear Dr Ramaite

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

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

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

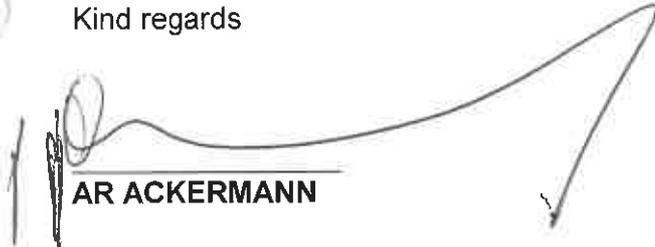
An additional matter which I wish to bring to your attention is the Pebco 3 matter, where the accused are due to appear on a final remand in the Port Elizabeth High Court on 5 August 2008. The accused had, since 2004, appeared in the High Court on indictment, but on each occasion, the matter has been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

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

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

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

Kind regards



AR ACKERMANN



AD19

**Helena Zwart (H)**

---

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

Dear Anton

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

1. Pebco 3:

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

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

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

## 2. Anton Lubowski

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

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

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

## 3. St James/Heidelberg Tavern

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

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

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

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

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

## 4. Simelane matter

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

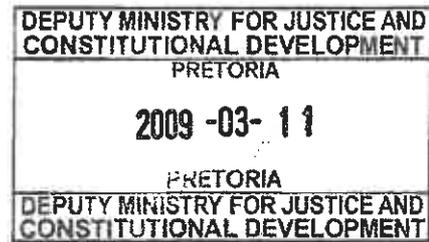
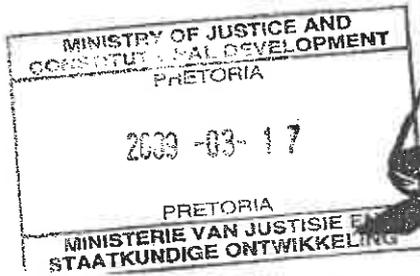
- 4.2 The TRC evidence must be analysed in order to establish whether it materially contradicts the statements in the docket.
- 4.3 A detailed analysis must be made of Howard Varney's report and the merits of his points in favour of a prosecution carefully analysed.

Kind regards

Chris



3/16/2



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

## MEMORANDUM

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

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

**SUBJECT:** TRC TASK TEAM

**DATE:** 17 FEBRUARY 2009

### 1. PURPOSE OF MEMORANDUM

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

### 2. BACKGROUND

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

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

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

### 3. BRIEFING

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

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

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

#### 3.4.2 *Anton Lubowski Assassination*

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

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

#### **3.4.3 The kidnapping and murder of the *Cradock 4***

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

#### **3.4.4 The kidnapping and disappearance of *Nokuthula Simelane***

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

#### **3.4.5 The *Heidelberg Tavern and St James Church Massacres***

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

#### **3.4.6 Warrant of arrest: *Philip Powell***

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

#### **3.4.7 The *Samora Machel* air crash**

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

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

3.4.8 The murder of Rick Turner

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

3.4.9 Allegations against Security Branch member, General Basie Smit

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

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

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

NOTED

ADV M SIMELANE  
DG: DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT  
DATE:

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

06/3/9

I cannot find fault with the approach proposed. In fact, in law, NDPP must proceed with prosecutions or not if requested. To ensure this does not take place in isolation, the Task Team was established, as part of remedial policy. As this is a sensitive matter, I agree without

12/3/9  
ADV J DE LANGE

DEPUTY MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT

DATE:

consultations with NECT Resident



NOTED

*Support Davis view*

MR ME SURTY, MP

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 2009-07-29

*investigations must proceed!*

*However, matters can be raised in IMC meeting.*

Helena Zwart (H)

---

**From:** Sibongile Mzinyathi  
**Sent:** 20 May 2009 07:50 AM  
**To:** Willie Hofmeyr (WA); Helena Zwart (H); Aubrey T. Mngwengwe  
**Cc:** Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman  
**Subject:** RE: Investigators for TRC cases

Thanda

This is for your information/attention.

Kind regards

S Mzinyathi

---

**From:** Willie Hofmeyr (WA)  
**Sent:** 19 May 2009 08:56 PM  
**To:** Helena Zwart (H)  
**Cc:** Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman; Sibongile Mzinyathi  
**Subject:** RE: Investigators for TRC cases

Hi

It sounds like a good idea, but let me do some consultation in the DSO on the issue.

Regards

Willie

---

**From:** Helena Zwart (H)  
**Sent:** Mon, 18 May 09 13:23  
**To:** Willie Hofmeyr (WA)  
**Cc:** Mokotedi Joseph Mpshe; Silas Ramaite; Anton R. Ackerman  
**Subject:** Investigators for TRC cases

Dear Willie

I met this morning with Commissioner Lalla concerning the appointment of SAPS investigators to investigate the TRC cases where victims have asked the NPA to look at prosecutions. We have been taking quite a beating due to the fact that nothing has been done on these matters for a number of years and in fact, in certain cases, the victims are threatening us with *mandamus* applications. In this regard, Commissioner Lalla asked me to provide him with the names of three/four investigators who had the necessary experience. We are only looking at a small number of cases, plus-minus nine. Obviously, no progress at all will be made if the investigators do not have previous knowledge of the relevant Apartheid security structures and role players therein.

The only persons I could think of off-hand, were CSI Marion and three/four of his KZN DSO investigators, who were previously involved with the Goldstone Commission and ITU. All these persons have indicated their willingness to transfer to SAPS. Commissioner Lalla indicated that the TRC investigations would constitute a special tasking and the investigators would be permitted to finalise these cases before taking on other commitments. He also indicated that he would pay the costs of the investigations from his budget. This would ensure that they could deal with these matters irrespective of whether they are located in DPCI or any other police structure. He asked me to communicate directly with you on this issue.

Kind regards

Chris Macadam



**From:** Bezuidenhout Colla - Superintendent [mailto:BezuidenhoutColla@saps.org.za]  
**Sent:** 07 July 2009 08:56 AM  
**To:** Helena Zwart (H)  
**Subject:** RE: TRC cases

AD22B

Hallo Helena,

Comm Lalla agreed to the meeting but requested that we involved Deputy National Commissioner Dramat. Welma will speak to his office and let you know. We are currently looking at the week of the 20<sup>th</sup> July.

Regards,

Colla

Superintendent Colla Bezuidenhout  
 Staff officer: Divisional Commissioner: Detective Service  
 Tel : +27 12 393 1024  
 Fax : +27 12 393 2193  
 Cell : +27 82 778 3694

**From:** Helena Zwart (H) [mailto:hzwart@npa.gov.za]  
**Sent:** 01 July 2009 11:34 AM  
**To:** Bezuidenhout Colla - Superintendent  
**Subject:** TRC cases

AD 22 A

Dear Colla

Can you set up a short meeting with the Commissioner when he is available to discuss the TRC matters? We are under intense pressure and have been called upon to report on progress to the Minister and the Justice Portfolio Committee. The one matter which requires investigation prescribes on 12 September 2009 and this case must be fully investigated and the family afforded an opportunity to exercise their right to a private prosecution before the crime prescribes.

Our previous discussions on this topic did not materialise due to the fact that Willie Hofmeyr was not appointed as the head of DPCI.

Kind regards

Chris Macadam

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[www.npa.gov.za/ReadContent458.aspx](http://www.npa.gov.za/ReadContent458.aspx)

AD2 C

**Helena Zwart (H)**

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**From:** Helena Zwart (H)  
**Sent:** 07 July 2009 10:52 AM  
**To:** Silas Ramaite  
**Cc:** Anton R. Ackerman  
**Subject:** TRC cases

Dear Silas

Commissioner Lalla will set up a meeting with me and Commissioner Dramat to discuss the TRC investigations in the week of 20 July 2009. I have asked him in the interim to at least appoint an investigating officer for the Lubowski matter, because of the fact that the case will shortly prescribe.

Kind regards

Chris Macadam

**Helena Zwart (H)**

---

**From:** Lalla Rayman - Divisional Commissioner [LallaR@saps.org.za]  
**Sent:** 14 July 2009 08:32 AM  
**To:** Helena Zwart (H)  
**Subject:** RE: TRC cases requiring investigation

Dagsê Helena

Kommissaris Dramat se kantoor het nou net geskakel hy wil die vergadering uitstel na Augustus. Hy is nie beskikbaar volgende week nie.

Ek sal die nuwe datum met jou kommunikeer.

Groete

Welma

-----Original Message-----

**From:** Helena Zwart (H) [mailto:hzwart@npa.gov.za]  
**Sent:** 13 July 2009 04:08 PM  
**To:** Lalla Rayman - Divisional Commissioner  
**Subject:** TRC cases requiring investigation  
**Importance:** High

Beste Welma

Aangeheg vind asb. 'n lys van die TRC-sake wat by die vergadering bespreek gaan word. Sal jy asb. so vriendelik wees om dit aan te stuur na die twee Kommissarisse, aangesien ons nog nie Kommissaris Dramat se kontakbesonderhede het nie?

Het Colla die dringendheid van die Lubowski-saak met jou bespreek?

Baie dankie en groete!

Helena Zwart  
NPA

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**Helena Zwart (H)**

---

**From:** Helena Zwart (H)  
**Sent:** 16 July 2009 08:41 AM  
**To:** Chris Macadam  
**Subject:** FW: TRC prosecutions

Dear Chris

Thanks for the info.

Silas

---

**From:** Helena Zwart (H)  
**Sent:** 15 July 2009 03:45 PM  
**To:** Silas Ramaite  
**Subject:** TRC prosecutions

Dear Silas

I was due to meet Commissioners Dramat and Lalla next week to discuss TRC investigations, but Commissioner Dramat requested that the meeting be postponed to August 2009. I have indicated that I have no objection to the postponement, but indicated that as an interim measure, an investigating officer should be appointed immediately to investigate the *Lubowski* matter, which prescribes on 12 September 2009. The family have already briefed counsel and indicated that if we do not prosecute, they intend considering a private prosecution.

I have informed the Commissioners that by no later than 12 August 2009, the ANDPP would have to make a decision based on a fully investigated docket. I am still waiting for a response, but we would have to have a cut off date by no later than the end of next week, because none of the allegations have been adequately investigated and not even the best investigator would remotely be able to do justice to the case in a short period.

If we don't get any response from SAPS, I suggest that the ANDPP inform the Minister.

If no investigations are done, we would have no option but to hand over the files to the family so at least not to deprive them of their right to a private prosecution. They will obviously go to the media and there will be an uproar because there are allegations of a high level conspiracy formulated in South Africa to kill the deceased, using an international assassin.

Kind regards

Chris Macadam

**Helena Zwart (H)**

---

**From:** Willie Hofmeyr (WA)  
**Sent:** 20 July 2009 03:26 PM  
**To:** Helena Zwart (H)  
**Cc:** Silas Ramaite  
**Subject:** RE: TRC investigations

Will do my best, hoping to see him today or tomorrow.

Regards

---

**From:** Helena Zwart (H)  
**Sent:** Mon, 20 Jul 09 10:51  
**To:** Willie Hofmeyr (WA)  
**Cc:** Silas Ramaite  
**Subject:** TRC investigations

Dear Willie

Since the beginning of the year, I have been liaising with Commissioner Lalla as regards the appointment of investigators for these matters. I was to have a meeting with Commissioners Dramat and Lalla to discuss these matters this week, but Commissioner Dramat postponed the meeting to August 2009.

I requested Commissioner Lalla, as an interim measure, to at least appoint an investigating officer to investigate the Lubowski matter. This relates to a conspiracy to murder him, formulated in South Africa and such offence prescribes on 12 September 2009. The family have instructed counsel who has indicated that they require a decision to be made whether to prosecute or not before 12 August 2009, because if the decision is not to prosecute, then the family wish to obtain legal advice as to the institution of a private prosecution and must comply with all the requirements of Section 7 of Act 51 of 1977 before 12 September 2009.

I was contacted this morning by Commissioner Lalla, who informed me that his entire Organized Crime Structure has been transferred to Commissioner Dramat and consequently, he cannot appoint an investigating officer. He has informed me that you deal directly with Commissioner Dramat (I do not have any contact details for him.) and advised that I request you to secure Commissioner Dramat's intervention.

At present, all we have is an incomplete D'Oliveira Unit inquiry, but there are several indications that there was in fact a CCB conspiracy to murder Lubowski. These allegations must be investigated so that Adv Mpshe SC can make a properly informed decision and appraise the Minister. It may well be necessary to appraise the Namibian Government due to their long standing interest in the matter. Obviously, it will be extremely damaging for the NPA for this matter to prescribe before anything is done to investigate the allegations.

Herby Heap, who was in the DSO (VGM) was part of the D'Oliveira Unit and is currently earmarked for Crime Intelligence. In my view, he is suitably qualified to, at short notice, attend to what has to be done. If necessary, his S&T expenditure can be carried out of our budget.

Please let me know if you can help, as this matter is extremely urgent.

Kind regards

Chris Macadam

**Helena Zwart (H)**

---

**From:** DPCI:Head [dpci.head@saps.org.za]  
**Sent:** 28 August 2009 02:02 PM  
**To:** Helena Zwart (H)  
**Subject:** FW: TRC/Nuclear matters

Good day Mr Macadam,

We wish to acknowledge receipt of your e-mail. DNC Dramat is unable to meet with you presently but will revert back to you in due course.

Thank you

Secretary : Pumla N Mphothulo  
The Head : Directorate for Priority Crime Investigations  
6th Floor Koedoe Building  
Tel : 012 393 5463  
Fax : 012 393 5079  
Cell : 082 778 3664  
E-mail : (internal) DPCI : Head  
(external) dpci.head@saps.org.za

---

**From:** Bezuidenhout Colla - Superintendent  
**Sent:** 27 August 2009 07:18  
**To:** Helena Zwart (H)  
**Cc:** DPCI:Head  
**Subject:** RE: TRC/Nuclear matters

Good morning,

Commissioner Dramat's office is at room 627, 6<sup>th</sup> floor, Koedoe building (opposite Police Head office in Pretorius str). His office number is 012 393 5463 and email [dpci.head@saps.org.za](mailto:dpci.head@saps.org.za) His secretary is Pumla.

I will ask Comm Lalla about joining the meeting and will inform Helena.

Regards,

Colla

Superintendent Colla Bezuidenhout  
Staff officer: Divisional Commissioner: Detective Service  
Tel : +27 12 393 1024  
Fax : +27 12 393 2193  
Cell : +27 82 778 3694

---

**From:** Helena Zwart (H) [mailto:hzwart@npa.gov.za]  
**Sent:** 26 August 2009 12:19 PM  
**To:** Bezuidenhout Colla - SuperIntendent  
**Subject:** TRC/Nuclear matters

Dear Colla

2009/09/16



I recently had a telcom with your Commissioner in which he advised that the TRC and the nuclear matters which we have previously discussed would now have to be attended to by Commissioner Dramat. Is it possible to provide me with Commissioner Dramat's address and fax number so that I can set up a meeting with him? Would your Commissioner be amenable to facilitate the meeting, as it might help if the two of us can inform Commissioner Dramat of the history of these matters.

Kind regards

*Chris Macadam*

Deputy Director of Public Prosecutions  
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National Prosecuting Authority of South Africa  
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## Priority Crimes Litigation Unit



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18 January 2010

Assistant Commissioner Lebeya  
Directorate for Priority Crime Investigations  
South African Police Service  
Private Bag X302  
PRETORIA  
0001

Dear Commissioner Lebeya

### INVESTIGATION BY SAPS OF CRIMINAL OFFENCES ARISING FROM THE TRC

My letter dated 13 July 2009, addressed to Deputy National Commissioner Dramat and Divisional Commissioner Lalla, and our meeting of 26 November 2009 have reference.

The issue related to the appointment of investigators to investigate the 11 matters identified by the NPA, which were itemised in my letter of 13 July 2009. Subsequently, the Acting National Director of Public Prosecutions declined to prosecute in the Lubowski matter and consequently, only the remaining 10 cases on the list required attention.

Senior Superintendent Bester of your office attended our meeting and informed you that he was in possession of a number of further dockets which he felt also required investigation. On 6 December 2009, I had a meeting with Senior Superintendent Bester and established that these dockets related to cases against the Liberation Movements in respect of which a decision was taken in 2004 by the then National Director not to prosecute. It should be noted that in the main, all the suspects implicated in the dockets had applied for and received amnesty. I therefore informed Senior



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## INTERNAL MEMORANDUM

TO : DR JP PRETORIUS SC  
ACTING SPECIAL DIRECTOR OF PUBLIC  
PROSECUTIONS: PCLU

FROM : ADV RC MACADAM  
SDDPP: PCLU

DATE : 4 FEBRUARY 2016 (Opinion requested on even  
date)

SUBJECT : OPINION: REOPENING TIMOL/AGGETT  
INQUESTS

REF : 10/3/1/PCLU

Dear Torie

1. This opinion is provided arising from a meeting between members of the NPA and Messrs Varney, Dutton and others. An oral presentation was given, motivating the reopening of both inquests.
2. In order to address the request, it is necessary to briefly refer to the relevant provisions of the Inquest Act:
  - 2.1 Section 5 requires that an inquest be held in respect of each natural death where the deceased is suspected of having died of unnatural causes.
  - 2.2 Section 16 requires the inquest Magistrate to make findings as to:
    - 2.2.1 the identity of the deceased
    - 2.2.2 the date and cause of death
    - 2.2.3 whether the death was caused by a criminal act on the part of any person
  - 2.3 Section 17 requires the Magistrate to refer the inquest to the DPP in the event of either not being able to determine the death or in the event of a finding of criminal liability. He is also required to refer the matter to the DPP irrespective of his findings if so requested.

- 2.4 Section 17(2) empowers the DPP at any time [my emphasis] after receipt of the inquest request the Judicial Officer to reopen the inquest and take further evidence.
- 2.5 Section 17A(1) also empowers the DPP to request the Minister to request the Judge President to appoint a Judge to reopen the inquest.
3. Sections 17(2) and 17A(1) both empower the DPP to cause inquests to be reopened on the basis of further evidence. The sole difference is whether the Minister and the Judge President must be involved and whether the inquest would be reopened by the original Inquest Court or by a Judge appointed by the Judge President. The invocation of section 17A(1) would be a more time-consuming process and would also place a burden on the High Courts which are under pressure with their existing civil and criminal rolls.
4. In my view, it would be appropriate to invoke section 17(2) where the new evidence would lead to certain of the original findings being amended, but would have no other public interest consequences, e.g. a prosecution or in a transparent manner to test the new evidence orally. Section 17A(1) would in my view be appropriate if there was high public interest in the new evidence, but the DPP was of the view that it should first be tested before instituting a prosecution.
5. It has to be stated that if the DPP is of the view that new evidence justifies the institution of a prosecution, then there is no need to first reopen the inquest before instituting the said prosecution.
6. The background to the two cases is as follows:

### **6.1 Achmed Timol**

- 6.1.1 He died in detention in Johannesburg in October 1971 while under interrogation by the Security Branch having been arrested on charges linked to his involvement with the SACP.
- 6.1.2 The then Attorney General declined to prosecute and a formal inquest was held in the Johannesburg Regional Court, which handed down a verdict that he had committed suicide and that the police were not responsible for his death.
- 6.1.3 Shortly after the establishment of the PCLU in 2003, Mr Timol's nephew (a member of the NIA) approached the unit and indicated that he had established that the inquest record and docket were not available. (Governmental archive directives require the destruction of documentation after a certain period.)
- 6.1.4 He however alleged that the daughter of Sergeant Rodrigues (who had been alone with the deceased immediately before he fell to his death) had approached Ivor Powell (then a journalist) and informed him that her father had confessed to her that the deceased had been murdered. The NDPP had directed that the DSO must assist the PCLU with the investigation of TRC matters. The DSO reported that the journalist had been interviewed, denied the allegation and produced the newspaper article which he had written, which contained no confession or new evidence. In the circumstances the DSO deemed it inappropriate to approach Rodrigues or his daughter. The nephew was satisfied with this explanation and the matter was not taken further.

- 6.1.5 In late 2015, I however asked the DPCI to register an enquiry due to extensive publicity given to the matter by the media and as a result of statements made by Adv Bizos SC and the family.

## 6.2 Neil Aggett

- 6.2.1 Dr Aggett died in police custody in Johannesburg in 1982 after a lengthy period of detention and interrogation by the Security Branch.
- 6.2.2 The then Attorney General declined to institute a prosecution and a formal inquest was held before a Regional Court Magistrate in Johannesburg. He handed down a verdict to the effect that the deceased had committed suicide and that the police were not responsible.
- 6.2.3 In 2013, a group of Dr Aggett's friends submitted a petition to the President and Minister of Justice, calling for the prosecution of the police officials responsible for his death.
- 6.2.4 As a result of this petition, the PCLU requested the DPCI to open an enquiry.

## 7. The status of the PCLU/DPCI investigations:

### 7.1 Achmed Timol (I/O Captain Ben Nel)

- 7.1.1 It has been established that the original inquest and docket are not available.
- 7.1.2 A copy of the inquest donated by the family attorney to Wits has been downloaded. It is missing 652 pages, which include the evidence and cross-examination of all the police officers involved. However, on the remaining evidence it was possible to establish who the witnesses were and what the issues in dispute were.
- 7.1.3 Captain Nel has been requested to canvas the availability of all the witnesses, i.e. the police officers, medical doctors and members of the deceased's family.
- 7.1.4 It has been established that other detainees who were never called as witnesses could possibly shed light on the matter. The first is a Mr Mohammed Essop, who was arrested at the same time as Timol. The second is Quentin Jardine, whose identity, it is alleged, led to the deceased deciding to commit suicide. The third is a Mr Pahad, whom it is alleged was arrested arising from Timol's interrogation. Ms Fullard has been tasked to uplift the detention files from DoJ&CD so that Captain Nel can conduct the necessary investigations in this regard.
- 7.1.5 It has been established that the TRC appointed a journalist, Piers Pigou, as an investigator and he dealt with the Timol matter. He has indicated that he is available for an interview when he returns to the country. As a matter of interest, it was in fact he who approached Sergeant Rodrigues and not Ivor Powell. His notes reflect that Rodrigues stood by his original statement. It may therefore be that Timol's nephew confused the two journalists and what Rodrigues said.

- 7.1.6 It has been established that Gordon Winter published a book in which he claimed to have first-hand knowledge of the Timol incident. Ms Fullard has undertaken to establish whether he is alive and where he is residing.
- 7.1.7 A Methodist priest in the UK made public statements to the effect that when Timol's body was viewed in the mortuary, it showed signs of gross mutilations. This claim would have to be followed up although it is in conflict with the evidence of the three doctors who testified at the inquest, including a pathologist, appointed by the family.
- 7.1.8 What also has to be followed up is whether the police, who were involved in the incident, were involved in other cases, which could have a bearing on their version in this matter. It would also have to be established whether there were other incidents involving detainees which would be relevant.

## 7.2 Neil Aggett (I/O Col Sam Mahlangu)

- 7.2.1 Col Mahlangu indicated that he was unable to locate the original inquest and docket.
- 7.2.2 He however established that a copy of the inquest was available on the Wits website and requested the PCLU to peruse it and to thereafter indicate whether further investigations were required.
- 7.2.3 The record is in the regional of some 8 500 pages and has been uploaded in blocks, which makes online reading time-consuming. Obviously downloading 8 500 pages would place an extreme burden on the office's printing facilities.
- 7.2.4 It has however been established that Adv Bizos SC, who acted for the family, conceded that there was no evidence to justify the conclusion that the deceased had been murdered. (Adv Bizos SC was assisted by a private pathologist and other medical experts.) He however submitted that Whitehead and Cornwright (the two officers responsible for Aggett's interrogation) should be prosecuted for culpable homicide. If the learned advocate is in fact correct, then the crimes prescribed in 2002 and no prosecution is feasible as requested by the deceased's friends.
- 7.2.5 The matter is however complicated by the fact that the former Deputy Judge President of the KZN High Court (Nicholson DJP) has published a book, alleging that the facts of the Aggett matter demonstrate unequivocally the crime of murder by induced suicide. If the learned Judge is correct, then the NPA would still have jurisdiction to prosecute on a charge of murder.
- 7.2.6 It has been established that Goosen, Pollock and Erasmus applied for amnesty on charges relating to breaking into the house of Aggett's parents, looking for evidence to support the claim that he had committed suicide. The TRC material has been uplifted and has been perused.
- 7.2.7 Aggett's detention file was also uplifted, but it contains no relevant information.
- 7.2.8 Deborah Quin was given the list of witnesses, who testified at the inquest and was requested to establish their availability, present whereabouts and

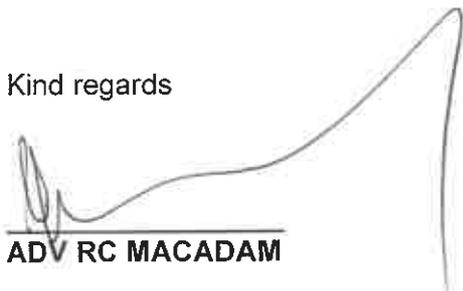
also whether any of them were connected to other incidents which would be relevant. She is also looking into the issue of whether there were other deaths in detention at the same time, which could be relevant. She has already indicated that Cornwright is deceased and that Auret van Heerden, who was in detention in close proximity to Aggett, is currently in an old age home in the USA.

8. Currently the two matters are not receiving the attention of the PCLU due to firstly, operational constraints which arose since October 2015. (Adv Bukau was given an urgent espionage-related case and uncertainty surrounded Adv Macadam's position due to the NDPP on 8 October 2015, indicating that he had not cancelled his appointment as the OECD Foreign Bribery Prosecutor.) In a meeting with Adv Macadam in September 2015, the NDPP raised the issue as to whether the TRC matters should be taken away from the PCLU. As a result of all these uncertainties, a memorandum was prepared in January 2016, requesting the NDPP to confirm whether the PCLU should continue to deal with TRC cases or whether they should be referred to the DPPs. A response to this memorandum is still outstanding.
9. In my view, a decision on the request made by Messrs Dutton *et al* cannot be taken solely by the NPA.
  - 9.1 Both are the subject of enquiries being conducted by the DPCI and clearly the views of the relevant senior managers within the DPCI should be canvassed.
  - 9.2 In the Aggett matter a group of his former colleagues has formed an association, "*Friends of Neil Aggett*", which has called for the prosecution of the police officials involved. The request to reopen the inquest runs contrary to the group's position. The group has a direct interest in the matter and its view should be consulted.
  - 9.3 Also in regard to the Aggett matter, although Cornwright is dead, Whitehead is still available and would clearly be affected by the reopening of the inquest. He would be entitled to legal representation, access to relevant material and the right to challenge any new evidence.
  - 9.4 In the Timol matter, it still has to be established whether any of the police involved in his interrogation are still alive and whether any new evidence could result in a prosecution of them on a charge of murder.
10. In my view, it would be inappropriate at this stage to reopen the two inquests. On what has been placed before me it would not appear that Mr Dutton has conducted a comprehensive investigation which would justify all the relevant factors which would have to be taken into consideration by both the NPA and the presiding officers of the inquests.
  - 10.1 The original inquests are not available and consequently the NPA would have to request Wits to make available its originals and to pay for all the relevant copies to be made.
  - 10.2 A decision would have to be taken as to whether to invoke section 17(2), 17A(1), which would require a determination as to whether the witnesses and suspects are available, whether a charge of murder is feasible, whether a *viva voce* hearing, which would involve having to provide the suspects with legal representation, is necessary.
  - 10.3 In my view, a Presiding Officer and the Judge President (if section 17A(1) is invoked) would be reluctant to reopen the inquests, to receive only Dutton's evidence and before the police have concluded their investigations and the NPA decided that there are no prospects of a successful prosecution. This would be particularly apposite in

the Aggett matter where there are 8 500 pages of evidence to be perused, numerous witnesses who would be required to be recalled and where Whitehead could still be prosecuted.

11. In my view therefore, it would be inappropriate to accede to the request prior to the conclusion of the DPCI investigations and the NPA deciding not to prosecute. I am of the view that even if a decision not to prosecute is taken, then there would be new evidence which would justify the reopening of the inquests. At this stage it is not possible to predict what the consequences of this new evidence would be and therefore it cannot be predicted:
  - 11.1 whether the additional statements should simply be placed before the Regional Court, which could in chambers consider them and elect to amend the original Magistrate's findings
  - 11.2 whether a Judge should be appointed to hear the additional evidence *viva voce*
12. Having said that, it has to be, in the strongest possible terms, stated that it is imperative that the NDPP make a decision as to whether the TRC cases must remain with the PCLU or not. It will serve no purpose to decline the request, but to be placed in the position that two or more years down the line the cases have not been finalised because either the DPCI or NPA or both are unable to commit the necessary resources to finalise the matters timeously. It has to be emphasised that the Aggett matter requires a considerable amount of work due to the volume of evidence to be assessed, which may include an MLA request to the USA to interview Van Heerden. In the Timol matter there are also indications that evidence may be located in the UK, which would also have to be accessed through an MLA process.
13. Currently a member of the PCLU could give almost fulltime attention to the two matters. However, it is only to be anticipated that this will not be the case when shortly the unit's current workload will increase.
14. It is recommended that you:
  - 14.1 advise the NDPP not to accede to the request to reopen the inquests until the investigations have been concluded and a decision taken not to prosecute
  - 14.2 request the NDPP to, as a matter of urgency, make a decision as to whether the TRC matters must remain with the PCLU.

Kind regards



ADV RC MACADAM



Helena

AD 25 1512

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**From:** Gabriele Mohale [<mailto:Gabriele.Mohale@wits.ac.za>]

**Sent:** 31 March 2016 03:05 PM

**To:** Helena Zwart (H)

**Cc:** Michele Pickover; Paiki Muswazi

**Subject:** Neil Aggett inquest records

Dear Advocate Macadam ,

Your attached letter to our Principal Curator refers. Unfortunately Michele Pickover is on leave and asked me to respond.

We very much welcome your Office looking into the case of Neil Aggett. We digitised these records in 2013 when the matter first came up, knowing that our set of records of the inquest was the only surviving one.

Before we proceed with possibly handing over the collection records, some of which are fragile, could we maybe suggest submitting the bulk of digital files to you? We could either send you the multipage PDF, or even the single page TIFF files. You would have seen that the print quality is very good, as the records have been scanned at 300dpi in colour.

Please advise if this would agree with you,

Warm Regards,

Gabriele Mohale

**Gabriele Mohale (Mrs.)**

**Archivist**

Historical Papers Research Archive

William Cullen Library

University of the Witwatersrand

Johannesburg, South Africa



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e-mail: [Gabriele.Mohale@wits.ac.za](mailto:Gabriele.Mohale@wits.ac.za)

<http://www.historicalpapers.wits.ac.za/>

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UNIVERSITY OF THE WITWATERSRAND  
JOHANNESBURG



From: Helena Zwart (H) [hzwart@npa.gov.za]

Sent: 31 March 2016 02:03 PM

To: Michele Pickover

Cc: Chris Macadam

Subject: Neil Aggett formal inquest record

Dear Ms Pickover

Please find the attached letter for your attention.

Kind regards

Helena Zwart

National Prosecuting Authority: S.A.

A handwritten signature in black ink, appearing to be 'H' or 'HZ'.

 Outlook

---

**FW: FW: Neil Aggett inquest records**

---

**From** Chris Macadam <cmacadam@npa.gov.za>  
**Date** Thu 11/27/2025 2:48 PM  
**To** Muzikayifani A. Madlala <MMadlala@npa.gov.za>

 1 attachment (13 KB)  
image003.png;

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**From:** "Helena Zwart (H)" <hzwart@npa.gov.za>  
**Date:** 01/04/2016 at 13:07:34  
**To:** "Chris Macadam" <cmacadam@npa.gov.za>  
**Subject:** FW: Neil Aggett inquest records

---

**From:** Gabriele Mohale [mailto:Gabriele.Mohale@wits.ac.za]  
**Sent:** 01 April 2016 12:52 PM  
**To:** Helena Zwart (H)  
**Subject:** RE: Neil Aggett inquest records

Dear Helena,

My reply, with attachments, to your email bounced back, saying it has been rejected. The file size of the attachments is around 14MB – could that be the reason?

Please advise.

Kindly,

Gabriele

**Gabriele Mohale (Mrs.)**



**Archivist**

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---

**From:** Helena Zwart (H) [<mailto:hzwart@npa.gov.za>]

**Sent:** 01 April 2016 11:40 AM

**To:** Gabriele Mohale

**Subject:** RE: Neil Aggett inquest records

Dear Gabriele

Is it possible to send us one document in PDF format just to see how it is going to print, please?

Kind regards



**Nonceba MN. Monageng**

---

**From:** Sibongile Mzinyathi  
**Sent:** Tuesday, 07 May 2019 08:01  
**To:** Chris Macadam; Maria Mutshivhana  
**Cc:** Pfanani Malova (PG); Nonceba MN. Monageng  
**Subject:** RE: Request for interview with Adv Batohi

Dear NDPP and Adv Macadam

I will await the confirmation of the meeting from Nonceba/Maria.

Kind regards

S Mzinyathi

**From:** Chris Macadam <cmacadam@npa.gov.za>  
**Sent:** Monday, May 6, 2019 2:10 PM  
**To:** Maria Mutshivhana <MMutshivhana@npa.gov.za>  
**Cc:** Sibongile Mzinyathi <smzinyathi@npa.gov.za>; Pfanani Malova (PG) <pgmalova@npa.gov.za>  
**Subject:** FW: Request for interview with Adv Batohi

Please advise I have a meeting at 9am tomorrow with the SANDF but otherwise free. I would also like to add terrorism which raises the same issues and wont add too much extra time to the meeting

**From:** Shamila Batohi <SBatohi@npa.gov.za>  
**Sent:** 06 May 2019 08:38 AM  
**To:** Chris Macadam <cmacadam@npa.gov.za>; Maria Mutshivhana <MMutshivhana@npa.gov.za>  
**Cc:** Sibongile Mzinyathi <smzinyathi@npa.gov.za>; Bulelwa Makeke <bmakeke@npa.gov.za>; Jan Daniel JD. Schmidt <jdschmidt@npa.gov.za>  
**Subject:** Re: Request for interview with Adv Batohi

Maria

Please schedule a meeting.

Sent from my iPhone

On 03 May 2019, at 15:11, Chris Macadam <cmacadam@npa.gov.za> wrote:

Dear NDPP I think we need a frank and detailed discussion on this . I am busy with an audit of the cases and am concerned that the absence of a full time research capacity linked to poor quality police investigations we may well ,despite our good intentions and hard work, be back in the position that the victims will accuse us of letting them down. I am also concerned about creating false expectations. Regards chris

**From:** Shamila Batohi <SBatohi@npa.gov.za>  
**Sent:** 02 May 2019 06:22 PM  
**To:** Sibongile Mzinyathi <smzinyathi@npa.gov.za>; Bulelwa Makeke <bmakeke@npa.gov.za>; Chris Macadam <cmacadam@npa.gov.za>  
**Subject:** RE: Request for interview with Adv Batohi

If we are going to do it, then we need to provide a script that is approved before.



## Priority Crimes Litigation Unit

**TO:** ADV RJ DE KOCK  
ACTING DEPUTY NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS: NATIONAL PROSECUTION SERVICES

**FROM:** ADV RC MACADAM  
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS  
HEAD: PRIORITY CRIMES LITIGATION UNIT (PCLU)

**RE:** REPORT ON TRC CASES

### Head Office

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1. The following cases have all been referred to the DPPs and the police given instructions to take the dockets to the Nodal Points for allocation to individual prosecutors.
2. **DPP EASTERN CAPE (EC):**
  - 2.1. **Cradock Four:** Murder. Under investigation.
  - 2.2. **Highgate Hotel:** Under investigation.
  - 2.3. **Mdaka / Mthimkhulu:** Under investigation.
  - 2.4. **PEBCO 3:** Under investigation.
3. **DPP FREE STATE (FS):**
  - 3.1. **Ladybrand Four:** Disappearance. Murder suspected. Under investigation.
4. **DPP JOHANNESBURG (JHB):**
  - 4.1. **Dr Neil Aggett:** Death in detention. Inquest re-opened, but postponed *sine die* pending COVID-19.
  - 4.2. **Ernest Dipale:** Death in detention. To be joined to **Aggett** matter once investigation concluded.
  - 4.3. **Matthews Mabelane:** Death in detention. Investigation outstanding.
  - 4.4. **Eustice Bimbo Madikela; Ntshingo Mataboge & Fanyana Nhlapo:** Murder. Under investigation.
  - 4.5. **Suliman Babla Saloojee:** Death in detention. Under investigation.

- 4.6. **Sono & Shabalala:** Murder. Under investigation.
- 4.7. **Ahmed Timol: S v Rodrigues.** Accused charged with murder of detainee. Matter pending in JHB High Court for SCA ruling on an application for leave to appeal against a dismissal of an application for a stay of prosecution.
5. **DPP KZN:**
- 5.1. **Dr Hoosen Haffejee:** Death in detention. Inquest re-opened. Enrolment put on hold pending COVID-19.
- 5.2. **Ntombikayise Khubeka / Kubeka:** Murder. Under investigation.
- 5.3. **Dr Albert Luthuli:** Suspected murder. Under investigation.
- 5.4. **Oupa Mdondo:** Murder. Under investigation.
- 5.5. **Bayempin Mzizi:** Death in detention. To be joined to **Haffejee** matter once investigation concluded.
- 5.6. **Jameson Ngoloyi Mngomezulu:** Murder. Decision taken not to prosecute in 2000 by the DPP: PTA and accepted by the then NDPP. Lawyers however require a prosecution against the General in respect of whom the decision was made. The matter now falls under the DPP: KZN. It has to be established if there are grounds for the decision to be reviewed. A decision has furthermore to be made in respect of other persons who have been implicated but were not part of the original decision.
- 5.7. **Griffiths Mxenge:** Murder. Prosecution instituted and amnesty granted. New allegation as regards the possible involvement of Eugene de Kock must however be investigated.
- 5.8. **Musa Phewa:** Disappearance. Case linked to that of **Ntombikayise Khubeka / Kubeka**. Under investigation.
- 5.9. **Rick Turner:** Murder. New allegation as regards the possible involvement of Durban Security Branch must however be investigated.
6. **DPP LIMPOPO:**
- 6.1. **Peter Nchabeleng:** Death in detention. Under investigation.
- 6.2. **Jacobus van der Merwe:** Murder. Under investigation.
7. **DPP MPUMALANGA:**
- 7.1. **Adreano Louis Bambo (aka Strongman):** Murder. Decision taken not to prosecute in 2000 by the DPP: PTA and accepted by the then NDPP. Lawyers however require a prosecution against the General in respect of whom the decision was made. The matter now falls under the DPP: Mpumalanga. It has to be established if there are grounds for the

decision to be reviewed. A decision has furthermore to be made in respect of other persons who have been implicated but were not part of the original decision.

7.2. **Japie Maponya:** Murder. Decision taken not to prosecute in 2000 by the DPP: PTA and accepted by the then NDPP. Lawyers however require a prosecution against the General in respect of whom the decision was made. The matter now falls under the DPP: Mpumalanga. It has to be established if there are grounds for the decision to be reviewed. A decision has furthermore to be made in respect of other persons who have been implicated but were not part of the original decision.

7.3. **Johannes Sweet Sambo:** Murder. Decision taken not to prosecute in 2000 by the DPP: PTA and accepted by the then NDPP. Lawyers however require a prosecution against the General in respect of whom the decision was made. The matter now falls under the DPP: Mpumalanga. It has to be established if there are grounds for the decision to be reviewed. A decision has furthermore to be made in respect of other persons who have been implicated but were not part of the original decision.

#### 8. DPP MTHATHA:

At this moment in time no cases.

#### 9. DPP NORTHERN CAPE (NC):

At this moment in time no cases.

#### 10. DPP NORTH WEST (NW):

10.1. **Richard & Irene Motasi:** Murder. Under investigation.

#### 11. DPP PRETORIA (PTA):

11.1. **Steve Biko:** Death in detention. Under investigation.

11.2. **Nicodemus Kgoate; Solomon Modipane & Jacob Monnakgotla:** Deaths in detention. Under investigation.

11.3. **Mthokozisi Welcome Khanyile:** Murder. Under investigation. Matter involves some of the same suspects who were involved in the **Strongman Bambo** case above.

11.4. **Moses Morudi:** Murder. Under investigation.

11.5. **Caiphus Nyoka:** Murder. Under investigation.

11.6. **Nokuthula Simelane: S v Coetzee and Others.** Murder. Prosecution to commence in Pretoria High Court in October 2020.

11.7. **Peter Thabuleka:** Kidnapping. Under investigation.

12. **DPP WESTERN CAPE (WC):**

- 12.1. **Imam Abdullah Haroon / Haron:** Death in detention. Under investigation.
  - 12.2. **Heidelberg Tavern:** Murder. Under investigation.
  - 12.3. **Ashley Kriel:** Amnesty granted. However allegations regarding false testimony before TRC must be investigated.
  - 12.4. **St James Church massacre:** Murder. Under investigation.
  - 12.5. **Williams & Waterwitch:** Alleged murder. Appointment of investigating officer awaited. (Deceased part of **Ashley Kriel**-cell)
13. This demonstrates that there are currently **39** cases with the DPPs but, as is illustrated, the majority of the matters are waiting for the finalisation of investigations. As indicated to you in meetings, I have raised concerns about the quality of investigations as well as the decision to locate these investigations in a component of the DPCI in Pretoria, which has, in addition, a heavy case load of other serious matters. These matters were discussed with the Head: DPCI at the end of January 2020 and certain interventions were promised. In certain of the matters the families have approached the Foundation for Human Rights (FHR), who has in turn engaged lawyers firms. This results in threats of litigation if decisions are not taken.
14. I would recommend that a meeting with the Head: DPCI again be scheduled, particularly when regard is had to the below.
15. As part of the NDPP's public statements regarding the prioritisation of the TRC matters, the lockdown was used to undertake an audit of all the deaths in detention matters from 1963 to 1990 as well as other matters which warrant investigations. This has identified 85 further cases which would require investigation and referral to the DPPs. This would result in the DPPs who currently do not have cases, now being seized with matters and that a large number of cases would have to go to the DPP: JHB. I was planning to call for a meeting with the Unit Commander regarding these matters, but if you agree that a meeting with the Head: DPCI should be arranged, then this should be tabled at that meeting.
16. The cases already referred include matters which may be connected but were committed in the jurisdictions of different DPPs. The nodal points have been requested to work collectively on these matters so as to detect similar fact evidence and possibly consolidate cases.
17. As indicated above, there was a decision taken in 2000 not to prosecute a General linked to six (6) murders committed across four (4) provinces. Lawyers have requested that four (4) of these matters be considered and in addition new suspects have been identified. If there are grounds to justify a review of the original decision, then the other two cases would have to be looked at.

Kind regards



**ADV R. C. MACADAM  
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS:  
HEAD PRIORITY CRIMES LITIGATION UNIT (PCLU)**

Date: 25 MAY 2020

**COMMENTS:**

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**ADV RJ DE KOCK  
ACTING DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS  
HEAD: NPS**

Date:



AD-8  
1522



# National Prosecution Service

Reference number:  
Enquiries: [carendse@npa.gov.za](mailto:carendse@npa.gov.za)

Dear General Lebeya  
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## INVESTIGATION OF TRC CASES

I would like to request a follow-up meeting with you relating to the above matters arising from the meeting of 31 January 2020 between yourself, the National Director and Advocates Mzinyathi and Macadam.

During this meeting, certain concerns were raised regarding the investigation of TRC cases resulting in you indicating that you would make certain interventions to address the concerns.

The Priority Crimes Litigation Unit (PCLU) has conducted an audit of all TRC matters, which has established that there are 42 cases which have been referred to the Directors of Public Prosecution. With the exception of 4 cases, all these matters are reflected as awaiting the finalisation of investigations. The NPA is under intense pressure to have these matters finalised and I would like to have the opportunity to discuss with you how this will be done. I would like to identify the following matters for discussion:

- The process of appointing former police officers with TRC experience on a contract basis.
- The use of provincial investigators.
- The development of a research capacity within the investigations.

The PCLU has also identified no the less 62 further TRC matters which would require investigation before these matter can be referred to the DPPs. A list of the cases is attached hereto as Annexure A. It is necessary to establish what

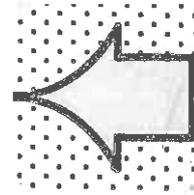
capacity the DPCI has to undertake these further investigations so as to ensure a proper referral to the DPPs.

I would be grateful if you could indicate when you will be able to meet with me. I will be accompanied by the Head PCLU.

Regards

---

Adv R de Kock  
Acting Deputy National Director of Public Prosecutions  
Date:



**SIGN  
HERE**



## LIST OF ALL PRIORITY CRIMES LITIGATION UNIT (PCLU)'s **TRC** CASES:

### DPP: **EASTERN CAPE**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>• <b>PEBCO 3</b> <ul style="list-style-type: none"> <li>○ CATS CAS 23/05/2016 &amp; HENDRIK VERWOERD AIRPORT CR 17/07/1990</li> <li>○ Capt Ben Nel</li> <li>○ Kidnapping and murder of 3 Port Elizabeth (PE) activists</li> </ul> </li> <li>• <b>Highgate Hotel</b> <ul style="list-style-type: none"> <li>○ CATS CAS 24/05/2016 &amp; CAMBRIDGE CR 14/05/1993</li> <li>○ Capt Ben Nel</li> <li>○ Attack on hotel in 1993 by unknown assailants</li> </ul> </li> <li>• <b>Cradock 4</b> <ul style="list-style-type: none"> <li>○ CATS CAS 05/06/2016 &amp; SWARTKOPS CR 13/07/1985</li> <li>○ Col Makua</li> <li>○ Kidnapping and murder of 4 Cradock activists</li> </ul> </li> <li>• <b>Steve Biko</b> <ul style="list-style-type: none"> <li>○ CATS CAS 03/12/2017 &amp; INQUEST PTA 573/1977</li> <li>○ Lt Col Patsa</li> <li>○ Death in detention relating to prominent activist. Injured in PE, but died in PTA in detention. See also <b>DPP: PTA</b></li> </ul> </li> <li>• <b>Caleb Mayekiso</b> <ul style="list-style-type: none"> <li>○ Col Ripa</li> <li>○ Death in detention in 1969</li> </ul> </li> <li>• <b>Sipho Maxwell Mtimkhulu &amp; Topsy Madaka</b> <ul style="list-style-type: none"> <li>○ Kidnapping and murder of 2 PE activists. Perpetrators granted amnesty, but inquest must be held</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Nobandla Bani</b> [1987 death in detention]</li> <li>• <b>George Botha</b> [1976 death in detention]</li> <li>• <b>Benedict Mashoke</b> [1986 death in detention]</li> <li>• <b>Mapetla Mohapi</b> [1976 death in detention]</li> <li>• <b>Eric Mtonga</b> [1987 death in detention]</li> <li>• <b>Lungile Tabalaza</b> [1978 death in detention]</li> <li>• <b>Bellington Tyita</b> [1964 death in detention]</li> </ul>

= 6	= 7

**DPP: FREE STATE**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>• <b>Ladybrand Four</b> <ul style="list-style-type: none"> <li>○ CATS CAS 33/11/2016</li> <li>○ Capt Ben Nel</li> <li>○ Disappearance of 4 MK operatives after being detained by Security Branch</li> </ul> </li> <li>• <b>Mpilo Atwel Mapekeza</b> <ul style="list-style-type: none"> <li>○ Colonel Ripa</li> <li>○ Killing of MK operative in Lesotho, but case linked to <b>Ladybrand Four</b> one</li> </ul> </li> </ul>	
= 2	= 0

**DPP: JOHANNESBURG**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>• <b>Ahmed Timol (S v Rodrigues)</b> <ul style="list-style-type: none"> <li>○ JHB CENTRAL CAS 798/10/2017 &amp; INQUEST OF AHMED TIMOL</li> <li>○ Capt Frans Mathipa</li> <li>○ Prosecution of <b>Rodrigues</b> in progress</li> </ul> </li> <li>• <b>Dr Neil Aggett (and Ernest Dipale)</b> <ul style="list-style-type: none"> <li>○ CATS CAS 10/06/2016 &amp; INQUEST 139/82</li> <li>○ W/O Kgamanyane</li> <li>○ <b>Aggett</b> inquest in progress. <b>Dipale</b> to be added. Minister's authorisation in process of being obtained</li> </ul> </li> <li>• <b>Matthews Mabelane</b> <ul style="list-style-type: none"> <li>○ CATS CAS 03/10/2017 &amp; JHB INQUEST 28/1977</li> <li>○ Capt Frans Mathipa</li> <li>○ Death in detention</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Pans Malatji</b> [1983 death in detention]</li> <li>• <b>Sipho Malaza</b> [1977 death in detention]</li> <li>• <b>Elmon Malele</b> [1977 death in detention]</li> <li>• <b>Jacob Mashabane</b> [1969 death in detention]</li> <li>• <b>Edward Mzolo</b> [1976 death in detention]</li> <li>• <b>Lawrence Ndzanga</b> [1977 death in detention]</li> <li>• <b>Leong Pin</b> [1966 death in detention]</li> <li>• <b>Andries Raditsela</b> [1985 death in detention]</li> <li>• <b>Clayton Sizwe Sithole</b> [1990 death in detention]</li> <li>• <b>Lucas Tihotlhomisang</b> [1990 death in detention]</li> <li>• <b>Wellington Tshazibane</b> [1976 death in detention]</li> </ul>

<ul style="list-style-type: none"> <li>• <b>Lolo Sono &amp; Siboniso Shabalala / Tshabalala</b> <ul style="list-style-type: none"> <li>○ ORLANDO CAS 392/11/1988 &amp; 393/11/1988</li> <li>○ Lt Col Peter Mhlongo</li> <li>○ Murder of 2 youths linked to Mandela Football club</li> </ul> </li> <li>• <b>Suliman Babla Saloojee</b> <ul style="list-style-type: none"> <li>○ CATS CAS 11/03/2018</li> <li>○ Capt Frans Mathipa</li> <li>○ Death in detention</li> </ul> </li> <li>• <b>Eustice Bimbo Madikela, Ntshingo Mataboge &amp; Fanyana Nhlapo (Krugersdorp Bombing / COSAS 4 case)</b> <ul style="list-style-type: none"> <li>○ CATS CAS 04/03/2018</li> <li>○ Serg Tjiane</li> <li>○ 4 youths killed in explosion by Security Branch</li> </ul> </li> <li>• <b>Ernest Dipale (see Dr Neil Aggett)</b></li> <li>• <b>Mlahleni Ignatius Mthebule</b> <ul style="list-style-type: none"> <li>○ CATS CAS 32/11/2016</li> <li>○ Capt Ben Nel</li> <li>○ Disappearance of MK operative in Johannesburg (JHB). Presumed dead. MPTT to provide more information</li> </ul> </li> <li>• <b>Nokuthula Simelane</b> <ul style="list-style-type: none"> <li>○ JHB CENTRAL CAS 1469/02/1996</li> <li>○ Col Makua</li> <li>○ Only suspect linked to her kidnapping in JHB deceased.</li> <li>○ Case relating to murder proceeding in Pretoria (PTA) High Court: <b>S v Coetzee and Others</b>. See also <b>DPP: PTA</b></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Unknown man [1976 Death in detention]</b></li> </ul>
<b>= 9</b>	<b>= 12</b>

**DPP: KZN**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>• <b>Ntombikayize Khubeka (and Phewa)</b> <ul style="list-style-type: none"> <li>○ CATS CAS 10/03/2018 &amp; CR SWART CR 01/09/1987</li> <li>○ W/O Moloto</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Aaron Khoza [1977 death in detention]</b></li> <li>• <b>Samuel Malinga [1977 death in detention]</b></li> </ul>



<ul style="list-style-type: none"> <li>○ Disappearance of 2 MK operatives at hands of Security Branch</li> <li>• <b>James Ngoloyi Mngomezulu</b> <ul style="list-style-type: none"> <li>○ CATS CAS 09/03/2018</li> <li>○ W/O Moloto</li> <li>○ Killing of MK operative arising from De Kock prosecution</li> </ul> </li> <li>• <b>Dr Hoosen Haffejee</b> <ul style="list-style-type: none"> <li>○ CATS CAS 4/10/2017 &amp; INQUEST of 1997</li> <li>○ W/O Kgamanyane</li> <li>○ Death in detention. Re-opened inquest due to proceed in March 2021. Mzizi inquest to be re-opened and joined</li> </ul> </li> <li>• <b>Dr Albert Luthuli</b> <ul style="list-style-type: none"> <li>○ CATS CAS 15/05/2018</li> <li>○ W/O Kgamanyane</li> <li>○ Investigation to determine whether in fact he was accidentally killed in train accident</li> </ul> </li> <li>• <b>Oupa Mdondo</b> <ul style="list-style-type: none"> <li>○ CATS CAS 34/05/2016</li> <li>○ Capt Ben Nel</li> <li>○ Killing of MK operative by Security Branch. Perpetrators granted amnesty, but inquest must be held</li> </ul> </li> <li>• <b>Musa Phewa (see Khubeka)</b> <ul style="list-style-type: none"> <li>○ CATS CAS 02/09/2017</li> <li>○ Capt Ben Nel</li> <li>○ Disappearance</li> </ul> </li> <li>• <b>Mzizi (see Haffejee)</b></li> <li>• <b>Goodwill Collin Sikhakhane</b> <ul style="list-style-type: none"> <li>○ Case flowing out of Eugene de Kock's prosecution. Killing of MK operative</li> </ul> </li> <li>• <b>Griffiths Nxenge</b> <ul style="list-style-type: none"> <li>○ Dirk Coetzee and others granted amnesty, but case re-opened due to claim that Eugene de Kock was also involved</li> </ul> </li> <li>• <b>Dr Rick Turner</b> <ul style="list-style-type: none"> <li>○ Unsolved murder of activist. New information regarding possible killers being followed up</li> </ul> </li> <li>• <b>Michael Ncetywa (Mcetywa)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Joseph Mdluli</b> [1976 death in detention]</li> <li>• <b>Ephraim Mthethwa</b> [1984 death in detention]</li> </ul>
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<ul style="list-style-type: none"> <li>○ Request by family member to investigate death of father arising from amnesty hearing</li> </ul>	
<b>= 11</b>	<b>= 4</b>

**DPP: LIMPOPO**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>• <b>Jacobus van der Merwe</b> <ul style="list-style-type: none"> <li>○ CATS CAS 07/09/2018 &amp; THABAZIMBI CR 43/4/1979</li> <li>○ Capt Ben Nel</li> <li>○ Kidnapping and murder of farmer allegedly by MK operatives. Body still has to be found</li> </ul> </li> <li>• <b>Peter Nchabeleng</b> <ul style="list-style-type: none"> <li>○ CATS CAS 02/06/2018 &amp; SESHEGO INQUEST 1/1987</li> <li>○ Const Ubisi</li> <li>○ Killing at Sekhukune police station. Currently very little information available</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Tshlfiwa Mupphe</b> [1981 death in detention]</li> <li>• <b>Samuel Tshikudo</b> [1984 death in detention]</li> </ul>
<b>= 2</b>	<b>= 2</b>

**DPP: MPUMALANGA**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<p>Three cases listed below arise from prosecution of <b>Eugene de Kock</b> and allegation by him that he was acting under instructions from <b>General Krappies Engelbrecht</b>. Decision not to prosecute Engelbrecht was taken in 2000, but investigation is in progress to determine whether decision should be reviewed or not:</p> <ul style="list-style-type: none"> <li>• <b>Japie Maponya</b> <ul style="list-style-type: none"> <li>○ CATS CAS 32/05/2016</li> <li>○ Capt Ben Nel</li> </ul> </li> <li>• <b>Johannes Sweet Sambo</b> <ul style="list-style-type: none"> <li>○ CATS CAS 13/03/2018 &amp; KOMATIPOORT CAS 14/07/1991</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Simon Mndawe</b> [1983 death in detention]</li> </ul>

<ul style="list-style-type: none"> <li>○ Const Ubisi</li> <li>• <b>Adreano Louis Bambo</b> <ul style="list-style-type: none"> <li>○ CATS CAS 05/09/2018 &amp; KOMATIPOORT CAS</li> <li>○ 221/01/1996</li> <li>○ W/O Kgamanyane</li> </ul> </li> </ul>	
<b>= 3</b>	<b>= 1</b>

**DPP: MTHATHA**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>• <b>CLOSED</b> - Batandwa Ndondo / Batanda Nondondo <ul style="list-style-type: none"> <li>○ MK operative shot dead by Viakplaas Askaris</li> <li>○ Case <b>CLOSED</b> Oct 2020 after endorsement of 2003 <i>nolle</i></li> </ul> </li> <li>• <b>Solomzi Talakumina</b> <ul style="list-style-type: none"> <li>○ Colonel Ripa</li> <li>○ MK operative shot by his comrades. Body secretly buried. Body exhumed by Transkei police but thereafter disappeared. Remains still to be located</li> </ul> </li> <li>• <b>Murder of 5 youths in 1993</b> <ul style="list-style-type: none"> <li>○ W/O Ngcanga</li> <li>○ Case reported by Nodal Point.</li> <li>○ Father of deceased was PAC member. SAPS, believing father harboured APLA members, attacked home at night. 5 children were killed, thinking they were APLA members</li> <li>○ <u>Note</u>: Possibly SANDF and <b>NOT</b> SAPS</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Mthayeni Cutsela</b> [1971 death in detention]</li> <li>• <b>Ngeni Gaga</b> [1965 death in detention]</li> <li>• <b>Pongolosa Hoye</b> [1965 death in detention]</li> <li>• <b>Twatifeni Joyi</b> [1977 death in detention]</li> <li>• <b>Manana Mgqweto</b> [1981 death in detention]</li> <li>• <b>Thalo Mosala</b> [1976 death in detention]</li> <li>• <b>Saul Ndzumo</b> [1980 death in detention]</li> <li>• <b>Mxolisi Sipele</b> [1984 death in detention]</li> <li>• <b>Sithembele Zokwe</b> [1988 death in detention]</li> </ul>
<b>= 2</b>	<b>= 9</b>

**DPP: NORTH WEST**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED

<ul style="list-style-type: none"> <li>• <b>Richard &amp; Irene Motasi:</b> <ul style="list-style-type: none"> <li>○ CATS CAS 03/03/2018</li> <li>○ Captain Hattingh</li> <li>○ Security Branch killings. Certain suspects granted amnesty, but investigation in progress to establish whether other persons were also involved or not. Crime may also have been committed in <b>PTA</b>. See also <b>DPP: PTA</b></li> </ul> </li> <li>• <b>Moses Morudi</b> <ul style="list-style-type: none"> <li>○ CATS CAS 02/03/2018</li> <li>○ Const Ubisi</li> <li>○ Disappearance of MK operative after being kidnapped by Security Branch operatives. Crime may also have been committed in <b>PTA</b></li> </ul> </li> <li>• <b>Boiki Thlapi</b> <ul style="list-style-type: none"> <li>○ Col C Mathe (Vryburg)</li> <li>○ KLERKSDORP INQUEST 49/94 &amp; STILFONTEIN CAS 10/11/2006</li> <li>○ Disappearance of activist after being detained by police. Allegation is that body was thrown down mine shaft</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Brian Ngqulunga</b> [Case flowing out of Eugene de Kock's prosecution. Crime may also have been committed in <b>PTA</b>. <b>DPP: PTA</b>, however, declined to prosecute <b>Genl Krappies Engelbrecht</b>]</li> </ul>
<p><b>= 3</b></p>	<p><b>= 1</b></p>

**DPP: NORTHERN CAPE**

<p>TRC CASES ALREADY REFERRED</p>	<p>TRC CASES WHICH MUST STILL BE REFERRED</p>
	<ul style="list-style-type: none"> <li>• <b>Xoliso Jacobs</b> [1986 death in detention]</li> <li>• <b>Phakamile Mabija</b> [1977 death in detention]</li> </ul>
<p><b>= 0</b></p>	<p><b>= 2</b></p>

**DPP: PRETORIA**

<p>TRC CASES ALREADY REFERRED</p>	<p>TRC CASES WHICH MUST STILL BE REFERRED</p>
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- **Nokuthula Simelane.** See remarks under **DPP: JHB**
- **Richard & Irene Motasi**
  - CATS CAS 03/03/2018
  - Captain Hattingh
  - Security Branch killings. Certain suspects granted amnesty, but investigation in progress to establish whether other persons were also involved or not. As crime may also have been committed in **NW**, reporting by **DPP: NW**
- **Nicodemus Kgoathe, Solomon Modipane & Jacob Monnakgotla**
  - CATS CAS 07/03/2018 & INQUEST PTA 02/02/1969
  - Lt Col Patsa
  - Deaths in detention in 1969
- **Steve Biko**
  - CATS CAS 03/12/2017 & INQUEST PTA 573/1977
  - Lt Col Patsa
  - Death in detention relating to prominent activist. Injured in PE, but died in PTA in detention. See also **DPP: EC**
- **Welcome Khanyile**
  - CATS CAS 05/03/2018 & INQUEST 6/1993
  - Capt Mamabolo
  - Killing of IFP member by Security Branch
- **Peter Thabuleka**
  - CATS CAS 06/03/2018
  - Capt Mamabolo
  - Kidnapping of MK operative by Security Branch
- **Moses Morudi [DPP: NW]**
- **James Lenkoe**
  - Death in detention in 1969
- **Brian Ngqulunga**
  - Case flowing out of Eugene de Kock's prosecution. Crime may also have been committed in **NW**
- **James Hamakwayo** [1966 death in detention]
- **Looksmart Ngudle** [1963 death in detention]
- **Haugula Shongyeka** [1966 death in detention]
- **Jundes Tubakwa / Judea Boloma Tubakwa** [1968 death in detention. Brig Xaba requested on 4 Aug 2020 to register investigation and appoint I/O. Case to be dealt with by **DPP: PTA**]
- **Ah Yan** [1967 death in detention]

<ul style="list-style-type: none"> <li>○ <b>DPP: PTA</b>, however, declined to prosecute <b>Genl Krappies Engelbrecht</b></li> <li>● <b>Caiphus Nyoka</b> <ul style="list-style-type: none"> <li>○ DAVEYTON CAS</li> <li>○ Col Beukman, DPCI Germiston</li> <li>○ Ex-Security Branch member confessing to media during 2019 that he killed activist</li> </ul> </li> </ul>	
<b>= 10</b>	<b>= 5</b>

**DPP: WESTERN CAPE**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>● <b>Heidelberg Tavern</b> <ul style="list-style-type: none"> <li>○ CATS CAS 25/05/2016 &amp; WOODSTOCK CAS 628/12/1993</li> <li>○ Capt Ben Nel</li> <li>○ Attack by APLA</li> </ul> </li> <li>● <b>St James Church massacre</b> <ul style="list-style-type: none"> <li>○ CATS CAS 26/05/2016 &amp; CLAREMONT CAS 539/07/1993</li> <li>○ Capt Ben Nel</li> <li>○ Attack by APLA</li> </ul> </li> <li>● <b>Ashley Kriel</b> <ul style="list-style-type: none"> <li>○ CATS CAS 14/04/2016 &amp; ATHLONE INQUEST 23/1987</li> <li>○ Capt Ben Nel</li> <li>○ Shooting of MK member by Security Branch</li> </ul> </li> <li>● <b>Imam Abdullah Haroon</b> <ul style="list-style-type: none"> <li>○ CATS CAS 08/03/2018 &amp; INQUEST 50/1970</li> <li>○ Lt Col L Thokolo</li> <li>○ Death in detention in 1969</li> </ul> </li> <li>● <b>Coline Williams &amp; Robbie Waterwitch</b> <ul style="list-style-type: none"> <li>○ DPCI ENQ 22/08/2020</li> <li>○ Capt van Beulen</li> <li>○ 2 MK members killed in explosion in 1989</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● <b>Elijah Loza</b> [1977 death in detention]</li> <li>● <b>Bellington Mampe</b> [1963 death in detention]</li> <li>● <b>Luke Mazwembe</b> [1969 death in detention]</li> </ul>
<b>= 5</b>	<b>= 3</b>

**DPP: INADEQUATE INFORMATION IN RESPECT OF CASES BELOW TO DETERMINE IN WHICH DPP'S JURISDICTION DEATHS TOOK PLACE**

TRC CASES WHICH MUST STILL BE REFERRED	TRC CASES WHICH MUST STILL BE REFERRED
<ul style="list-style-type: none"> <li>• <b>Makompe Kutumela</b> [1986 death in detention] [DPP LIMP?]</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Donald Thabela Madisha</b> [1990 death in detention] [DPP LIMP?]</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Alfred Makaleng</b> [1988 death in detention] [DPP MPUM / LIMP / JHB?]</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Ernest Mamashila</b> [1976 death in detention] [DPP PTA?]</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Simon Marule</b> [1986 death in detention] [DPP JHB / PTA?]</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dumisani Mbatha</b> [1976 death in detention] [DPP JHB / PTA?]</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Mr Khehla Nkutha</b> [Abduction 23 Feb 1978 and subsequent death. New request received from family member. Very little information available] [DPP KZN / MPUM?]</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dr Nanaoth Ntshunsha</b> [1977 death in detention] [DPP MPUM?]</li> </ul>
<ul style="list-style-type: none"> <li>• <b>William Tshwane</b> [1976 death in detention] [DPP JHB / PTA?]</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Unknown</b> [1968 Death in detention] [DPP?]</li> </ul>

**= 10**

**NAMIBIAN CASES:**

TRC CASES	TRC CASES
<ul style="list-style-type: none"> <li>• <b>Alpheus Madiba</b> [1967 death in detention]</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Michael Shivute</b> [1969 death in detention]</li> </ul>

**= 2** Although these deaths took place in Namibia, Security files are available. Investigations will be conducted locally and, if necessary, matters referred to DPP: Namibia

**ZIMBABWEAN CASES:**

TRC CASES
<ul style="list-style-type: none"> <li>• <b>Joe Ndzingo Gqabi</b> [31 July 1981 assassination in Harare. New request received from family member. Very little information available]</li> </ul>

**= 1**

**GRAND TOTAL OF ALL TRC CASES:**

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED	TRC CASES UNSURE OF	FOREIGN CASES
= 53	= 46	= 10	= 3

= 112

[SCB 30 Nov 2020]



NATIONAL PROSECUTING AUTHORITY  
South Africa

## CONFIDENTIAL LIST OF ALL TRC CASES: FULL DETAILS

### DPP: EASTERN CAPE

ALREADY REFERRED TRC CASES: = 7				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Steve Biko</b>	<u>Docket:</u> CATS CAS 03/12/2017 & PTA Inquest 573/1977 <u>I/O:</u> Lt Col Cleopatra Patsa <u>Cell:</u> 072 574 3492	Death in detention relating to prominent activist. <b>DPP EC</b> must make decision re assault. Then <b>DPP PTA</b> must decide whether to prosecute for failure to render medical assistance at Pretoria prison	No feedback reports submitted
2	<b>Craddock 4</b>  <u>PCLU</u> Ref: <u>10/3/5/TRC - 5/2015</u> <b>(PCLU)</b>	<u>Docket:</u> CATS CAS 05/06/2016 & Swartkops CR 13/07/1985 <u>I/O:</u> Col Joe Makua <u>Cell:</u> 082 779 8596 <u>Prosecutor:</u> HM Ackermann	Kidnapping and murder of 4 activists. Investigations ongoing after lawyers acting for families of deceased launched Court application.	NPA's affidavit to be drafted
3	<b>Highgate Hotel</b>	<u>Docket:</u> CATS CAS 24/05/2016 & Cambridge CR 14/05/1993 <u>I/O:</u> Capt Ben Nel /// Col Ripa <u>Cell:</u> 082 779 8688 <u>Prosecutor:</u>	Attack on hotel in 1993 by unknown assailants	No feedback received
4	<b>Caleb Mayekiso</b>  <u>PCLU</u> Ref: <u>10/3/5/TRC - 11/2020</u> <b>(PCLU)</b>	<u>Docket:</u> <u>I/O:</u> Col Ripa <u>Cell:</u> <u>Prosecutor:</u>	Part of <b>1969 DEATHS IN DETENTION</b> . Prosecutor(s) in task team to peruse evidence. Liaise with <b>DPP PTA</b> and <b>WC</b>	No feedback received
5	<b>Sipho Maxwell Mtimkhulu &amp; Topsy Madaka</b>  <u>PCLU</u> Ref: <u>10/3/5/TRC - 9/2020</u> <b>(PCLU)</b>	<u>Docket:</u> <u>I/O:</u> Col Ripa <u>Cell:</u> <u>Prosecutor:</u>	To be investigated together with <b>PEBCO 3 &amp; CRADOCK 4</b>	No feedback received
6	<b>PEBCO 3</b>  <u>PCLU</u> Ref: <u>10/3/5/TRC - 3/2015</u> <b>(PCLU)</b>	<u>Docket:</u> CATS CAS 23/05/2016 & Hendrik Verwoerd Airport CR 177/1990 <u>I/O:</u> Capt Ben Nel /// Col Ripa <u>Cell:</u> 082 779 8688 <u>Prosecutor:</u>	Kidnapping and murder of 3 Port Elizabeth (PE) activists	No feedback received

7	<b>Gwaza Duckworth Twalo</b>  PCLU Ref: 10/3/5/TRC – 6/2021 (PCLU)	Docket: I/O: Cell: Prosecutor:	Detained Jan 1980 in Aliwal North, Eastern Cape. Officially released in May 1980, but never seen again. Documentary proof to effect he was still in custody of Security Police HQ in Pretoria in Sept 1980. Reprs received by relative. Referred to DPP EC on 19 May 2021	Investigation to be opened by DPCI with monitoring by DPP EC. No feedback at all
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TRC CASES WHICH MUST STILL BE REFERRED: = 7				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Nobandla Bani</b>		1987 death in detention	
2	<b>George Botha</b>		1976 death in detention	
3	<b>Benedict Mashoke</b>		1986 death in detention	
4	<b>Mapetla Mohapi</b>  PCLU Ref: 10/3/5/TRC – 8/2021 (PCLU)		1976 death in detention	
5	<b>Eric Mtonga</b>		1987 death in detention	
6	<b>Lungile Tabalaza</b>		1978 death in detention	
7	<b>Bellington Tyita</b>		1964 death in detention	

## DPP: FREE STATE

ALREADY REFERRED TRC CASES: = 2				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Ladybrand Four</b>  PCLU Ref: 10/3/5/TRC - 2/2020 (PCLU)	Docket: CATS CAS 33/11/2016 I/O: Capt Ben Nel Cell: 082 779 8688 Prosecutor: Adv SW Mthethwa	Disappearance of 4 MK operatives after being detained by Security Branch. <b>Maqekeza</b> below to be part of investigation	Death certificate obtained of <b>Antonie Jagga</b> (suspect). Investigations ongoing
2	<b>Mpilo Maqekeza</b> Atwel	Docket: PCOMM ENQ 01/10/2020 I/O: Col Ripa Cell: Prosecutor: Adv SW Mthethwa	Deceased (MK operative) killed / assassinated in 1987 in Lesotho. Although DPCI & DPP do <b>NOT</b> have jurisdiction, one of <b>Ladybrand Four</b> victims was involved in Lesotho incident.  Case also linked to <b>Solomzi Talakumina</b>	Investigations ongoing

			matter being dealt with by DPP MTHATHA.	
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TRC CASES WHICH MUST STILL BE REFERRED: = 0				
No	Matter	Case particulars	Comments	Outcome / status
1				

## DPP: JOHANNESBURG

ALREADY REFERRED TRC CASES: = 7				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Dr Neil Aggett</b>  PCLU Ref: 10/3/5/TRC - 3/2019 (PCLU)  and Ernest Dipale  PCLU Ref: 10/3/5/TRC - 6/2019 (PCLU)	Docket: CATS CAS 10/06/2016 & Inquest 139/82 I/O: W/O Kgamanyane Cell: 071 481 3671 /// 072 966 4723 Prosecutor: Adv JJ Mlotshwa & S Singh	Re-opening of inquest and joinder with that of <b>Aggett</b> as ordered by Minister	After transcription of record / evidence and arguments by parties, judgment is awaited
2	<b>COSAS 4 / Krugersdorp Bombing (Eustice Bimbo Madikela, Ntshingo Mataboge &amp; Fanyana Nhlapo)</b>  PCLU Ref: 10/3/5/TRC - 13/2020 (PCLU)	Docket: CATS CAS 04/03/2018 I/O: Serg Tjiane Cell: 082 463 4332 Prosecutor: Adv Deon van Wyk	4 youths killed in explosion by Security Branch. Name of 4 <sup>th</sup> deceased unknown.	Investigations still ongoing. I/O must obtain warning statements from other suspects  Confession obtained from <b>Mfalapitsal</b> who appeared in court. Was released on warning. Intends to plead guilty. Matter remanded to 1 Oct 2021
3	<b>Matthews Mabelane</b>	Docket: CATS CAS 03/10/2017 & Inquest JHB 28/1977 I/O: Capt Frans Mathipa Cell: 082 923 7015 Prosecutor: Adv Aiden Maharaj /// Adv Mohamed	Death in detention	Investigations still ongoing. Deceased's family requested inspection <i>in loco</i> at JHB Central police station
4	<b>Mlahleni Ignatius Mthebule</b>	Docket: CATS CAS 32/11/2016 I/O: Capt Ben Nel Cell: Prosecutor: Adv Mathews Rampyapedi	Disappearance of MK operative in Johannesburg (JHB)	Investigations still ongoing
5	<b>Suliman Babla Saloojee</b>  PCLU Ref: 10/3/5/TRC - 1/2020 (PCLU)	Docket: CATS CAS 11/03/2018 I/O: Capt Frans Mathipa Cell: 082 923 7015 Prosecutor: Adv Deon Barnard	Death in detention	Investigations still ongoing

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6	<b>Lolo Sono &amp; Siboniso Shabalala / Tshabalala (Mandela Football club (MFC))</b>  PCLU Ref: 10/3/5/TRC - 8/2020 (PCLU)	Docket: I/O: Const Ubisi Cell: 079 509 0873 Prosecutor: Adv Paul Schutte	Murder of 2 youths linked to Mandela Football club (MFC). Other possible deceased also identified / linked e.g. <b>Susan Maripa</b>	Investigations still ongoing
7	<b>Ahmed Timol</b>  PCLU Ref: 10/3/5/TRC - 1/2018 (PCLU)	Docket: JHB Central CAS 798/10/2017 & Inquest I/O: Capt Frans Mathipa Cell: 082 923 7015 Prosecutor: Adv S Khumalo & S Singh	Case of <b>S v Joao Rodrigues</b> part-heard	SCA dismissed appeal. Matter remanded to 30 Sept 2021 pending application to ConCourt, <b>BUT ACCUSED DIED ON 6 SEPT 2021</b>

TRC CASES WHICH MUST STILL BE REFERRED: = 13				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Pans Malatji</b>		1983 death in detention	
2	<b>Sipho Malaza</b>		1977 death in detention	
3	<b>Elmon Malele</b>		1977 death in detention	
4	<b>Jacob Mashabane</b>		1969 death in detention	
5	<b>Edward Mzolo</b>		1976 death in detention	
6	<b>Lawrence Ndzanga</b>		1977 death in detention	
7	<b>Leong Pin</b>		1966 death in detention	
8	<b>Andries Raditsela</b>		1985 death in detention	
9	<b>Clayton Sizwe Sithole</b>		1990 death in detention	
10	<b>Smit murders</b>  PCLU Ref: 10/3/5/TRC - 7/2020 (PCLU)		Assassinations. Currently dealt with by PCLU, but will be referred to JHB	
11	<b>Lucas Tihotlhomisang</b>		1990 death in detention	
12	<b>Wellington Tshazibane</b>		1976 death in detention	
13	<b>Unknown man</b>		1976 Death in detention	

## DPP: KZN

ALREADY REFERRED TRC CASES: = 17				
No	Matter	Case particulars	Comments	Outcome / status

1	<b>Dr Hoosen Haffejee</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 4/2019 (PCLU)</b>  (and <b>Bayempini Mzizi</b> )	<u>Docket:</u> <ul style="list-style-type: none"> <li>Durban OCIU ENQ 38/06/2021</li> <li>CATS CAS 4/10/2017</li> <li>Inquest 957/1997</li> </ul> <u>I/O:</u> W/O Kgamanyane /// Colonel Motlhe /// Capt Mbhele <u>Cell:</u> 071 481 3671 /// 072 966 4723 /// 079 325 7901 <u>Prosecutor:</u> Adv Denardo Macdonald	Death in detention. Re-opened inquest commenced in 2021. Although DPP KZN was asked to timeously request <b>Mzizi</b> inquest to be re-opened by Min and joined with that of <b>Haffejee</b> , only <b>Haffejee</b> inquest proceeded	Inquest set down from 16 Aug – 17 Sept 2021
2	<b>Mohseen Jeelah</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 10/2021 (PCLU)</b>		1994 allegedly shot and killed (together with 3 other men) by police in Durban. Case referred by <b>PCLU</b> in Sept 2021	
3	<b>Aaron Khoza</b>	<u>Docket:</u> Durban OCIU ENQ 50/06/2021 <u>I/O:</u> Capt. Myeni <u>Cell:</u> 071 481 3446 <u>Prosecutor:</u> Adv N Dunywa	1977 death in detention.  On own initiative DPP migrated matter to KZN without official referral from <b>PCLU</b> HQ	Hospital and prison records have been requested
4	<b>Ntombikayize / Ntombi Khubeka</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 3/2020 (PCLU)</b>  (Musa Phewa and Zama Sokhulu)	<u>Docket:</u> <ul style="list-style-type: none"> <li>Durban OCIU ENQ 36/06/2021</li> <li>CR Swart CR 01/09/1987</li> <li>Durban Central CAS 547/03/2021</li> <li>CATS CAS 10/03/2018</li> </ul> <u>I/O:</u> W/O Solly Moloto /// Colonel Motlhe <u>Cell:</u> 082 770 4903 /// 079 886 6618 <u>Prosecutor:</u> Adv Ncedile Dunywa	Disappearance of MK operatives at hands of Security Branch.  Consultation with <b>S204</b> witness (Mbane) unsatisfactory. He is not credible single witness. W/O Moloto will render support during re-exhumation. Col Motlhe new I/O	Investigations ongoing. Exhumation of <b>Khubeka's</b> body was ordered. I/O busy consulting stakeholder re date of exhumation as well as transport of remains to Argentina
5	<b>Dr / Chief Albert Luthuli</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 5/2019 (PCLU)</b>	<u>Docket:</u> <ul style="list-style-type: none"> <li>CATS CAS 15/05/2018</li> <li>Durban OCIU ENQ 39/06/2021</li> </ul> <u>I/O:</u> W/O Kgamanyane /// Capt Mathipa /// Col Motlhe <u>Cell:</u> 071 481 3671 /// 072 966 4723 /// 079 886 6618 <u>Prosecutor:</u> Adv Naveen N.B. Sewparsingh	Must be established whether he was accidentally killed in train accident!  W/O Kgamanyane will assist to source funds for appointment of external experts	DPCI will pay expert fees. DPCI HQ will apply for funds
6	<b>Oupa Madondo / Mondono @ Oupa Ronald "Scorpio" Madondo</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 20/2020 (PCLU)</b>	<u>Docket:</u> <ul style="list-style-type: none"> <li>CATS CAS 34/05/2016</li> <li>CATS 08/02/2016</li> <li>Durban OCIU ENQ 40/06/2021</li> </ul> <u>I/O:</u> Capt Ben Nel /// Lt. Colonel Steyn <u>Cell:</u> 082 779 8688	Killing of MK operative by Security Branch. Perpetrators granted amnesty, but inquest must be held.  Clarification sought re identity of person in respect of whose	Investigations ongoing

		Prosecutor: Mziwodumo Miza	killing amnesty was granted	
7	<b>Samuel Malinga</b>	Docket: Durban OCIU ENQ 51/06/2021 I/O: Capt Myeni Cell: 071 481 3446 Prosecutor: Adv N Dunywa	1977 death in detention.  On own initiative DPP migrated matter to KZN without official referral from PCLU HQ	Investigations are continuing
8	<b>Michael Mcetywa / Ncetywa</b>  PCLU Ref: 10/3/5/TRC - 7/2019 (PCLU)	Docket: • Pongola CR12/11/1993 • Durban OCIU ENQ 44/06/2021 I/O: W/O Moloto /// Capt. Myeni Cell: 082 770 4903 /// 071 481 3446 Prosecutor: Adv Penny Pillay Ref: 10/2/4/1-5/2020	Request by family member to investigate death of father arising from amnesty hearing. Complainant ( <b>Zolile Mcetywa</b> ), however, died in interim	Investigations ongoing
9	<b>Joseph Mdluli</b>	Docket: Durban OCIU ENQ 48/06/2021 I/O: Capt. Myeni Cell: 071 481 3446 Prosecutor: Adv N Dunywa	1976 death in detention.  On own initiative DPP migrated matter to KZN without official referral from PCLU HQ	Investigations are ongoing
10	<b>James Ngoloyi Mngomezulu</b>  PCLU Ref: 10/3/5/TRC - 10/2020 (PCLU)	Docket: • CATS CAS 09/03/2018 • Durban OCIU ENQ 37/06/2021 I/O: W/O Solly Moloto /// Colonel Motlhe /// Lt Col Steyn Cell: 082 770 4903 /// 079 492 8334 Prosecutor: Adv Ncedile Dunywa	Killing of MK operative. Part of <b>CASES FLOWING OUT OF DE KOCK'S PROSECUTION.</b> Liaise with DPP Mpumalanga and Pta.	Investigations ongoing. Possible S204 statement obtain from person present during kidnapping. Consultations are ongoing with persons who received amnesty
11	<b>Ephraim Thami 'Shakes' Mthethwa</b>	Docket: Durban OCIU ENQ 49/06/2021 I/O: Col Motlhe Cell: 079 886 6618 Prosecutor: Adv N Dunywa	1984 death in detention.  On own initiative DPP migrated matter to KZN without official referral from PCLU HQ	Investigations are ongoing
12	<b>Griffiths Mxenge / Nxenge (and Victoria Mxenge / Nxenge)</b>  PCLU Ref: 10/3/5/TRC - 12/2019 (PCLU)	Docket: Durban OCIU ENQ 45/06/2021 & 46/06/2021 I/O: W/O Kgamanyane /// Colonel Motlhe /// Lt Col Steyn Cell: 079 492 8334 Prosecutor: Adv N Dunywa	Dirk Coetzee and others granted amnesty, but case re-opened due to claim that <b>DE KOCK</b> was also involved. Must be dealt with as part of <b>Haffejee</b> inquest	Investigations ongoing
13	<b>Bayempini Mzizi (and Haffejee)</b>	Docket: Durban OCIU ENQ 42/06/2021	See above	See above

	<b>PCLU</b> Ref: <b>10/3/5/TRC - 13/2019 (PCLU)</b>	<u>I/O:</u> W/O Kgamanyane /// Colonel Motlhe /// Capt Mbhele <u>Cell:</u> 071 481 3671 /// 072 966 4723 / 079 325 7901 <u>Prosecutor:</u> Adv Denardo Macdonald		
14	<b>Musa "Sbu" Phewa (Ntobikayise Khubeka and Zama Sokhulu)</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 1/2017 (PCLU)</b>	<u>Docket:</u> • CATS CAS 02/09/2017 • Durban OCIU ENQ 41/06/2021 <u>I/O:</u> W/O Solly Moloto /// Colonel Motlhe <u>Cell:</u> 082 770 4903 /// 079 886 6618 <u>Prosecutor:</u> Adv Ncedile Dunywa	See above. Consultation with witness (Mbane) unsatisfactory. He is not credible single witness. Applications for amnesty could not be traced	Investigations ongoing to ID suspects and obtain statements.
15	<b>Goodwill Collin Sikhakhane</b>	<u>Docket:</u> • Greytown CR 154/6/1994 • Durban OCIU ENQ 47/06/2021 <u>I/O:</u> W/O Moloto /// Capt Myeni <u>Cell:</u> 071 481 3446 <u>Prosecutor:</u> Adv N Dunywa	Killing of MK operative. Part of <b>CASES FLOWING OUT OF DE KOCK'S PROSECUTION.</b> Prosecutor(s) in task team to peruse evidence. Liaise with DPP Mpumalanga and PTA	Investigations ongoing
16	<b>Zama Sokhulu (Ntobikayise Khubeka and Musa "Sbu" Phewa)</b>	<u>Docket:</u> Durban OCIU ENQ 02/08/2021 <u>I/O:</u> Col Mothle <u>Cell:</u> 079 886 6618 <u>Prosecutor:</u> Adv N Dunywa	See above.  On own initiative DPP migrated matter to KZN without official referral from PCLU HQ	Investigations are continuing
17	<b>Dr Rick Turner</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 11/2019 (PCLU)</b>	<u>Docket:</u> Durban OCIU ENQ 43/06/2021 <u>I/O:</u> Lt. Colonel Steyn <u>Cell:</u> 079 492 8334 <u>Prosecutor:</u> Adv N Dunywa	Unsolved murder of activist. New information regarding possible killers being followed up	Investigations ongoing

**TRC CASES WHICH MUST STILL BE REFERRED: = 0**

No	Matter	Case particulars	Comments	Outcome / status
1				

**DPP: LIMPOPO**
**ALREADY REFERRED TRC CASES: = 2**

No	Matter	Case particulars	Comments	Outcome / status
1	<b>Peter Nchabeleng</b>	<u>Docket:</u> CATS CAS 02/06/2018 & Seshego Inquest 1/8 <u>I/O:</u> Const Ubisi <u>Cell:</u> 079 509 0873	Killing at police station. Currently very little information available	Investigations ongoing

2	<b>Jacobus van der Merwe</b>	Docket: CATS CAS 07/09/2018 & Thabazimbi CR 43/4/79 I/O: Capt Ben Nel Cell: 082 779 8688	Kidnapping and murder of farmer allegedly by MK operatives. Body still has to be found	Investigations ongoing
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TRC CASES WHICH MUST STILL BE REFERRED: = 2				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Tshlfhiwa Mupphe</b>		1981 death in detention	
2	<b>Samuel Tshikudo</b>		1984 death in detention	

## DPP: MPUMALANGA

ALREADY REFERRED TRC CASES: = 3				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Adreano Louis Bambo</b>  PCLU Ref: 10/3/5/TRC - 8/2019 (PCLU)	Docket: CATS CAS 05/09/2018 & Komatipoort / Nelspruit CAS 221/01/1996 I/O: Const Ubisi Cell: 079 509 0873	Part of <b>CASES - DE KOCK'S PROSECUTION.</b> Prosecutor(s) in task team to peruse evidence. Liaise with DPP KZN and PTA.	Investigations ongoing
2	<b>Japie Maponya</b>	Docket: CATS CAS 32/05/2016 & Krugersdorp CAS 245/12/1994 I/O: Capt Ben Nel Cell: 082 779 8688	Part of <b>CASES FLOWING OUT OF DE KOCK'S PROSECUTION.</b> Prosecutor(s) in task team to peruse evidence. Liaise with DPP KZN and PTA.	Investigations ongoing
3	<b>Johannes Sweet Sambo</b>  PCLU Ref: 10/3/5/TRC - 9/2019 (PCLU)	Docket: CATS CAS 13/03/2018 & Komatipoort CAS 14/07/1991 I/O: Const Ubisi Cell: 079 509 0873	Part of <b>CASES - DE KOCK'S PROSECUTION.</b> Prosecutor(s) in task team to peruse evidence. Liaise with DPP KZN and PTA.	Investigations ongoing

All three cases arise from prosecution of **EUGENE DE KOCK** and allegation by him that he was acting under instructions from **GENERAL KRAPPIES ENGELBRECHT** [PCLU Ref: 10/3/5/TRC - 1/2021 (PCLU)]. Decision not to prosecute **ENGELBRECHT** was, however, taken in 2000 by DPP PTA, but investigation is in progress to determine whether decision should be reviewed or not.

TRC CASES WHICH MUST STILL BE REFERRED: = 1				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Simon Mndawe</b>		1983 death in detention	

**DPP: MTHATHA**

ALREADY REFERRED TRC CASES: = 2				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Murder of five (5) youths in Mthatha in 1993</b>  PCLU Ref: 10/3/5/TRC - 17/2020 (PCLU)	Docket: I/O: W/O Ngcanga Cell: 082 319 8093 Prosecutor: Not yet allocated	Case reported by DPP. Father of deceased was PAC member. SAPS, believing father harboured APLA members, attacked home at night. 5 children were killed, because SAPS thought they were APLA members <b>NB:</b> Apparently SANDF. <b>NOT</b> SAPS	Investigations ongoing
2	<b>Solomzi Talakumina</b>  PCLU Ref: 10/3/5/TRC - 12/2020 (PCLU)	Docket: I/O: Serg Mkhulisa Cell: 071 481 2407 Prosecutor: Not yet allocated	MK operative shot by comrades in 1986 during operation. Body secretly buried in Tsolo. Later unlawfully exhumed by Transkei police but remains thereafter disappeared. Still missing  Case also linked to one of <b>Mpilo Atwel Mapekeza</b> being dealt with by DPP FS.	Investigations ongoing

TRC CASES WHICH MUST STILL BE REFERRED: = 9				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Mthayeni Cutsela</b>		1971 death in detention	
2	<b>Ngeni Gaga</b>		1965 death in detention	
3	<b>Pongolasha Hoye</b>		1965 death in detention	
4	<b>Twasifeni Joyi</b>		1977 death in detention	
5	<b>Manana Mgqweto</b>		1981 death in detention	
6	<b>Thalo Mosala</b>		1976 death in detention	
7	<b>Saul Ndzumo</b>		1980 death in detention	
8	<b>Mxolisi Sipele</b>		1984 death in detention	
9	<b>Sithembele Zokwe</b>		1988 death in detention	

**DPP: NORTH WEST**

ALREADY REFERRED TRC CASES: = 4				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Moses Morudi</b>	<u>Docket:</u> CATS CAS 02/03/2018 <u>I/O:</u> W/O Ndawo <u>Cell:</u> 082 632 5882	Disappearance of MK operative after being kidnapped by Security Branch operatives. Crime may also have been committed in PTA. Liaise with DPP PTA. DPP NW to submit reports	Investigations ongoing
2	<b>Richard &amp; Irene Motasi</b>  <u>PCLU Ref:</u> <b>10/3/5/TRC – 4/2021 (PCLU)</b>	<u>Docket:</u> CATS CAS 03/03/2018 <u>I/O:</u> Capt Loretta Hattingh /// Capt Moss <u>Cell:</u> 082 373 9558 /// 082 574 9904	Security Branch killings. Certain suspects granted amnesty, but investigation in progress to establish whether other persons were also involved or not. Crime may also have been committed in PTA. Liaise with DPP PTA. DPP NW to submit reports	Investigations ongoing
3	<b>Brian Ngqulunga</b>	<u>Docket:</u> <ul style="list-style-type: none"> <li>• Ga-Rankuwa CR 238/07/1990</li> <li>• CATS CR 10/12/2020</li> </ul> <u>I/O:</u> Const Chiseve <u>Cell:</u> 082 542 1093	Part of <b>CASES FLOWING OUT OF DE KOCK'S PROSECUTION.</b> Formerly allocated to DPP PTA. See comment above re <b>GENERAL ENGEL-BRECHT!</b>	Investigations ongoing
4	<b>Boiki Thlapi</b>  <u>PCLU Ref:</u> <b>10/3/5/TRC - 2/2017 (PCLU)</b>	<u>Docket:</u> Stilfontein CAS 10/11/2006 Klerksdorp Inquest 49/94 <u>I/O:</u> Lt Col C Mathe /// Lt Col Mokoka (f) <u>Cell:</u> 082 6677 550 /// 078 326 6747 <u>Old DPP PTA Ref:</u> PVT92040T	Disappearance of activist after being detained by police. <u>Allegation:</u> Body was thrown down mine shaft.	Investigations ongoing

TRC CASES WHICH MUST STILL BE REFERRED: = 0				
No	Matter	Case particulars	Comments	Outcome / status
1				

## DPP: NORTHERN CAPE

ALREADY REFERRED TRC CASES: = 1				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Nutuse Booi Mantyi</b>	<u>Docket:</u> <ul style="list-style-type: none"> <li>• DPCI ENQ 02/05/2021</li> </ul>	Shot dead by police on 16 Jun 1985 in De Aar, Cape province.	Investigations ongoing

	<u>PCLU</u> Ref: <b>10/3/5/TRC-5/2021</b> <b>(PCLU)</b>	<ul style="list-style-type: none"> <li>Inquest 13/85</li> </ul> I/O: Serg Greef (Karoo Region TRC team, Bloem) Cell: 0715677471 Commander: Capt Moleko Cell: 0820675225 Prosecutor: Adv S Weyers /// Adv Mpho M. Makhaga (Johny)	Received from DPP NC. Referred in May 2021	
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TRC CASES WHICH MUST STILL BE REFERRED: = 2				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Xoliso Jacobs</b>		1986 death in detention	
2	<b>Phakamile Mabija</b>		1977 death in detention	

## DPP: PRETORIA

ALREADY REFERRED TRC CASES: = 7				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Steve Biko</b>	Docket: CATS CAS 03/12/2017 & PTA Inquest 573/1977 I/O: Lt Col Cleopatra Patsa Cell: 072 574 3492	Injured in PE, but died in PTA in detention.  DPP EC must make decision re assault. Then DPP PTA must decide whether to prosecute for failure to render medical assistance at Pretoria prison	No feedback reports submitted
2	<b>Nicodemus Kgoathe, Solomon Modipane &amp; Jacob Monnakgotla</b>  <u>PCLU</u> Ref: <b>10/3/5/TRC - 5/2020</b> <b>(PCLU)</b>	Docket: CATS CAS 07/03/2018 & PTA Inquest 02/02/69 I/O: Lt Col Cleopatra Patsa Cell: 072 574 3492	Part of <b>1969 DEATHS IN DETENTION.</b>	Prosecutor(s) in task team to peruse evidence
3	<b>Mthokozisi Welcome Khanyile</b>  <u>PCLU</u> Ref: <b>10/3/5/TRC - 4/2020</b> <b>(PCLU)</b>	Docket: CATS CAS 05/03/2018 & Inquest 6/93 I/O: Capt Mamabolo Cell: 082 822 8336	Killing of IFP member by Security Branch. Part of <b>CASES FLOWING OUT OF DE KOCK'S PROSECUTION.</b> Prosecutor(s) in task team to peruse evidence. Liaise with DPP KZN and Mpumalanga	Investigations ongoing to trace witnesses for their affidavits  Supervised by Adv Mosing
4	<b>James Lenko / Lenkoe</b>	Docket: I/O: Cell:	Part of <b>1969 DEATHS IN DETENTION.</b> Prosecutor(s) in task	Investigations ongoing

	<b>PCLU</b> Ref: <b>10/3/5/TRC - 2/2021</b> <b>(PCLU)</b>		team to peruse evidence. Liaise with DPP EC and WC.	
5	<b>Peter Maluleka / Thabuleka</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 6/2020</b> <b>(PCLU)</b>	<u>Docket:</u> CATS CAS 06/03/2018 <u>I/O:</u> W/O Mamabolo <u>Cell:</u> 082 822 8336	Kidnapping of MK operative by Security Branch. Decision must still be made. Supervised by Adv Mosing	Investigations ongoing
6	<b>Caiphus Nyoka</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 10/2019</b> <b>(PCLU)</b>	<u>Docket:</u> PCOMM Enq 04/10/2019 <u>I/O:</u> Col LJ Kekana <u>Tel:</u> 012 301 5400 <u>New I/O:</u> Col Beukman <u>Cell:</u> 082 568 4502 <u>Commander:</u> Col Gounden	Ex-Security Branch member ( <b>Marais</b> ) confessed to media during 2019 he killed activist. Subsequently insinuated he is mentally ill.  Webber Wentzel involved. Adv Mzinyathi personally handling matter. I/O regularly provides updates	Investigations ongoing
7	<b>Nokuthula Simelane</b>  <b>PCLU</b> Ref: <b>10/3/5/TRC - 4/2015</b> <b>(PCLU)</b>	<u>Docket:</u> JHB Central CAS 1469/02/1996 <u>I/O:</u> Col Makua <u>Cell:</u> <u>Prosecutor:</u> Advs R Mathenjwa & A Barnard	<u>Case:</u> <b>S v Coetzee and Others.</b>  <b>NB:</b> Case on list of DPP PTA, <b>BUT</b> prosecuted by DPP JHB and report submitted by DPP JHB	Trial set down in Pretoria High Court from 2-27 Aug 2021. Matter remanded to 12 Oct 2021 for NDPP's decision re request to review DPP PTA's two decisions

**TRC CASES WHICH MUST STILL BE REFERRED: = 5**

No	Matter	Case particulars	Comments	Outcome / status
1	<b>James Hamakwayo</b>		1966 death in detention	
2	<b>Looksmart Ngudle</b>		1963 death in detention	
3	<b>Haugula Shongyeka</b>		1966 death in detention	
4	<b>Jundes Tubakwa / Judea Boloma Tubakwa</b>		1968 death in detention	Brig Xaba requested on 4 Aug 2020 to register investigation and appoint I/O. Case to be dealt with by DPP PTA
5	<b>Ah Yan</b>		1967 death in detention	

**DPP: WESTERN CAPE****ALREADY REFERRED TRC CASES: = 6**

No	Matter	Case particulars	Comments	Outcome / status
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1	<b>Anton Fransch</b>  PCLU Ref: 10/3/5/TRC - 9/2021 (PCLU)		Deceased killed in shootout with police in 1989 in Athlone. Referred on 18 Aug 2021.	Investigations must be instituted
2	<b>Imam Abdullah Haroon</b>  PCLU Ref: 10/3/5/TRC - 1/2019 (PCLU)	Dockets: CATS CAS 08/03/2018 & Inquest 50/1970 CATS ENQ 2/11/2017 I/O: Lt Col Thokolo New: Col Petersen /// Capt Naicker Cell: 073 460 4729 Commander: Lt Gen Vearey Prosecutor: Adv A Stephen, Mopp & Damerell /// Adv Riley	Part of <b>1969 DEATHS IN DETENTION.</b> Prosecutor(s) in task team to peruse evidence. Liaise with DPP PTA and EC.	Investigations ongoing
3	<b>Heidelberg Tavern</b>  PCLU Ref: 10/3/5/TRC - 2/2015 (PCLU)	Docket: CATS CAS 25/05/2016 & Woodstock CAS 628/12/1993 I/O: Capt Ben Nel Cell: 082 779 8688 Prosecutor: Adv A Stephen & D Damerell Ref: 10/2/11/1/1/73/19	APLA attack. 23 Jun 2020: DPP WC <i>nollied</i> case 13 Jul 2020: PCLU enquired about: <ul style="list-style-type: none"> <li>• Docket (never received)</li> <li>• Whether Mr Fourie ever informed</li> </ul> No reply received	Nov 2020: <i>Nolle</i> decision <b>held back</b> until investigations in <b>St James Church massacre</b> are concluded
4	<b>Ashley Kriel</b>  PCLU Ref: 10/3/5/TRC - 14/2019 (PCLU)	Docket: CATS CAS 14/04/2016 & Athlone Inquest 23/1987 I/O: Capt Ben Nel Cell: 082 779 8688 New: Capt Naicker & Col Petersen Prosecutor: Adv A Stephen /// Adv Demerell /// Adv Riley	Shooting of MK member by Security Branch  Klatzow moved to UK Significant progress made with investigations	<b>ORIGINAL DOCKET &amp; INQUEST CANNOT BE TRACED!</b> Investigations ongoing
5	<b>St James Church massacre</b>  PCLU Ref: 10/3/5/TRC - 1/2015 (PCLU)	Docket: CATS CAS 26/05/2016 & Claremont CAS 539/07/1993 I/O: Capt Ben Nel Cell: 082 779 8688 Prosecutor: Adv A Stephen Ref: 10/2/9/1/1-1/2020	APLA attack	Investigations ongoing
6	<b>Coline Williams &amp; Robbie Waterwitch</b>  PCLU Ref: 10/3/5/TRC - 2/2019 (PCLU)	Docket: DPCI Enquiry CAS 22/08/2020 I/O: Captain Van Beulen, (DPCI CATS WC) Cell: 071 481 3259 (Commander: Col Clive J Ontong) Prosecutor: Adv A Stephen & D Damerell /// Adv Riley	2 MK members killed in explosion in 1989.  To be investigated together with Kriel.	Investigations ongoing

TRC CASES WHICH MUST STILL BE REFERRED: = 3				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Elijah Loza</b>		1977 death in detention	
2	<b>Bellington Mampe</b>		1963 death in detention	

3	Luke Mazwembe		1969 death in detention	
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**DPP: INADEQUATE INFORMATION IN RESPECT OF CASES BELOW TO DETERMINE IN WHICH DPP'S JURISDICTION DEATHS TOOK PLACE**

<b>UNKNOWN DPP TRC CASES WHICH MUST STILL BE REFERRED: = 10</b>				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Makompe Kutumela</b>		1986 death in detention [DPP: LIMP?]	
2	<b>Donald Thabela Madisha</b>		1990 death in detention [DPP: LIMP?]	
3	<b>Alfred Makaleng</b>		1988 death in detention [DPP: JHB / LIMP / MPUMALANGA]	
4	<b>Ernest Mamashila</b>		1976 death in detention [DPP: PTA?]	
5	<b>Simon Marule</b>		1986 death in detention [DPP: JHB / PTA?]	
6	<b>Dumisani Mbatha</b>		[1976 death in detention] [DPP: JHB / PTA?]	
7	<b>Khehla Nkutha (MALE)</b>  PCLU Ref: 10/3/5/TRC 18/2020 (PCLU) -		Abduction 23 Feb 1978 and subsequent death. [DPP: KZN / MPUMALANGA?]	New request received from family member. Very little information available. Dr Pretorius guides investigation
8	<b>Dr Nanaoth Ntshunsha</b>		1977 death in detention [DPP: MPUMALANGA?]	
9	<b>William Tshwane</b>		[1976 death in detention [DPP: JHB / PTA?]	
10	<b>Unknown</b>		1968 Death in detention [DPP?]	

**REPRESENTATIONS TO HEAD: NPS**

<b>REPRESENTATIONS RECEIVED RE POSSIBLE TRC CASES: = 1</b>				
No	Matter	Case particulars	Comments	Outcome / status

1	<b>Complaint against international banks (Open Secrets)</b>  PCLU Ref: 10/3/5/TRC - 14/2020 (PCLU)			
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Request to prosecute CEOs of European Banks for bank activities during apartheid era. Complainant objected to case being allocated to Dr Pretorius and being dealt with by the unit of Brigadier Xaba (DPCI). Matter taken up by Head: NPS and Adv Macadam with General Lebeya. Gen Lebeya was not prepared to remove case from that unit. Complainant made reps to Head: NPS. Response unknown

## NAMIBIAN CASES:

NAMIBIAN TRC CASES: = 2				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Alpheus Madiba</b>		1967 death in detention	
2	<b>Michael Shivute</b>  PCLU Ref: 10/3/5/TRC – 7/2021 (PCLU)		1969 death in detention	Dr Pretorius guides investigation

Although deaths took place in **NAMIBIA**, security files are available. If domestic investigations can link SA perpetrators to deaths, matters must be referred to applicable DPP. Any relevant information / evidence of use in foreign jurisdiction ought to be shared with **DPP: NAMIBIA**

## ZIMBABWEAN CASES:

ZIMBABWEAN TRC CASE: = 1				
No	Matter	Case particulars	Comments	Outcome / status
1	<b>Joe Ndzingo Gqabi</b>  PCLU Ref: 10/3/5/TRC – 16/2020 (PCLU)		31 July 1981 assassination in Harare	New request received from family member. Very little information available. Dr Pretorius guides investigation

Although killing took place in **ZIM**, local investigations might link SA perpetrators to assassination, in which case matter must be referred to applicable DPP. Any relevant information / evidence of use in foreign jurisdiction ought to be shared with **DPP: ZIM**

## SUMMARY:

DPP Office	No of cases already referred	No of cases still to be referred
<b>DPP: EC</b>	<b>7</b>	<b>7</b>

<b>DPP: FS</b>	<b>2</b>	<b>0</b>
<b>DPP: JHB</b>	<b>7</b>	<b>13</b>
<b>DPP: KZN</b>	<b>17</b>	<b>0</b>
<b>DPP: LIMPOPO</b>	<b>2</b>	<b>2</b>
<b>DPP: MPUMALANGA</b>	<b>3</b>	<b>1</b>
<b>DPP: MTHATHA</b>	<b>2</b>	<b>9</b>
<b>DPP: NC</b>	<b>1</b>	<b>2</b>
<b>DPP: NW</b>	<b>4</b>	<b>0</b>
<b>DPP: PTA</b>	<b>7</b>	<b>5</b>
<b>DPP: WC</b>	<b>6</b>	<b>3</b>
<b>UNKNOWN DPPs</b>	<b>-</b>	<b>10</b>
<b>REPS TO HEAD: NPS</b>	<b>1</b>	<b>-</b>
<b>NAMIBIA</b>	<b>-</b>	<b>2</b>
<b>ZIMBABWE</b>	<b>-</b>	<b>1</b>
<b>TOTAL:</b>	<b>59</b>	<b>55</b>

### GRAND TOTAL OF ALL TRC CASES:

TRC CASES ALREADY REFERRED	TRC CASES WHICH MUST STILL BE REFERRED	TRC CASES UNSURE OF	FOREIGN CASES
<b>= 59</b>	<b>= 42</b>	<b>= 10</b>	<b>= 3</b>

**= 114**

[SCB 20 Sept 2021]



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**FW: RE: REQUEST TO REOPEN INQUEST INTO THE DEATH OF MR BAYEMPINI MZIZI**

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**From** Chris Macadam <cmacadam@npa.gov.za>  
**Date** Tue 12/2/2025 12:31 PM  
**To** Muzikayifani A. Madlala <MMadlala@npa.gov.za>

3 attachments (41 KB)  
image001.jpg; image003.png; image004.png;

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**From:** "Chris Macadam" <cmacadam@npa.gov.za>  
**Date:** 24/06/2021 at 15:24:59  
**To:** "Nledile Dunywa" <nlediled@npa.gov.za>  
**Cc:** "Ashika Sewchurran" <ASewchurran@npa.gov.za>, "Denardo C. Macdonald" <dcmacdonald@npa.gov.za>, "Emma Jute (E)" <ejute@npa.gov.za>, "Elaine Zungu" <EZungu@npa.gov.za>, "xaban@saps.gov.za" <xaban@saps.gov.za>  
**Subject:** RE: REQUEST TO REOPEN INQUEST INTO THE DEATH OF MR BAYEMPINI MZIZI

Hi , the issue is that we want to join the this matter to the haffejee one where a judge has been appointed. It is a complicated process to reopen and join inquests which involve action from the NDPP, minister and JP. Deborah Quinn had obtained extensive archive material which must be converted into evidence. Of importance is the 83year old living in Umlazi who was detained with the 2 deceased and complained of torture, two policemen who arrested Mzizi but never testified at the inquest, confirmation that the 2IC of the DBN Security branch is the same person as Deborah identified as living in Pretoria. Mo and Yunus Shaik who were arrested later implicated the same policemen as having tortured them. Of utmost importance is the fact the advocate who acted for the family[Meskin]died but left all his court papers with his daughter in Durban> Steve Naidoo needs the written pm report and photographs taken at PM and in the cell to make clear findings as to the injuries/cause of death. The I/O should fetch the boxes and check if the missing documents are there. I have copied Brig Xaba as he is overall in charge of investigations and we are experiencing similar problems in other regions. I am available for an MT meeting to run through everything if needed . regards chris

---

**From:** Nledile Dunywa  
**Sent:** Wednesday, June 23, 2021 11:16 AM  
**To:** Chris Macadam <cmacadam@npa.gov.za>; Elaine Zungu <EZungu@npa.gov.za>  
**Cc:** Ashika Sewchurran <ASewchurran@npa.gov.za>; Denardo C. Macdonald <dcmacdonald@npa.gov.za>; Susan Bukau <sbukau@npa.gov.za>  
**Subject:** RE: REQUEST TO REOPEN INQUEST INTO THE DEATH OF MR BAYEMPINI MZIZI

 Outlook

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**FW: RE: RE-Opened Inquest: Ernest Dipale**

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**From** Chris Macadam <cmacadam@npa.gov.za>  
**Date** Thu 11/27/2025 1:38 PM  
**To** Muzikayifani A. Madlala <MMadlala@npa.gov.za>

 1 attachment (26 KB)  
image001.jpg;

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**From:** "Chris Macadam" <cmacadam@npa.gov.za>  
**Date:** 26/02/2021 at 17:29:31  
**To:** "Jabulani J. Mlotshwa" <jjmplotshwa@npa.gov.za>,"Susan Bukau" <sbukau@npa.gov.za>  
**Cc:** "Xaba N - Brigadier" <XabaN@saps.gov.za>,"Torie Pretorius (JP)" <jppretorius@npa.gov.za>  
**Subject:** RE: RE-Opened Inquest: Ernest Dipale

Dear JJ has Dipale's detention file when he was detained with Aggett been presented? I gave a copy to Frank. It shows that a magistrate was prevented from seeing him .On the 2<sup>nd</sup> visit he complained of being tortured and on the 3<sup>rd</sup> told that if he continues complaining he will be sent to the Free State where he will see no one. With Mamasela you have Dirk coetzee's amnesty judgment where Joe was implicated as playing the leasing role in the attack on joyce Dipale's house Madelaine has also given a nice report on Joe's activities around this time > looks like all Webber Wentzel's criticisms are proving to be wrong

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**From:** Jabulani J. Mlotshwa  
**Sent:** Friday, February 26, 2021 3:57 PM  
**To:** Chris Macadam <cmacadam@npa.gov.za>; Susan Bukau <sbukau@npa.gov.za>  
**Cc:** Xaba N - Brigadier <XabaN@saps.gov.za>  
**Subject:** RE-Opened Inquest: Ernest Dipale

Dear Colleagues

We have almost lead all the necessary evidence in this re-opened inquest.



On Monday and Tuesday we will lead the evidence of the LCRC officer whom we requested to take photographs of the cell in which Mr Diplae was found hanging and the manufacturers of the cell blankets to show to the court whether it would have been possible for Mr Dipale to tear a strip of the blanket with his hands, to use same to hang himself with (no sharp object or knife or anything else was found in the cell which Dipale could have used to tear a strip of the blanket with).

All indications are that Mr Joseph Mamasela and or Deetleefs or both had a hand in the death of the deceased.

The investigating officers have had big challenges in serving the subpoena on Mr Mamasela.

I have now sought the assistance of General Kadwa of the DPCI to assist the investigating officers to serve the subpoena on Mamasela.

I have advised the Judge of this predicament and he awaits a report of the progress in this regard.

I do not think that the Judge will allow us to "close" the hearing of this inquest without the testimony of Mamasela.

Regards



Jabulani J. Mlotshwa  
Deputy Director Public Prosecutions  
National Prosecuting Authority

Innes Chambers Building,  
Cnr Pritchard & Kruis street  
Johannesburg, 2000  
Private Bag X8, Johannesburg, 2000

Tel: +27 11 220 4002  
Ext: 114002  
Cell: +27 73 502 9602

E-mail: [jjmlotshwa@npa.gov.za](mailto:jjmlotshwa@npa.gov.za)  
Web: [www.npa.gov.za](http://www.npa.gov.za)



**From:** imtiaz cajee <[imtiazahmedcajee@gmail.com](mailto:imtiazahmedcajee@gmail.com)>

**Sent:** Saturday, April 16, 2022 1:58 PM

**To:** Chris Macadam <[cmacadam@npa.gov.za](mailto:cmacadam@npa.gov.za)>

**Cc:** Rodney J. De Kock <[rjdekokk@npa.gov.za](mailto:rjdekokk@npa.gov.za)>; Shamila Batohi <[SBatohi@npa.gov.za](mailto:SBatohi@npa.gov.za)>

**Subject:** ASSISTANCE REQUIRED

AD 15

AD33

Dear Adv Macadam

Hope you are well?

As you are aware, the passing of Rodrigues has brought an end my journey to uncover the true circumstances to my beloved Uncle Ahmed Timol's murder in October 1971.

In your supporting affidavit on behalf of the NDPP submitted to the Full Bench of the South Gauteng High Court,

As per Page 35 of your attached affidavit, 7.1.4 it reads as follows:

- 7.1.4 It has been established that other detainees who were never called as witnesses could possibly shed light on the matter. The first is a Mr Mohammed Essop, who was arrested at the same time as Timol. The second is Quentin Jardine, whose identity, it is alleged, led to the deceased deciding to commit suicide. The third is a Mr Pahad, whom it is alleged was arrested arising from Timol's interrogation. Ms Fullard has been tasked to uplift the detention files from DoJ&CD so that Captain Nel can conduct the necessary investigations in this regard.

It would be appreciated if you can share the source of information related to QUENTIN JARDINE as it is alleged his identity led to my Uncle to commit suicide. This is an important piece of information that I have not come across over the years of my investigation.

Your assistance in this query is highly appreciated.

Kind Regards



 Outlook

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**FW: Re: ASSISTANCE REQUIRED**


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From Chris Macadam <cmacadam@npa.gov.za>  
 Date Thu 11/27/2025 2:09 PM  
 To raymond christopher macadam <rcmacadam@mweb.co.za>; Muzikayifani A. Madlala <MMadlala@npa.gov.za>

FIDE

 1 attachment (90 KB)  
 image002.png;

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**From:** "imtiazhmedcajee" <imtiazhmedcajee@gmail.com>  
**Date:** 21/04/2022 at 10:54:54  
**To:** "Chris Macadam" <cmacadam@npa.gov.za>  
**Cc:** <SBatohi@npa.gov.za>, <rjdekok@npa.gov.za>  
**Subject:** Re: ASSISTANCE REQUIRED

Dear Advocate Macadam

Many thanks for your response. All the best for your retirement.

I will follow up with Ms Fullard accordingly.

Kind Regards

Imtiazh Ahmed Cajee  
<http://www.ahmedtimol.co.za>

On Thu, Apr 21, 2022 at 10:37 AM Chris Macadam <cmacadam@npa.gov.za> wrote:

Dear Mr Cajee, I retired in October last year and have no access to my TRC files. When I worked on this case some years previously I tried to gather as much information as possible from a variety of sources. One narrative [I cannot recall the source] was to the effect that the police had seized documents where a Quinton was mentioned and that your uncle's interrogation was aimed at trying to compel him to reveal who he was. It was suggested that the person was in fact Quinton Jardine. I asked Ms Fullard to establish whether DOJ had detention files on all persons who could feature in the case including Jardine. She confirmed the existence of a number of files including one for Jardine and I requested that they all be obtained. By the time I was given new duties they had not been received. Everything I had collected was given to the then investigating officer Captain Nel who should be able to assist you. regards



**BEFORE THE AMNESTY COMMITTEE****APPLICATIONS FOR AMNESTY  
IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND  
RECONCILIATION ACT, NO 34 OF 1995****THE AMNESTY APPLICATIONS OF:**

- |                                     |   |           |
|-------------------------------------|---|-----------|
| 1. SATHYANDRANATH RAGUNANAN MAHARAJ | - | AM5514/97 |
| 2. JOHANNES MODISE                  | - | AM5500/97 |
| 3. ANDREW MANDLA LEKOTO MASONDO     | - | AM5501/97 |
| 4. STEPHEN VUKILE TSHWETE           | - | AM5539/97 |
| 5. NGOAKO ABEL RAMATLHODI           | - | AM5538/97 |
| 6. GODFREY NHLANHLA NGWENYA         | - | AM5537/97 |
| 7. LAMBERT LEHLOHONOLO MOLOI        | - | AM5512/97 |
| 8. SNUKI JOSEPH ZIKALALA            | - | AM6515/97 |
| 9. PETER RAMOSHOANE MOKABA          | - | AM5504/97 |
| 10. B.P. GILDER                     | - | AM5510/97 |
| 11. B.L. MASETHLA                   | - | AM5511/97 |
| 12. M.N. PHOSA                      | - | AM5520/97 |
| 13. Z.P. TOLO                       | - | AM5526/97 |
| 14. T.M. MBEKI                      | - | AM5506/97 |
| 15. C. NQAKULA                      | - | AM5507/97 |
| 16. N.N. MAPHISA                    | - | AM5505/97 |
| 17. S.W. SIGXASHE                   | - | AM5536/97 |
| 18. B.A. MANCI                      | - | AM5535/97 |
| 19. R.S. MOPATI                     | - | AM5527/97 |
| 20. S.S. MAKANA                     | - | AM6158/97 |
| 21. T.M.G. SEXWALE                  | - | AM5533/97 |
| 22. J.K. NETSHITENZHE               | - | AM5532/97 |
| 23. P.R.F. MDLULI-SEDIBE            | - | AM5531/97 |
| 24. J.G. ZUMA                       | - | AM5530/97 |

25. J.K. NKADIMENG	-	AM5529/97
26. J.S. SELEBI	-	AM5528/97
27. A. NZO	-	AM6203/97

### DECISION

On the 9<sup>th</sup> of May 1997, 29 applications were submitted to the Amnesty Committee by the Truth and Reconciliation Commission desk of the African National Congress. The applications were lodged under cover of a notice dated 09 May 1997, indicating that the 29 applications were to be considered in terms of section 19 (5) (b) of the Promotion of National Unity and Reconciliation Act No 34 of 1995, which section empowers the Amnesty Committee to jointly consider individual applications. Further a declaration was submitted "in support" of the applications, and the applicants in turn referred to the declaration as the basis for their applications for amnesty. The content of this declaration is dealt with herein under.

On receiving the notice and 29 applications, individual files were opened, each registered separately in terms of the procedures of the Amnesty Committee. In the meantime further individual applications from various applicants other than those received from the ANC/TRC desk were received which also referred to the declaration, purporting to be an extension of the original joint applications of the applications of 29 applicants. These applications were administratively dealt with individually. After some time 37 applications, 21 of which included names of those mentioned above and 16 others not part of the original 29 were submitted by staff to a panel of the Amnesty Committee. The notice attached to the original 29 applications, appears not to have been placed on all the files. This resulted in 8 of the original 29 applications intended for joint consideration not being included amongst the 37.

The granting of Amnesty to the 37 and the subsequent court proceedings, are matters of history. What is however important, is that the court directed the Amnesty Committee "to consider afresh the applications for Amnesty of the third to thirty ninth respondents (the 37), including the issue of whether such applications properly comply with the relevant requirements of the Promotion of National Unity and Reconciliation Act. 34 of 1995".

The Committee decided to consider the 29 original applications received from the TRC desk of the ANC jointly and to consider the other 16 applications separately. It needs to be mentioned that a large number of further applications, similarly based and relying on the declaration, have since been lodged with the Committee. All of these will be considered separately.

The declaration on which the above applicants rely, reads as follows:-

"We, the applicants, having at various times between 1 March 1960 and 10 May 1994, as indicated below been members and leaders of the African National Congress (hereinafter referred to as the ANC), elected and /or appointed to serve in various structures including its highest organ, the National Executive Committee, do hereby make the following declaration:

1. During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid, appropriately dubbed a crime against humanity by the international community.

2. In the course of our people's struggle, with the intent to induce the apartheid government of the National Party to abandon apartheid with its concomitant violent repression, and with the intent to achieve, bring about and promote fundamental political, social and economic changes in the Republic, the ANC, inter alia, established its military wing, Umkhonto weSizwe, through which it prosecuted an armed struggle.
3. At all material times, Umkhonto weSizwe operated under political authority, direction and leadership of the ANC.
4. Due to its peculiar circumstances, and the attacks mounted upon it by its adversary, the apartheid government, the ANC established various organs at various times such as the RC, PMC and a security organ NAT which at all material times also operated under its authority, direction and leadership.
5. Due to the circumstances which prevailed in the townships, in the early 1990s as a result of third force activities, the leadership of the ANC established and, in some instances encouraged the establishment of Self Defence Units (SDUs), which played a critical role in the defence of defenceless communities.
6. In the event, and to the extent that, any of the activities of any of the above mentioned institutions and structures including the SDU's could in any manner whatsoever be regarded as the kind of acts or omissions or offences envisaged in the Promotion of National Unity and Reconciliation Act, we collectively take full responsibility therefore applying for amnesty in respect thereof".

Following the court order, the Amnesty Committee made further inquiries from the ANC - TRC desk which represents at least the original 29 applicants and gave directions in respect of the attestation of the applications and requested for further particulars.

As a result of such enquiries, a letter dated the 10 November 1998 was received by the Committee from the ANC's Secretariat. The contents thereof are as follows:-

*Amnesty Committee  
Truth and Reconciliation Commission  
Cape Town*

*Dear Judge Khampepe*

*RE: ANC AMNESTY APPLICATION*

*As you are aware, during 1997, the ANC applied for amnesty for a group of 29 of its leaders.*

*The list was conveyed in a communication dated 9 May 1997 which apparently had a list of 30. However, the list contained a mistake in that the name of ZP Tolo appears twice on the list. (We attach the list for ease of reference).*

*The application was launched in keeping with the ANC commitment made in its submission to the Human Rights Violations Committee of the TRC that its leadership would take collective responsibility for the bona fide activities of members of the organisation.*

*The ANC consciously and deliberately took this position in order to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act*

whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act.

More specifically, the leadership of the ANC was determined then, as it is now, not to abandon or desert the thousand[s] of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary.

The leadership also hoped that by making this application, it would lead its members by example, encouraging those affected to follow in its footsteps.

The group selected to apply for amnesty was not the complete list of the leadership of the ANC during the mandate period of the ANC.

It was representative of a group of this leadership, chosen in a manner consistent with the definition of "the leadership of the ANC" by the Human Rights Committee.

This overall leadership is reflected in Appendix One of the May 1997 "Further Submission and Responses by the African National Congress to Questions Raised by the Commission for Truth and Reconciliation". (pp 34-56).

Accordingly, the list of 29 covered the period 1960-94 and included people who had been members of various committees of the ANC, from the NEC downwards.

Further, the group was also selected on the basis that, to the knowledge of the ANC, none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty.

From the foregoing, it should be clear that "the 29" would not be able to answer any questions which sought to establish the specific acts for which they were applying for amnesty, since there are none.

It also seems clear that there are other leaders of the ANC who applied for amnesty on their own and in the same way as "the 29", who would also not be able to supply specific information, as they applied in furtherance of the collective responsibility assumed by the leadership of the ANC.

The ANC would be willing to join these to "the 29", after having established in each case that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act.

Contrary to what has been falsely argued, the ANC never sought a "blanket amnesty" for leadership of the ANC, in bona fide belief that each one of "the 29" would stand any detailed scrutiny with regard to whether they were culpable of any gross violation of human rights, within the meaning of the provisions relating to the granting of amnesty.

As the records of the Amnesty Committee will show, though some of the names are common to both, our list of "the 29" is not the same as the list of 37 which the Committee seemed to have considered.

We are therefore uncertain as to whether the selection of those among "the 37" other than "the 29" was based on the same criteria as were used when "the 29" were selected.

Accordingly, we would humbly suggest that the Amnesty Committee should consider "the 29" or any new list which might be drawn up, which would include other leaders of the ANC who have applied for amnesty, as reflected above.

*We trust that this letter will help you and the Committee in its work. We are ready further to assist the Committee as it requires, according to our ability. We therefore look forward to hearing from you in due course.*

*Yours sincerely*  
 DEPUTY SECRETARY GENERAL

Subsequent to receiving this letter the Applications of Mokoape and Mafu have been withdrawn from the list, bringing the total number for joint consideration down to 27.

## ISSUES

In our view there are two principal issues to be considered in these applications.

The first issue relates to the reliance by the applicants on the declaration quoted herein above. The thrust of the declaration is that the applicants collectively take full responsibility for the activities of their institutions or structures and apply for amnesty " in the event and to the extent that any of the activities of these institutions and structures could in any many whatsoever be regarded as acts/omissions or offences envisaged in the Act".

The cardinal point for consideration is whether this committee can grant amnesty to the applicants for acts committed by members of the various structures (which acts they are unaware of) on the basis of collective political and moral responsibility.

The second issue relates to whether the applications, as amplified in terms of the letter of the 10th November 1998, disclose any specific act that constitutes an offence or delict.

We therefore accordingly proceed to deal with these issues *seriatim*.

Having regard to the declaration it is quite evident that the individual applicants apply for amnesty not because they committed any acts that could constitute an offence or a delict but do so solely because they are persons who were either in the leadership of the ANC at various times between 1960 to 1994, or were members of the structures established by the ANC in order to wage a struggle against the NP led government and therefore take collective responsibility for the acts committed by their members in the various structures which acts were committed under the ANC's political authority, direction and leadership. They accordingly assume political and moral accountability for such acts.

It is appropriate at this stage to refer to the sections for the granting of amnesty as contained in the Act. Section 20 (1) stipulates as one of the requirements for amnesty that "the act, omission or offence" in respect of which amnesty is sought must be an "act associated with a political objective". Section 20 (1) c stipulates that the applicant must make a full disclosure of all the relevant facts in respect of the "act, omission or offence" for which amnesty is sought. Section 20 (2) then steps in to define an "act associated with a political objective". It states that an "act associated

with a political objective means an act or omission which constitutes an offence or a delict which according to the criteria in subsection (3), is associated with a political objective, ...". It is clear from these sections that for an applicant to qualify for amnesty he should have committed an act which constitutes a delict or an offence; he should fully disclose, *inter alia*, the nature and extent of his participation in respect of the offence or delict for which he seeks amnesty and provide other relevant facts which will be used by the Committee in its application of the prescribed criteria contained in section 20(3) in determining whether or not a particular act, omission or offence qualifies for amnesty.

The applicants' applications are founded on collective responsibility for acts committed by their members in the event and to the extent that such acts are found to be acts associated with a political objective. In as much as the applicants are to be commended for taking such a noble step of publicly taking collective responsibility in the manner they have done, it was not the intention of the legislature to extend amnesty to the applicants merely on the basis of collective responsibility as the applicants seek to do. The sections dealing with the granting of amnesty are quite clear and unambiguous. The individual applicant must, *inter alia*, fully disclose a specific offence or delict advised, planned, directed, commanded, ordered or committed by herself/himself in order to qualify for amnesty. In the case of the applicants it is quite evident that they are not aware of all the acts committed by their members and one can comprehend their conundrum in this regard.

It is further evident that from the declaration and the letter relied upon by the individual applicants the applicants sought to apply not as individuals in their personal capacities but in their capacity as " a representative group of the ANC leadership" for the period 1960 to 1994.

It is instructive to point out that the Act does not provide *locus standi* to Liberation Movements, Political Organisations or the State to apply for amnesty for acts associated with a political objective as defined in the sections quoted herein above. These juristic entities are nevertheless immune from both criminal and civil liability in terms of section 20 (7) (a), once "a person" has been granted amnesty in respect of an act, omission or offence. In the case of the ANC, once a member or supporter of that organisation has been granted amnesty for an act, offence or omission, the ANC is indemnified against any criminal and civil liability for the acts of the wrongdoer (who has been granted amnesty) which could have arisen in consequence of its vicarious liability for such an act, omission or offence. The State is equally discharged from any civil liability if its employee has been granted amnesty for any act omission or offence in circumstances where it would have been held vicariously liable.

It therefore follows that the ANC will not be held vicariously liable for the acts that the applicants might have intended to cover through their applications and for which they take collective responsibility once amnesty is granted to individual applicants who are their members and such amnesty is granted in respect of acts committed by them in their various structures set up by the ANC leadership at various times.

Having said that, it needs to be mentioned that the ANC will be so indemnified **only to the extent** that their members have been granted amnesty for specific acts. It is trite that notwithstanding the lack of *locus standi* to these juristic entities, no provision has been made in the Act to extend indemnification to such bodies as the ANC or the State in circumstances where their members have not applied and have not been granted amnesty for acts associated with a political objective.

The second and fundamental issue that we have to consider is whether the applications of the individual applicants comply with the requirements of the Act at all, in terms of Section 18 and 20 (1) of the Act.

Section 18 (1) which deals with **applications for granting of amnesty** provides that:

"Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in Section 7 (3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form".

Section 20 (1) which deals with the **granting of amnesty** provides that:

"If the Committee, after considering an application for amnesty, is satisfied that :-

(a) the application complies with the requirements of this Act;

(b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and

(c) the applicant has made a full disclosure of all relevant facts, it shall grant amnesty in respect of that act, omission or offence".

Section 20 (2) further defines an act associated with a political objective as follows:

In this Act, unless the context otherwise indicates, "act associated with a political objective" means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date ..."

Having regard to the provisions of Section 20(1) (a) (b) and Section 20 (2) it is quite clear that an application will only comply with the requirements of the Act if it discloses an act which constitutes an offence or delict (Section 20 (2) ) for which an applicant has made a full disclosure in terms of Section 20 (1) (c).

None of the applicants have disclosed any such act, omission or offence. On the contrary, pursuant to the enquiries made by this Committee in terms of Section 19, the applications as amplified in the letter quoted hereinabove, categorically state that "none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty"; " ... that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act", that they do not have to apply for amnesty for "specific acts .... since there are none".

According to the amplification the stated reasons for the applications were that the leadership of the ANC was determined then as at present, to;

- show its determination "not to abandon or desert the thousand[s] of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary".

- "lead its members by example, encouraging those affected to follow in its footsteps" by applying for amnesty.
- " ... to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act".

The Committee notes the reasons advanced by the ANC. Unfortunately no matter how noble and commendable these reasons may be, they clearly demonstrate that these applications do not comply with the requirements of the Act as no act, omission or offence is the subject of the applications as required by Section 18(1) of the Act. The applications do not relate to any specific act, omission or offence. On their own admission none of the applicants have been involved in any act "for which they would require to apply for amnesty". In the premises, no amnesty can be granted to the applicants because in terms of what is before the Committee they have committed no offence or delict.

The intention of the applicants to support the thousands of cadres did not warrant an application of this nature. It would have been sufficient for the applicants to support their members' applications for amnesty where necessary without themselves applying for amnesty for the acts of such members. That it was never envisaged by the Act to have persons such as the applicants applying for amnesty on the basis of collective responsibility or for the aforementioned reasons is to be found in Section 20 (7) (a) which has already been discussed hereinabove.

#### FINDINGS

It is our finding that:

In so far as the applicants seek to apply for amnesty for acts committed by their members in the various institutions and structures on the basis of collective political and moral responsibility, their applications fall outside the ambit of the act and accordingly they do not require to apply for amnesty.  
In so far as the applications read with the amplification are concerned we find that no amnesty can be granted to the applicants because

1. on their own version they have committed no offence or delict in terms of the act.
2. Their applications do not relate to any specific act, omission or offence in terms of Section 20 (1) and therefore do not fall within the ambit on the Act.

#### CONCLUSION

In the premises the applications do not comply with the requirements of the Act and no amnesty is granted.

Signed on the 4th Day of March 1999.

1. Judge S. Khampepe

2. Judge S. Miller

3.

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Adv. N.J. Motata

4.

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W. C. Malan  
SK/nt/

Verw : A15  
Navraag: Adv A R Ackermann  
Tel : 845 6432

**SPECIAL LITIGATION UNIT /  
SPESIALE LITIGASIE EENHEID**

26 Junie 2006

**MEMORANDUM**

AAN : Dr S Ramaite S C  
VAN : A R Ackermann S C  
ONDERWERP : DIE STAAT teen

- (1) MTHETHELEDI ZEPHANIA MNCUBE
- (2) MZONDELELI EUELID NONDULA
- (3) JABULANI SYDNEY MBULI

Saakdossiere :

- (1) Messina MR 67/12/85 : Moord van 2 SAP lede
- (2) Messina MR 57/11/85 : Landmynontploffing
- (3) Messina MR 58/11/85 : Landmynontploffing
- (4) Messina MR 67/11/85 : Landmynontploffing
- (5) Messina MR 65/11/85 : Landmynontploffing
- (6) Messina MR 66/11/85 : Landmynontploffing
- (7) Messina MR 34/12/85 : Landmynontploffing
- (8) Messina MR 41/12/85 : Landmynontploffing
- (9) Messina MR 21/02/86 : Landmynontploffing
- (10) Alldays MR 10/10/86 : Landmyn onskadelik gestel
- (11) Alldays MR 11/10/86 : Landmyn onskadelike gestel

- 3 -

Die ondersoek het verder op 'n gewapende aanval op 26 Desember 1986 op 'n SA' patrollie betrekking waartydens 3 ANC-lede doodgeskiet en een (MNCUBI) gearresteer is. MNCUBE het later daarin geslaag om te ontsnap deur twee SAP-lede nl ALOFF GERBER en Sers NEL dood te skiet. (Messina MR 67/12/86).

Eersgenoemde twee persone hierbo (MNCUBE en NONDULA) is later gearresteer en is weens al die gemelde misdade vervolgt, skuldig bevind en gevonnissen, terwyl die derde persoon (MBULI) nooit gearresteer was nie.

## 2. AMNESTIE

Amnestie is op 16 Maart 2001 aan al die bogenoemde persone verleen vir alle misdade waaraan hulle met gemelde ontploffings verband hou. Eersgenoemde (MNCULBE) het ook amnestie vir die moord van die twee SAP lede ontvang.

## 3. OPMERKING

Die ANC het die gebruik van landmyne in die Messina grensgebied goedgekeur en opdragte in die verband is deur die bevelstruktuur van Umkhonto we Sizwe (MK) aan lede gegee. (Amnestie uitspraak van vermeldes).

Volgens getuienis gelewer was die vermeldes onder bevel van ene MANCHECK wat opdragte gegee en aan MK gesagvoerders verslag moes doen. MANCHECK is oorlede en daar is geen getuienis oor sy skakeling met die MK opgesag nie.

Al die ander ANC-lede (voetsoldate) wat by hierdie misdade betrokke was is oorlede.

## 4. BESLISSING

Ten opsigte van die sogenaamde voetsoldate is geen verdere ondersoek nodig nie. Ten aansien van die ANC leierskap wat die opdragte vir die landmynveldtog gegee het en nie amnestie ontvang het nie, moet 'n besluit tegeleener tyd nog geneem word nadat al die relevante partye gespreek is.

Bovermelde is 'n moeilike besluit.

Adv A R Ackermann S C  
SPESIALE DIREKTEUR

/tp

20/1/2001

A/INV/25/02/TRC

TO: M. B. T. NCOUKA

FROM: RC MACADAM  
Deputy Head of PCLU

### ALLEGATIONS AGAINST THE PRESIDENT

1. I enclose herewith a copy of CIO Leask's affidavit confirming that General Van der Merwe did not furnish him with any information on the basis that this was in the possession of his attorney Wagener.
2. I have conducted the following investigations into the matter:
  - (i) SAPS are in possession of a huge number of dockets relating to criminal offences committed by the ANC/MK. I have a list of these dockets. In not one of them has the President been implicated as a suspect.
  - (ii) Several prominent MK members applied for and received amnesty. None of these implicated the President. In terms of section 20 (7) (a) of Act 34 of 1995 the organisation cannot be held vicariously liable for the acts committed by their members. Wagener represented the victims at several of these hearings and only made allegations against members of the Military Headquarters of the ANC and not the President. ✓
  - (iii) The Foundation for Equality Before the Law made a submission to the TRC accusing the ANC of several human rights abuses. These allegations are almost entirely based on Sechaba and other publications which are not admissible in law without proof of authenticity. Yet again the President was not implicated.
  - (iv) The ANC also made a submission to the TRC and admitted to various human rights abuses. The President made the submission relating to landmine incidents. (The admissions were made on behalf of the organisation and not in his individual capacity. In terms of section 29 of Act 34 of 1995 the submission is inadmissible in criminal proceedings. ✓
  - (v) It is true that the President applied for and was refused amnesty. The basis of the refusal was that he did not admit to committing criminal acts.

- (3) The various old Terrorist laws have been abolished. His guilt or innocence must be determined by the general principles of common law relating to conspiracy and common purpose. In this regard it must be proved either that he was present at a meeting where he agreed participated in the commission of the crimes. I am unable to find any evidence to prove either.

ANDREW GORDON LEASK

States under oath in English:

I am appointed as Head of the Special National Projects Unit at the Directorate of Special Operations Head Office, where I hold the rank of Chief Investigating Officer.

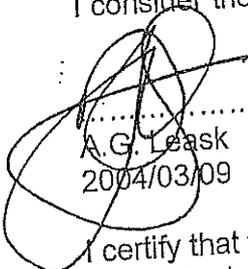
As part of my duties I perform and assist with investigation for the Priority Crimes Litigation Unit.

On 2004/03/09 I conducted an interview with the ex police Commissioner Johan van der Merwe. The purpose of this meeting was to offer him an opportunity to make available any information or evidence that could assist in establishing a case for possible criminal charges against the leadership of the ANC.

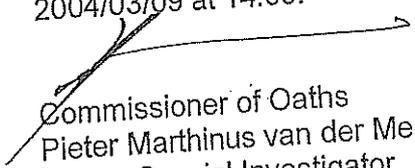
The General has clearly stated that he has conducted an investigation and has obtained documents and statements implicating members of the ANC with regard to the so-called TRC cases. Further that these documents have been handed to their attorney Wagener who is still in possession thereof.

General van der Merwe has undertaken to confirm this in a sworn statement which he will prepare himself.

I know and understand the contents of the declaration.  
I have no objection to taking the oath.  
I consider the oath to be binding on my conscience.

  
A.G. Leask  
2004/03/09

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration which was sworn to before me and the deponents signature placed thereon in my presence at PRETORIA on 2004/03/09 at 14:00.

  
Commissioner of Oaths  
Pieter Marthinus van der Merwe  
Senior Special Investigator  
Directorate of Special Operations  
VGM Building  
Weavind Park  
PRETORIA  
R.S.A

## ***NPA MEDIA RELEASE***

***DATE: 15 MAY 2004***  
***IMMEDIATE RELEASE***

### ***THE NPA CLOSES THE FILE ON 37 ANC LEADERS***

The National Prosecuting Authority (NPA) has decided not to launch any investigation into 37 ANC leaders who were refused amnesty by the TRC.

In 1996 the ANC leadership, led by President Mbeki, jointly applied for amnesty and took collective responsibility for policy decisions that led to cadres committing acts that were regarded as criminal by the previous government.

According to the joint application, none of the leaders had committed any individual action for which they were required to seek amnesty.

In terms of the TRC Act, people had to make individual applications, give a full disclosure of each and every specific offence that the person had committed. The TRC committee found that the joint application did not disclose any act, omission or offence.

The TRC, therefore, turned down the ANC leaders' application, as it did not comply with the Promotion of National Unity and Reconciliation Act of 1995.

The joint amnesty, along many other amnesty judgments, was referred to the NPA for the organization to decide whether or not prosecutions could be instituted.

The "Foundation for Equality Before the Law" – an organization led by former National Police Commissioner, General Johan van der Merwe, which mainly comprises former members of the old security police – sought to use the TRC judgment to call for the prosecution of the ANC leaders.

The Foundation alleged that it was in possession of documents that could prove a criminal case against the ANC leaders.

The National Director of Public Prosecutions, Bulelani Ngcuka, made several requests to be furnished with this evidence, however, the Foundation failed to supply the NPA with the relevant facts.

Furthermore, the NPA perused all relevant material in possession of both the TRC and the SAPS and was unable to find any evidence on which to launch an investigation.

In the circumstances, the NPA has no reasonable basis to authorize an investigation in terms of the provisions of Sec 28 of Act 32 of 1998.

*Issued by Siphon Ngwema, Executive Manager: NPA Communications.  
For more information contact him @ 082 499 8111.*

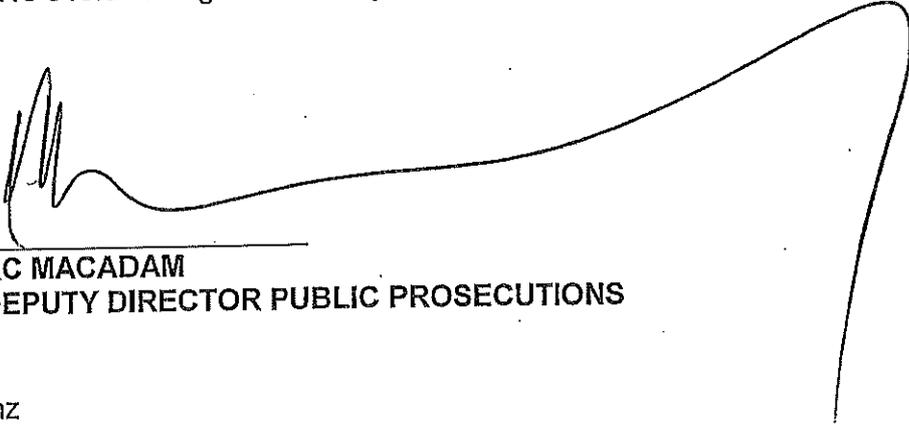
Inv 25/02 TRC

2 July 2004

Supt Brits  
SAPS  
Crimes Against the State  
PRETORIA

**REFUSAL OF AMNESTY: PRESIDENT AND OTHER PROMINENT  
ANC LEADERS**

Having considered all the relevant material in its possession, the National Prosecuting authority has decided that there is insufficient evidence upon which to launch a criminal investigation arising from the TRC's refusal to grant amnesty to the above persons.



**RC MACADAM  
DEPUTY DIRECTOR PUBLIC PROSECUTIONS**

/hz

/Z56 forms

Office of the Head  
Priority Crimes Litigation Unit  
VGM Building  
PRETORIA

## INTERNAL MEMORANDUM

INV 25/02 TRC

P. O. Box 752,  
PRETORIA  
0001

VGM Building  
Hartley St.  
Weavind Park  
0001  
Pretoria  
South Africa

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

**TO:** MR B T NGCUKA  
**FROM:** R C MACADAM  
**SUBJECT:** INVESTIGATION AGAINST THE PRESIDENT AND OTHER  
PROMINENT ANC LEADERS  
**DATE:** 5 JULY 2004

1. I normally do not allow myself to be distracted by such matters, but given the manner in which Commissioner Selebi sought to attack you over the above case, the following is of interest:
2. On 5 July 2004 Senior Superintendent L Bester and Superintendent H Britz of SAPS Headquarters saw me in connection with the attached memo confirming the NPA's decision not to conduct an investigation. They were displeased with the contents of the memo and attempted to persuade me to reopen the case against the President, as there was an abundance of evidence to justify a prosecution. I have invited them to furnish me with dockets containing such evidence.
3. During these discussions Mr Ackermann joined the meeting and drew their attention to the fact that since June 2003 he had invited them to produce evidence implicating the President without any success. I am now waiting to see if any dockets will materialize and will inform you accordingly.

  
R C MACADAM  
DEPUTY HEAD PCLU

  
A R ACKERMANN SC  
HEAD: PCLU

I agree.

Adv. M  
P. A. 01  
P. A. 01  
P. A. 01

## INFORMATION NOTE

**To: Assistant Commissioner P J Jacobs**

### TRC RELATED MATTERS: INQUESTS

- 1 As far as the finalization of certain inquests are concern, the following cases were perused an the findings are as follows:
- 2 **Messina CR 57/11/85 M Z Ncube and two others.**  
Inquests were held in respect of the Van Eck and De Nysshen victims. (Attached copies of the J56's - annexures A-F).  
Inquests in respect of the two policemen, Nel and Gerber, were not held because the accused, Ncube and two others were charged and convicted but receive amnesty.
- 3 **Ellisras CR A28/8/88 M J Rampolo**  
Inquests were held in respect of the policeman N C Claassen and the ANC member J M Kgwahla who were killed during the incident. (Attached copy of the Inquest Register at Seleka Magistrate's Court - annexure G). Unfortunately no J56's could be traced.
- 4 **King Williams Town CR 397/11/92 T T Xundu**  
Inquests were held in respect of Gillian Davis, Rhoda MacDonald, David Andre Theresa Davis and Ian Wheelright MacDonald who were killed during the incident. ( Attached copies of the J56's - annexures H - K).
- 5 **Diepkloof CR 228/8/89 Micheal Ndlovu, William Mafa and Ben Bani**  
The circumstances surrounding Michael Ndlovu in so far as granting of amnesty is concern, is still under investigation.
- 6 **Umbumbulu CAS 35/4/87 Steven Mkulusi, Moses Mkize and Sakhile Nzama**  
The Magistrate's Court at Umbumbulu was visited but neither could the Inquest register nor the Inquest file, with a possible J56 been traced.
- 7 **Jeppe CR 47/7/88 Ellispark Bomb**  
Inquests were held in the respect of Clive Winston Quayle and Linus Mare who were killed during the incident. (Attaced copies of the J56's - annexures L+M)
- 8 **Fort Beaufort CR 156/3/93 N Diaho-Monehang**  
An inquest was held in respect of J F Jerling who was killed during the incident. (Attached copy of J56 - annexure N)

**COMMANDER; CRIMES AGAINST THE STATE**  
**L J BESTER**

**SENIOR SUPERINTENDENT**

MESSINA M.R. 677/1986

ANNEXURE A 1104

-76-200000 (M-S)

J 56

No. 1 1986

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA

MESSINA

LIANDROSTRIC S.O.S.  
 PRIVATE BAG X827  
 1986-05-27  
 MESSINA 0800

A.J. BOSCH

esquire, Magistrate for the said district  
Landdros van genoemde distrik en  
as assessor(s) on the 16de day  
as assessor(e) op die dag

1986 into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ns of section 16 of the Act:  
volge artikel 16 van die Wet:  
of the deceased person  
t van die oorledene

CARLA DE NYSSCHEN; BLANKE; DOGTER; 8 JAAR OUD

ill name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

15 DESEMBER 1985

er likely cause of death  
s of waarskynlike oorsaak van dood

SKOK EN BLOEDING NA ERNSTIGE LEDEMAAT EN HOOF BESERINGS

OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE 'N  
PASSASIER WAS.

er the death was brought about by any act or omission involving or amounting to an offence on the part of any  
dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak

JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

A.J. BOSCH

MEI 1986

ADD. Magistrate/Landdros 11.11.81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
ERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
d that fact.  
ld aan te teken nie, hy dié feit moet boekstaaf.

RNEY-GENERAL,  
JREUR-GENERAAL,  
vaatsak X300  
TORIA 0001

ms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
olge artikel 17 (1) van die Wet op GeregteLIKE Doodsondersoekte, 1959 (Wet 58 van 1959), word die notule van

Messina P.N. 67/12/86

ANNEXURE B  
A92

G.P.S. 45811-1975-76-200000 (M-S)

J 56

No. 2 19.86

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

helden at MESSINA in the district of MESSINA  
ehou te A.J. BOSCH

of mnr. esquire, Magistrate for the said district  
Landdros van genoemde distrik en

MEI 19 86 into the circumstances attending the death of the person mentioned below.  
as assessor(s) on the 16de day  
as assessor(e) op die dag

ii. in terms of section 16 of the Act  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

a) Identity of the deceased person: JOHANNES JACOBUS DE NYSSCHEN; BLANKE; SEUN; 3 JAAR OUD;  
Identiteit van die oorledene

(State full name, race, sex, age and occupation/Meid volle naam, ras, geslag, ouderdom en beroep.)  
Date of death: 15 DESEMBER 1985  
Datum van sterfgeval

Cause or likely cause of death: SKOK EN BLOEDING NA ERNSTIGE NEK-, LEDEMAAT- EN 75%  
Oorsaak of waarskynlike oorsaak van dood

BRANDWONDE OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE  
'N PASSASIER WAS.

Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person: JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

6 MEI 1986

A.J. BOSCH  
ADD. Magistrate/Landdros 11.11.81

NOTE.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
OPMERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
word that fact.  
vermeld aan te teken nie, hy dié feit moet boekstaaf.

CLERK GENERAL,  
SHERIFF-GENERAAL,  
Messina  
P.O. Box 1001  
Messina  
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings  
in terms of artikel 17 (1) van die Wet op Geregtelelike Doodsondersoek 1959.

92  
93  
94  
95  
96

MESSINA M.K. 6/12/86

ANNEXURE C 1776

1-1975-76-200 000 (M-S)

J 56

No.....3/86.....

# INQUEST: ACT 58 OF 1959 GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA

A.J. BOSCH

in die distrik

DEURS  
PRIVATE BAG 824

Magistrate, Magistrate for the said district  
Landdros van genoemde distrik en

as assessor(s) on the 16de day  
as assessor(e) op die dag

1986-05-27

MEI 1986 into the circumstances attending the death of the person mentioned below,  
aangaande die omstandighede van die dood van ondergenoemde persoon.

MAGISTRATE

in terms of section 16 of the Act:  
in terme van artikel 16 van die Wet:

Identity of the deceased person: MARIA GERTRUIDA DE NYSSCHEN; BLANKEVROU; 56 JAAR OUD  
Identiteit van die oorledene

Full name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

Date of death: 15 DESEMBER 1985

Place of death: SKOK EN BLOEDING NA ERNSTIGE NEK EN VERMINKTE ONDERSTE

Probable or likely cause of death: LEDEMATE OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE

Probable or likely cause of death: 'N PASSASIER WAS.

Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person: JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

16 MEI 1986

A.J. BOSCH

ADD. Magistrate/Landdros Tl.11.81

NOTE.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
OPMERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
word that fact.  
Meld aan te teken nie, hy dié feit moet boekstaaf.

ATTORNEY-GENERAL,  
ADVOCATE-GENERAAL,  
Private Bag X300  
PORTERIA 0001

In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
In terme van artikel 17 (1) van die Wet op GeregteLIKE Doodsondersoek, 1959 (Wet 58 van 1959), word die notule van  
hiermee voorgelê.

6 MAY 1986

A. J. BOSCH

MESSINA M.R. 67/12/86

ANNEXURE A112

176-200000 (M-S)

J 56

No. 4 19 86

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA  
in die distrik

A.J. BOSCH

1986 Esquire, Magistrate for the said district  
Landdroes van genoemde distrik en  
as assessor(s) on the 16de day  
MESSINA assessor(s) op die dag

19 86 into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ms of section 16 of the Act:  
volge artikel 16 van die Wet:  
of the deceased person  
it van die oorledene

JACOBA VAN ECK; BLANKEVROU; 34 JAAR OUD

all name, race, sex, age and occupation/Meld voile naam, ras, geslag, ouderdom en beroep.)

15 DESEMBER 1985

death  
van sterfgeval

SKOK EN BLOEDING NA ERNSTIGE NEK, LEDEMAAT EN IN-

or likely cause of death  
k of waarskynlike oorsaak van dood

ENDIGE BESERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP  
ORLEDENE 'N PASSASIER WAS.

death was brought about by any act or omission involving or amounting to an offence on the part of any  
veroorsaak is deur 'n handeling of verstui, wat 'n misdryf aan die kant van iemand insluit of uitmaak  
JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

16 MEI 1986

A.J. BOSCH

ADD Magistrate/Landdroes 11.11.81

E.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out at  
ERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdroes nie in staat is om enige van die bevind  
d that fact.  
d aan te teken nie, hy dié feit moet boekstaaf.

RNEY-GENERAL,  
UREUR-GENERAAL,  
atsak X300

RIA 0001  
ms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
olge artikel 17 (1) van die Wet op Geregte like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van  
iermee voorgelê.

A.J. BOSCH

MESSINA 11.11. 67/12/86

ANNEXURE E  
1108

S-76-200 000 (M-S)

J 56

No. 5 1986

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA  
in die distrik

A.J. BOSCH

Magistrate for the said district  
WATSAK/PRIVATE

as assessor(s) on the 16de day  
as assessor(e) op die dag

19 86, into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ns of section 16 of the Act:  
volge artikel 16 van die Wet:

of the deceased person. IGNATIUS MICHAEL VAN ECK, BLANKE, SEUN; 2 1/2 JAAR OUD  
t van die oorledene

ll name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

death. 15 DESEMBER 1985

an sterfgeval

likely cause of death. SKOK EN BLÔEDING NA ERNSTIGE HOOF, ROMP- EN LEDEMAAT-  
of waarskynlike oorsaak van dood

ERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE  
PASSASIER WAS.

the death was brought about by any act or omission involving or amounting to an offence on the part of any  
ood veroorsaak is deur 'n handeling of verstuijn, wat 'n misdryf aan die kant van iemand insluit of uitmaak  
JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

MEI 1986

A.J. BOSCH

ADD. Magistrate/Landdros 11.11.81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
KING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
that fact.  
aan te teken nie, hy dié feit moet boekstaaf.

NEY-GENERAL,  
EUR-GENERAAL,  
itsak X300

IA 0001  
of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

ANNEXURE F  
A100

MESSINA M.R. 67/12/86

-200 000 (M-S)

J 56

No. 6 19 86

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA  
in die distrik

A.J. BOSCH esquire, Magistrate for the said district  
Landdroos van genoemde distrik en  
as assessor(s) on the 16de day  
as assessor(e) op die dag

19 86 into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

section 16 of the Act:  
artikel 16 van die Wet:

deceased person... die oorledene  
NELMART VAN SCKE ABLANKE; DOGTER; 8 JAAR-OUD

name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

15 DESEMBER 1985

cause of death... oorsake van dood  
SKOK EN BLOEDING NA ERNSTIGE HOOF, EKSTENSIEWE LEDEMAAT

cause of death... oorsake van dood  
NEK BESERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP  
LEDENE 'N PASSASIER WAS.

death was brought about by any act or omission involving or amounting to an offence on the part of any person  
veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak

A, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

1986

A.J. BOSCH

ADD. Magistrate/Landdroos 1P.11.81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
Art. 16 (3) van die Wet bepaal dat indien die Landdroos nie in staat is om enige van die bevindings

to be recorded, the Magistrate, if he is unable to do so, shall record the fact that the findings have not been recorded.  
as teken nie, hy dié feit moet boekstaaf.

GENERAL,  
REGISTRAR,  
X300

Section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
Art. 17 (1) van die Wet op Geregte Like Doodsondersoek, 1959 (Wet 58 van 1959), word die notule van

Datum naas- bestaandes kennis gegee Date next of kin notified	Datum van aanvang van geregtelike doodsondersoek Date of commencement of inquest	Bevinding en datum daarvan Finding and date thereof	Datum aan Prokureur- generaal gestuur Date sub- mitted to Attorney-General	Datum van Prokureur- generaal terug- ontvang en sy verwysings- nommer Date of return by Attorney-General and his reference number	Datum terug aan polisie Date returned to police
11/1/89	17/1/89	The death was not about by any act or omission involving or amounting to an offence on the part of any person.	N/A	N/A	?
1/1/89	6/2/89	The deceased is a terrorist who was killed during hot pursuit and as such there is no act or omission on the part of any person involving or amounting to an offence but defence.	?	?	?
1/1/89	20/2/89	The deceased is a terrorist who was killed during hot pursuit and as such there is no act or omission on the part of any person involving or amounting to an offence but defence.	20/2/89	14/3/89 13/1/89	89/3/17
1/8/89	20/2/89	The deceased was killed during hot pursuit of a terrorist during process of hot pursuit.	20/2/89	14/3/89 18/1/89	89/3/17
1/8/89	20/2/89	One terrorist was killed while there are some spores of three other	20/2/89	14/3/89 18/1/89	89/3/17

MMUSO WA LEBOWA  
Magistrate/Magistrata  
1989-01-26  
Private Bag/Privaatsak  
POTGIETERSRUSS  
LEBOWA GOVERNMENT SERVICE  
LEBOWA REGERINGSDIENST

ADD: MAGISTRATE/MAGISTRATA  
PHALALA

ADD: MAGISTRATE/MAGISTRATA  
PHALALA 20/2/89

1989-02-23  
Private Bag/Privaatsak  
POTGIETERSRUSS  
LEBOWA GOVERNMENT SERVICE  
LEBOWA REGERINGSDIENST

MMUSO WA LEBOWA  
Magistrate/Magistrata  
Add: Magistrate/Magistrata  
PHALALA

SEN OR AANKLAAR/PROSECUTOR  
MOTER/AGTERMOEGELO  
LEBOWA GOVERNMENT SERVICE  
LEBOWA REGERINGSDIENST

SV199/96

J 56

G.P.-S.

No. 59/2003 19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die distrik in the district of KING WILLIAM'S TOWN
voor by N MJEKULA Landdros van genoemde distrik en Magistrate for the said district
met with as assessor(e) op die dag as assessor(s) on the day

aan 18.2.2004 aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.

Indings ingevolge artikel 16 van die Wet: findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person GILLIAN DAVIS
FEMALE 53 years
(Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death 28.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death MULTIPLE SCHRAPNEL WOUNDS AND RETROPERITONEAL HAEMORRHAGE

(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person
DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF
THEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS!UMZIWONKE NTINTILE, TOBELA MLAMBISA

Datum 18.2.2004 (SGD) N MJEKULA Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall vermeld aan te teken nie, hy dié feit moet boekstaaf. record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregtelike Doodsondersoeke gevolg. When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY GENERAL DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings. hiermee voorgelê.

Datum 18.2.2004 (SGD) N MJEKULA Landdros/Magistrate

Die stukke gaan hiermee terug vir lissering. My verwysingsnommer is 9/2/9-110/04 The record is returned herewith for filing: My reference number is... PUBLIC PROSECUTOR

No. 57/2003 Jaar Year

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die in the KING WILLIAM'S TOWN

\*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/distrik  
\*division of the High Court of South Africa/regional division/district

voor by N MJEKULA \*regter/streeklanddros/landdros  
\*judge/regional magistrate/magistrate

van genoemde \*afdeling/streekafdeling distrik met  
of the said \*division/regional division/district with (i) as assessor(e)  
(ii) as assessor(s)

op (datum) 17.2.2004 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.  
on (date) into the circumstances attending the death of the person mentioned below.

bevindings ingevolge artikel 16 van die Wet:  
findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene  
Identity of the deceased person RHODA MacDONALD

FEMALE 56 years

(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)

(b) Datum van sterfgeval  
Date of death 29.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood  
Cause or likely cause of death MULTIPLE WOUNDS OF BODY

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:  
Whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person:

DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF  
TEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILI  
AND TOBELA MLAMBISA

Datum 17.2.2004  
Date

(SGD) N MJEKULA  
Regterlike Beampte • Judicial Officer

OPMERKINGS: 1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo vermeld aan te teken, hy dié feit moet boekstaaf.  
NOTE: 1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record that fact.

\*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die kode "Geregtelike Doodsondersoeke" gevolg.  
\*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIREKTEUR VAN OPENBARE VERVOLGINGS  
DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.  
In terms of section 17(1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 17.2.2004  
Date

(SGD) N MJEKULA  
Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is  
The record is returned herewith for filing. My reference number is

9/2/9-10/04 114/04

Die Direkteur: Openbare Vervolgings het besluit \*om te verwoig/om nie te verwoig nie.  
The Director: Public Prosecutions has decided \*to prosecute/not to prosecute.

Datum 17.2.2004

SV199/96

J 56

G.P.-S.

No. 60/2003 19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die distrik in the district of KING WILLIAM'S TOWN
voor by N. MJEKULA Landdroos van genoemde distrik en Magistrate for the said district
met with as assessor(e) op die 18 dag as assessor(s) on the 18 day

FEBRUARY 2004xx aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.



Findings ingevolge artikel 16 van die Wet: Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person DAVID ANDRE THERESA DAVIS

MALE 59 years (Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death 28.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death MULTIPLE SCHRAPNEL WOUNDS WITH LEFT HAEMOTHORAX

(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF THEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILE, TOBELA MLAMBISA

Datum 18.2.2004 (SGD) N. MJEKULA Landdroos/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdroos nie in staat is om enige van die bevindings hierbo vermeld aan te teken nie, hy dié feit moet boekstaaf. NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregte Like Doodsondersoeke gevolg. When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregte Like Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY GENERAL DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregte Like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê. In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 18.2.2004 (SGD) N. MJEKULA Landdroos/Magistrate

Die stukke gaan hiermee terug vir lissering. My verwysingsnommer is 9/2/9-115/04 The record is returned herewith for filing. My reference number is 9/2/9-115/04

PUBLIC PROSECUTIONS

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN In die in the KING WILLIAM'S TOWN

\*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/distrik
\*division of the High Court of South Africa/regional division/district

voor by N MJEKULA \*regter/streeklanddros/landdros
\*judge/regional magistrate/magistrate

van genoemde \*afdeling/streekafdeling distrik met as assessor(e)
of the said \*division/regional division/district with (i) (ii) as assessor(s)

op (datum) 17.2.2004 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
(date) into the circumstances attending the death of the person mentioned below.



bevindings ingevolge artikel 16 van die Wet:
findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person IAN WHEELWRIGHT MACDONALD

MALE 61 years
(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)

(b) Datum van sterfgeval 28 NOVEMBER 1992
Date of death

(c) Oorsaak of waarskynlike oorsaak van dood MULTIPLE WOUNDS ON BODY
Cause or likely cause of death

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:
Whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person:

DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF
THEMBELANI XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILE & TOBELA
MLAMBISA

Datum 17.2.2004 (SGD) N MJEKULA
Date Regterlike Beampte • Judicial Officer

OPMERKINGS: 1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo
NOTE: 1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record
vermeld aan te teken, hy dié feit moet boekstaaf.
that fact.

\*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die
\*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure
prosedure voorgeskryf in paragraaf 12 van die kode "Geregteelike Doodsondersoeke" gevolg.
prescribed in paragraph 12 of the code "Geregteelike Doodsondersoeke" should be followed.

DIREKTEUR VAN OPENBARE VERVOLGINGS
DIRECTOR OF PUBLIC PROSECUTIONS
GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregteelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.
In terms of section 17(1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 17.2.2004 (SGD) N MJEKULA
Date Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir klassering. My verwysingsnommer is 9/2/9-110/04 113/04
The record is returned herewith for filing. My reference number is

Die Direkteur: Openbare Vervolgings het besluit om te vervolg/om nie te vervolg nie.
The Director: Public Prosecutions has decided to prosecute/not to prosecute.

VEILIGE HEIDSTRAK

JOHANNESBURG

G.P.-S. 003-0033

J 56

No. 1919 / 19 19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

Gehou te **JOHANNESBURG** in die distrik **JOHANNESBURG**  
Held at in the district of

voor **M. K. S. DE LANGE** Landdros van genoemde distrik en  
by Magistrate for the said district  
met as assessor(e) op die dag  
with as assessor(s) on the day

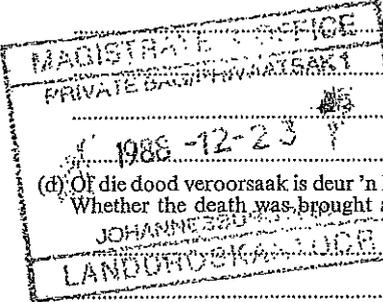
van **1988-12-08** 19... aangaande die omstandighede in verband met die dood van ondergenoemde persoon.  
of into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet:  
Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene **CLIVE WINSTON D HAYLE**  
Identity of the deceased person **CLUCAS WIMALLE; 47 YRS**  
(Meid volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval **2/7/88**  
Date of death

(c) Oorsaak of waarskynlike oorsaak van dood **MULTIPLE INJURIES**  
Cause or likely cause of death **Car bomb explosion**



(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak  
Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person

*Person unknown*

Datum **1988-12-08**  
Date

*[Signature]*  
Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo  
NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall  
vermeld aan te teken nie, hy dié feit moet boekstaaf.  
record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf  
When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph  
in paragraaf 12 van die Kode Geregte Like Doodsondersoeke gevolg.  
12 of the code "Geregte Like Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL  
THE ATTORNEY-GENERAL **JOHANNESBURG**

Ingevolge artikel 17 (1) van die Wet op Geregte Like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge  
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
hiermee voorgelê.

Datum **1988-12-08**  
Date

*[Signature]*  
Landdros/Magistrate

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is  
The record is returned herewith for filing. My reference number is

**11712/2682/88**

1504

WETLIK HEIDS TAK

JOHANNESBURG

No. 14461/19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

Gehou te **JOHANNESBURG** in die distrik **JOHANNESBURG**  
Held at ..... in the district of .....

voor by **MARCELO LANGE** Landdros van genoemde distrik en Magistrate for the said district

met with **1959-12-08** as assessor(e) op die dag as assessor(s) on the day

van of ..... 19..... aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet: Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person **LIMUS MARE ; W / MALE**  
(Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death **2/7/88**

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death **MULTIPLE INJURIES**  
**Carbon monoxide poisoning**



Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person

*[Handwritten signature]*

Datum **1959-12-08**  
Date ..... Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo vermeld aan te teken nie, hy dié feit moet boekstaaf. NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregte Like Doodsondersoeke gevolg. 12 of the code "Geregte Like Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY-GENERAL

**JOHANNESBURG**

Ingevolge artikel 17 (1) van die Wet op Geregte Like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê. In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum **1959-12-08**  
Date ..... Landdros/Magistrate

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is **1192127/2/88**  
The record is returned herewith for filing. My reference number is .....

Datum **22.12.88**  
Date ..... Hoofklerk van die Prokureur-generaal Chief Clerk to the Attorney-General

NO. 2/2003

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

hou te held at FORT BEAUFORT in die FORT BEAUFORT  
In the FORT BEAUFORT

\*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/  
\*division of the Supreme Court of South Africa/regional division/

distrik voor JP JAQUIRE \*regter/streeklanddros/  
district by ..... \*judge/regional magistrate/

landdros van genoemde \*afdeling/streekafdeling distrik met GEEN as assessor(e) op die 11 dag  
magistrate of the said \*division/regional division/district with ..... as assessor(s) on the ..... day

van DESEMBER 2003 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.  
of ..... 19 into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet:  
Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene JOHANNES FREDERICK JERLING  
Identity of the deceased person.....

18 JAAR, MANLIK

(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)

(b) Datum van sterfgeval 20/03/1993  
Date of death.....

(c) Oorsaak of waarskynlike oorsaak van dood SKIETWOND IN KOP NADAT OORLEDENE IN 'N AANVAL  
Cause or likely cause of death.....  
DEUR APLA OP DIE YELLOWWOODS HOTEL GESKIET IS.

In

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:  
Whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person:

JA. NKOPANE, DIABO-MONAHENG, VUYISILE BRIAN MADASI EN LUNGISA MZIWONKE NTINTILI

Datum 11 DESEMBER 2003  
Date .....

Regterlike Beampte • Judicial Officer

OPMERKINGS.-1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo vermeld aan te teken, hy dié feit moet boekstaaf.  
NOTE.-1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record that fact.

\*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die kode "Geregtelike Doodsondersoeke" gevolg.  
\*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL DIREKTEUR OPENBARE VERVOLGINGS  
THE ATTORNEY-GENERAL PRIVAATSAK X1009, GRAHAMSTAD, 6140

Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.  
In terms of section 17(1) of the Inquest Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 11 DESEMBER 2003  
Date .....

Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir lassing. My verwysingsnommer is SV 64/95. 9/2/9 - 980/02  
The record is returned herewith for filing. My reference number is .....

Die Prokureur-generaal het besluit om te vervolg/om nie te vervolg nie/dat die polisie ondersoek moet voortgaan.  
The Attorney-General has decided to prosecute/not to prosecute/ that police investigation is to continue.

Datum 2003-12-23  
Date .....

GRAHAMSTOWN

Hoofklerk van die Prokureur-Generaal  
Chief Clerk to the Attorney-General

\* Skrap indien nie van toepassing.

VERSKYNNINGS INGEVOLGE ARTIKEL 11 VAN DIE WET  
APPEARANCES IN TERMS OF SECTION 11 OF THE ACT

As Staatsaanklaer  
As Public Prosecutor

MR. M. RUSI

en ..... NO-ONE ..... namens  
and ..... on behalf of

Die volgende beëdigde/bevestigende verklaring is ingevolge artikel 13 (1) van die Wet toegelaat:  
The following affidavits/affirmations were admitted in terms of section 13(1) of the Act:

- A - CLYDE CONWAY SCHWARTZ
- B - HENRY SHANE FERREIRA
- C - JAN JOHANNES NEL
- D - HENDRIK JACOBUS STEPHANUS RAUTENBACH
- E - CHARL JACQUES HURN
- F - KHAYALETHU EVERTON KEPEYI
- G - LANCE PIETER DE KLERK
- H - CHARL JACQUES HURN
- J - JOHANNES PETRUS JACOBUS ERASMUS
- K - DR. BASIL WINGREEN
- L - FREDERICK JACOBUS PETRUS NEL
- L2 Kennisgewing van vrywaring deur Warheid en Versoenings Kommissie
- L3 Beslissing van vrywaringskommissie
- L4 Proklamasie interne van artikel 20(1) Wet 34/1995

Die volgende mondelinge getuienis is afgeleë:  
The following oral evidence was adduced:

GEEN

/Z56 forms

Office of the Head  
 Priority Crimes Litigation Unit  
 VGM Building  
 PRETORIA

P. O. Box 752,  
 PRETORIA  
 0001

VGM Building  
 Hartley St.  
 Weavind Park  
 0001  
 Pretoria  
 South Africa

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

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## INTERNAL MEMORANDUM

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**TO:** ADV VP PIKOLI  
 NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

**CC:** MS KALYANI PILLAY  
 SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS

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

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

**SUBJECT:** TRC MATTERS

**DATE:** 16 AUGUST 2007

Dear Adv Pikoli

1. Anton has asked me to deal with this matter after he in turn had discussed it with Dr Ramaite SC.
2. I attach herewith the fax from AfriForum, as well as a draft reply for your consideration.
3. This is the following episode in the saga of the so-called case against the President and other senior ANC leaders which has been the source of much controversy, since the President made his speech in April 2003 to the effect that there would be no further TRC amnesty processes.
4. As in the case of all previous complaints, AfriForum refuses to

produce the "evidence" upon which it makes its allegations.

5. When the allegations of a so-called case against the President first surfaced, I went through a large number of dockets at the DPP: Pretoria's office, which had been compiled by the former Security Branch of the then SAP. I also held detailed discussions with the two SAPS members, who were in charge of such dockets. I could find no evidence implicating the President or any other senior ANC member. In all the dockets, the implicated parties had received amnesty and no further prosecution of them was therefore legally justified.
6. With the assistance of Madeleine Fullard, I went through the following TRC material:
  - 6.1 A submission by the former Security Force Generals directed against MK. None of the current parties were implicated during the course of such submission.
  - 6.2 A submission by the President in his capacity as the Head of the ANC during the course of which it was admitted that human rights abusers were committed during the course of the Liberation Struggle. This submission was not an admission of personal liability and in any event, in terms of the TRC legislation, statements of this nature are not admissible as confessions in criminal proceedings.
  - 6.3 Amnesty applications by former MK operatives with particular reference to the land mine campaign. In certain instances, these applications were opposed by the lawyers acting on behalf of the Generals (In this case, claiming to have a mandate from the victims). Again, the current parties were not implicated and in any event, the TRC granted amnesty on the basis that a full disclosure had been made.
  - 6.4 The refusal of amnesty to a group referred to collectively as the "ANC 37". The basis of the refusal was that collective political responsibility had been assumed without admission of individual criminal acts. Since the TRC was only empowered to grant amnesty for criminal offences, the applications had to be refused.
7. The security laws which applied in the 1970/1980's contained several presumptions aimed at easing the burden on the State to prove individual criminal acts. These laws have all been repealed and consequently, guilt must be determined on the basis of the general principles of common purpose. Common purpose as interpreted by the Courts requires either direct participation in the offence or a prior agreement to commit it. The relevant acts must be committed either prior to or during the commission of the offence.
8. In the light of the above, I was of the view that there was no admissible evidence upon which to investigate or prosecute the ANC leadership and I submitted a memorandum to Mr Ngcuka to this effect. Subsequently, the NPA released a media statement to the effect that no grounds existed to investigate or prosecute the ANC leadership.
9. Mr Ngcuka also requested me to brief Minister Maduna and members of the Office of the President and all parties were satisfied.
10. It is highly likely that your reply will be released to the media by Mr Kriel and I therefore deem it inappropriate to request him to make his investigation available, as this might create the

impression that there is in fact a case against the ANC leadership and we will have a repeat of the problems where senior Government officials believed that we were planning to arrest the President and other persons.

Kind regards

---

**RC MACADAM**

17 August 2007

The CEO  
AfriForum  
Pretoria  
0001

Fax: (012) 6641281  
Email: [kallie@afriforum.co.za](mailto:kallie@afriforum.co.za)

Dear Mr Kriel

**YOUR COMPLAINT RE TRC MATTERS**

I acknowledge receipt of your letter dated 27 July 2007 and have to inform you that in 2004, my predecessor, Adv Bulelani Ngcuka, declined to prosecute the leadership of the ANC in respect of various matters arising from the TRC process. This decision was taken after careful consideration of all the available, admissible evidential material and in the light of the Constitutional powers and policy of the National Prosecuting Authority. His decision was publicly announced to the media. A copy of the media release is attached herewith for easy reference.

In essence, the facts upon which you based your allegations against the ANC leadership, formed part of the evidential material, which was considered by Adv Ngcuka. I note in your letter that you have declined to make your private investigation available to me. I therefore have no legal basis upon which to overturn the properly informed and carefully considered decision of my predecessor.

I wish to inform you that all prosecutions arising from the TRC process are in accordance with the prosecution policy as required by the Constitution. I therefore cannot accede to your further request to cease all prosecutions arising from the TRC cases.

Yours sincerely

---

**ADV VP PIKOLI**  
**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

- 2.6 With the aforementioned in mind, my clients will now have to liaise with the investigating officer of this specific incident and Adv. Ackermann SC and guide them regarding the evidence and witnesses from whom further affidavits should be obtained. (Which should have been done in the first place). Thereafter, if necessary, Adv. Ackermann SC will be requested to utilise his powers in terms of Section 204 and 205 of the Criminal Procedure Act, to wrap up outstanding evidential issues and then, so we believe, a prosecution will follow.
  - 2.7 Should the unthinkable happen and the NPA at that stage still decide not to prosecute, my clients may have no alternative than to institute private prosecutions. We trust, however, that this will not happen and that you will respect the said constitutional principles.
3. I will keep you informed of progress herein.

Yours faithfully



J WAGENER  
FOR: WAGENER MULLER

**MEDIA STATEMENT BY THE NATIONAL  
DIRECTOR OF PUBLIC PROSECUTIONS**

***S v JOHANNES VELDE VAN DER MERWE & 4 OTHERS***

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I confirm that on 17 August 2007 and at the Pretoria High Court, in accordance with a Plea and Sentence Agreement in terms of Section 105A of Act 51 of 1977, JOHANNES VELDE VAN DER MERWE, ADRIAAN JOHANNES VLOK, CHRISTOFFEL LODEWIKUS SMITH, GERT JACOBUS LOUIS HOSEA OTTO and HERMANUS JOHANNES VAN STADEN pleaded guilty to a charge of attempted murder, relating to an attempt to poison Reverend Frank Chikane and that the accused were sentenced as follows:

Johannes Velde Van Der Merwe & Adriaan Johannes Vlok

**10 years imprisonment, wholly suspended for 5 years**

Christoffel Lodewikus Smith, Gert Jacobus Louis Hosea Otto and Hermanus Johannes Van Staden

**5 years imprisonment, wholly suspended for 5 years**

In arriving at the decision to prosecute the accused in this matter, I have acted in accordance with both the Constitution and the law.

This case has been conducted in terms of the Prosecution Policy, as amended and is in full compliance with Section 179(5) of our Constitution, which empowers the National Director to determine prosecution policy with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecution. It is important to note that each of the TRC cases before the NPA will be dealt with on its own merits. The National Prosecuting Authority expresses its satisfaction with the co-operation it has received from the victim/complainant, the accused and the defence team in resolving this grave matter which is of national and international significance.

In dealing with all of these cases, I will at all times be guided by the Constitution and the law, in particular the preamble to the Constitution, "Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental rights".

This case is a victory for the Rule of Law for the State, the National Prosecuting Authority as well as the South African public at large and is in line with the 4 pillars from which the National Prosecuting Authority derives its strength, viz.:

- Independence
- Accountability
- Integrity and
- Transparency

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**ADV VP PIKOLI**  
**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**