**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 perfectmemory 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 dockets, 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 Godolozi), 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 shouldprogress, 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 re-convened.

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