

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

AFFIDAVIT OF SHUBNUM HARIPARSADH SINGH

I, the undersigned,

SHUBNUM HARIPARSADH SINGH

declare under oath and state that:

- 1 I am an adult female. I am a prosecutor, holding the rank of a senior state advocate and Head the TRC Component within the National Prosecution Services (NPS) of the National Prosecuting Authority (NPA).

A ACADEMIC AND PROFESSIONAL BACKGROUND

- 2 I wish to set out the following background about myself, the relevance of which will become clear in the course of this affidavit. In 2001, I obtained a Baccalaureus Procuratoris (B Proc) degree from the University of South Africa (UNISA). In 2007, I obtained my Bachelor of Laws (LLB) from UNISA. Between the period spanning from 1990 and 2000, I was employed by the South African Police Service (SAPS) during which I completed a National Diploma in Police



Administration (Dip: Pol-Ad- 1995 Technikon SA). At the time of my resignation in 2000, I was a commissioned officer, holding the rank of a Captain. Between 2001 and 2002, I served my articles of clerkship and in 2003 I was admitted as an attorney. In 2005 I joined the NPA. In 2008 I was admitted as an advocate of the High Court of South Africa.

- 3 As head of the TRC Component, I am tasked with overseeing all matters emanating from the TRC process, coordinating prosecutions, jointly guiding investigations with prosecutors and DPCI, and ensuring accountability in cases involving apartheid-era crimes. This position requires a combination of legal expertise, prosecutorial judgment, and strategic management skills, given the complex historical, evidential, and societal challenges inherent in TRC matters.
- 4 Part of my function includes developing strategies for managing TRC matters, establishing dedicated capacity for their investigation and prosecution, engaging with civil society stakeholders and victims' families, and representing the NPA in oversight forums, including Parliament and this Honourable Commission.

B PURPOSE OF THIS AFFIDAVIT

- 5 I depose to this affidavit in my capacity as senior state advocate and Head of the Truth and Reconciliation Commission (TRC) Component within the National Prosecuting Authority (NPA). The purpose of this affidavit is to place before the Commission a full account of the NPA's measures, progress, and challenges in relation to TRC matters since the establishment of the dedicated TRC Component on 6 September 2021. This affidavit is intended to demonstrate the



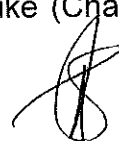
institutional commitment of the NPA to address the legacy of apartheid-era crimes, to ensure accountability, and to give effect to the recommendations of the TRC. I set out both my personal involvement and the broader initiatives adopted at a national level, with the aim of providing clarity, transparency, and accountability regarding the prosecution-guided approach to these matters.

- 6 I dispute the assertion that very little progress had been made since September 2021 and will outline progress made on Foundation for Human Rights (FHR) specific matters in relation to the cases of the Applicants in the litigation application before Court.

C INVOLVEMENT IN TRC MATTERS AND ESTABLISHMENT OF THE TRC COMPONENT

- 7 During 2016, I was temporarily seconded to the Priority Crimes Litigation Unit (**PCLU**) at the Head Office of the NPA from the Office of the Director of Public Prosecutions (DPP), South Gauteng, together with three other colleagues as part of a separate project. Whilst at the PCLU, I was assigned to be part of the prosecution team in the **re-opened inquest of Mr Ahmed Timol (I01/2017)** along with Advocates T. Pretorius (evidence leader) and J.J. Mlotshwa. The inquest proceedings commenced in June 2017 and resulted in the original inquest finding being overturned by Judge Billy Mothele on 12 October 2017. A copy of this judgment is attached hereto marked **Annexure A**.

- 8 Thereafter the inquest record was referred to the NPA and the docket was returned to the office of the DPP, Advocate Andrew Chauke (Chauke), South

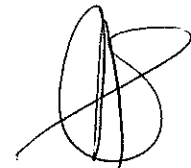


Gauteng. Upon completion of further investigations, Mr JA Roderigues (Roderigues) was charged on 30 July 2018, for murder and defeating the ends of justice and appeared before the Johannesburg Magistrate Court. Shortly thereafter the case was transferred to the High Court.

- 9 After nineteen court appearances with many applications that resulted in inordinate delays, Roderigues died on 7 September 2021. This is after he had approached the full bench in the Gauteng Division of the High Court, Johannesburg and the Supreme Court of Appeal (SCA) challenging his prosecution, seeking a permanent stay of prosecution, citing a violation of his rights to a fair trial. Both the full bench and the SCA made adverse findings against the NPA, which are now the subject of ventilation by this Commission of Inquiry (COI). See **Annexure B and C**.
- 10 I also dealt with several other TRC matters and whilst in Pretoria, I guided informally on some matters but worked extensively on other matters, with an investigating officer, on the matter of Dr Hoosen Haffejee (Haffejee) and lay the groundwork for the Chief Luthuli (Luthuli) investigation. In the Haffejee matter, DPCI with NPA commenced and concluded the entire investigation. In the Luthuli matter, affidavits from some family members and witnesses were obtained, as well as location of and compilation of the crime scene had taken place, before the matters were migrated to the Divisions. The original court finding in the Haffejee matter was overturned in Kwa-Zulu Natal in 2023 after evidence was led by the prosecutor. Extensive evidence was also led by prosecutors in Kwa-Zulu Natal in the re-opened inquest in the matter of Chief Luthuli. Arguments were heard between 13-16 October 2025 and judgment was delivered on 30

October 2025. The original court finding was also overturned. Other matters will be outlined in a statistical account which will form part of this affidavit.

- 11 The Timol matter is worth mentioning because of its protracted process resulting in hearings before the High Court and the SCA. Both the full court and SCA judgments emanated from this matter. Roderigues was charged in 2018 after the Timol Inquest judgment was delivered. He then brought a s342A application for a permanent stay of prosecution.
- 12 Between May 2019 and September 2021, I was back at the DPP office in Johannesburg with no active involvement in TRC cases overseen by PCLU and therefore am not in a position to account for what could have transpired during that period save to indicate that in my view, significant progress had been made during my time at the PCLU.
- 13 Whilst at the DPP office in Johannesburg during 2019 I was allocated the re-opened inquest of Dr Neil Hudson Aggett (Aggett) and shortly thereafter the matter was enrolled. Another senior member was paired with me to lead evidence. To a limited extent, I also assisted other colleagues in the re-opened inquest of Mr Ernest Moabi Dipale (Dipale). Evidence was led in both matters and subsequently the original court findings in both the Aggett and Dipale matters were overturned in 2022 and 2023 respectively. The judgement of the Aggett matter is attached, **Annexure D**.
- 14 In July 2021, I was contacted telephonically by the late head of NPS, Adv Rodney de Kock (de Kock), who requested a meeting with me. At the meeting he



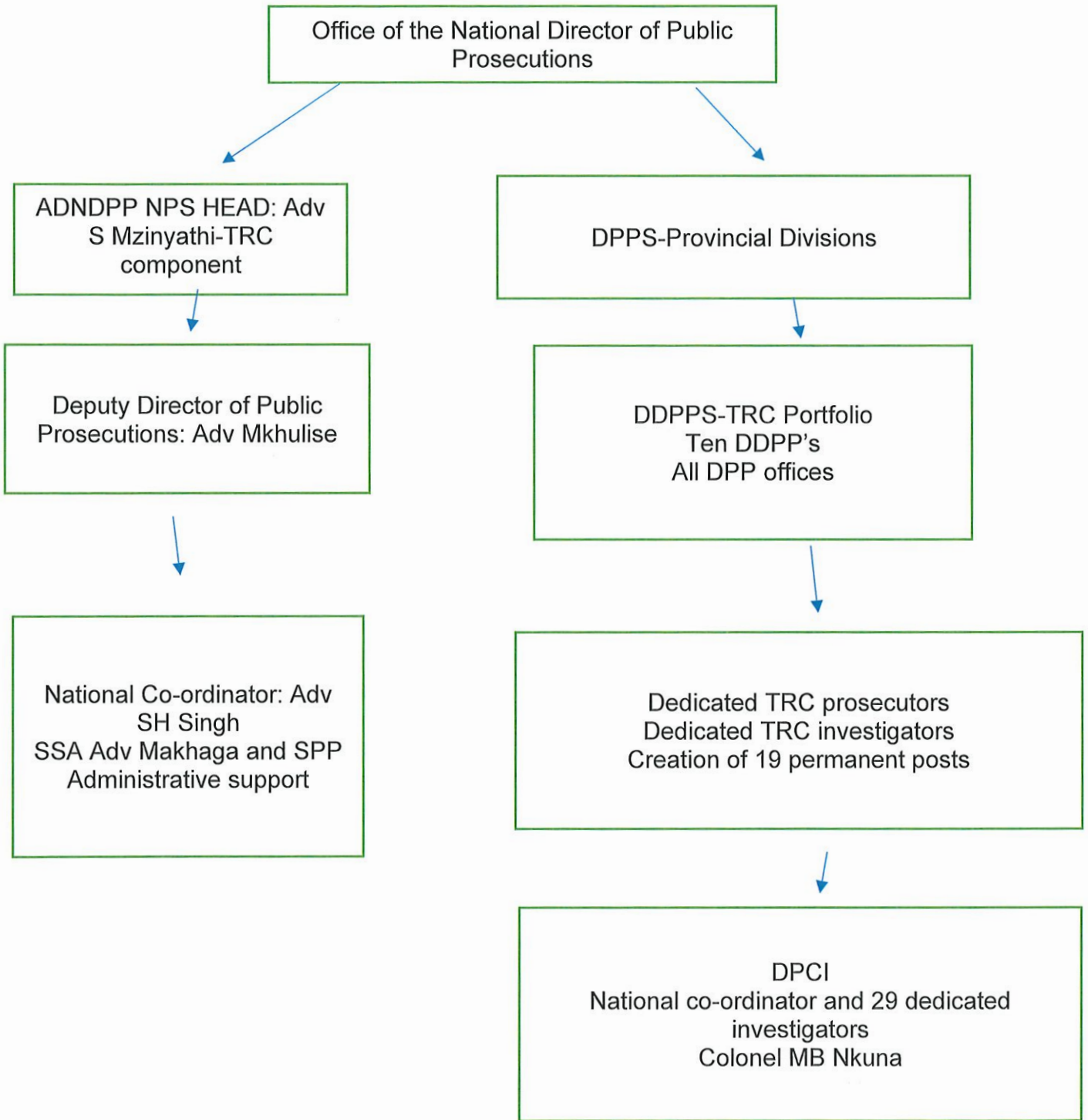
requested that I revive the work that I had done in TRC cases including the plan that had been developed with investigators and other stakeholders during 2018, which was largely based on the recommendations made at the Timol inquest. I agreed to assist but took a firm view that TRC cases, to prioritise them, needed to be dealt with an separately to effectively manage their prosecutions.

- 15 On 6 September 2021, the TRC Component was established within the office of the head of NPS. I was appointed as the national coordinator of TRC cases and reported directly to Adv De Kock. The mandate of the unit was to give special focus and prioritize the management of TRC matters. My duty was to specifically oversee TRC matters, guide and deal with all the related issues, challenges and co-ordinate the progress of TRC matters in all divisions. From there on, the NPA and DPCI, focused on re-opening and pursuing priority cases, enhancing its internal capacity, and prioritising and driving progress on TRC matters.
- 16 In 2022, the TRC Component was expanded with the appointment of a Special Director, Advocate Trish Matzke, to assist with strategic oversight of these matters.
- 17 Prior to September 2021, the NPA approached the Minister of Public Service and Administration (DPSA) to obtain a deviation from the normal recruitment process to appoint dedicated TRC prosecutors on a three-year contract, as opposed to the usual one-year contract. DPCI followed a similar process for the appointment of investigators and both investigators and prosecutors would deal with TRC matters only. The purpose was to ensure continuity in the investigations and, where appropriate, prosecution of TRC matters.



- 18 DPCI also appointed a National Co-Ordinator, Colonel NB Nkuna, whose role at DPCI is parallel to the role I play within the NPA. It was evident that with the extensive investigations that needed to be undertaken, it was important to commit, long term, to TRC matters. Both prosecutors and investigators who were on contract chose permanent employment when the opportunity arose. Contracts did not provide stability, and many prosecutors opted for permanent employment offered elsewhere when the opportunity arose.
- 19 Prosecutors who were appointed on a three-year contract and who remained in the employ of the NPA, had their contracts extended for a year only. In line with policy, it could not be extended further. In 2024, after motivating for the creation of permanent posts, 19 permanent posts for prosecutors who would be dedicated to TRC matters only, were approved. The purpose of appointing prosecutors permanently to deal exclusively with TRC matters, apart from ensuring stability and continuity in prosecution guided investigations, was also to build the rapport with affected families and victims. This process of permanent appointments of prosecutors to deal only with TRC matters is presently underway. The TRC component also has two other prosecutors including a senior state advocate (SSA) and a Deputy Director of Public Prosecutions (DDPP). An additional post for a senior public prosecutor (SPP) and another DDPP was advertised and has been processed. There is also additional support staff to render assistance.
- 20 Below I demonstrate the organogram of the TRC Component.

ORGANOGRAM OF THE TRC COMPONENT



- 21 As all TRC matters under investigation by PCLU were migrated in 2019 to the respective divisions in which the offences or crimes were committed, and where there was sufficient personnel within the DPP's offices as well as the fact that most of the witnesses and victims resided within the jurisdiction of the DPP'S, it was important for a practical and critical assessment to be undertaken in respect of matters under investigation and the possible review of matters that had been investigated and closed. In addition to developing a proforma for New Referrals, it was important to conduct an intensive audit of all TRC matters overseen or under investigation and which were in custody of the NPA and SAPS. The focus was on an investigative and prosecution guided plan of action to expedite investigations, identification of challenges and solutions and the fast tracking of identifying matters. Even though matters had been migrated to the Divisions in 2019, monthly progress reports were still submitted by all the Divisions to the PCLU office as it still had the mandate to deal with TRC cases.
- 22 Within every Division, there are senior managers holding the rank of Deputy Directors of Public Prosecutors (DDPP's). Ten DDPP's have been appointed to oversee the TRC Portfolio. Within every division, all TRC prosecutors hold the ranks of senior state advocates (SSA's). The dedicated prosecutor is accountable to the DDPP seized with the TRC portfolio, who in turn is accountable to the DPP. All decisions are taken by the office of the DPP. The DPP is accountable to the DNDPP: NPS and ultimately the NDPP.

- 23 A list of TRC matters under investigation by PCLU as of September 2021 was requested from PCLU. Although matters had been migrated to the divisions in 2019, monthly reports were still submitted from the divisions to the PCLU office as it still had the mandate to deal with TRC cases. It was noted that 59 matters were still under investigation by PCLU, and a further 55 matters were identified by PCLU for further investigation, which related to deaths in detention.

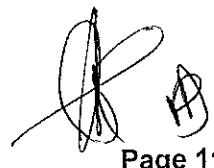
DIVISION	VOLUME OF MATTERS UNDER INVESTIGATION- SEPTEMBER 2021	VOLUME OF MATTERS UNDER INVESTIGATION IN 2025
Eastern Cape	7	14
Free State	2	5
Kwa-Zulu Natal	18	46
Johannesburg	7	22
Limpopo	2	12
Mpumalanga	3	9
DPP-Mthatha	2	2
North-West	4	8
Northern Cape	1	5
Pretoria	7	21
Western Cape	6	8
Total	59	150

24 **Referrals of the 55 deaths in detention identified for further investigation:**

The deaths in detention had been identified by PCLU from the Final Report of the TRC. Although the deaths had been identified for investigation, no investigation had yet been registered. Sitting jointly with DPCI, a proforma for New Referrals for the 55 deaths in detention was developed. At the beginning of 2022, intensive research was done to obtain as much information as possible to guide the investigators in their investigations.

25 The Referral form that was developed provided for important information to assist the investigator in their investigation and included inter alia information about the date, time and place of the incident, death of the victim, personal details of the victim, family members and contact details to obtain statements, similar fact detainee information, whether they had testified before the TRC, whether the perpetrators/persons of interest or victims were still alive, whether the person to whom the investigation relates to is deceased or still missing, or any other details that can assist both the investigation and prosecutor.

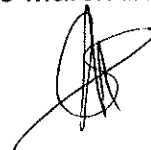
26 The lack of dockets created the biggest challenge for investigations and in all matters. Dockets had to be reconstructed. It required good old-fashioned policing techniques with prosecutors guiding on investigations. Once the death was registered, it was referred to Colonel Nkuna to allocate an investigating officer. The information collected as well as the name and contact details of the investigating officer will then be relayed to the office of the DPP who will be requested to appoint a prosecutor to oversee the matter. The investigation is formally registered in this way and an investigator to be guided in his/her investigation by a prosecutor.



DIVISION	TRC CASES-DEATHS IN DETENTION-IDENTIFIED FOR INVESTIGATION
Eastern Cape	7
Free State	-
Johannesburg	13
Kwa-Zulu Natal	-
Limpopo	2
Mpumalanga	1
Mthatha	9
North- West	0
Northern Cape	2
Pretoria	5
Western Cape	3
Other (inadequate information to determine jurisdiction/foreign cases)	13
Total	55

27 The majority of the matters are at the C phase/medium of investigation.

28 I also sought the original list of matters that were said to be handed over to the NPA. PCLU was created by presidential proclamation on 23 March 2003 and is




located in the office of the NDPP. Its mandate is to manage and direct investigations and prosecutions relating to, amongst others, matters emanating from the TRC process: Prosecutions and Missing Persons. As PCLU oversaw progress on TRC matters until September 2021, I sought the list of matters handed over to the NPA by the TRC from Adv Susan Bukau, who was also based at PCLU. She could not provide me with the information I needed. I also contacted the NPA's Missing Persons Task Team, Ms Fullard, who advised that FHR often referred to a list of 300 cases handed to the NPA, but she had never seen the list. In fact, no one seemed to have the list, including FHR. Further, that whilst she worked at the TRC, she and other TRC researchers were asked to compile a list of potential cases for TRC commissioner Yasmin Sooka. And both she and Nicky Rousseau were part of the process of drafting lists along with TRC researchers. Brief lists of possible cases were prepared and put together by researchers (not lawyers) for the Western Cape, Northern Cape, KZN, Eastern Cape and a report to the NDPP. And that she had never seen a list for any Transvaal cases or any final consolidated list. And that she doubted that the lists put together could have reached 300. And that all her efforts to find a consolidated document of 300 cases to date were unsuccessful.

- 29 I also made enquiries from those who were part of the TRC. No one could provide the actual/original list of matters handed over to the NPA. I also enquired from the Department of Justice, TRC Unit, and was informed telephonically on 31 May 2022 that they did not have a list of matters handed over to the NPA for investigation.

- 30 With capacity established both within the NPA and DPCI, and without interfering with the powers and functions of the DPPS, it was necessary to proactively plan how to expedite and drive progress on TRC matters. As the matters had now been migrated to the DPP's offices it was necessary to work together with the offices of the DPP's to gauge progress.
- 31 The NPA functions within a legal framework. In terms of section 179(1) and (2) of the Constitution, there is a single national prosecuting authority in the Republic, consisting of NDPP and DPPs and prosecutors, which has power to institute criminal proceedings on behalf of the state and to carry out any necessary functions incidental to instituting criminal proceedings.
- 32 In terms of the NPA Act 32 of 1998 (NPA Act), all prosecutions are instituted in the name of the State. The NDPP in accordance with section 179(5)(b) of the Constitution of the Republic of South Africa, 1996, and section 21(1)(b) of NPA Act issued Policy directives which must be observed in the prosecution process. Policy Directives first came into operation on 1 November 1999. The prosecution policy directives are binding on all members of the NPA. They [the directives] are intended to set uniform norms and standards in prosecutorial practice. They deal with the professional duties of prosecutors and do not purport to regulate administrative matters. I attach the relevant portion of the policy herein as **Annexure E.**
- 33 Part Two of Prosecution Policy provides that the primary responsibility for instituting and conducting prosecutions vest in the DPPs in respect of offences committed under their areas of jurisdiction. All crimes are investigated within the



area of jurisdiction where they occurred. To implement a plan of action to drive progress on TRC matters, it was imperative to obtain the “buy in” of the DPP’s.

34 It was important to conduct an intensive audit of all TRC matters overseen or under investigation and which were in custody of the NPA and SAPS. The most important questions to be asked were how many matters were under investigation within each of the divisions, the age of the matter, the facts of the matter, the duration of the investigation, what was the progress on each of the matters, what was hindering/preventing progress on the matter, specific challenges and how could the challenges or obstacles be overcome.

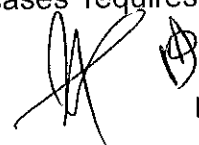
35 It was imperative to monitor and effectively evaluate progress and therefore senior DPCI management was engaged. The focus was on how best to conduct quality investigations even where there were challenges such as missing/untraceable or destroyed dockets, lack of postmortem reports, similar fact witnesses etc. Ultimately, quality evidence collated by dedicated investigators would allow the prosecutor to decide whether to prosecute a perpetrator/s, or request that an inquest be re-opened or held, or decline to prosecute, and inform the family of the decision. All evidence and leads had to be thoroughly investigated. Prosecutors were encouraged to be specific about what investigations had taken place monthly in the reports which were furnished monthly.

36 Apart from self-imposed time frames and fast tracking of matters to gauge progress on matters, a joint methodology was agreed to. Investigations were placed into three categories. Medium A (0-33% of investigation completed):

Investigation was assessed with the initial investigations to be completed, for example obtaining of the original case docket, inquest records, tracing of witnesses/victims, postmortem records, photograph albums, witness statements, death certificates, etc. Medium B (34-65% of investigation completed): Most of the investigation has been completed with a decision to be made on either obtaining expert reports/trajectory experts/ballistic experts/crime scene reconstruction etc, to either prove or disprove a version, and Medium C (66-100% of investigation completed): this is the final part of the investigation where expert reports that have been obtained which would enable the prosecutor and investigator to make an informed decision; or when the investigation is nearing completion and a decision needs to be taken.

D JOINT OPERATIONS WITH OTHER GOVERNMENT DEPARTMENTS

37 During the assessment of monthly reports, it was evident that both investigators and prosecutors needed to be exposed and upskilled in investigating TRC matters which are unique and as such requires a unique approach. The upskilling sessions included exposure to the role of physics in Engineering (mechanical, materials, aerodynamics) in forensic examination, the role and investigative strategy, Investigative Tools-Forensic Science Laboratory, crime scene reconstructions, senior forensic pathologists and in-house experts on Mutual Legal Assistance and Extraditions etc. In the normal course of investigations, a crime scene will be attended to by members of the South African Police Services ("SAPS") as soon as it is discovered. A crime scene is photographed, a postmortem examination performed on the deceased, witness statements obtained etc. The investigation of TRC cases in most cases requires that a



docket be reconstructed because the original criminal case docket which would have contained all the required information to inform a crime, was either destroyed, missing or misplaced.

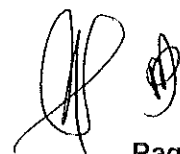
- 38 The TRC dealt with matters that occurred between 1960 and 1994 and these were cold cases, some of which are six decades old. The TRC found that there was mass destruction of documents in its Final Report (Volume one, Chapter 8). It acknowledged the deliberate and systematic destruction of state records and documentation to attempt to remove incriminating evidence and sanitize the history of oppressive rule. The biggest challenges then and which still inhibit investigations are the destruction/loss/misplacement of police dockets, post-mortem records, inquests records, witnesses and perpetrators who are aged or deceased etc. In some matters, it would be reflected, for example, that an unknown person, died on an unknown date of an unknown cause. Apart from other challenges the lack of a docket makes it difficult to investigate the matter as all records are destroyed.
- 39 It was necessary to ensure that the exposure to the skills transfer sessions, offered to prosecutors and investigators, took place jointly. The upskilling sessions included statement taking, resources available for reconstruction of dockets, the exposure to the role of physics in Engineering (mechanical, materials, aerodynamics) forensic examination- investigative strategy- investigative tools/services offered by the forensic Science Laboratory (FSL), crime scene reconstructions, taking of evidence on commission where witnesses were old, services of the office of witness protection (OWP), senior forensic



pathologists and in-house experts on Mutual Legal Assistance and Extraditions etc.

40 During 2022, a platform was created when joint accountability sessions were held between investigators and prosecutors within the divisions. It was an unprecedented, novel approach which also involved both the national coordinators, the DPP, DDPPs seized with TRC matters, and senior management of the DPCI. The primary purpose was to critically analyse progress on every matter under investigation within that specific division. The dual pronged approach was important to target purposeful prosecuted guided investigation. Both investigators and prosecutors accounted, in the presence of DPPs and DPCI senior management, for the progress or lack of progress on the matters. Performance of each division was gauged on a month-to-month basis. This was shared with all the divisions. It offered a more realistic view of the progress on TRC matters. All the sessions were physically attended by both the coordinators.

41 Increased joint accountability sessions between the NPA and DPCI between 2022 and 2025, have contributed to an increase in the level of engagement, progress and joint accountability. The focus is always on how best to conduct quality investigations into TRC matters. Decisions are informed by thoroughly investigated matters. Success of the sessions informed the decision to include accountability sessions between the NPA and DPCI as part of our Annual Operation Plan 2025 ("AOP") to expedite investigations into TRC matters.



- 42 The volume of matters under investigation within each division guided on the duration of the joint accountability sessions which were held over two or three days. Where there are training sessions involved, this may take place over five days. Skills sharing and preparation for trials and inquests also take place well in advance, and are held over 3-5 days, attended by prosecutors, investigators and both national coordinators.
- 43 Matters are identified for fast tracking wherein all resources are pooled to expedite and finalize the investigation into a specific matter. Whilst all matters are important, certain matters which are identified for fast tracking are matters where consideration is given to the age of the matters, seriousness of the offence, age of the accused and / or persons of interest as well as the interests of the victims. Concerted efforts are put into fast tracking all matters, especially those which are identified by civil society including Foundation for Human Rights (FHR).
- 44 The joint accountability sessions provided an opportunity to share the best practices in other divisions, provide updates on legal challenges on pending TRC matters in court, guide on challenges pertaining to access documents, stakeholder engagement, progress within the specific divisions, etc. Any challenge which cannot be resolved is escalated to the national office of both the NPA and DPCI. Ultimately, the session is about joint accountability. Strict time frames are imposed and if they are not reached, it is necessary to ascertain why it has not been reached and strategies put in place by putting together an action plan to arrive at a decision. Commanders and DPPs with DDPPs are on hand to

guide investigations and offer solutions when challenges to investigations are raised.

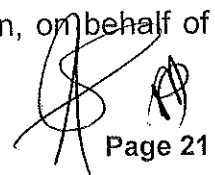
- 45 During 2022, five (5) accountability sessions were held. In 2023, eleven (11) sessions were held. And in 2024- eleven (11) sessions were held. Thus far for 2025, eleven (11) accountability sessions, eight (8) skills transfer sessions and one pre- planning session for a special project and an update session took place.
- 46 In line with the victim-responsive approach adopted by the NPA in its strategy, the NDPP also issued a directive in 2022 that required TRC prosecutors to liaise directly with the families and victims, and to keep them informed of progress in the matters. The same is required by investigators. Families are made aware that there are challenges in the investigation of the matter. All challenges with a prosecutor or investigator must be addressed either with the office of the DPP or DPCI, which is applicable. Should the matter be incapable of being resolved, it is escalated to the coordinators. Failing resolution by the coordinators, it is escalated to the DNDPP: NPS. All information collected must be passed on to the investigating officer. This is the same process of collaboration that has been established with all stakeholders including FHR.
- 47 The NPA engaged with FHR in January 2023, January 2024 and 1 August 2025. The NPA acknowledges the importance of structured stakeholder engagements. During the meetings, the role and purpose of the TRC component, the establishing of a respectful and healthy working relationship in line with our prosecution policy and directives, underpinned by a legal framework and with respect to the rule of law, amongst other issues, was set out. It was important



that there was structured engagement without encroaching upon or prejudicing the rights of accused person/s or persons of interest.

48 The Apartheid Era Victims Family Group (AVFG) is led by family members who have lost family members under tragic circumstances. During 2022, AVFG made a request to meet the DNDPP: NPS. In line with our victim-centered approach and policy, the DNDPP: NPS invited AVFG to meet with the DPPs and DPCI investigators within the Divisions in which their matters are investigated and decided. This resulted in families being introduced to prosecutors and investigators seized with their matters. This occurred between 2022 and 2024. The engagements with the office of the DPPs, DPCI and prosecutors were unprecedented. In accessing DPPs, prosecutors and investigators, families were able to identify the investigator and prosecutor seized with their matters, provide leads and information to investigators, without interfering with the functions of a prosecutor or investigator. It encouraged the building of trust between families, the investigator, and the prosecutor. Regular progress reports are given to the families. Because of transparency and accountability, the relationship between families, prosecutors and investigators is strengthened. Prosecutors and investigators are also mindful and committed to impartiality, fairness and the rule of law.

49 A total of eight meetings took place between AVFG and the offices of the DPPs within the different Divisions listed below. All meetings were attended by the DPPs in whose Divisions the matters are under investigation, the prosecutors and DPCI investigators. The process was driven by Mr I Cajee, the nephew of Mr Ahmed Timol, who has expressed in writing his appreciation, on behalf of



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families, for the excellent engagements. A platform was shared with the families where they were given the opportunity to share their pain, their challenges and commitment to working towards justice.

DIVISION	DATE OF MEETING	FAMILY
Pretoria	7 November 2022	Matter of Messrs Kgoathe/Modipane/Monnogotla, Nyoka family, Simelane and Sons and Els
Johannesburg	26 September 2022	Matter of Messrs Saloojee, Akhalwaya, Napier and others
Western Cape	15 February 2023	Matters of Mr Fransch, Mr Haron, Mr Kriel, Ms September and Mr Robbie Williams and Coline Waterwitch
Northern Cape	17 April 2023	Matter of Mr Jacobs
Eastern Cape	1 June 2023	Matters of Messrs Mohapi and Biko, Family members present.
Kwa-Zulu Natal	24 July 2023	Spokesperson of Haffejee family, Mr G Mxenge, Mrs Victoria Mxenge, Mohsheen Jeenah
National office	30 January 2024	NPA/DPCI and AVFG


National office/DPCI/Western Cape office	24 October 2025	NPA/DPCI
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49 Several meetings were also held with other stakeholders where access to documents in their possession was sought. This included South African National Archives (TRC records, inquests, files etc), Department of Home Affairs (death certificates, location of persons of interest etc), Department of Public Works (architectural plans for reconstruction purposes) amongst others.

50 During October 2022, and after having carefully considering the findings of the SCA in the matter of **Roderigues v National Director of Public Prosecutions and others** (1186/2019) [2021] ZASCA 44 (SCA) 21 June 2021), the Leadership of the NPA decided to appoint an independent advocate, Advocate Ntsebeza (Ntsebeza) SC, to review and assess the measures adopted by the NPA to deal with matters emanating from the TRC. On 27 June 2023, an opinion by Ntsebeza on the TRC component and TRC Prosecutions was obtained. The opinion found that the TRC component of the NPA was in large part adequate. Whilst it could not fault the model implemented by the NPA's TRC component to deal with TRC matters, it made recommendations to enhance our capabilities. Due to the sensitive nature of the investigations currently being undertaken, we shall not be annexing or disclosing any related materials at this stage. The disclosure of such information would not only compromise the integrity and confidentiality of the investigative process but may also prejudice ongoing or prospective prosecutorial decisions of the NPA. Accordingly, these investigations remain

confidential and protected from disclosure to safeguard the administration of justice and ensure that the investigative process is not unduly influenced or interfered with.

- 51 On 12 February 2025, FHR made written submissions to the Committee on Justice and Constitutional Development (PC) as per **Annexure F**. The NPA was requested to respond in writing to the submissions. The response of the NPA is attached as per **Annexure G**. On 20 May 2025, the NPA and DPCI appeared virtually before the Justice Committee. A copy of our presentation is attached marked **Annexure H**. FHR on 20 May 2025 made additional submissions. This was addressed internally. Shortly after the presentation, the PC issued a media release on 20 May 2025 in relation to the presentations made by the various stakeholders on progress on TRC matters. See **Annexure I**.
- 52 Dealing specifically with matters in which FHR are listed as families they represent in **Annexure G and H respectively**, progress has been made on all the listed matters as highlighted in our response to the PC. **Column A**, depicted hereunder, identifies the FHR matters under investigation. **Column B** depicts the progress that has been made to date.
- 53 Since FHR's submissions on 12 February 2025 and our subsequent response, there have been further developments, specific to FHR related matters as depicted in their claim for constitutional damages in **Calata and others v the Government of RSA and others** in Case number 2025/005245.



E CHALLENGES IN TRC INVESTIGATIONS

- 54 The investigation and prosecution of TRC matters have presented enduring and complex challenges that are both structural and evidentiary in nature. These cases are fundamentally distinct from conventional criminal investigations because they concern offences committed several decades ago, often under the auspices of state institutions that engaged in systematic concealment and destruction of evidence. The unique historical and political context within which these crimes occurred has compounded the difficulty of conducting credible and constitutionally compliant prosecutions.
- 55 One of the most persistent obstacles has been the destruction, loss, or misplacement of critical evidentiary material. The TRC itself, in its Final Report, acknowledged the deliberate and systematic destruction of state records intended to eliminate incriminating evidence and obscure the truth about state-sanctioned atrocities. Many original police dockets, inquest records, post-mortem reports, and photographic albums have either been destroyed or cannot be traced. This has necessitated the laborious process of reconstructing case dockets, often from fragmentary secondary materials such as contemporaneous media reports, family recollections, and residual administrative records. The absence of primary documentation undermines the ability to establish a coherent chain of evidence, identify perpetrators, and locate witnesses who can credibly attest to the events in question.
- 56 The passage of time has further eroded the evidentiary landscape. Witnesses, victims, and perpetrators have either passed away or are elderly and infirm, with

fading memories and limited ability to recall precise factual details. In certain instances, entire communities have been displaced, and physical evidence such as crime scenes or autopsy records no longer exist. The challenge, therefore, lies in balancing the imperative of justice and truth-telling against the procedural rights of accused persons, particularly the right to a fair trial. Courts have in several instances expressed concern about the prejudice arising from prosecuting cases that are several decades old, especially when key witnesses are deceased or evidence has irretrievably disappeared.

57 I am hesitant to comment on what happened before September 2021. Before the establishment of the TRC Component within the Office of the Head of the NPS in 2021, TRC cases were dispersed across regional divisions, with limited central oversight and accountability. Even after consolidation, ensuring uniform prosecutorial guidance across all provinces has required persistent coordination and the development of joint methodologies between prosecutors and investigators.



58 The investigative process is further complicated by the technical and scientific dimensions of these historical cases. Modern forensic techniques, such as ballistic and trajectory analysis, DNA testing, and crime scene reconstruction, are often constrained by the unavailability of original exhibits and specimens. Post-mortem records, where they exist, are frequently incomplete or lack corroborating documentation. The TRC cases therefore require investigators and prosecutors to adopt innovative evidentiary strategies, including the use of expert witnesses to reconstruct probable causes of death or injury based on fragmentary historical data. Experts are a limited resource and come at a cost.

The NPA has sought to address these challenges through targeted training and upskilling programmes for prosecutors and investigators, incorporating expertise from forensic pathologists, crime scene analysts, and experts in mutual legal assistance and extradition.

- 59 Another challenge relates to inter-agency cooperation and resource allocation. The protracted nature of these cases demands sustained commitment of human and financial resources over multiple years. Initially, prosecutors and investigators working on TRC cases were appointed on fixed-term contracts, which disrupted continuity and institutional memory. Although permanent posts have since been created for TRC-dedicated prosecutors and investigators, the process of building institutional capacity remains ongoing. Moreover, given the sensitivity of these cases, they often attract significant public and political scrutiny, which can place additional pressure on prosecutorial decision-making and case management.

F PROSECUTION PROCESS

- 60 The prosecution process begins after the investigating officer has completed all investigative work relating to a reported criminal offence and the evidence collected supports a decision to prosecute a person. As part of the process of prosecuted guided investigations (PGI), dedicated TRC prosecutors are allocated as soon as an investigation is registered, and an investigator is appointed. A prosecutor guides an investigator in the collation of evidence and he or she compiles what is commonly known as a police docket. This docket serves as the official record of the investigation and contains all relevant



materials necessary for prosecutorial consideration. It includes, among other things, statements from witnesses, expert reports, crime scene photographs, exhibits, confessions or admissions (if any), forensic analysis results, evidence given at the TRC, as well as any other documentation that supports or explains the facts of the case. The docket therefore forms the foundation upon which the prosecution process is built.

- 61 When the investigating officer is satisfied that the investigation is complete, the docket is formally submitted to the prosecuting authority. Unlike other matters TRC investigations mark a departure from normal registration and investigation where prosecutors are involved from the outset. The process above begins on TRC matters as soon as an investigation is registered. An inquiry or docket is registered by DPCI and then a request is made to the DPPS to appoint a prosecutor to appoint a prosecutor to guide the investigator.
- 62 When a docket is submitted for decision, the prosecutor must consider whether the evidence available is sufficient to sustain a reasonable prospect of conviction. This means the prosecutor must determine whether, when viewed objectively, the evidence can prove the accused's guilt beyond reasonable doubt. The prosecutor's discretion at this stage must be exercised independently, fairly, without interference and without bias. Decisions must be guided solely by the evidence and the law, free from external influence or personal or public opinion. A decision may also be taken to hold a formal inquest, re-open an inquest or decline to prosecute because there is insufficient evidence. The family of the victim is advised of the decision taken.



63 If the prosecutor concludes that the evidence contained in the docket is inadequate or incomplete, they are obligated to issue written instructions to the investigating officer. These instructions must be clear and specific, outlining what additional steps must be taken before prosecution can be considered. This may include obtaining further witness statements, securing supplementary expert or forensic reports, tracing additional suspects, or clarifying inconsistencies or contradictions in the evidence already gathered. The purpose of this process is to ensure that all relevant information is gathered before any decision is made to prosecute, thereby safeguarding the integrity of the case and preventing premature or unfounded prosecutions. An investigator may submit a docket for decision because he/she regards the case as been fully investigated. A prosecutor may still refer the matter back to the investigator to obtain additional evidence.

64 Once the prosecutor is satisfied that the evidence is complete, credible, and sufficient to establish a prima facie case, a formal decision to prosecute is recorded. Following this decision, the prosecutor proceeds to draft the charge sheet/indictment.

65 The charge sheet/indictment is a formal legal document that outlines the specific offences the accused is alleged to have committed. Each count on the charge sheet must clearly set out the statutory provision under which the charge is brought, the essential elements of the offence, and the factual particulars that describe the conduct of the accused. The prosecutor must ensure that the charges are framed accurately and in accordance with the applicable legislation, so that the accused is properly informed of the allegations they are required to

answer. The drafting of the charge sheet is a critical step because it guides the court proceedings and determines the scope of the trial.

66 Once finalised, the matter can be enrolled in court for its first appearance.

G PROGRESS OF TRC CASES

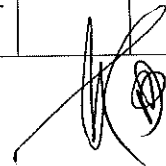
67 Whilst it is not ideal to disclose updates on progress on matters, for obvious reasons, it is imperative to show progress on FHR related matters which is as follows:

Applicant	Matter	Division	Progress	PCLU list Sept 2021	Status
1 st Applicant: Lukhanyo Bruce Matthews Calata	Deceased messrs Fort Calata, Sicelo Mhlauli, Sparrow Mkonto and Matthew Goniwe aka the Cradock Four	Eastern Cape Inquest re- opened, the matter is part heard.	The third inquest into the deaths of Messrs Mhlauli, Mkonto, Goniwe and Calata commenced with evidence led on 2-11 June 2025. Judge Beshe presides over the matter. The matter has been postponed to 13-24 October 2025 for further evidence and issues pertaining to	Yes	On the inquest court roll

			<p>legal representation of former South African Defence Force (SADF) members to be resolved. This is underway. Further evidence was led on 13 October 2025. The matter has been postponed 23 to 27 March 2026.</p>		
<p>2nd Applicant: Alegria Kutsaka Nyoka</p>	<p>Mr Caiphus Nyoka</p>	<p>North Gauteng Accused number one found guilty and sentenced. S v Marais</p>	<p>After an investigation by DPCI, the state charged four former police officers for the death of Mr Nyoka. Mr Marais, accused number one, pleaded guilty during November 2023, and after sentencing procedures were completed (due to the various issues that arose during pre-sentencing) on 10 July 2025, he was sentenced to 15 years imprisonment.</p>	<p>yes</p>	<p>Finalised- Convicted and sentenced</p>

		<p>Second case emanating from the Nyoka matter-on the criminal court roll- S v Engelbrecht and others</p>	<p>Leave to appeal was dismissed on 15 September 2025.</p> <p>This matter also stems from the Nyoka matter after Accused number one, Mr Marais above, pleaded and was found guilty and sentenced. The trial was separated from his remaining accused, Engelbrecht and two others. Evidence was presented in respect of the three-remaining accused. Further evidence was led between 12-30 May 2025. A discharge ito s174 was refused iro the all the accused, whereafter all three accused then closed their case. The matter was postponed to 22</p>	<p>On the criminal court roll- Judgment on 2 December 2025</p>
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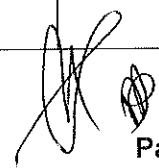
			<p>September 2025, Defence had to file its response by 15 October 2025, with oral arguments to be heard on 12 November 2025. Judgement will be delivered on 2 December 2025.</p>		
3 rd Applicant Bonakele Jacobs	Mr Mxolisi Dicky Jacobs	Northern Cape	<p>There are challenges in this matter, no inquest docket could be traced. A Mail and Guardian article confirmed that there was a formal inquest held at the Uppington Magistrate court where testimony was given by a Mr Pienaar. The family corroborates that there was a formal inquest held. TRC hearing follow up with regards to missing documents. No police docket, no post-mortem record or</p>	No	C Phase of investigation



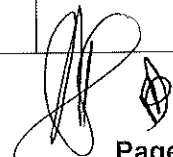
			<p>crime scene information available. No witnesses apart from Pienaar. The investigation of the correctional services also could not be traced. Mr Jacobs also went with the investigative team to UWC and national Archives to trace necessary documentation.</p> <p>There were accountability sessions and meetings with families. Civil claim was instituted but withdrawn.</p> <p>Reconstruction of the crime scene done but there is clarification required, and the sketch plan is awaited.</p>		
4 th Applicant Fatiema Haron- Masoet	Mr Abdullah Haron	Western Cape-	The inquest into the death of Mr Haron re-opened in 2022.	Yes	Inquest finalised. Decision taken-

		Inquest re-opened and finalised.	Evidence was led. On 9 October 2023, the original court finding was overturned. On 2 October 2025, the NPA took a decision to decline to prosecute any person in relation to the death of the deceased.		decline to prosecute
5 th Applicant Tryphina Nomandlovu Mokgatle	Mr Zandisilie Muzi-COSAS Four-was the last surviving member who subsequently passed away. Messrs Eustice Madikela, Peter Matabane and Fanyana Nhlapo were killed in the explosion in 1982	Case enrolled on the criminal court roll-South Gauteng Criminal Trial S v Mfalapitsa and another	Although the matter was set down for trial on several occasions, there have been various applications which prevented the matter from commencing. This included review applications, the failure by SAPS to fund the costs of legal representation of accused persons, recusal applications against the presiding officer, an application brought by SALC to be joined in the criminal trial as	yes	On the criminal court roll

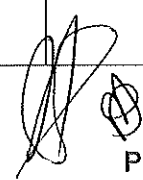
			<p>friends of the court, a challenge to the validity of the charge of Crimes against humanity (CAH) etc. The trial was to have commenced on 14 April 2025 after the challenge to the CAH charges were dismissed on 14 April 2025. The accused then brought an application against the judge to recuse himself. The application was argued. And refused on 23 April 2025. The accused then applied for leave to appeal which was to be heard on 9 May 2025. An application for recusal of the judge was heard and dismissed. Leave to appeal against the charges of crimes against humanity</p>	
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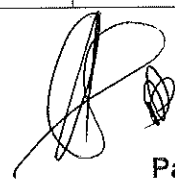
			<p>(CAH) was also appealed and dismissed. A trial date was set down for 20 October 2025. Accused 2 has now petitioned the SCA with a view to appeal the decision of the court dismissing the challenges to the validity of the charges. A second application for the court's dismissal of their leave to appeal regarding the recusal of the judge. There are two applications regarding the matter. The respondent (State) had to file a notice to oppose and answering affidavit for both the motions. Leave to appeal has been granted by the SCA. Remanded to 26 March 2026, a provisional trial date</p>	
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			has been set for 20 July 2026.		
6 th Applicant Karl Andrew Weber	Highgate Hotel Massacre (Deceased: Messrs Stanley Hacking, Douglas William Gates, Royce Michael Wheeler, Deon Harris and Deric John Whitfield. Several others were injured including Mr Weber.	Eastern Cape- Formal Inquest commenced- judgement is expected on 1 December 2025	The inquest into the deaths of the five deceased commenced on 27 January 2025 and continued until 7 February 2025. Matter resumed on 24 March 2025 until 27 March 2025. It was postponed to 11-13 August 2025 and then 1-4 September 2025 for arguments. Judgement is expected on 1 December 2025. Mr Weber was shot and injured during the attack. He testified at the inquest.	Yes	Inquest commenced- Judgment on 1 December 2025
7 th Applicant Kim Turner	Dr Richard Turner	Kwa-Zulu Natal Decision taken to hold an inquest	The DPP has taken a decision to hold a formal inquest. The matter was to be heard at the magistrate court. The	Yes	Formal inquest to be held.



			<p>DPP received a request from the family legal representative to hold the inquest in the High court. DPP acceded to the request. Tracing of witnesses and drafting of documents for the holding of inquest is underway. Translation of documents.</p> <p>Consultations been finalised. Pagination and indexing of documents underway. Virtual consultation took place with family members and legal representatives. A new investigator has been appointed. It is envisaged that the matter is set down for this year. Continuous engagements with</p>	
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			family members and legal representatives.		
8 th Applicant Lyndene Page	Highgate Hotel Massacre-as indicated above, sister to Deon Harris who lost his life during the attack.	Eastern Cape- Inquest commenced. Evidence has been led.	As above. A formal inquest was held. Ms Page testified at the inquest. The inquest commenced, evidence was led, and judgement is expected on 1 December 2025.	Yes	Inquest commenced- judgment on 1 December 2025
9 th Applicant Mbuso Khoza	Mr Sbho Phewa	Kwa-Zulu Natal- Case enrolled on the criminal court roll.	This matter is on the criminal court roll where several persons have been charged in S v Botha and two others. (Botha, Du Preez and Ras). The matter has been postponed to 31 October 2025 for the accused to process their applications for legal representation. This matter is joined with that of Ms Kubheka below. Botha and Du Preez's	Yes	The matter is on the criminal court roll



			<p>application for legal representation was granted by the SAPS, attorney appointed. State Attorney did not appoint Senior Counsel as per request. The appointment of senior counsel remains unresolved. Ras' application was approved, and he elected to have attorney Mr Muller with senior counsel. The State attorney appointed a junior counsel. Ras has rejected the appointed counsel stating he does not want a junior advocate.</p>		
10 th Applicant Neville Beling	Highgate Hotel Massacre- injured in the attack.	Eastern Cape Inquest held. Judgement not be delivered on	Pertains to the Highgate hotel inquest. Evidence was led. Mr Beling testified at the inquest. Judgement is	Yes	Inquest commenced. Judgment on 1 December 2025

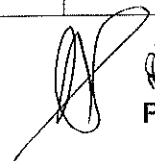


		1 December 2025.	expected on 1 December 2025.		
11 th Applicant Nombuyiselo Mhlauli	Cradock Four-spouse of Mr Sicelo Mhauri	Eastern Cape The third inquest has re-opened and is on the court roll.	The third inquest into the deaths of Messrs Mhauri, Mkonto, Goniwe and Calata commenced with evidence led on 2-June 2025. Judge Beshe presides over the matter. The matter has been postponed to 13-24 October 2025 for further evidence and issues pertaining to legal representation for SADF members to be resolved. This is underway. The third inquest into the deaths of the Cradock Four commenced as above. The matter has been remanded to March 2026.	Yes	Inquest commenced, evidence has been led.
12 th Applicant Sarah Bibi Lall	Dr Hoosen Mia Haffejee	Kwa-Zulu Natal- Inquest re- opened.	Inquest re-opened and finalised. Decision taken by the DPP-declined to	Yes	Inquest commenced. Findings overturned.

		Inquest finalised.	prosecute anyone in connection with this matter. All the witnesses are deceased. This has been communicated to the family.		Decision taken, decline to prosecute
13 th Applicant Sizakele Ernestina Simelane	Ms Nokuthula Simelane	North Gauteng-matter enrolled on the criminal court roll	This matter is on the criminal court roll since 2016. There have also been numerous applications including issues pertaining to legal representation, the demise of counsel and instructing attorney, the demise of two fo the original four accused, a request for the addition of certain charges etc. A s77(3) inquiry is underway where one of the accused has alleged, he is unable to follow proceedings. Matter has been postponed to 1-3 October 2025	Yes	The matter is on the criminal court roll-section 77(3) hearing underway

			for arguments. Judgment will be delivered on 21 January 2026.		
14 th Applicant Sindiswa Elizabeth Mkonto	Cradock Four-Spouse of Mr Mkonto	Eastern Cape-third inquest into the death of the Cradock four is underway.	The third inquest into the deaths of Messrs Mhauri, Mkonto, Goniwe and Calata commenced with evidence led on 2-11 June 2025. Judge Beshe presides over the matter. The matter has been postponed to 13-24 October 2025 for further evidence and issues pertaining to legal representation for SADF members to be resolved. This is underway. Further evidence has been led. The matter has been postponed to March 2026.	Yes	Inquest has commenced. Evidence has been led.
15 th Applicant Stephans Mbuti Mabelane	Mr Matthews Mojo Mabelane	South Gauteng- inquest re- opened	The inquest into the death of Mr Mabelane was re-opened. The prosecutor seized	Yes	The inquest has been re-opened. The prosecutor passed away.

			<p>with the matter passed away in July 2025. Efforts are underway to replace and bring the new prosecutor up to speed to enrol the matter. The NPA has arranged a preparation meeting with the legal representatives of the family.</p> <p>On 23 September 2025, intervention measures were staged to bring the new prosecutor, the TRC Nodal point up to speed to place the matter on the roll. Dates for case management and subpoenas to be served, arranged.</p>		<p>Intervention measures put in place to enrol matter.</p>
16 th Applicant Thuli Kubheka	Ms Ntombikayise Kubheka	Kwa-Zulu Natal- Enrolled on the criminal court roll	Several persons have been charged in this matter. The matter is on the criminal court roll. S v Botha and	Yes	The matter is on the criminal court roll




			others. The matter has been postponed to 31 October 2025 for their applications for legal representation to be finalised. Matter joined with Mr Phewa above.		
17 th Applicant Hlekani Edith Rikhotso	Mr Ignatius Mthebule	South Gauteng	This matter is still under investigation. Several statements have been obtained from senior members of the ANC. Meeting held with legal representative of the family. Statement of person of interest obtained. Additional witness statements to be obtained. On 16 September 2025, a meeting held with Mr Jos Venter, representing the family. He was briefed on the status of the matter. Remaining	Yes	Investigation is ongoing.

			statements to be obtained. Decision to be taken.		
18 th Applicant Tshidiso Motasi	Sgt Richard and Mrs Irene Motasi	North- West- Decision taken by the office of the DPP	This matter is at a sensitive stage of investigation. It cannot be discussed due to its sensitivity. The family of the deceased have been updated on developments in this matter. Matter was identified for fast tracking. Meeting was held with family legal representatives where they made representations. Expert opinions obtained. Challenge with demarcation, matter will be transferred to North Gauteng. Special project meeting ensued, persons of interest utilised similar modus operandi.	Yes	Decision pending from the office of the DPP

19 th Applicant Nomali Rita Galela	Messrs Champion Galela, Siphon Hashe and Qaqawuli Godolozzi aka as the PEBCO Three	Eastern Cape-Date for formal inquest to be set down.	The Minister has authorised the holding of a formal inquest. A date must be set and a judge appointed.	Yes	Formal inquest to be held. Date to be arranged for the formal inquest to be held at the Gqeberha High court
20 th Phumeza Mandisa Hashe	PEBCO Three- Spouse of Mr Siphon Hashe	Eastern Cape	The Minister has authorised the holding of a formal inquest. A date must be set and a judge appointed.	Yes	Formal inquest to be held. As above
21 st Applicant Mkhontowesizwe Godolozzi	PEBCO Three- Spouse of Mr Qaqawuli Godolozzi	Eastern Cape	The Minister has authorised the holding of a formal inquest. A date must be set and a judge appointed.	Yes	Formal inquest to be held. As above
22 nd Applicant Mogapi Solomon Tlhapi	Mr Nicholas Majestic Boiki Tlhapi	North- West	The inquest into the death of Mr Tlhapi has been re-opened. It has been enrolled for case management before Judge Petersen. A date for the hearing to be set	Yes	Inquest has been re-opened. Judge Petersen appointed. Awaiting confirmation of a date, 18/19 November 2025,

			<p>down. The first pre-inquest hearing took place on 9 September 2025. A court date is expected in November 2025 for case management. Subpoenas to be issued.</p>	<p>for the subpoenas for person of interest.</p>
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68 The following statistics are also important, more so for the context in this matter:

Matters on the criminal court roll	6	<p>S v Mfalapitsa and another (deaths of the COSAS Four)</p> <p>S v Coetzee and another (death of Ms Simelane)</p> <p>S v Engelbrecht and others (death of Mr C Nyoka)</p> <p>S v Botha and others (death of Ms Kubheka and Mr Sbo Phewa-2 matters)</p> <p>S v Schoon and others (death of Mr Mngomezulu)</p>
Convictions	2	<p>On 10 July 2025, former police officer Mr Johan Marais was convicted and sentenced to fifteen years imprisonment for the murder of Mr Nyoka.</p> <p>On 8 November 2023, former security branch police official, Mr Wesley Madonsela was convicted and sentenced to ten years imprisonment for the 1989 murder of a UDF supporter.</p>
Inquests re-opened or on the court roll	12	<p>The re-opened inquest into the deaths of the Cradock Four</p> <p>The re-opened inquests into the death of Mr Griffiths Mxenge</p> <p>The re-opened inquest into the death of Chief Albert Luthuli</p> <p>Inquest into the deaths of the Northcrest Five</p> <p>Inquest-The Highgate Hotel</p> <p>The re-opened inquest into the death of Mr Booi Mantyi</p> <p>Inquest-Mr Moss Morudi</p>

		<p>The re-opened inquest into the death of Mr Boikie Tlhapi</p> <p>The re-opened inquest into the death of Mr Mathews Mabelane</p> <p>The re-opened inquest of Mr Stephen Bantu Biko</p> <p>Inquest-PEBCO Three</p> <p>Dr Rick Turner</p> <p>Mr Kehla Nkutha</p>
Pending inquests	6	<p>Mr Sithembiso Nzuzo and Mr Moses Ramotlo</p> <p>Mr V Msani</p> <p>Mr V Mbatha</p> <p>Mr S Shezi</p> <p>Mr Ndaba</p> <p>Mr Shabalala</p>
Finalised inquests	7	<p>Inquest of Mr Oupa Ronald Madondo</p> <p>Inquest of Mr Mthunzi Vlemseni Njakazi</p> <p>Re-opened inquest of Dr Neil Hudson Aggett</p> <p>Re-opened inquest of Mr Ernest Dipale</p> <p>Re-opened inquest of Mr A Haron</p> <p>Inquest-Mr Zama Sokhulu Mlobeli</p> <p>Re-opened inquest of Dr HM Haffejee</p>
Pending application for re-opening	3	These are applications where memoranda are underway to re-open inquests.
Decisions taken	39	These are cases where investigations have been exhausted and decisions have been taken to close the matter, or where amnesty was granted, or where persons were charged, convicted and sentenced, or offences have prescribed etc.
Potential prosecutions	2	Indictments underway

- 69 Other matters highlighted: The Kwamakutha massacre-This matter is under investigation by the Kwa-Zulu Natal TRC unit. The Ntuli family massacre occurred on 21 January 1987, where 13 members of the Ntuli family were ambushed and killed. In what became known as the Malan trial, 20 accused persons were prosecuted. The investigation underway was identified as a matter for investigation because of the refusal of immunity by the trial court. DPCI investigations, under the watch of the NPA's TRC Nodal point is presently underway. During a meeting held with the NPA/DPCI and legal representatives on the matter of Dr Rick Turner, inquiries were made for information on the Ntuli family massacre which had already been identified and registered for investigation. The Ntuli family is kept updated on all developments in the matter.
- 70 The Esikhawini murders were committed in the context of the political violence between certain political parties. The matter is under investigation. Both the NPA and DPCI provide feedback to the families. The mandate is to focus on matters which were referred to the NPA by the TRC. Whilst some matters were considered and decided upon, others were not dealt with by the TRC. Where there is evidence of the commission of a crime, charges will be preferred.
- 71 The Bambo matter: This was also dealt with in the response to the Portfolio Committee. A decision is imminent in this matter.

- 72 Sons and Els: The matter was dealt with by Mr Veenemens, based with the Representation section of the NPS and a decision was taken to decline to prosecute. His affidavit is attached, **Annexure I**.

Cradock Four docket: Despite efforts to trace the original Cradock Four docket, I have not been successful. The third inquest into the death of the Cradock Four is underway in the Gqeberha High Court. Since September 2021, whenever a docket was handed over, this was done against a signature, of the investigating officer concerned. All copies of the Cradock Four matter which were located were handed over to the investigating officers between January 2022 and April 2022, were handed over to the investigating officers for comparison with what was contained in the reconstructed docket.

- 73 It is important to also note that whilst all matters are important, progress has also been made on matters even where FHR is not involved including and not limited to the re-opened inquest into the death of Mr Stephen Bantu Biko, the re-opened inquest into the death of Mr Griffiths Mxenge, the Northcrest Five (Messrs Mzwandile Mfeya, Sandiso Yeso, Samora Mpendulo, Sadat Mpendulo and Thando Mthembu), the re-opened inquest into the death of Mr Booi Mantyi, the inquest into the deaths of Mr Zama Sokhulu Mlobeli, Mr Mthunsi Vlemeseni Njakazi, Mr Oupa Ronald Madondo, the re-opened inquest of Chief Albert Luthuli, amongst others.

- 74 Whilst acknowledging that all matters are important, and factoring in the duration that it has taken for TRC matters to be investigated, all the resources cannot be pooled into investigating matters only where legal representatives are involved.

Equal attention, with regards to age of the matter, age of the witnesses etc must be taken into account.

- 75 Investigations given the challenges do take time. Since 2021, there has been a marked increase in progress on TRC matters. It is important for us to ensure that our investigations are thoroughly undertaken. Matters that are poorly investigated and which result in unsuccessful findings also add to the pain of families.
- 76 A decision to prosecute or not prosecute must be taken with care because it has profound consequences for victims, witnesses, as well as accused persons and their families. We exercise our functions without fear, favour or prejudice.
- 77 Since 2021, TRC matters have also formed a standing agenda item at National Operational Management Meeting (NOMM), a middle management meeting attended by all DPP's and senior managers. Progress on TRC matters, or the lack thereof is discussed at the meetings.
- 78 Apart from internal oversight and accountability, the Cabinet Member responsible for the administration of justice must exercise final responsibility over the prosecuting authority. The NPA is accountable to Parliament which has oversight on TRC matters.
- 79 The NPA is the only organ of state mandated by the Constitution to institute and prosecute criminal proceedings on behalf of the State. Our work and functions are monitored by Parliament to which it accounts as part of its oversight

functions. An agency or organisation that is granted permission to monitor the work of the NPA will infringe on the prosecutorial independence of the NPA.

80 Since September 2021, we have appeared before the Justice and Portfolio Committee on five occasions viz 1 June 2022, 25 November 2022, 21 November 2023, 17 September 2024 and 20 May 2025. Our presentations are attached as **Annexure J, K, L and M respectively**. FHR also made additional written submissions on 20 May 2025, **Annexure N**. This was addressed internally and at a meeting held on 1 August 2025. A follow up meeting with FHR on structured engagement with the NPA and DPCI, is also scheduled for November 2025.

81 The prosecutor's primary function is to assist the court to arrive at a just verdict and not simply to secure a conviction at all costs. The basic principles of a right to a fair trial, the presumption of innocence, and the onus on the State to prove its case beyond a reasonable doubt remain paramount.

82 Cases may only be placed on the roll if there is evidence that establishes the elements of a crime, and it is linked to an accused person. A decision to prosecute must be made after a thorough consideration of all the available evidence and facts and if there is a reasonable prospect of a successful prosecution. The rights of all the parties must be respected and recognised.

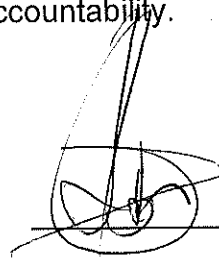
H CONCLUSION

83 In conclusion, the National Prosecuting Authority has taken deliberate steps to address the backlog of TRC matters through the establishment of a dedicated TRC Component and the adoption of a prosecution-guided model. These efforts

have strengthened coordination with the DPCI and ensured accountability in the handling of apartheid-era cases.

84 Despite challenges such as missing records, the passage of time, and limited capacity, progress has been made through joint accountability sessions, enhanced skills training, and a victim-centred approach that continues to build trust with affected families.

85 I confirm that during my tenure there has been no political interference during the investigation or prosecution of TRC matters, and the work continues to advance the principles of truth, justice and accountability.



DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pretoria on this 31 day of **October 2025** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: Prunella Josephine Steenkamp

CAPACITY: *Library Assistant*
AREA: *Weewindpark*

NATIONAL PROSECUTING AUTHORITY
2025 -10- 31
NATIONAL PROSECUTING AUTHORITY



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES.	
(2) OF INTEREST TO OTHER JUDGES: YES	
(3) REVISED.	
<u>DATE</u>	<u>SIGNATURE</u>

CASE NUMBER: IQ01/2017

In the matter of:

**THE RE-OPENED INQUEST INTO THE DEATH OF
AHMED ESSOP TIMOL**

JUDGMENT

MOTHLE J

INTRODUCTION

1. The 1972 inquest into the death of AHMED ESSOP TIMOL ("*Timol*") was formally re-opened by the High Court on 26 June 2017, in terms of section 17A of the Inquests Act 58 of 1959 ("*the Act*"). The 1972 inquest was held following Timol's death in 1971. The purpose of re-opening the inquest is to investigate the circumstances leading to the death of Timol in 1971, in light of further evidence that has been uncovered.
2. It is a matter of record from the 1972 inquest that the incident which resulted in Timol's death occurred on 27 October 1971, at which time Timol died while held in custody by members of the Security Branch of the South African Police ("*Security Branch*"). The then Attorney-General, Johannesburg, declined to prosecute. Consequently an inquest into the death of Timol was held in Johannesburg, under case reference number 2361/71 from April to June 1972 ("*the 1972 inquest*"), before Senior Magistrate M De Villiers ("*the magistrate*") assisted by Professor Simpson ("*Prof. Simpson*") a medical doctor, as assessor.
3. At the end of that inquest the magistrate concluded and found In essence that Timol had committed suicide and no person alive was responsible for his death. The family of Timol did not accept this finding, and for a period of approximately 43 years had to live with the magistrate's decision.
4. With the assistance of the Human Rights Foundation and eminent legal counsel¹, Timol's nephew, Mr Imitiaz Cajee ("*Cajee*") obtained further evidence relating to the death of Timol, which enabled them to

¹ Advocate George Bizos SC of the Johannesburg Bar.

approach the National Director of Public Prosecutions (“NDPP”) with information that was not placed before or considered by the magistrate conducting the inquest in 1972. The NDPP made a recommendation to the Minister of Justice and Correctional Services for the re-opening of the inquest in terms of section 17A of the Act.

5. Acting in terms of this section of the Act, the Minister forwarded the recommendation from the NDPP to the Judge President of the Gauteng Division of the High Court of South Africa, who in turn designated a Judge to re-open the inquest.²
6. The re-opening of this inquest in the High Court of South Africa is the first of its kind³ by a Superior Court and presided by a Judge of the High Court.⁴
7. It is apposite to state up front that this 2017 re-opened inquest started off with a limp. Firstly, the inquest relates to an incident which occurred 46 years ago. As it turns out, out of about thirty members of the Security Branch of the South African Police involved in the arrest, detentions as well as the investigation of the case concerning Timol’s death, only three were found still alive. Two of the three former police officers who testified during the hearing of oral evidence in 1972, were served with subpoenas to testify again in the 2017 inquest and were in attendance during the proceedings.
8. Secondly, the records of the 1972 inquest are incomplete. At the commencement of the 2017 proceedings it was drawn to the attention

² Judge President D Mlambo of the Gauteng Division designated the writer of this judgment Judge S.P. Mothle, to re-open and preside over the inquest proceedings.

³ Counsel for the NDPP who was the evidence leader, confirmed that this re-opening was the first of its kind in South Africa.

⁴ Inquests are ordinarily presided over by magistrates, although the Act defines the “Judicial Officer” as including District and Regional Magistrates as well as a Judge of the Superior Court.

of the Court that the record of proceedings of the 1972 inquest runs up to 1,157 pages, ending with the 77 page judgment by the magistrate. The Court only received portions of this vital record which starts from page 653 up to the end. Mysteriously missing from the record are pages 1 to 652, which consists mainly of the oral evidence of the police witnesses, the originals or copies of the relevant photographs and other exhibits.

9. The Court received copies of the sworn statements (affidavits) of the police witnesses. However, in the case of Mr Joao Rodrigues's⁵ 4 page affidavit, page 3 thereof has also mysteriously disappeared. This missing page 3 provided details as to how in Rodrigues's version, Timol fell from the 10th floor of John Vorster Square building. The version in the missing page of Rodrigues's affidavit was narrated in summary by the magistrate in his judgment, which is part of the records that survived the mysterious disappearance of documents. The 2017 re-opened inquest thus had to rely on the magistrate's summary as well as the oral evidence of Rodrigues delivered in person in 2017 proceedings, to appraise itself of the contents of the missing page 3 of his affidavit.
10. This monumental task of re-opening the 1972 inquest was largely simplified by the evidence of witnesses who testified orally in Court. The Court is indebted to these witnesses as well as those who submitted affidavits. In particular, this Court recognises the courage with which the witnesses, who are former detainees, were able to share with this Court and through this Court, the public, as to how they had to endure abuse, humiliation and torture at the hands of the Security Branch. Their contribution has been of tremendous assistance to this proceedings.

⁵ A member of the Security Branch and main witness for the police.

11. The Court also expresses its gratitude to the legal representatives of the NPA, the family of Timol and the former members of the Security Branch. Their participation and contribution throughout this inquest was also valuable to this Court. Advocate George Bizos SC is the only lawyer who participated in both the 1972 inquest and the 2017 re-opened inquest, 46 years later. This Court is indebted to him and all experts for their contribution.
12. It is through the persistent effort of Mr Imitiaz Cajee that this historic sitting of the re-opened inquest occurred. His efforts should be emulated as an example of how citizens have to assert their rights.

THE INQUESTS ACT 58 OF 1959.

13. Inquests proceedings are regulated by the Act. The purpose of holding an inquest is to investigate the circumstances of death apparently occurring from other than natural causes and where the prosecutor had declined to prosecute. It is therefore an inquisitorial *cum* investigation process.
14. In ***Timol v The Magistrate of Johannesburg***⁶, the Court had this to say about inquests:

“Nevertheless, the inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into the circumstances of death.”
15. The Appeal Court in ***Marais NO v Tiley***⁷ echoed the sentiments of ***Timol v The Magistrate supra*** as follows:

⁶ 1972 (2) SA 28 (T). This reported decision arises out of the 1972 inquest, where the Timol family brought an interlocutory application against the magistrate and prosecutor, for an order compelling them to make available all documents of the inquest. The Court granted the order sought.

⁷ 1990 (2) SA 899 (A) at 901F-902A-B

“...The underlying purpose of an inquest is to promote public confidence and satisfaction; to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences and so that persons responsible for such deaths may, as far as possible, be brought to justice...”

16. Recently In ***Freedom Under Law v NDPP***⁸ this Division of the High Court also had this to say about the purpose of an inquest:

“[72] An inquest is an investigatory process held in terms of the Inquests Act which is directed primarily at establishing a cause of death where the person is suspected to have died of other than natural causes. Section 16(2) of the Inquests Act requires a magistrate conducting an inquest to investigate and record his findings as to the identity of the deceased person, the date and cause (or likely cause) of his death and whether the death was brought about by any act or omission that prima facie amounts to an offence on the part of any person. The presiding officer is not called on to make any determinative finding as to culpability.”

17. Section 17A (1) of the Act was inserted into the original text as an amendment by section 1 of Act 145 of 1992. It provides thus:

*“The Minister may, on the recommendation of the Attorney General concerned, at any time after the determination of an inquest and if it deems it necessary in the interest of justice, request a Judge President of a provincial division of the Supreme Court of South Africa to re-open that inquest, whereupon the Judge thus designated shall re-open such inquest.”*⁹

⁸ *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP)

⁹ Please note that the words “*the Attorney General*” and “*a provincial division of the Supreme Court of South Africa*” in this section refer to the National Director of Public Prosecutions and a provincial Division of the High Court of South Africa respectively, as restructured and re-named in terms of the provisions of the Constitution of the Republic of South Africa, 1996.

18. Section 1 of the Act defines "*judicial officer*" as "*a judge of the Supreme Court of South Africa, a regional magistrate or a magistrate.*" In practice, the inquests in South Africa are presided over by a regional magistrate or magistrate. Judges get involved when there is an appeal or review of the inquest findings made by the judicial officer in the magistrate court. However, in regard to the re-opened inquests, section 17A provides specifically for the designation of a Judge to preside over a re-opened inquest.
19. The Act draws a subtle distinction between the re-opening of an inquest in terms of section 17 (2) and in terms of section 17A. Under sections 17 (2) and (3), an inquest is re-opened at the request of the Attorney General¹⁰ (presently Director of Public Prosecutions), directed to the judicial officer *who presided over an inquest*, to take further evidence generally or in respect of a particular matter. In practice it would ordinarily be before a regional magistrate or magistrate who made the finding. This process is designed to focus on taking further evidence following an initial finding of the inquest Court.
20. In regard to the section 17A re-opening, the Director of Public Prosecutions makes a recommendation to the Minister for the re-opening of the initial inquest, by a designated Judge, who is also empowered *mutatis mutandis* to take further evidence generally or in respect of a specific matter as in section 17 (2). Thus section 17A of the Act empowers the Judge presiding to exercise the provisions of section 17 (2) and to take further evidence generally or in respect of any matter, in effect for the purposes of the reconsideration of the entire evidence including *on the existing record*. Most importantly,

¹⁰ South Africa had an Attorney General for each of the provincial and local divisions of the then Supreme Court. In terms of Section 43 of the National Prosecuting Authority Act 32 of 1998, a person holding the position of Attorney- General shall be deemed to be appointed as director in terms of the NPA Act.

Section 17A (3) (b) obligates the Judge to record any finding that differs from a finding of the initial inquest as referred to in section 16(2), as well as the respect in which it differs.

21. Section 17A (3) (a) empowers the presiding Judge to cause any person who has already given evidence in the inquest to be subpoenaed to give evidence in the re-opened inquest. The witnesses are for the Court not the parties participating. It is not the purpose of an inquest to resolve a dispute between parties, even though there may be a tendency by participating parties to protect or promote their interests. The judicial officer should thus guard against inadvertently being drawn to approach the proceedings as would be the case in resolving a dispute between such parties. The proceedings are thus not adversarial but rather inquisitorial.
22. The inquest proceedings should not be conducted like criminal trials. However, they are more aligned to criminal proceedings than civil proceedings. Section 8 (2) of the Act provides that the laws governing criminal trials shall *mutatis mutandis* apply to securing the attendance of witnesses at an inquest, their examination, the recording of their evidence, the payment of their allowances and the production of documents or material.
23. There is also the added factor in that the presiding judicial officer must, consistent with the Bill of Rights in the Constitution, draw to the attention of witnesses who may be at risk of possible prosecution, of their rights against self-incrimination and procurement of legal representation, prior to testifying. The evidence leader will be from the prosecution and the presiding Judge may appoint assessors. It is in consideration of these factors that while an inquest is not a criminal

trial, the inquest court should be constituted more in line with criminal proceedings¹¹ than civil proceedings.

24. The order of the presentation of the evidence is determined by the presiding judicial officer and mostly depends on the availability of witnesses at a given time. Ordinarily the proceedings would commence with formal opening statements, first by the presiding judicial officer and thereafter by participating parties. In the scheme of things, the investigating officer who gathered documentary and other evidence would be the ideal witness to start with, followed by eye witnesses if any. The investigating officer should be led by the evidence leader from the prosecution.
25. The Inquest Act empowers the presiding officer to call for and receive affidavits. Where necessary, he/she may decide to hear oral evidence. In this regard, the presiding judicial officer is empowered to summon witnesses to appear in person at the inquest proceedings in order to testify.
26. At the end of the proceedings and in terms of section 16 of the Act, the presiding judicial officer is required to record a finding upon the inquest as to the identity of the deceased person; the cause or likely cause of death; the date of death and 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. Should the presiding judicial officer be unable to record any such finding, she or he is required to record that fact.
27. Finally, the re-opened inquest is neither an appeal nor a review of the initial inquest. In both these instances, a court is confined to the

¹¹ In practice, Judges in the High Court presiding in criminal trials wear red robes as opposed to regular black robes.

record of the initial inquest and only empowered to admit new evidence when a case has been made out for such. The re-opened inquest requires a reconsideration of the entire evidence considered by the initial inquest as well as the evidence that was available at the time of death, which for one or other reason was not or could not be considered during the initial inquest proceedings, and has become available. This is the information that would justify a re-opening

28. I now turn to deal with the background to the facts concerning the arrest and detention of Timol.

BACKGROUND

29. According to the evidence of his brother Mohammed and friend Professor Salim Essop (*"Essop"*), Timol was born in the small town of Breyten in what is now Mpumalanga on 3 November 1941. He was the eldest son of Hajee Yusuf Ahmed Timol and Hawa Ismail Dinder. Timol was one of the six children in the family. In 1949, the family moved to Roodepoort on the west rand near Johannesburg. In 1955, the family moved back to the town of Balfour, in Mpumalanga where Timol's father opened a shop. Timol went to school in Standerton, Mpumalanga as there was no school in Balfour at the time. He completed his high school education at the Johannesburg Indian High School. Once more, the family moved back to Roodepoort in 1956 where the father opened a trading store. The family struggled to survive to the extent that Timol had to leave school and be employed as a clerk at a bookkeeper's office in Johannesburg. He later obtained a scholarship to pursue a teaching course at the Johannesburg Training Institute for Indian Teachers. It is at that school that between 1962 and 1963 he served as Vice Chairperson of the Students Representative Council.

30. He completed his teacher's diploma in 1963 and was posted to the Roodepoort Indian School. As a teacher he was reported to have been well loved and respected by colleagues and students and a popular teacher at school. On 26 December 1966, Timol went to the Hajj (the pilgrimage to Mecca), where he proceeded via Cairo, Egypt, to settle in London and obtain a teaching post there. It was at this time that he was joined by his younger brother Mohammed. While in London, Timol was recruited to join the South African Communist Party which operated underground in exile. He was trained in conducting underground work and dissemination of information, including through letter bombs. He returned to South Africa in February 1970 and resumed his teaching post at the Roodepoort Indian School. His brother Mohammed testified that he had an inclination that he (Timol) was returning to South Africa to be involved in the struggle against apartheid. He had been trained and prepared to serve in the struggle against apartheid by Dr Yusuf Dadoo. Dr Dadoo, who was based in exile in Europe, was the National Chairman of the South African Communist Party ("SACP") as well as the Vice Chairman of the Revolutionary Council of the African National Congress ("ANC"). The SACP and the ANC were banned organisations at that time.
31. It was further common cause that during this time, Timol established an SACP underground unit in South Africa. One of the members of the underground unit was Essop, then a third-year student at the Medical School of the University of Witwatersrand ("Wits"). He now holds a Doctoral degree in Philosophy.
32. Essop, who was regularly in the company of Timol, testified in the 2017 re-opened inquest that on the night of the 22 October 1971 at

about 23H00 pm at night, he was driving a motor vehicle, Ford Anglia with registration numbers TU 22315 on Fuel Road in Coronationville. He was with Timol. They encountered a road block which directed them to stop. The road block was manned by Sergeant Leonard Gysbert Kleyn (*"Kleyn"*) and Const. Adam Alexander Cecil Thinnies (*"Thinnies"*), both members of the South African Police stationed at Newlands Police Station in Johannesburg. After asking routine questions as to where the two passengers in the vehicle were travelling to, the police indicated they wanted to search the boot. In the boot the police found pamphlets of the banned SACP. Essop and Timol were arrested and taken to Newlands Police Station together with the impounded vehicle and the documents found in the boot.

33. At the Newlands Police Station. Sergeant Kleyn phoned Warrant Officer Neville Els (*"Els"*) who was a member of the South African Police, attached to the Security Branch at John Vorster Square. He was on stand-by duty that evening. Kleyn informed him of the arrest. Timol was locked up in a cell and Essop was put on a bench awaiting the arrival of Els. On arrival, Els took charge of the documents and pamphlets found in the boot. He then phoned senior officials of the Security Branch who later also arrived at the police station. These were Captain Dirker followed by Colonel Greyling (*"Greyling"*). Captain Dirker took Timol to the Security Branch offices at John Vorster Square and Essop was transported by Greyling to the same offices.
34. Essop, whose evidence of their arrest is by and large corroborated by Kleyns, Els and Thinnies, testified further that he was first taken to the office of Greyling on the 9th floor of the Security Branch offices at John Vorster Square, where he was interrogated and tortured. Apart from having seen Timol for the last time when they were separated at

Newlands Police Station, Essop testified that sometime during his detention, he was standing in the strong room when through the open door, he could see a person looking very much like Timol being escorted by two police officials, having a hood on his head and walking slowly with great difficulty. Police officers held him by both hands on either side of the body. That was the last glimpse of Timol that Essop had.

35. It was only in March 1972, when he first appeared in court that Essop became aware that Timol died in detention on the 27 October 1971. The evidence before the 1972 inquest confirmed the identity of Timol as well as the date of death.
36. Consequent to the arrest of Timol and Essop on the night of 22 October 1971, the Security Branch went on a raid the following day and arrested 20 other persons whom they presumed to be linked to Timol. Among them who testified in the 2017 re-opened inquest, was Mr Kantilal Naik (*"Naik"*) (currently a retired professor of mathematics), Timol's brother Mr Mohammed Timol (*"Mohammed"*), arrested in Durban and Ms Dilshad Jetham (*"Jetham"*), presently a medical doctor and cardiologist. Like Timol and Essop, these former detainees and others, with exception of Mohammed who was in Durban, were also detained and interrogated during that same weekend at the same place, John Vorster Square, at about the time Timol met his death.

Security legislation in 1971.

37. Before turning to the evidence presented in both inquests, it is necessary to state, as the evidence presented before the 2017 re-opened inquest showed, that there were detainees who died in detention before Timol and many others thereafter. Thus, in order to

facilitate an understanding of the context within which the events unfolded at that time, it is apposite to succinctly examine the pivotal role played by the security laws in force in the apartheid South Africa.

38. It is a well-known practice internationally that governments of the day are constitutionally or by legislation obligated to protect the state against foreign and domestic threats. Legislation in place would generally establish security structures whose functions would be, amongst others, to gather intelligence so as to assess the threats to the state and where necessary, take pro-active action to prevent attacks on the State.¹²
39. The apartheid government took measures to deal with the activists opposed to the apartheid system; this much is clear from Rodrigues' evidence.¹³ These measures entailed enactment of pieces of legislation to authorise various law enforcement agents to suppress dissent to the segregation laws. The implementation of these measures resulted in the detentions of scores of people.¹⁴ These pieces of legislation included.
- a. ***The 1950 Suppression of Communism Act***¹⁵ which outlawed the "*Communist Party of South Africa*" and prohibited organisations from pursuing communist ideas and objectives. Subsequent to the declaration of the Communist Party of South Africa to be an unlawful organisation, the SACP took its place. It too was banned

¹² Some of these security units would be established by rogue governments to disempower political opponents during political power contestations.

¹³ Joao Rodrigues is a former member of the Security Branch linked to the death of Timol. During the presentation of his oral evidence in Court, he repeatedly described the situation that prevailed at that time as "*oorlog*", (war).

¹⁴ People arrested and held in terms of various security-related legislation were referred to as detainees.

¹⁵ Act 44 of 1950

until February 1992, when together with other organisations which were prohibited, it was unbanned. It is still in existence;

- b. ***The General Law Amendment Act***¹⁶ which authorised police to detain without warrant any person suspected of politically motivated crime for up to ninety days without access to a lawyer, doctor or any family or visitors (*incommunicado*)¹⁷. On expiry of the ninety days many detainees had their period of detention extended by a further ninety days. Subsequent thereto, the ***Criminal Procedure Amendment Act No. 96 of 1965*** lengthened the span of detention to 180 days which remained renewable;
- c. ***The Terrorism Act*** ¹⁸ whose purpose was to prohibit terroristic activities. The Act defined terrorism as anything that might endanger the maintenance of law and order. It is this act, which in terms of Section 6 thereof, authorised detention of persons for a period of 60 days which was renewable, for purposes of interrogation without trial. These powers were conferred on police officers of the rank of Lieutenant-Colonel and above. It is during detention under this particular section that South Africa saw the torture and death of many detainees as well as the torture of many more others who survived. It is further under this particular section in terms of which the detainees, including Timol, were detained indefinitely *and incommunicado*. Only the Commissioner, subject to directions from the Minister, was authorised to order a release of such detainee "*when satisfied that he has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention*".

¹⁶ Act 37 of 1963.

¹⁷ A colloquial term used to explain the condition where the detainee is unable to communicate with any civilian or any civilian being unable to communicate with the detainee.

¹⁸ Act 83 of 1967.

d. ***The 1982 Internal Security Act***¹⁹, this Act was later amended by the ***1991 Internal Security and Intimidation Amendment Act***²⁰. This Act repealed the Terrorism Act but retained most of the provisions of that Act, including the provisions of section 6 referred to above. Section 6 of the Terrorism Act was restated with minor changes as section 29 of the Internal Security Act. It also introduced several kinds of detention including preventative detention without interrogation in terms of section 10 and detention in terms of section 50, which authorised detention for fourteen days.

40. The Internal Security Act of 1982 was repealed following the adoption of the Constitution, 1996, which ushered in a new democratic order with a Bill of Rights. Chapter 11 of the Constitution, in particular section 198(d), places national security under the authority of Parliament and the National Executive, with the Courts retaining the jurisdiction to pronounce on the constitutionality or legality of both the statutes and conduct of officials authorised to act in terms thereof.

41. Timol, people associated to him and many other detainees were held in terms of the provisions of section 6 of the Terrorism Act. In order to appreciate the extent of the unfettered powers granted to the police under this section, it is necessary to quote the full text of the section. It reads thus:

“6(1) Notwithstanding anything to the contrary in any law contained, any commissioned officer as defined in Section 1 of the Police Act, 1958 (Act 7 of 1958), of or above the rank of Lieutenant Colonel may, if he has reason to believe that any person who happens to be at any place in the Republic, is a terrorist or is withholding from South African Police any information relating to

¹⁹ Act 74 of 1982

²⁰ Act 138 of 1991

terrorists or to offences under this Act, arrest such person or cause him to be arrested, without warrant and detain or cause such person to be detained for interrogation at such place in the Republic and subject to such conditions as the Commissioner may, subject to the directions of the Minister, from time to time determine, until the Commissioner orders his release when satisfied that he has satisfactorily replied to all questions at the third interrogation or that no useful purpose will be served by his further detention, or until his release is ordered in terms of subsection (4).

- 6(2) *The Commissioner shall, as soon as possible after the arrest of any detainee, advise the Minister of his name and the place where he is being detained, and shall furnish the Minister once a month with the reasons why any detainee shall not be released.*
- 6(3) *Any detainee may at any time make representations in writing to the Minister relating to his detention or release.*
- 6(4) *The Minister may at any time order the release of any detainee.*
- 6(5) *No court of law shall pronounce upon the validity of any actions taken under this section, or order the release of any detainee.*
- 6(6) *No person other than the Minister or an officer in that service of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee.*
- 6(7) *If circumstances so permit, a detainee shall be visited in private by a Magistrate at least once a fortnight."*

42. This section was an affront to various human rights values such as the rights prohibiting arbitrary arrest, detention, torture, denial of due process, political activism or advocacy, freedoms of movement, association and expression. Most importantly, it indirectly placed the lives of detainees wholly in the hand of the interrogators. As the evidence demonstrates, some of these lives were lost, including that of Timol. Section 6 prohibited civilian accesses to the detainee and excluded the jurisdiction of the Courts to inquire into the conditions under which a detainee was held and interrogated.
43. The only right the detainee had was to write to the Minister for his release. Given the circumstances of secrecy under which detainees were held, it is doubtful whether detainees were informed of this right, let alone being assisted to exercise it. Consequently, and as the evidence in these and other inquests demonstrate, this drastic legislation became a tool in the hands of some members of the Security Branch, not only to torture but also to kill detainees with impunity.
44. The 2017 inquest proceedings heard evidence that apart from the death of several detainees in detention, some of those that were released from detentions or released from prison after serving sentence, were subjected to a different form of detention. They were served with banning orders which effectively meant self-monitored detention.²¹ The banning orders would entail house arrest, restriction on the number of people the banned person might associate with or be in the company of at any given time and restriction on attending or participating in any gathering.

²¹ Sections 8 and 9 of the Suppression of Communism Act.

45. The effect of security legislation did not end there. It permitted the Security Branch to repeatedly enter, without a warrant, the work place and residence of a detainee, to ransack the premises, search and seize documents and anything they deemed to be an instrument used for terroristic activities²². In the process, they would threaten and question on the spot, parents, siblings and relatives of the detainee present in the residence. In short, the harassment of the family of the detainee, and after his/her release, they would continue the harassment in the form of repeated visits, partly to isolate the released detainee and his/her family from friends and neighbours. Such harassment would often become unbearable to an extent that the person who had been detained would choose to leave South Africa and go into exile.
46. The evidence presented, reveals that the family of Timol, like many other families, was subjected to all these experiences; the arrest, detention and subsequent death of Timol in detention; the arrest, detention and torture of his brother Mohammed; the harassment of their parents and family members during the detention of both Timol and Mohammed, through numerous visits to their home; the banning order with all the restrictions served on Mohammed upon his release; and Mohammed eventually having to leave South Africa and go into exile. All of these incidents as stated above were the consequence of various provisions of the security legislation operations at that time, in particular the Terrorism Act and Suppression of Communism Act.
47. The evidence further reveals the role of some carefully selected prosecutors, magistrates and medical doctors who were complicit in the declaration of the so-called war against those opposed to the apartheid order. These persons betrayed and demeaned their

²² Section 7 (3) of the Suppression of Communism Act.

respective oaths of office by participating in inquests proceedings that became a sham; concealing the atrocities committed by the Security Branch and ensuring that the judicial system finds “**No one to Blame**”.²³

48. Since the advent of democracy in South Africa, there has been progress in dealing with the past security legislation. The security laws that were at the centre of the atrocities committed on detainees ended with the demise of the apartheid order. The Security Branch no longer exists. Parliament, constituted in terms of the 1994 Democratic dispensation, enacted the **Protection of the Constitutional Democracy against Terrorist and Related Activities, Act 33 of 2004**. This statute provides for measures to prevent and combat terrorism and related activities as well as other measures to enable the security forces to investigate any activities which may result in crimes against the State. It provides for supervised detention and recognises the jurisdiction of the courts to intervene where necessary. This new security legislation repeals the last vestige of the apartheid security laws, namely, the **Internal Security Act of 1982**.

49. Having witnessed and experienced the atrocious events which led to the Second World War, the international community in 1948 took measures to ensure that people all over the world should be protected by a set of human rights values, against incidents of arbitrary arrests, detention and torture. **Article 5 of the Universal Declaration of Human Rights, adopted by the United Nation General Assembly on 10 December 1948, resolution 217 A (III)** provides:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

²³ The evidence of Advocate George Bizos SC, who appeared as a legal representative in many such inquests. **No one to Blame** is the title of his book which was submitted as evidence in court. His evidence on the role of some magistrates and doctors complicit in the sham is corroborated by Paul Erasmus, a former member of the Security Branch, who also testified in the 2017 re-opened inquest.

50. The African Countries adopted a similar declaration called **Article of 5 the African Charter On Human and Peoples' Rights, Adopted on on 27 June 1981. It reads:**

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his²⁴ legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited"

51. South Africa followed in 1996 with the enactment of **section 35 (2) of the Constitution of the Republic of South Africa, 1996 thus:**

"Everyone who is detained, including every sentenced prisoner, has the right-

- (a) To be informed promptly of the reason for being detained;*
- (b) To choose, and to consult with, a legal practitioner, and to be informed of this right promptly;*
- (c) To have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
- (d) To challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;*
- (e) To conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expens, of adequate accommodation, nutrition, reading material and medical treatment and;*
- (f) To communicate with, and be visited by, that person's-*
 - (i) Spouse or partner;**
 - (ii) Next of kin;**
 - (iii) Chosen religious counsellor; and**
 - (iv) Chosen medical practioner."**

²⁴ I take it that "his" also includes "her".

52. I now turn to deal with the summary of the evidence of 1972 and 2017 inquests.

THE 1972 INQUEST PROCEEDINGS

53. The 1972 inquest proceedings before the magistrate commenced in April and ended in June 1972. The witnesses who testified in that inquest were the arresting officers; about 14 members of the Security Branch of different ranks ranging from Constable to Colonel, who might at one stage or another, have interrogated Timol, Essop and other detainees during the same weekend as Timol at John Vorster Square; about 6 police officials from ranks of Warrant Officer to Major General, attached to the Criminal Investigation Department, who investigated the death of Timol; Timol's parents, Yusuf and Hawa Timol; one Mr M Kahn a funeral undertaker; a journalist Mr Swart; 2 assistant curators at the state mortuary as well as 4 medical officials being Dr V D Kemp, District Surgeon Johannesburg, Dr N J Schepers Senior State Pathologist, Dr H Koch the pathologist who testified on behalf of the police and Dr J Gluckman, the pathologist for the Timol family.
54. In regard to the interrogation of Timol, the approximately 20 police officers who filed affidavits for the 1972 inquest, deposed to the same version, namely that Timol was never assaulted or subjected to any form of ill treatment while in detention. The version they put forward is that on the 27 October 1971, Joao Anastacio Rodrigues ("*Rodrigues*"), a sergeant attached to the Security Branch who travelled from the Compol Building offices of the Security Branch in Pretoria, to John Vorster Square to deliver salary cheques for Captain Johannes Hendrik Gloy ("*Gloy*") and Captain Johannes Zacharias

Van Niekerk ("*Van Niekerk*"). The two Captains were interrogating Timol at that time. The time was approximately 3.40 pm (15h40).

55. Rodrigues, who also testified in the 2017 re-opened inquest, presented his version as follows: He found the two captains sitting with Timol in room 1026 at the John Vorster Building. While they were sitting with Timol, an unidentified member of the Security Branch called Mr X, came through the door and said to the other two officials that a breakthrough had been made in identifying some people whose names appeared in one of the documents confiscated from Timol's room. The version goes further to state that Timol got into a fright and the two police officials requested Rodrigues to guard Timol while they followed Mr X out of the room.

56. It was while he was sitting with Timol that Timol requested to go to a toilet and they both stood up. It is at this point that there are different versions from the evidence of police officers as recorded by the Magistrate.

57. One version by Major-General Christoffel Andries Buys ("*Buys*")²⁵, supported by Goy and Van Niekerk, is that Timol stood up, went to the door and as Rodrigues was standing up to follow him, he then suddenly turned and went to the window which he opened and jumped out. Rodrigues could not stop Timol because he was obstructed by the table between them as well as the chairs which were on both sides of the left and right of the table and stumbled on the one on the left trying to stop Timol.

²⁵ Buys was head of the Criminal Investigation Department (CID) and head of investigation into the death of Timol. He testified on what he alleges Rodrigues told him, which Rodrigues denied at trial.

58. The second version by Rodrigues is that Timol stood up, indicated that he wanted to go to the toilet, and immediately went to the window, opened it, and jumped out as Rodrigues was struggling to overcome the table and the chair on the left as obstacles, to reach Timol.
59. The third version also by Rodrigues is that as Timol stood up, he also stood up and moved to the left to come around the table. While he was pushing the chair on which Van Niekerk was sitting, under the table, at that time he saw Timol going towards the window. Rodrigues moved to the right to go around the table between them and he stumbled and fell as he was obstructed by the chair on which he had been sitting. At that moment, he was on the floor, unable to reach Timol, when he witnessed how Timol opened the window and jumped to his death.
60. The police, in spite of the contradictions, testified in support of Rodrigues and broadly stood by this version. They either denied that they had ever assaulted or inflicted any injuries on Timol, or testified that they did not see any injuries on his body.
61. In the absence of that portion of the record of proceedings dealing with the evidence by the police, the 2017 re-opened inquest was deprived of the benefit of the record of police officers' evidence in chief, cross-examination and re-examination. Consequently, the 2017 re-opened inquest was constrained to deal with the version as deposed to in the sworn statements by each of the police officials and summarised by the magistrate in his judgment.
62. There was also the evidence of Timol's parents. This evidence relates to the various trips undertaken on different dates by different

police officials from the Security Branch, who went to search and confiscate materials, articles and documents from Timol's room while he was held in detention. At some point during one of the visits, there was an altercation between Timol's mother and a member of the Security Branch. Bizos who testified in the 2017 re-opened Inquest, described this incident in his affidavit as follows:

"90. *Ms Hawa Timol (Ms Timol) testified at the inquest that on 26 October 1971 two Security Branch members arrived at her home to look for a book. She asked this policeman, 'where is my son, please I want to see my son'. One police member then said: 'You cannot see your son anymore'. She then asked him: 'Why, Sir, I am so sad, you are' The police member in question then allegedly said: 'He must get a hiding'. Then she asked him: 'Why, Sir, you beat my son and I did not beat my son.' He then answered: 'You did not beat him that is why we are now beating him.' Then she said: 'You say that you are giving my son a hiding, you must listen well, Sir, if somebody gives your son a hiding, his mother will also be sad. You must not give my son a hiding.'*

91. *Warrant Officer Van Rensburg, one of the Security Branch officers who visited the Timol home to retrieve a book, gave a different account of the conversation. He related it as follows: Ms Timol asks: 'I want to see my son'. He answered: 'You cannot see him'. Ms Timol: 'Why did you capture him?' Answer: 'He was naughty'. Ms Timol: 'My child was never naughty; I never gave him a hiding.' Answer: 'Listen, old mother, a child must get a hiding. If you gave him a hiding then he would not have been crying now.'*

92. *Needless to say the Magistrate rejected Ms Timol's version as unconvincing. It was not unusual for the courts to prefer the evidence of the Security Branch members."*
63. The surviving record of the 1972 Inquest has the evidence of the medical doctors and the post-mortem report.
64. The record of proceedings reflects how considerable time was spent in dealing with the evidence of the medical doctors in regard to what appeared to be evidence of injuries on the body of Timol, which were not consistent with his fall from the 10th floor of the John Vorster Square Building. These were the injuries that appeared to have been sustained by Timol before his death, *ante mortem*. Bizos had this to say about the evidence relating to the post mortem on the body of Timol:
- "81. *Gluckman had noticed numerous injuries which were not fresh. He explained that histologists could date the injuries by the length of the macrophage cells. The healing process comes about as healthy cells make themselves longer in order to devour or replace the injured cells. By measuring the length of the macrophages cells, you could determine whether the injury was inflicted more than two, four, six, eight, ten or twelve days before death.*
82. *The scientific evidence showed that the injuries on Timol's body were probably inflicted while he was in custody. Three pathologists testified: the State pathologist, Dr Schepers, Dr Gluckman for the family, and Prof Koch for the police. The main difference of opinion related to the timing of pre-death injuries, which Drs Schepers and Gluckman opined that the injuries were inflicted within 4 to 6 days prior to the fall, (during the first or*

second day of detention) while Prof Koch opined that the injuries were sustained 5 to 8 days prior to the fall (before Timol's arrest and detention).

83. *It should be noted that Koch was the same person who said that he had examined Essop after his admission to hospital and that there were no injuries, as alleged by the detainee's father, Mr Ismail Essop. His failure to mention the sixteen injuries that Dr Kemp had noted on Essop was disingenuous, to say the least."*

65. Koch's posture did not assist the court either. His view was not objective as would be expected of an expert. He virtually placed all the *ante-mortem* injuries well before Timol's arrest, between 9 and 12 days. Bizos testified that Koch was roundly criticised by his colleagues for the sloppy manner in which he presented his analysis. The summary of joint examination of slides by Koch, Schepers, Gluckman and Shapiro which were conducted in the presence of the assessor, Simpson, yielded disagreement between Koch on the one side and the rest of the other doctors on the other.

66. Bizos testified that in the application brought by Mr Ismail Essop on behalf of his son Essop, Koch failed to mention 16 injuries that Kemp had noted on Essop. According to Bizos, Koch was disingenuous to the court. He had this to say about him:

"it was obvious that Dr Koch had lied under oath when he stated that he had not seen any injuries. He attempted to explain himself by claiming that he was not asked by the lawyer to say whether there were injuries on Essop, but merely to deal with the question whether or not Essop had the specific injuries described by his father in his original affidavit. Koch had said that the injuries he saw differed from those described by Mr Ismail Essop. It was also argued that disclosing the injuries would reveal

information about the detainee. This was prohibited by the Terrorism Act unless those holding him consented. The judges hearing the application did not adversely comment on Koch's lack of candour or the correctness or otherwise of his alarming interpretation of the Terrorism Act."

67. The Magistrate, in a seventy seven page judgment, summarised the evidence of each of the police who testified in some detail, which summary proved to be helpful to the 2017 re-opened inquest. The judgment also dealt with the medical evidence as well as that of the police involved in the investigation of Timol's death. He dismissed out of hand the evidence by Timol's mother, in regard to the verbal altercation she had with the police at her home. In essence the Magistrate reached conclusions that came under attack in the 2017 re-opened inquest. Firstly he dismissed the submission that murder was involved as absurd because Timol was a valuable find to the Security Branch who desperately wanted to keep him. Secondly he also dismissed the theory that Timol fell by accident as being absurd. He concluded that Timol must have jumped out of the window on his own accord. Thirdly, the magistrate decided on the basis of the medical evidence that some of the injuries found on Timol's body are not consistent with the fall. The abrasions could have been between 4 and 8 days old and the bruises between one and seven days old. He further concluded that Timol was in custody for 4 days and seven hours prior to his death. Fourthly, he opined in relation to the *ante mortem* injuries that the nearest one could come to an explanation is that the injuries were sustained in a 'brawl' where he was pushed around and possibly fell. Fifth, even though Timol was interrogated for long hours, the magistrate found that he was treated in a civilised and humane way. There was therefore no basis to find any form of torture or mistreatment. Sixth, the magistrate also accepted that the evidence before him indicated beyond reasonable doubt that the deceased committed suicide. Seventh, he accepted that Timol was a communist

and a prominent member of the communist party in South Africa. Timol was therefore conversant with all orders to SACP members including one which said: *“Rather commit suicide than betray the organisation.”*

68. At the end of the 1972 inquest, the magistrate made the following findings in terms of section 16 of the Act:

“(a) The identity of the deceased is Ahmed Essop Timol, an Asian male, 29 years old, born South African, teacher by profession.

(b) Date of death: 27 October 1971.

(c) Cause or probable cause of death: the deceased died because of serious brain damage and loss of blood sustained when he jumped out of a window of room 1026 at John Vorster Square and fell to the ground on the southern side of the building. He committed suicide.

(d) No living person is responsible for his death.”

69. I will deal with the magistrate’s conclusions and findings on the evidence as it was then, within the context of the 2017 re-opened inquest evidence to which I now turn.

THE 2017 INQUEST PROCEEDINGS

Summary of evidence

Captain Nel

70. Captain Benjamin Nel (*“Nel”*) of the South African Police Service is stationed at the unit: Crimes Against the State, Organised Crime and

Directorate for Priority Crime Investigation. The unit: Crimes Against the State is mandated to investigate cases relating to the Truth and Reconciliation Committee (“TRC”). Captain Nel is the investigating officer in this re-opened investigation and was tasked to accumulate the evidence and records of the 1972 inquest proceedings. He testified that he downloaded a copy of the inquest record from the University of Witwatersrand historical papers’ website. He also contacted the South African National Archives who confirmed that the inquest records were not available. The archives supplied a document from the Department of Justice dated 13 June 1986 authorising the destruction of old inquest registers and files which included that of Timol. He also proceeded to Johannesburg Magistrate’s Court where he was informed that the records were not available.

71. Captain Nel managed to trace from the archives of the South African Police, the whereabouts of police officials who were involved in the investigation of the Timol case and other people who were also involved in the inquest. He compiled a list of these police officials and could establish that only three of them were still alive. He further established that the undertaker, Mr and Mrs Timol, Drs Kemp, Schepers, Gluckman and Prof Koch are all deceased. He further found out that Senior Magistrate J J L De Villiers is also deceased.

72. He interviewed a number of witnesses as well as former members of the Security Branch of the South African Police to establish the methods of interrogation. Two of these former members were Mr Roelf Venter and William Smith whose applications served before the TRC hearings. He could further establish from Brigadier Wahl Du Toit that the South African Police Printing Mill was used to print documents that could be used as negative propaganda by the State

to frame its enemies. He also studied cases in the law reports relating to Timol, the book by Bizos titled "**No One to Blame**" as well as two other publications, one by Imtiaz Cajee titled "**Timol a Quest for Justice**" and the other by Don Foster, Dennis Davis and Diane Sandler titled "**Torture in South Africa**".

73. Captain Nel managed to obtain copies of newspaper reports that were in circulation at that time relating to the Timol and Essop detentions. He testified further that he found a total of 54 files of people who were arrested as a result of the arrest and interrogation of Timol and Essop from the archives. He also established that other than Timol and Essop, there were 20 other persons who had been detained and interrogated by the police as they were believed to form part of Timol's so-called main unit assisting the Communist Party of South Africa. The names of these persons appear in Captain Nel's affidavit and include those of Timol's brother Mohammed, Professor Kantilal Naik and Dr Dilshad Jetham. Their affidavits were also filed as part of the record as Exhibit "C".
74. Captain Nel further testified that in the course of his investigation he visited the John Vorster Square Building and in particular the offices where Timol, Essop and others were held and interrogated from Friday 22 October 1971 to Wednesday 27 October 1971, when Timol died. In particular, Captain Nel interviewed one of the surviving members of the Security Branch linked to the Timol case, Rodrigues who, as already stated alleged that he was in the room with Timol when he fell to his death. Rodrigues is one of the few members of the Security Branch linked to the Timol case, who are still alive.
75. Also of critical importance Captain Nel obtained a document with a title "*Inkululeko Freedom No 2*" dated February 1972, as part of the

records. The significance of this document will be dealt with later under evaluation.

Professor Salim Essop

76. Professor Salim Essop was born in Johannesburg on 21 May 1949. He testified as follows: He grew up in Roodepoort and in 1967 matriculated from the Roodepoort Indian School where Timol taught. On passing matric he enrolled for a medical degree at the University of Witwatersrand in 1968. It was on 22 October 1971 while travelling with Timol in a car that his medical studies were interrupted by his arrest and detention.
77. He met Timol as a student studying for his junior certificate (Standard 8) in 1965. Timol was his class teacher. Timol left South Africa in 1966, settling and working in London for a few years. During his stay in London, Timol associated with South African political exiles. Since he was committed to the anti-apartheid struggle, he accepted an offer of ANC and the SACP to return to South Africa to help resuscitate the underground structures and in particular arrange for the distribution of their political literature. Timol and Essop were living in the same area where they would often bump into each other on Marais Street in what he described as "*the lappies neighbourhood*". They struck up a friendship where Essop eventually got to participate in underground political activities together with Timol.
78. He joined Timol's unit whose task was to organise an underground infrastructure by setting up small groups, known as "*propaganda units*". Timol's main responsibility was to acquire, print and distribute literature for both the ANC and the SACP. Essop assisted Timol in the distribution of newsletters and pamphlets which possession was

in contravention of the law. He worked for nearly twenty months with Timol, disseminating ANC political leaflets through the post, acquiring printing, photographic and other equipment, and planning to set up a viable political underground structure inside the country. Timol had different mailing addresses at which he would receive correspondence and packages from London, often in tea, biscuit or chocolate packages. Even though he was assisting Timol, Essop never had any contact with anyone abroad and was never recruited and never attended any ANC or SACP meetings in South Africa. He and Timol worked closely together for approximately twenty months starting from February 1970 until his arrest in October 1971.

79. Upon their arrest, they were taken to Newlands Police Station and separated. Timol was taken away by two police officers while he was taken to the back of Newlands Police Station where there was a small two-storey building with a metal staircase. He was also escorted by two members of the Security Branch. He subsequently learned that these two police officers were Major J H Fourie and Colonel J Van Niekerk. His interrogation started right at the Newlands Police Station where he was asked questions about his travel with Timol and the assaults started. He was continually punched and slapped. The assault continued for about an hour. They then took him back to the police station reception area and handed him over to Colonel Piet Greyling (*"Greyling"*).
80. Essop was then transported to the John Vorster Square building to the office of Greyling on the 9th floor. After making a few calls, Greyling left him with Sergeant Kleyn who assaulted him further. When Greyling returned, the beating stopped and Greyling sent Kleyn away. Greyling then forced him to hand over the house keys and make him produce maps of his room at his parents' house and locker

at Wits. He was thrust up and down and sideways causing his head to hit the floor several times. He testified that he was in pain as this torture continued for hours.

81. He was taken to an office on the 10th floor with a wooden door which, when opened, revealed a steel door, something akin to a safety door of a bank vault. He was then taken into a strong-room attached to that office which was in fact a vault. It is a room that measured 4 x 3 meters perimeter and 3 meters height without any windows except for two airbricks and the steel door that opens only from the outside. It is in this room that Essop was held from Friday, 22 October to Tuesday, 26 October, day and night subjected to hours and hours of torture. The only time he left that vault was when he was escorted to a bathroom that is situated hear the stairwell. On one occasion when he was washing in the bathroom, one officer took him to look out the window of the bathroom: *"He asked me if I had heard of an Indian man, Babla Saloogee, (who had, I knew, died in detention in 1964 after he was flung from a window of the 7th floor of Greys Building, Johannesburg, which was the old headquarters of the Security Branch). This officer also told me that I would fall to my death from 10th floor. I prayed silently that I would not be subjected to such a fate. I was taken back to the vault by the two officers."*

82. Many security officers were involved in inflicting pain on him during the middle and final phases of the torture in the vault. These officers came in pairs and alternating. They applied numerous torture methods, including the following:

"(a) Placing a bag over my head and suffocating me;

(b) Applying electric shocks and stepped up voltage rate to my tongue and lower limbs thereby inflicting excruciating pain;

- (c) *Delivering repeatedly the so-called 'mule kick' to my lower limbs and thus stiffening them to almost unbendable rods;*
- (d) *Holding me by my ankles and dangling my body from the stairwell on the 10th floor whilst threatening to drop me to my death;*
- (e) *Forcing me into unconscious state and thereafter throwing water or even urinating on me to revive me; and*
- (f) *Subjecting me to continuous sleep deprivation to exhaust and disorientate me."*

83. At some stage during detention he was instructed to half-squat. He was ordered to sit on a chair near the wall but there was no chair. He was ordered to simulate sitting on a chair in a half-squat position. Two police officers stood alongside him one on the one side and the other on the other side. They started beating him up on the sides while he was in that squatting position which caused him to collapse to the floor several times. When that happened, they lifted him back to the "sitting" position and continued delivering the punches and the kicks. This treatment was called "*the mule kick*". At the end of that treatment he was ordered to tell them everything otherwise he would be subjected to the same treatment again.

84. Essop was taken to the bathroom to wash himself and on the way back he was taken first to the stairwell where he was reminded that there were ten floors down to the ground. He was made to look down the void in between the spiral stairwell. He was lifted and held dangling from the stairway on the void. He kept dangling away from the railing of the stairwell while being held by his ankles. He felt

dizzy, disoriented and despondent. After a while he was lifted up and taken back to the vault.

85. At some point during the interrogation, Essop cannot even recall what day it was, the vault door was left open while he was standing inside, he looked to his right and could see the passage as the door leading to the office in which the vault is situated was open. He testified thus:

“This is when I last caught a fleeting sight of Timol. He had a black hood placed over his head and was being dragged along by two Security Branch officers. I knew immediately that this was Timol as I was familiar with his physique and height. He was not able to walk normally and was being held up by security officers on either side of him who were holding onto the sides of his trunk. I got the impression that the Security Branch had ‘worked on him’ in the same manner as they had on me, perhaps with even greater savagery. I presume that they had taken Timol to the toilet and were walking him from the toilet, probably the same toilet that I was also taken to a few times to urinate and wash the blood off my body, and this may have been a reason they had taken Timol to the toilet. Although I could not be hundred percent certain, I believe that the day I saw Timol was Monday, 25th October 1971. Even today, when I reflect on my last sighting of him I feel a sense of overwhelming sadness knowing that the Security Branch probably singled him out for the most vicious and sadistic treatment.”

86. It was during interrogation that he collapsed and lost consciousness a few times. Greyling called a doctor to examine him. Essop recalls that this happened on the morning of Tuesday 26.
87. He has a hazy memory of what happened after Dr Kemp left the vault. He was later to learn that he was initially transported in an

unconscious state to the General Hospital in Johannesburg and thereafter to Hendrik Francois Verwoerd Hospital in Pretoria. He cannot testify as to why he was removed from the Johannesburg General Hospital to the H F Verwoerd Hospital in Pretoria.

88. From the hospital he was detained further in prison until his appearance in Court.
89. Essop's trial took place at the old Synagogue on Paul Kruger Street, Pretoria. On 31 October 1972, he was convicted and sentenced to five years imprisonment. After an unsuccessful application for leave to appeal, he was held at Leeuwkop Prison in Pretoria. He was later transported to Cape Town where he was taken by ferry to Robben Island to serve his five-year sentence. It was when on Robben Island that he met Nelson Mandela, Walter Sisulu, Govan Mbeki, Ahmed Kathrada, Mac Maharaj and others who were serving long or life sentences. When he was released from Robben Island after five years, he was served with a five year banning order and taken to his home in Roodepoort.
90. After serving more than three years of his banning order, he escaped from South Africa to go into exile and lived and worked in several countries before settling in the United Kingdom where he is currently based as a retired academic. He could only visit South Africa several times after 1994. He was never called to testify in the 1972 inquest into the death of Timol.
91. During the presentation of his evidence in the 2017 re-opened inquest, Essop interrupted his testimony on the afternoon of Tuesday, 27 June to lead the presiding Judge, legal representatives and representatives of the media on an inspection *in loco* on the 9th and 10th Floors as well as the roof at John Vorster Square Building.

Inspection in loco

92. On 27 June 2017 at 14H00, Essop led the court into the John Vorster Square Building. The inspection started off on the 9th floor where the office of Greyling had been located. There had been some slight adjustments to the structure of the offices over the years and in some respects it was not exactly as he had remembered it. However, the main parts of the building that featured in his evidence were still visible.
93. Firstly, the spiral stairs that start from the ground floor right up to the 10th floor, with a void at the centre thereof were still intact. When one looks down from the spiral stairs, the ground floor is clearly visible even though such exercise would leave those with phobia for heights feeling dizzy. From the 9th floor we moved to the 10th floor where in this instance, there had been little tampering with the office structures, the passages and the bathrooms. They came out exactly as he had described in his evidence, including office 1013 where he was held. The passages leading to the offices from the landing on the stairway had steel doors such as those one would find in a bank vault. These are opened by key to access the passage. There are offices on either side of the passage and internal walls built by an opaque glass wall from top halfway to the ground. The passage is about a metre and a half wide between the walls of the various offices on either side.
94. At the end of the passage-way there is another steel door similar to the one nearer the stairway. Next to the stairway landing there is a toilet which seems to be a feature on each floor including the 9th floor. Essop pointed out that the layout of the bathroom was not exactly the way it was during his detention. There were some slight changes.

But basically the structure was more or less the same and the measurements the same. As he entered the passage leading to office 1013, Essop made no mistake in identifying the office door as well as the office in which he was interrogated.

95. As one enters the office, there is a steel vault door to the right, opening to a small, approximately 12 square metre area vault with thick strong walls and no windows at all. The vault was as Essop had described. Higher up the walls there were two airbricks. At the time of our visit, there was a lot of stationery stored therein.
96. Essop led us into that vault and showed us the various positions in which he stood while he was being interrogated. One could not exactly see some of the walls as these were covered with boxes of stationery. However, the room was exactly as he had described it. He then pointed out a spot where he was at the time he had sight of the person he believed was Timol being carried, and walking slowly along the passage. I stood exactly on that spot as he demonstrated how he had a brief sight of Timol as he was carried with the steel door as well as the door leading to the office both open. He then simulated how Timol was carried and where I stood, I had a clear view of a person being carried on both sides as he moved on the corridor past the open door. The movement was slow and with an effort.
97. The entourage also inspected room 1026 where Timol was held. It turned out to be a very small room of 2½ to 3 x 4 metre. This, according to Rodrigues's version, is the room from where Timol fell down through the window. The particular window was still intact. The only difference in that room was the furniture as well as an external steel screen that has since been inserted along the wall of the entire building, which allows vision to the outside but would prevent any

object from falling through any of the windows of the building. It is in the shape of a steel ventilator. We then went to the adjacent room, room 1025 with almost the same measurement as room 1026, which has side a door leading to room 1024. Room 1024 also has a vault inside. On the other side of room 1026 was room 1027 which is near the walkway leading to toilets which are now described as men's toilets. They also have been renovated.

98. As the screening vent is now in place, it was not possible to have a clear sight of the spot on the ground where Timol landed. The entourage then went up the stairs through the top of the building on the outside where it was possible to see the spot where Timol fell, when one stands on top of the building just above the room 1026. The inspection went back to floor 10, where another witness Dr Jetham, who was held in either 1025 or 1027, (the offices were locked and we could not gain access), pointed out that she was interrogated therein after her arrest on Saturday, 23 October 1971. She then showed us the office that is next to the landing of the stairway on the 10th floor and near the bathroom structure. It was in relation to the bathroom structure that she was able to point out the office saying that where she was held was a few metres from the bathroom structure as she was taken there during the interrogation. She later testified that it was from that room that she could hear the screams which she no doubt believed were coming from Timol towards the direction of rooms 1026 and 1025.

99. From the 9th floor the entourage went back to the ground floor where we went to the spot exactly where Timol fell. After 45 years, there was little evidence to show that someone had fallen there. However, the spot is part of the garden landscape outside the building and has not changed very much. From then on we went to the ground floor

next to the parking where the cells are located. We could not access the cells as the officer in charge thereof was not available. We then ended the inspection *in loco* at about 16H00.

Adv George Bizos SC

100. Adv. George Bizos SC ("*Bizos*") practised as a senior counsel at the Johannesburg Bar but is currently employed by the Legal Resources Centre in Johannesburg. He testified as follows: He was born in Greece on 14 November 1928 and became a resident of South Africa during 1941 at the age of thirteen years after fleeing the Nazi occupation of Greece. He joined the Bar in Johannesburg in 1954 and spent his career representing victims of apartheid violations. He has been a senior member of the Johannesburg Bar since 1978. In October 2004 he was made honorary life member of the Bar.

101. During the apartheid era, he acted as counsel in a wide range of cases that came before the court. These included criminal trials of activists and inquests into the deaths of people in detention, held under various South African security laws.

102. Bizos was one of the counsel who acted on behalf of both Timol and Essop in regard to their detention as well as for Timol's family during the 1972 inquest.

103. His evidence gave an overview of the various security laws which authorised police officials in particular those attached to the security branch of the South African Police, to detain people randomly during the era of apartheid. He referred to legislation such as the Suppression of Communism Act, 44 of 1950; the General Law Amendment Act, 37 of 1963; the Terrorism Act, 83 of 1967; the

Criminal Procedure Amendment Act, 96 of 1965; and the Internal Security Act, of 1982, which existed at that time. In his evidence he pointed out that the isolation of detainees allowed for their abuse and cover-up by the police of such abuse as the police were always the only witnesses. He testified:

“In my experience, over many years of appearing as counsel in these matters, policemen routinely perjured themselves to conceal the truth of abuse of detainees. My view has since been confirmed by the testimony of many policemen and security branch officers before the Truth and Reconciliation Commission’s (TRC) Amnesty and Human Rights Violation Committees.”

104. Bizo recounted the number of deaths in police custody, of people detained in terms of security legislation, inquest proceedings being held in some of them. The inquest proceedings into the deaths of the detainees were usually heard by white senior magistrates who invariably accepted police explanations. These magistrates saw it as their duty to protect organs of the State, such as the police. The magistrates tended not to interrogate police versions that vigorously. By way of example, magistrates invariably never asked police the most obvious question: *“Why should the detainee commit suicide when he had the option of remaining silent under interrogation”*.

105. The families and their lawyers had considerable difficulty in probing the deaths of the persons held in conditions of total secrecy.

“Almost without exception security branch members committed themselves to a conspiracy of silence. The detainees were not there to speak for themselves.”

106. The other difficulty which routinely faced counsel in inquest proceedings concerning the death of a detainee would be the manufacture of false evidence by police including the presentation of false testimony. There would be a blank secrecy imposed under

security laws which was invoked during an inquest to prevent critical evidence from being disclosed. As an example, Bizos refers to the fact that Essop, who was available during the inquest in Timol's case, was kept in custody throughout the Timol inquest effectively silencing him, and preventing his highly relevant evidence from being heard by the inquest court. The only inference that can be drawn from the deliberate concealing of Essop was to prevent his evidence of torture being heard by the inquest court.

107. He then proceeded to cite other examples. Where there were civil claims brought against police, these were settled out of court first to avoid any evidence coming through during court proceedings. It therefore emerged in TRC enquiries that police routinely employed deception at judicial proceedings. In this regard, Bizos refers to the inquest dealing with the deaths in detention of Mr Stanza Bobape as well as that of Mr Steven Biko²⁶. Bizos further refers to the collusion that would take place between the police and prosecutors, who collaborated with police to undermine cases of victims and/or their families.

108. Bizos narrated how Timol and Essop were both detained by the Security Branch in terms of Section 6 of the Terrorism Act on 22 October 1971. The allegation at that stage was that Communist Party propaganda material had been found in the car boot that Essop was driving. On that occasion, as already been stated earlier in this judgment, Timol and Essop were travelling together in a car. He further testified that:

"A post-mortem examination of Timol's body discovered several pre-death injuries. Notwithstanding this, indisputable facts, the inquest

²⁶ See Volume 5, Chapter 6 Findings and Conclusions, page 221, para 100, sub-para (p) Finding on the State and Unlawful Activities, TRC Publications.

into Timol's death found that 'No one was to blame for his death'. This finding mirrored the findings of many other deaths which occurred in detention throughout the apartheid era."

109. Bizos' further evidence as outlined in his affidavit, gives a background as to how he came to be involved with Advocate I A Maisels SC ("*Maisels*") to represent the family in the 1972 inquest. He described the version of the security branch policemen who claimed that at all times they treated both Timol and Essop with care and consideration, indeed to the point that they spent their own money to buy them food and drinks. He states that police officers denied that they had assaulted either of the two men, or that they had observed injuries on their person. The security branch members claimed that Essop was admitted to hospital because he was malingering.
110. Bizos further recalled how the application for an interdict against the torture of Essop came to be brought. He testified that on 28 October 1971, after news of Timol's death had become public, a nurse informed Mr Ismail Essop, the father of Essop, that his unconscious son had been admitted to a non-white section of the H F Verwoerd Hospital in Pretoria at 11H00 on 26 October 1971. He had severe injuries and was in a critical condition. She said that his presence there was being kept a secret. Essop's father rushed to the hospital but was denied access to his son who was under police guard. He, however, managed to confirm by standing on a bag outside and peeping through the small glass panel, that his son lay in a hospital bed.
111. Essop's father then consulted attorneys who briefed Bizos and Maisels to bring an urgent application to allow for access to see Essop. The urgent application came before Judge Cecil Margo of the Pretoria Supreme Court on 29 October 1971. Advocate Frikkie Eloff,

(who later became the Honourable Mr Justice Eloff and Judge President of the Supreme Court, Transvaal Provincial Division), appeared for the police and handed to the court an affidavit alleging that Essop was detained under Section 6 of the Treason Act, which prohibited access to him by anyone except the Minister or an officer of the State on official duty. There was also a short affidavit supplied by Dr Hieronymus Koch, the State pathologist who had examined Essop, disputing the injuries as observed by Mr Ismail Essop. Bizos continued:

“The police claim that Essop was suffering from hysteria. Judge Margo indicated during the course of argument that there was public disquiet and further that it would not be in the interests of justice for him to hold that the courts were powerless to assist the father’s access to his comatose son – especially in circumstances where his friend Timol had, according to the Security Branch, committed suicide by jumping out of a window. He suggested that there should be discussions, in the hope that some access would be given to the father, and that an assurance or undertaking be provided by the police that Essop would not be ill-treated any further.”

112. Eloff requested adjournment to consult the Prime Minister after which he came back and indicated that access to the detainee would not be allowed. Judge Margo then declined to grant access to Essop but pointed out that the matter required a thorough investigation before a final order would be made. Essop’s counsel then requested to file further affidavits and the matter was postponed. The Deputy-Sheriff was prevented from even serving Essop with the court order. The order had to be delivered by the Registrar of the Court.

113. Attempts to approach the nurses for evidence did not yield any result as all nurses had been told not to tell anyone about Essop and

consequently could not make any statement on the matter. The police disclosed that they had had three neuro-surgeons examine Essop. Bizos recounted that one of them, Dr Louw, testifying in court, was cross-examined by Maisels who asked as follows:

"Dr Louw, did you see Mohammed Essop, our client's son?"

"Yes."

"Did he have any injuries?"

"Lots, I can do no better than read the letter that was sent to me by Dr Dennis Vermont Kemp, the district surgeon, who listed sixteen injuries."

114. This revelation led to Kemp, who was a district surgeon in Johannesburg, being summoned telephonically to come to court that very morning. The Judge ordered as such and Kemp came to testify. Dr Kemp had difficulties explaining to the court as to why he withheld or failed to disclose evidence of injuries on Essop. After hearing the matter, the Judge rejected the evidence of Colonel Greyling who was the Second Respondent in the application, denying that Essop was not assaulted. The Judge found that Essop was indeed assaulted and granted the interdict preventing any further assaults on him. In rejecting Greyling's version of events, the Judge described him as been less than honest and stopped short of declaring that he lied to the court.

Professor Kantilal Naik

115. Professor Kantilla Naik is a retired Professor of Applied Mathematics at the University of Witwatersrand. Naik testified as follows: He started lecturing at the university during 1970's and had retired just

two years ago. He testified that he knew Timol because the two of them lived in Roodepoort together and taught at Roodepoort Indian School. He taught science while Timol taught history and commercial subjects.

116. Naik was arrested on Saturday, 23 October 1971. The police demanded that he accompany them to the Roodepoort Indian School where they seized his typewriter. Later at 11H00 the same day the police came to the pharmacy where he was doing part-time work and took him to his home where they searched his room and told him that Timol had identified him as someone he was *trying* to recruit. He testified that he did not know that Timol was a communist and heard this from the police. He was then taken to John Vorster Square on the 10th floor and made to stand for many hours before they began assaulting him for information. He too had been detained under section 6 of the Terrorism Act.

117. Naik stated in his affidavit that he was not involved in any political activity. Throughout his detention he experienced assaults in the form of being punched several times and as he fell down they lifted him up and continued punching him. The Security Branch then applied what they called the helicopter method of torture on him. This they did by tying his hands with a rope and slipped the ends in front of his knees. Thereafter they then put him on a broom stick in between his elbow and knees. He was then suspended on the broom stick between two tables and two chairs. They then assaulted him in that position as they rotated him on the broom stick that was suspended between two tables or chairs. He suffered extreme pain and when they finally released him from that position, he had lost all mobility in his hands. His hands and wrists were completely numbed. He was deprived of any sleep and they only took him to a cell the next

morning (Sunday morning) where he was left for some time. He had been so tortured that he could not do even simple tasks such as washing himself. He was kept in solitary confinement.

118. On Monday 25 October they took him to a General Coetzee who later became Commissioner of Police. He was in the presence of the district surgeon, Kemp, who examined him in a lift. After that consultation Naik was then given physiotherapy and electrical treatment to repair the damage to the muscles in his hands. That treatment took almost three and a half months. From then the only time they took him up on the 10th floor was when they needed to question him or to apply the treatment of physiotherapy as well as electrical massaging. The members of the Security Branch who tortured him were later removed during the remaining period of detention. Naik recalls telling a magistrate about his injuries during the latter's visit. The magistrate sent some people to take statements and he was later taken to Newlands Police Station to lay a charge. On return to John Vorster Square, members of the Security Branch were not impressed and made threats to him to withdraw the charges.

119. Naik was held at John Vorster Square for six months. He is of opinion that the reason why he was held so long was that the police wanted to make sure that his hands were healed before he could be released. During the period of six months, however, he was held in solitary confinement where he was not allowed contact with anybody, including legal counsel. It was during this period that he came to hear of the passing of Timol.

120. He also complained about the food as he told them that he was a vegetarian and this also made the police angry. The Police became aggressive and they verbally abused him. During his interrogation, he

was told that they are rounding up Indians who were the backbone of the struggle against apartheid. The police told him that the Indians were trying to make Africans politically aware and for that reason they need to be taught a lesson. He was referred to as a communist.

121. After four and a half months he was told that he will be released but will be used as a State witness against certain people. In this regard, the Security Branch wanted assurance from him by way of an affidavit, which he was pressured to sign, that he would not reveal the torture that they had inflicted upon him nor even tell his wife. The police even warned him about divulging what transpired during his detention, to the media. He was forced to make several statements to the police.
122. By the time he was released, the police had instilled an enormous amount of fear in him. He was afraid to talk to people and many became suspicious of him. They held the view that since he had been released from detention, he might be an informer of the Security Branch. That, he testified, was the worst kind of torture that he endured. The police fed on this perception by spreading false rumours that he was their informer and that his colleagues should be very careful of him.
123. Naik denies that he was an informer for the Security Branch. He points out that if that had been the case, his life would have been easier and the several passport applications which he made would not have been rejected. He would not have been overlooked for promotion at work and would have easily secured better paying work with significantly more benefits.

124. Prior to his detention; he had support from the community, which support changed after his detention. It hurt him. Naik recounted that 3 days after his detention, his daughter was born and people did not readily come to the assistance of the family because they did not want to be implicated. This ostracism continued several years after his release. He was subjected to harsher conditions as people in the community did not trust him. At some point, a neighbour claimed that he was an informer for the Security Branch. He was even told that the police should have thrown him out of the 10th floor of John Vorster Square Building instead of Timol. This view was reinforced by the fact that even after his release, the Security Branch kept visiting and harassing him and his family.

Mohammed Timol

125. Mohammed Timol is the brother to Ahmed Timol. He commenced his evidence by informing the inquest how he related to his brother as they grew up, with the age gap between them being seven to eight years. Of importance, he painted a picture to the inquest as to who Timol the person was, as he knew him. He further narrated the history of Timol and how he grew up with Timol and saw him leaving the country and on his return participating in political activities. Timol had received training under the leadership of Dr Yusuf Dadoo, who in exile served as the National Chairman of the South African Communist Party as well as Vice Chair of the Revolutionary Council of the African National Congress. The details of this part of the evidence appear under the heading "*Background*" in this judgment.

126. Mohammed also joined the struggle against apartheid. He had followed Timol to London where he was also trained under the auspices of the ANC and the SACP, to distribute leaflets by way of

leaflet bombs. After his training in London and before he returned, he met Dr Dadoo who gave him a message to his brother Timol, that they had not heard from him for sometime. He requested him to convey to Timol a message that he should inform them that he had not been detained and was safe.

127. On his return to South Africa he was fetched by Timol from the airport. He delivered the message to Timol. The very following day he was ordered by his mother to go and have a haircut. On his return from the barber, his mother informed him that members of the Security Branch had come to their home looking for him as they had previously done while he was away. Mohammed told Timol what happened when he returned from school. Timol advised him to go and see them. He testified that he went to the Security Branch offices in Roodepoort and on arrival he was told that in fact they were looking for Timol and not him. He conveyed that message and he says he could see that Timol was worried. On 17 October, Timol informed him that they were both under surveillance and suggested to him that he should go to Durban. The following day on the 18th, Mohammed left for Durban. That was the last time he saw Timol alive. When he last saw Timol, the latter was in good health with no injuries.

128. On 25 October at about 08H30 while he was staying with students in a flat at Himalaya Heights in Warwick Street in Durban, he was woken up by six Security Branch officers who stood by his bedside. The police aggressively enquired if he was Mohammed Timol and thereafter arrested him. One of the police was Lt. Naicker, a member of the Security Branch. The only person who knew that he was in Durban was Timol who had probably told the police. After taking him to the offices of the Security Branch, the police informed him that they

have also detained his brother, Timol. Thus began the interrogation and torture.

129. During the interrogation he was made to stand on a brick and to hold up two telephone directories for hours. He was repeatedly beaten up whenever he became unsteady on the bricks or lowered the directories to rest his arms. At all times he was in the company of Security Branch officers and was never left alone. He was then taken to Berea Police Station where he was locked up. The next morning he was taken to Fischer Street, for interrogation again. The beatings continued, including being made to sit on an imaginary chair. The interrogation continued until Wednesday evening when they abruptly stopped. Everything went quiet and he was taken to his cell in the Berea Police Station.

130. The following morning on Thursday 28, three Security Branch officers gave him a paper and pen and instructed him to tell the truth otherwise he would rot in jail. He did not write anything on the paper. On the same day in the evening, Lt. Wessels came in and told him that Timol had died. When he asked him how he died Wessels informed him that he was not aware what happened as they were still waiting for more information from Pretoria.

131. On Friday 29 October as he was been driven back to the offices of the Security Branch, he read on a headline poster "*Death Plunge, Vorster speaks*". This caused him to recall how Babla Salojee, who had been interrogated by a Security Branch officer, Rooi Rus Swanepoel, and had plunged to his death at Grey's Building. As they exited the lift at the building of the Security Branch, one of the officers expressed his condolences to him for the death of his brother. Later that day he was taken back to Berea Police Station where he spent

the entire weekend. For a few more days after the weekend, he was taken back and forth to the Security Branch offices at Fischer Street and at one point was forced to sign a statement on what he had told them during the interrogation. After that, he was taken back to police station Berea where they never came back for him again.

132. On 30 November 1971, Naicker and Wessels woke him up and informed him that he was being taken to Johannesburg. He was allowed to wash his face and gather his things. He was driven to Johannesburg while handcuffed to a handle in the police car for the duration of the trip. They left Durban at 01H00 in the morning. On arrival in Johannesburg, which was the early morning hours of 1 December 1971, he was taken to John Vorster Square where he was locked up in a cell. He continued to be detained under Section 6 of the Terrorism Act. Each day he was taken outside for thirty minutes exercise. After a month he was given a Quran in its translated form and later the bible and Bhagavad Gita.

133. On 14 March 1971, Mohammed was taken to the office of Greyling who informed him that he was been released and he could go home. However, he was told that he had to go and see the CID investigating officer Major Fick who was tasked with the case relating to Timol's death. When Greyling asked him if he had complaints, he told Greyling about his assaults and beatings by the police officers, which evoked a response from Greyling "*with the uttering of expletives, telling him to get out of his office.*" He was then taken to Fick who asked him about Timol, whether he had any mental issues that would cause him to commit suicide. He denied this and told Fick that Timol was fit. Fick and another officer then took him home to Roodepoort.

134. After his release, Mohammed continued to participate as an activist in the struggle and was later detained under Section 10 of the Internal Security Act²⁷ on expiry of which he was released and handed a house arrest order which restricted his movement and banned him from participating in political activities for a period of five years and banned from receiving any visitors at his home or being seen in the company of more than one person at a time. He was also restricted from leaving his home during working days from 6 am and return by 7 pm. He was only allowed to leave his home on Saturdays from 8 in the morning until noon. Thereafter, he was expected to remain home for the rest of the weekend.
135. On 1 January 1978 he left South Africa without a passport and made his way to Swaziland. He became a full-time functionary of the ANC based in Mozambique and Zambia. He underwent military training under the auspices of the ANC and in April 1990 after the unbanning of the ANC, he was part of the delegation that went to Cape Town for the Groote Schuur talks with the apartheid government.

Dr Dilshad Jetham

136. Dr Dilshad Jetham (*"Jetham"*) is a Cardiologist practicing as a physician on a *pro bono* basis. She testified thus: At the time of her arrest she was 22 years old. She was a second year medical student at Wits. She and Essop attended Roodepoort Indian School and were contemporaries. Timol was older than her. She knew him as a family friend who later in Grade 10 became her history teacher. Her family and that of Timol lived a few blocks apart and she and Timol knew each other well.

²⁷ Act 138 of 1991.

137. She was arrested late in the afternoon on Saturday, 23 October 1971 when she arrived home from university. She was taken to John Vorster Square and escorted to the 9th floor of the building. She was first taken to Greyling's office on the 9th floor where she was given a pen and paper to write her role in political activities. Each time, Greyling threw the paper in the waste basket and refused to accept what she wrote. She was then taken to an office on the 10th floor where her interrogation and torture began. She was interrogated and tortured by white male officers. She testified that where she was held, she could hear the "*Athaan*" (the Islamic call to prayer) from the Newtown Mosque nearby. It was this early morning call to prayer that helped her to keep track of the days during her interrogation. She described the period as being that of Ramadan (holy month of fasting, introspection and in prayer for Muslims). On sunset she needed to break her fast and was only given a glass of water to do so.
138. She was asked questions, made to stand and not allowed to go to the bathroom on request. The white male officers hurled insults at her and filled water up and made her drink so that she would have to relieve herself whilst fully clothed again and again. Later the police brought her a mop and a bucket and made her clean up her urine. She was made to stand on the bucket without shoes and to relieve herself in the bucket. She was deprived sleep and shouted at the whole day. She was interrogated by different sets of police including one Lt. Swanepoel. They accused her of being a communist and later they attached to her finger a device that electrocuted her. This electrocution was also repeated on her back with a higher voltage. That caused her to pass out.
139. She recognised Timol's screams emanating from another room which was not far from where she was interrogated. She had no idea in

which room Timol was being interrogated, but it was nearby. Timol's screams continued on Monday night. She recognised his voice. On Tuesday, 26 October late in the afternoon she was taken down for a cold shower, and she changed into clothes that her family sent to her. She continued to hear screams from the other rooms as she was slapped across the face. At some point she passed out and was woken up in spite of her exhaustion and the assaults.

140. The interrogation continued. She heard Timol screaming and begging for them to stop, even crying at some point. It was the whole night and at dawn the screams suddenly stopped. There was dead silence. She then saw frantic activity on the 10th floor with officers scurrying around madly. Things appeared to have changed. She recalls that this incident occurred at dawn because it coincided with the call to prayer she could hear coming from the Mosque.

141. At around 06H00 in the morning on 27 October she was moved to a cell on another floor on the same building. She was held in the cells and given a tablet which caused her to hallucinate. She was later taken to the 10th floor where she met one officer named Pitout who demanded that she make a statement in return for immunity. She was intimidated into making the statement to testify against Essop and Amina Desai. On her release she denied the statement at trial and later the police continued to intimidate her through repeated visits even at University.

Mr Ernest Matthis

142. Mr Ernest Matthis (*"Matthis"*) is a retired advocate who practiced as such during 1971. He testified as follows: On 27 October 1971 he was at the John Vorster Square offices in Johannesburg, preparing to

prosecute a case together with a colleague, a senior counsel. While they were in the office room, he saw through the window, a body of a person falling downwards. He then rushed to the window and looked down and saw the body lying on the ground where it had landed. He then looked up to see where the body was falling from and he saw that all the windows were closed.

143. He then called Mr Harry Schwartz, a Member of Parliament at that time, to inform him about the incident. He later learned that the body was that of Timol. He and his colleague were working on either the 4th or 6th floor of the building when he saw the person falling, facing away from the building. When he informed Mr Schwartz about the incident, Swartz told him that this announcement would cause some consternation in government ranks. He did not see any police rushing to the body or any ambulance being called. He does not remember at what time he saw the person fall, however if he were to take a guess it would have been in the morning.

Mr Paul Erasmus

144. Paul Francois Erasmus ("*Erasmus*") is a former member and Warrant Officer of the Security Branch of the South Africa Police. He testified thus: He joined the South African Police in 1975 in order to avoid conscription. Two years later in 1977 he was deployed to the Security Branch. His task at the Security Branch was to produce propaganda material that would counter the organisations and activists opposed to apartheid.
145. He forged signatures of prominent people, prepared and issued pamphlets carrying messages aiming at discrediting leaders of the anti-apartheid organisations. He was involved in the bombing of

buildings of anti-apartheid organisations including that of the Congress of the South African Trade Unions ("COSATU").

146. He witnessed detainees being tortured where different methods of torture were used. These methods included administering electric shocks, assaulting detainees and subjecting them to sleep deprivation. The sleep deprivation was the first method after a detainee was arrested so as to break the detainee by subjecting such detainee to long hours, sometimes even three days without sleeping. This would be achieved by sending interrogators, mostly in pairs on a rotational basis. At some point he too was roped in to assist in this practice.
147. Police got away with criminal activity including death in detention, with the aid of what he termed "*resident sweepers*". In this regard, he identified a Brigadier Grobler assisted by Gloy (who at that time had been promoted to Lt Colonel), together working as a unit. This unit assisted members of the Security Branch to escape liability for their criminal acts, by removing or sweeping away evidence implicating them. Whenever the police were accused of torture, the sweepers were brought in to conceal the evidence to the extent that very few police were in fact charged.
148. Some magistrates, sometimes state pathologists and prosecutors played along and ensured that the culprits escaped justice. This protection of criminal activity on the part of the Security Branch also entailed holding mock trials where witnesses would be coached and made to rehearse evidence. Some of the police would then be asked to role play advocates questioning these witnesses to enable them to avoid being adversely cross-examined.

149. After the death of Neil Aggett, ("*Aggett*"), he was called in to assist in manufacturing evidence that would support a false version that Aggett committed suicide. He and another police officer went to Aggett's home where he broke in, being under the impression that there was no one. It was while he was in the house looking for any evidence that they could use to support the version of suicide that the family helper came in and accosted him. The fact that he was caught became public and he was called in for reprimand by the police.
150. Later he was called in by the Sweeper Unit, where he was informed that he should accept responsibility for a minor offence of trespassing in which instance it has been arranged that he would be levied a fine of R200.00. They would take care of it. He was then sent to court in Cape Town to stand trial. On arrival all other charges were dropped and the magistrate imposed a fine of R200.00 for trespassing. The fine of R200.00 for trespassing was paid by the police from a secret fund.
151. He also participated in the bugging of the telephone of Bizos, issued pamphlets discrediting Mrs Winnie Mandela and pamphlets misleading people about leaders of the Alexander Action Committee, including their prominent member, Mr Mayekiso.
152. He testified before the Truth and Reconciliation Commission (TRC) to reveal the illegal activities of the Security Branch and his role therein.

Ms Stephanie Kemp

153. Stephanie Kemp ("*Kemp*") is a former detainee and exiled political activist. She testified as follows: She was arrested by the Security Branch and held in detention where she was assaulted and her head

slammed on the floor until she became unconscious. She was accused of being a member of the South African Communist Party and committing deeds of terror. She eventually fled to the United Kingdom where she continued her work with the underground structures of the South African Communist Party. She never met Timol in person but knew of him and coordinated communication with him when he was back in South Africa as leader of an underground SACP cell. The communication was routed via friends in London with encrypted messages.

154. Kemp emphatically denied that members of the SACP were instructed to commit suicide once they find themselves in incarceration. She also identified inconsistencies in the content of Inkululeko / Freedom No 2 pamphlet dated 2 February 1972. She pointed out that the reference to "*Communist Party of South Africa*" was a give-away in that her party was known as the South African Communist Party. The language used in the pamphlet was not consistent with the language that they would use as members of the Communist Party. No member of the Communist Party would make reference to names of people in correspondence. Reference to prominent people such as Adv. I Maisels, George Bizos and Soggot would not have been used. Besides, these were not members of the South African Communist Party at that time.

Professor Kenneth Bollard

155. Professor Kenneth Bollard. ("*Boffard*") is a Professor Emeritus and Honorary Consultant Surgeon, Department of Surgery at Wits. He is also a Trauma Director at Milpark Hospital Trauma Centre, Wits. He has served as a visiting Professor at various international institutions. He is an expert witness who was called to testify, having

studied the autopsy report of Schepers. In his opinion, it was not correct practice and procedure for the police to remove the body which had sustained serious injuries after falling from the 10th floor of a building. The ambulance and para-medics should have been summoned. He agreed under examination that the mere removal of the body might contribute towards the demise of a patient who had sustained such injuries. In his opinion, the police should have put the body to lie on the side so as to promote breathing.

Mr Essop Pahad

156. Mr Essop Pahad ("*Pahad*") is a former Minister in the Office of the President and cabinet member in the Government of the Republic of South Africa. He testified thus: He grew up in a family that was involved in politics. He left the country and went to settle in London in exile. He was staying in London when Timol and later Mohamed Timol came to stay with them. He informed the Court that he is the person who actually recruited Timol as a member of the South African Communist Party then operating underground in London. He also arranged for Timol to undergo further training in the Soviet Union and then back to London. He also introduced Timol to other members of the SACP in order for Timol to get political education.

157. Pahad denied that members of the SACP were advised to commit suicide in case of arrest and detention. On the contrary, he testified that members were trained to endure torture in the first forty eight hours of arrest before they can release names of other people associated with them. That would have then granted those people time to go into hiding and evade arrest.

158. Pahad further denied that the last paragraphs under the heading "*Stand Firm*" were part of the document with the title "*Inkululeko Freedom dated February 1972 Issue No. 2*". Like Stefanie Kemp, Pahad pointed out the obvious mistakes that appear in the concluding paragraphs under that heading of "*Stand Firm*". He denied that that would have been a message by the SACP. He stated that one of the obvious mistakes is the mentioning of names of individuals as well as reference to the party at the end as the Communist Party of South Africa. He pointed out that the Communist Party of South Africa was disbanded in the 1950's when it was banned in South Africa. At the time Timol was in London and came to be in South Africa later, the name of the party was and had always been the South African Communist Party.

Dr Shakeera Holland

159. Dr Shakeera Holland ("*Holland*") is a Senior Specialist in the Department of Forensic Medicine and Pathology at the University of Witwatersrand. She has local and international qualifications and experience. She testified thus: She reviewed the post mortem report on the body of Timol which had been performed by Dr Schepers, a Senior State Pathologist. She pointed out that the report mentions and correctly so that the cause of death was multiple injuries. She then identified the injuries on the body of Timol which occurred as a direct result of the fall. The impact on the body on the surface on which it landed and on the body by any intervening surfaces that collided with the body as it fell; transmitted forces extending from the areas of impact; and the acceleration/deceleration and rotational forces that acted on the body during the fall as a result of gravitational force.

160. Holland identified a number of wounds that could not be attributed to the fall from the height. There were multiple external wounds which show scab fermentation indicating that the wounds were present before the fatal fall and were not caused by the fall. These included multiple abrasions with scab formation over the middle third of the right clavicular (*collar bone*) area; an abrasion with scab formation on the right scapula (*shoulder blade*); A small abrasion with scab formation on the left lateral neck situated 3cm below the ear lobe; and a 2.5 cm x 4 mm abrasion with scab formation across the left forearm.
161. According to her evidence, the histological analysis showed that the wounds sampled were between four to six days old. She opined that according to analysis done by Dr Schepers, in at least five of the sections sampled from the various skin wounds, the findings were consistent with wounds of four to six days old. Dr Gluckman concurred with this finding.
162. Holland went on to list the injuries as observed and stated by Drs Schepers and Gluckman and concluded her medical opinion as follows:
- a. She concurred with the cause of death as multiple injuries consistent with a fall from a height;
 - b. In her interpretation of the Inquest medico-legal report, there were injuries that were unlikely to have been sustained from the fall. The implication is that these injuries must have been present prior to the fall and were sustained during the time that the deceased was in police custody and they included:

- The multiple external wounds with scab formation. Histological analysis on these wounds indicated that there were many wounds that were sampled which were estimated to be four to six days old, confirming that these wounds were present before the fall from the height.
- The multiple bruises and facial fractures, including the nasal bone; left orbital ramus; right inferior orbital ramus; fractures of the right upper jaw, left upper jaw and left lower jaw, all of which did not appear to be related to the base of skull fracture sustained in the fall.
- The isolated depressed skull fracture which is a rare in a fall from a height.
- The tear of the soft tissues around the hyoid bone.
- The fracture of the first rib.

163. In her opinion, Holland concluded that some of these multiple injuries, in particular that on the 1st rib, indicated that force would have been applied to cause the injury. She opined further that these injuries present on the body of the deceased, which could not be ascribed to the fall from the height, indicate that the deceased sustained physical assault while in police custody prior to his death.

Professor Steve Naidoo

164. Professor Steve Naidoo ("*Naidoo*") is an independently practising forensic pathologist with 34 years' experience in academic and practical forensic pathology. Naidoo has extensive qualifications

having served as an Associate Professor and Honorary Research fellow at a school of law. Unlike Holland who based her opinion on the medico-legal report, Naidoo studied the evidence of Rodrigues as summed up in the judgment and that of GJ Deysel of the Security Branch who removed the body after the fall. The doctor further noted that there were shortcomings in the original inquest report such as lack of x-rays of fractures, lack of drawings of skull fractures, lack of measurements of wounds except one lesion and generally, absence of detail on surface wounds and internal injuries.

165. Most importantly, Naidoo commented on the reliance on histology to make a determination of the age of wounds. He acknowledged that conventional histological wound age determination remains the basis of all wound age diagnostics. He however cautioned that the age estimation of wounds is never accurate as might be desired for any particular case.
166. Naidoo also differentiated between the pre-fall and fall related injuries. He concluded after listing the two categories that wounds number 8 to 35 on the translated version of the autopsy report were *ante-mortem* and thus could not have been caused by the fall from the building. More pointedly, Naidoo singled out the injuries on the calf of the deceased's right leg, exhibiting extensive bruising/contusions and dislocated left ankle and degree of bruising, as neither directly nor secondary to the fall. He further included in his observation that the depressed fracture at the left parietal bone fracture of the lower jaw and deep scalp bruising at the left occipital area, cannot all be attributed to the fall.
167. The doctor concluded as follows: that the deceased was alive at the time of the fall; that he struck the ground with his forehead and the

right shoulder/elbow/chest as the primary points of impact; that the right shoulder and elbow impact transmitted the force of that impact to the right side ribs, diaphragm and liver as well as left side rib; and that the deceased would have survived less than ten minutes after the fall.

Mr Don Foster

168. Mr Don Foster is an author of a publication with the title “***Detention and Torture in South Africa, Psychological, Legal and Historical Studies.***” He co-authored the book with Dennis Davis and Diane Sandler. He testified about the research undertaken on this subject, which included the historical considerations, legal considerations, psychological investigations, the empirical study, the process of detention that is detainees’ descriptions and finally, interpretations and recommendations. In the publication, the authors make reference in Appendix L, the statistics of official and unofficial number of detentions between 1974 and 1985. In Appendix M, the authors list the names of the persons who died in detention from September 1963 to 6 May 1985. Timol appears in that list as having died on 27 October 1971.

169. The publication has been useful in revealing the extent to which torture in detention and in particular deaths resulting from such torture have occurred in South Africa. The authors attribute this state of affairs among others to a legal framework which permitted such torture, in the form of various pieces of legislation that gave the police the authority, without legal scrutiny, to randomly detain and torture detainees. The publication also point out the fact that the police somehow avoided been held to account or prosecuted for these atrocities.

170. The list of persons who died in detention as stated in Appendix M amount to 64. The majority have died between 1976 and 1977.

Mr Frank Kennan Dutton

171. Mr Frank Kennan Dutton ("*Dutton*") is a private investigator and a highly decorated and experienced retired police officer. He has investigated a number of cases involving police atrocities locally and abroad, including on behalf of the TRC. He was the first head of the Elite Scorpions Unit which was disbanded. He testified as follows: The Police Department was divided into three sections. The first section which consisted of the largest number of police was the uniformed police. This group was followed by the Criminal Investigation Department and the third being the Security Branch. He recounted how the Security Branch was a law unto themselves and corroborated Paul Erasmus in regard to the tendency to cover up unlawful conduct on the part of the Security Branch. The investigation into Timol's death was not objective and independent. Buys was appointed to investigate the death of Timol. Before his investigation started, he had already told the media that Timol had committed suicide. This, according to Dutton, was a demonstration that his mind was already made up and that he was not impartial in his investigation.

172. Dutton further mentioned the following factors in support of his contention that it was a cover-up namely:

- a. There were no statements taken from members of the Security Branch who were on the 10th floor or other floors of the building who could have witnessed the incident, including black members of the Security Branch;

- b. There was no investigation that would have led to a disciplinary enquiry for members of the Security Branch who failed to prevent the fall from the 10th floor of Timol.;
 - c. The body of Timol was removed rapidly from the scene without any forensic investigation including markings where the body fell and the photographs of the body in the position in which it was found;
 - d. There was no forensic investigation in an attempt to obtain evidence relating to possible blood samples in room 1026 as well as fingerprints and other evidence in 1026 and on its window; and
 - e. The failure by the Magistrate to recognise and accept that there were already instances of persons who died in police custody where police denied having assaulted the said victims.
173. Dutton further testified that in regard to Rodrigues, on whose version the magistrate relied, there were some unanswered questions about his conduct. Firstly, he was an administrative clerk who was not part of any interrogation team. However, on his version, the police concluded that he would be capable of standing guard on Timol whom the police regarded as "*a big fish*". Secondly, Rodrigues already had a record of a previous conviction of perjury to his name. Thirdly, his personal file records the date of his resignation from the police as two days after the delivery by the magistrate of his finding that there was no police person to blame. Fourthly, Rodrigues was handed a letter of commendation for exemplary services by the

Commissioner of Police. This, according to Dutton, who corroborated Paul Erasmus, was highly unusual and would occur in very exceptional circumstances. Commendation from the Commissioner was reserved for members of the Police Service who had distinguished themselves very well. There was no indication on Rodrigues' record that he deserved such accolade.

174. With reference to experiences gained from his work with the TRC, Dutton completed his evidence by reiterating that the version of the police as presented to the 1972 inquest was a cover-up.

Mr Tivesh Moodley

175. Mr Thivash Moodley is an Aeronautical Engineer with 19 years' experience in trajectory calculations in aerospace, defence and vehicle dynamics. He testified thus: He made calculations, using the existing data available and the eye witness account of Adv. Matthis to measure the trajectory of Timol's body in terms of its fall from the 10th floor to the ground shrubs in order to analyse whether the late Timol had jumped or was pushed or thrown from the 10th floor or was pushed or thrown from the roof of the building.

176. Moodley commenced his calculations by giving a detailed description of the window of room 1026 through which it is alleged by the police that Timol jumped. He describes the window as such:

"The window that the late Mr Timol allegedly fell out of can be described as a steel window that opens at a 90 degree angle to the frame and had a hinge point approximately 27cm from the right upright edge of the window frame. The window pane had a rotating lever fitted to it that left the window pane to the window frame that resulted in the window opening clockwise from left to right. In the open position the window pane was kept open using an expanding

lever that braced the pane against the frame so that the wind could not blow the window closed when it was opened."

177. The Court agrees that the description of the window above is exactly as the Court observed it during the inspection *in loco*. Moodley continued to state that given the position of the window, the dive option is not possible. He opined that it would not be possible to run, open the window and dive simultaneously. The dimensions of the window frame are 155cm x 71cm width. He concluded that that would be challenging. He then proceeded to make calculations based on the versions of witnesses including Rodrigues who testified that Timol jumped out of the window; police officer Deysel who testified having found the body of Timol lying perpendicular to the building with the head pointing towards the building and the legs towards the road in some shrubbery; Matthis evidence that he witnessed the body as it was falling, as well as the finding in the medical reports.

178. Moodley worked out six scenarios as follows:

- a. *Scenario one:* where Timol is said to have jumped through the window, using two legs to generate force, feet first perpendicular to the building. In this scenario, Timol would have landed 13 meters from the building.
- b. *Scenario two:* where Timol stepped through the window, feet first perpendicular to the face of the building. It is projected that he would have landed 4 meters from the building, with his head facing away from the building;

- c. *Scenario three*: where Timol, being placed on the window sill in a sitting position and then pushed out of the window at the shoulders. This would have resulted in Timol somersaulting through the air and landing as Deysel describes, 3 meters from the building.
 - d. *Scenario four*: where Timol, being carried to the window, with his body facing the building, his legs carried out and then the rest of his body pushed out of the window, feet first so that his trajectory would result in him falling with this head pointing in a northerly direction and his body landing in the orientation described by Deysel. He would have landed 3.1 meters from the building.
 - e. *Scenario five*: where Timol is being thrown from the roof of the building with a horizontal motion with the torso parallel to the face of the building, typical of two people holding a body at the feet and hands and swinging it to launch it off the building. He would have landed 4 meters from the building; and
 - f. *Scenario six*: where Timol is being rolled from the roof of the building with the torso parallel to the face of the building and the body flying horizontally down past the building, typical of somebody who is incapacitated to stand on their own strength and was placed on the parapet wall of the roof and rolled/pushed off the side of the building. He would have landed 1,25 meters from the building.
179. Having taken the Court through the calculations, Moodley concluded as follows:

- a. Using scenarios one and two, it is shown that if Timol jumped, he would have landed between 4.5 metres and 13 metres away from the building. This is based purely on his internal muscle condition thrusting him forward. In this instance, Timol would have most likely landed with his head in the direction of Commissioner Street. Using the witness' statements it is unlikely that Timol would have jumped;
 - b. Using scenarios three and four that predict how the body lands as per Deysel's statement, the instances indicate that the body, if pushed from the windowsill, either forward whilst the body was in a seated position on the windowsill or legs first and then the remainder of the body pushed out with the face and stomach towards the building, the body would have landed in the same vicinity and orientation described by Deysel; and
 - c. Using scenarios five and six, this predicts how the body falls and lands. As Matthis witness' account of trajectory, it means that Timol would have had to exit the window in the direction of the motorway with his body parallel to the building. Taking into account that the window pane opens from left to right, the window pane and glass would have prevented Timol from exiting in the orientation that Matthis saw him fall.
180. Moodley concluded his testimony by stating that based on his conclusions; scenarios 3 and 4 are the most likely scenarios where Timol was pushed. If Matthis's version is followed, with no open window when he looked up, the fall would be in line with scenarios 5 and 6, having being thrown from the roof top.

Mr Neville Els

181. Mr Neville Els is a former Warrant Officer attached to the Security Branch of the South African Police, specialising in explosive devices. He testified thus: He was on standby on Friday, 22 October 1971 when he was called to Newlands Police Station. On his arrival there, he was shown a box containing pamphlets of the South African Communist Party which were in the boot.

182. Prior to that he had been aware of the dissemination of banned pamphlets and literature through the use of an explosive device. His involvement in the case was in relation to that. He saw Timol and the other detainee shortly at Newlands Police Station before they were taken away by other members of the Security Branch. From then on he did not have any dealings with Timol.

183. Asked whether he knew anything about the assault on detainees, Els stated that he had only heard from the media that detainees were assaulted. He himself has never witnessed this. He was further shown police records which indicated that on the evening of Saturday 23 until Sunday morning, 24 October when Naik was subjected to torture through the "*helicopter method*", Els was one of the interrogators. His response to that evidence was that he could not recall. In fact, throughout his evidence, his response to questions was that he could not recall any of the instances put to him. It was later put to him that he could have been one of the interrogators of Timol as evidence showed that they changed teams during interrogation. He responded that he could not recall.

Mr Joao Anastacio Rodrigues

184. Rodrigues is a former Sergeant attached to the Security Branch of the South African Police and stationed at Compol Building in Pretoria. He had also testified during the 1972 inquest. In this court, he repeated the version which he stated to the 1972 inquest. The version was that he was requested by Captain Gloy to deliver their salary cheques while they were at John Vorster Square on the afternoon of the 27 October 1971. He testified that he went to John Vorster Square, and was escorted to the 10th floor where after waiting for a while he was then allowed to enter room 1026. In the room he found Captains Gloy and Van Niekerk in the company of a person who was facing Gloy and with his back to Els. He later learned that this person was Timol.

185. Prior to entering room 1026, he was requested by another male police officer who had a tray of three cups of coffee with him and asked that he should enter the room with those cups. The coffee mugs were meant for the three occupants in the room. While he was standing in the room next to the seated Timol who was not doing anything, an unidentified police officer came in and mentioned that they have identified and arrested some 3 people including Quentin, Martin and Henry. He, together with the two Captains, noticed that Timol was extremely shocked when he heard Mr X. He had a shocked look on his face and his eyes were big. He shook his head from side to side while looking at Gloy and Van Niekerk.

186. Gloy asked him to stay with Timol while he and Van Niekerk went out to check the information they had just received. He, Rodrigues, came around a table to sit opposite Timol. Not long after the two Captains had left the room, Timol requested him to go to the toilet and as they both stood up, Timol started moving to his left around the table while

Rodrigues was also moving to the left to push into the table the chair on which Van Niekerk was sitting. As he was doing this, he witnessed at the corner of his eye Timol rushing to the window, opened the window and jumped through it.

187. According to Rodrigues, before Timol could completely jump out of the window, he tried to stop him by moving in the direction where he was seated but stumbled on the chair on which he was sitting and fell on all fours. He could not stop Timol from jumping through the window. By the time he stood up Timol had jumped through the window and then he rushed and looked down below, he saw Timol's body on the ground. He then rushed onto the corridor screaming that someone jumped through the window. Other police officers came out of their offices on that floor and went back with him to look through the window. It was at that stage that one of the officers identified himself to him as Colonel Greyling. He went down with him to the ground floor through the lift where he saw some police officers feeling the pulse and he assisted to carry the body into the reception. He later learned that Timol had died.

188. Rodrigues, to everyone's surprise, added to his evidence an event that he admitted not to have disclosed to the magistrate during the inquest in 1972. He stated that during the time he was making a statement to Buys, the latter requested him to include in his statement an allegation that prior to Timol jumping through the window, he had wrestled with him. He refused to do so. He added that Gloy and Van Niekerk had also unsuccessfully approached him with a similar request prior to him making the statement. Consequently these officers together with others he could not remember were present in Court when he testified and he felt intimidated. For that reason, he

did not inform the magistrate about the attempt by the officers to get him to lie in his statement.

189. During questioning, Rodrigues conceded that he was offered protection after he testified on this version even though he was not aware of such protection. He further told the court that he had not been aware all these years that the then Commissioner of Police, General Joubert, had written a letter of commendation to him. He could not state why he was given a commendation. He conceded that it was a rare event and that such was reserved for police officers who have distinguished themselves in their career. He further conceded that he resigned from the police two days after the magistrate announced his findings on the inquest. He was angry with the police when he testified then because it was clear that his career would be finished, having refused the request from Buys, Gloy and Van Niekerk to add a lie to his statement.

190. Significantly, throughout his evidence, Rodrigues kept referring to the incident of the fall as "*ongeluk*" (accident).

191. Further during questioning, Rodrigues conceded that the last sentence in his sworn affidavit indicating that he did not assault Timol was not his idea but that of Buys. He consented to the inclusion of the sentence in his affidavit as suggested by Buys. The personal file of Rodrigues indicates that at the time he testified before the 1972 inquest, he already had a previous conviction of perjury, (making a contradictory false statement under oath.)

Mr Ali Thoken

192. Mr Ali Thoken is a businessman residing in Johannesburg. He testified as follows: On the morning of 27 October 1971, he was

filling his vehicle with petrol at the Dollars Filling Station opposite the south side of John Vorster Square. He was preparing to drive to Pretoria to sort out the issue of his business license. He heard a sound of a thud in the direction of the John Vorster Square Building. As he looked, he heard someone saying "*a man has fallen from the building*". He then moved across the street towards the direction of the sound and as he was approaching the middle of the street, he was told to go back by some plain-clothed member of the police who were by then standing around a body. He later learned that it was the body of Timol. Thokan informed the court that the incident he witnessed, occurred in the early morning of the 27 between 09H30 and 11H30. He emphasised that he was certain of the time because he would not have been there to prepare for a trip to Pretoria when it was in the afternoon. He knew that he would not find the government offices open in Pretoria in the afternoon. He was certain that it was in the morning. He was never called to testify in the 1972 inquest.

Mr Ronnie Kasrils

193. Ronnie Kasrils, a former Minister in the Government of the Republic of South Africa, testified as to the training that was received by the underground members of the SACP operating in South Africa. He testified as follows: He was in exile in London and was part of a group that trained new recruits into the SACP. He did not meet Timol personally, but he had heard of him and was of the view that he was trained by Hogson and Dr Yusuf Dadoo.

194. The new recruits who had to work underground were as part of their training, prepared how to deal with situations in case of arrests. They were instructed that during interrogation, they have to delay giving out

information particularly about other SACP members operating in South Africa. A detainee had to resist as much as possible, within twenty four or forty eight hours of their arrest, so as to allow other underground members linked to that cell to go into hiding. The trainers prepared the new recruits to hold out as much as possible even though as trainers, they conceded that sometimes it may be difficult to do so. The recruits were further trained to give out the obvious information that the police would have access to as part of delaying the process. He denied emphatically that members were taught to commit suicide when arrested. On the contrary, the SACP recruits who find themselves in detention were taught to accept the opportunity to stand trial when charged. This with the hope that he/she would be sent to prison, from where she/he could continue contributing to the struggle. It would therefore not be true that Timol was afraid of going to prison for twenty years as found by the magistrate. The new recruits were trained not to fear jail sentences.

Mr Abdullah Mohammed Adam

195. Mr Abdullah Mohammed Adam is a bookkeeper who was employed at Dollar's Filling Station opposite John Vorster Square in 1971. He testified as follows: On 27 October 1971, he was about to go on a tea break at 10H00 in the morning when his boss called him to go and check the commotion that was taking place across the street on the side of the John Vorster Square Building. He crossed the street and reached the pavement on the side of John Vorster Square. He saw a body of a person having lying on the shrubs with one of the shoes off his feet. He could not see clearer as his view was obscured by the shrubs. While he was there, the members of the police in plain clothes ordered him and the other passers-by to leave. He went back

across the street. When he got back into the filling station he told his boss what he had seen and went on to have his fresh tea.

196. Mr Adam was emphatic in his evidence that the incident he witnessed occurred in the mid morning between 10H00 and 10H15 because that is the time when he always had his tea. He denied that it was in the afternoon. He was able to remember the incident as he linked it with his tea break which has always been between 10H00 and 10H15 in the morning. He later learned from the newspaper reports and people speaking in the community that the person whose body he saw was Timol. He was never called to testify in the 1972 inquest.

Mr Imitiaz Cajee

197. Mr Imitiaz Cajee (*"Cajee"*) is Timol's nephew. Timol and his mother are brother and sister. He testified that he grew up in Mpumalanga and never knew Timol that much. He was told about Timol by his grandmother, Timol's mother, Hawa. It was Cajee who encouraged Timol's reluctant mother to testify at the Truth and Reconciliation Commission (*"TRC"*). It was during that event that he vowed to devote much of his time to find out what actually happened to his uncle, Timol. He then communicated, with the assistance of non-government organisations, with the National Director of Public Prosecutions (*"NPA"*) who initially responded to his correspondence that the matter was closed as the investigators could not find anything.

198. Cajee persisted in his efforts until, with the assistance of other legal representatives, was able to persuade the Minister, through the NPA, to re-open the inquest.

199. Prior to the inquest being re-opened, he communicated through correspondence with the then retired Lieutenant Colonel Gloy in an attempt to find out what transpired to his uncle, Timol. At first Gloy responded to his enquiries by referring him to the 1972 inquest outcome. Later, however, Gloy refused to correspond further with him and even threatened to institute legal proceedings if he persisted in communicating with him.

200. Cajee committed himself to pursuing his investigation in order to know what could have happened to his uncle. In the process, he authored a book titled "***Timol – A Quest For Justice***". He was supported by the family and in particular his uncle Mohamed, TCR Commissioner Yasmin Sooka and later Adv. Howard Varney and Frank Dutton as well as Adv. George Bizos SC.

201. Cajee ended up his evidence by requesting the Court to make the following recommendations to the authorities, namely:

"35.1 The erection of a sculpture outside Johannesburg Central Police Headquarters which pays tribute to all political detainees who died in police detention during the apartheid-era, alternatively, or in addition, a memorial to uncle Ahmed could be erected at the impact side in the garden outside the south wing.

35.2 The conversion of the south wing of the 10th floor of Johannesburg Central Police Headquarters into a memorial enshrine for political detainees who were tortured or killed during apartheid. This could be in a form of a museum or educational centre, open to the public, which tracks the history of security detention and its abuses. In particular Room 1026

and the other interrogation rooms should be faithfully restored to how they were in 1971.

35.3 *The energetic and vigorous investigation of outstanding apartheid-era cases before it is too late, which may involve the creation of a dedicated team of carefully selected investigators and prosecutors. All State entities should be required to supply all information at their disposal to this team.*

35.4 *All files pertaining to political detainees of the apartheid-era must be made easily accessible to the families seeking answers."*

202. The Court informed Cajee that in terms of the inquest Act, the powers of the Court are limited to determining amongst others things, the cause of death. It will certainly be outside the scope of the inquest to deal with the recommendations he had made except to mention them in this judgment as I do.

Seth Sons

203. Mr Seth Sons is a former member of the Security Branch attached to John Vorster Square. His office was on the 9th floor and he came to testify under subpoena, in the same way as Messrs Els and Rodrigues. He testified as follows: He was attached to the Security Branch of the South African Police at John Vorster Square. He was a leader of a unit of black members of the Security Branch. On a date he cannot recall in October 1971, he was requested by a superior officer, Captain Dirker to accompany him on an errand. He, together with Dirker and other Security Branch members drove out to Timol's home. On arrival there, he remained in the car and noticed some women who were standing on the veranda. He noticed some chicken

hanging on the veranda and blood flowing there. Dirker and others went into the house and later came back with, amongst others, a typewriter.

204. On their return to John Vorster Square, Sons went to park on the west side of the building and used the west entrance to access the building. On his way to the elevator, he heard people say that a person fell from the top floors of the building to the ground. He went back to his office on the 9th floor. On being questioned by the Court as to why he did not enquire from those people as to who fell, he repeatedly stated that he had a phobia of seeing people who have sustained injuries from a fall as that would turn his stomach. He did not want to make such enquiries. The Court reminded him that he had described himself as a leader of a unit operating from the 9th floor. Therefore the person who fell could have been a member of his unit. Under the circumstances one would expect that a natural reaction of any person in his position, out of curiosity, would be to inquire as to who fell from the upper floor of the building.

205. Faced with this obvious and simple logic, Sons became agitated and stated repeatedly that it is not his nature to enquire into other people's business as he thought it was some other people's business. The Court then put it to him that the only reason why he reacted the way he did, is because he already knew at that time, that the person spoken about was Timol. He denied that. He came to know of the identity of the person when he was back in his office on the 9th floor.

206. As with other two members of the Security Branch who testified, Sons stated that he does not know of any assaults on detainees and that he has read about these in the newspapers. He denied when it was put to him the names of people who will testify that he in fact assaulted them when he detained them. When confronted with this

evidence, he suddenly suffered loss of memory and stated that he could not remember some of these incidents.

207. After Sons testified, the Court received five affidavits from former detainees who allege that they were either assaulted by Sons or assaulted by members of his team in his presence.

Evidence of various other witnesses

208. Over and above the evidence of witnesses who testified orally before Court, there were a number of affidavits deposed to by witnesses, some of whose evidence is based on events after Timol's death and thus does not directly relate to the incident concerning Timol. However, their evidence contradicts denials of assault by former members of the security branch and further goes to show the pattern of behaviour and conduct by members of the Security Branch towards detainees.

Mr Laloo Chiba

209. Mr Chiba testified in his affidavit that he was arrested on 17 April 1963. During his detention he was subjected to torture in various forms including severe assaults, being thrown around, punched and slapped; a hessian bag placed over his head and over two third of his body and subjected to electrocution. He was interrogated by amongst others Captain "*Rooi Rus*" Swanepoel, Lieutenants Van Wyk, Brits, Van der Merwe and Victor.

Mr Abdulhay Jassat

210. Mr Jassat was also arrested in April 1963. He testified that he was subjected to various forms of torture which included having a wet hessian bag placed over his head and tied over his knee; being picked up under his armpits and by his feet and thrown down onto the cement floor; subjected to electrocution; made to stand on the same spot whilst being interrogated continuously; being hit on his hands with a ruler; forced to place his thumb on a coin and made to chase it around a table and being dangled outside a window whilst each officer held his ankles.

Miss Shantavothie Tweedie

211. Ms Tweedie is a former detainee who deposes as following in her affidavit. She was in detention from 13 June 1969 and subjected to various forms of torture, including sleep deprivation; solitary confinement; made to stand for long hours and denied a bath and the possibility of being drugged. Her interrogators included a "reddish round faced man", known as "*Rooi Rus*" Swanepoel.

Dr Snuki Zikalala

212. In his affidavit Dr Zikalala states that he was arrested on 12 May 1969 and subjected to various forms of torture such as being made to stand with his hands on his head on three unbalanced bricks; prolonged and continuous interrogation sessions; starvation and in those instances where food was provided, he was made to kill cockroaches with his bare hands before being allowed to eat with those hands. He was further subjected to physical assaults. Also in his case, his interrogators included Swanepoel.

Mr Peter Magubane

213. Peter Seford Magubane (*"Magubane"*) is a professional photographer who stated in his affidavit that in June 1969 he was arrested and held in solitary confinement for a period of 586 days. Since then he was arrested and detained several times. He is an accomplished photographer with a number of prestigious awards to his name.

214. When he was arrested in June 1969, he was photographing the protest taking place outside of the Pretoria Central Prison where Mrs Winnie Mandela and 21 other people were held. He was suspected of having an affiliation with the ANC. He was held in John Vorster Square for two days and thereafter transferred to Compol Building in Pretoria. That is when he was tortured by Lieutenant Swanepoel (*Rooi Rus*). Swanepoel made him stand on bricks for three days and three nights, interrogated for long hours and kept awake by being fed large quantities of black coffee. His body became dehydrated until he urinated blood. On his release, Magubane was placed under a banning order with restrictive conditions that in effect he was under house arrest and not allowed to be a photo journalist. As a result of the torture he endured, he experienced issues of body balance and memory loss.

215. Magubane suffered a fractured nose in a subsequent encounter with a police officer seeking to destroy his camera film.

Gadija Chothia

216. Gadija Chothia (*"Chothia"*) was also among the people who were detained on the Saturday 23 October 1971. During her interrogation she was not physically assaulted. She was assisting Timol with typing the addresses on the envelopes that would be used to distribute political literature by post.

217. Chothia states in her affidavit that she last saw Timol on 22 October 1971, the day of his arrest. Timol had visited her at her work place. He was either on his way to or from Friday Afternoon Jumuah prayers. She recounts that as far as she could see, Timol was injury free. *"He moved easily and freely and did not show that he was in pain of any sort, nor did he mention that he had been involved in an altercation or suffered any injuries of any sort."*

Dr Farouk Dindar

218. Dr Farouk Dindar (*"Dindar"*) is a neurologist, practising as such at the Scarborough Hospital, Birchmount Campus, Toronto, Canada. He is a first cousin to Timol.

219. Dindar recounts how he met several high profile ANC leaders such as Messrs Ahmed Kathrada and Nelson Mandela at the time the latter was operating underground. After graduation, he moved to work in Zambia where he continued to meet with other ANC leaders such as Messrs Oliver Tambo and Alfred Nzo. Dindar later moved to England where he met Timol, who at that time was residing with the Pahad brothers, Essop and Aziz. From London he moved to further his studies in Canada. He thereafter returned to South Africa.

220. Back in South Africa, Dindar reconnected with Timol who had also returned. Dindar's in-laws lived close to Timol's flat. He states that on the evening of 21 October 1971 after super at his in-laws, he visited Timol in his flat. He chatted with Timol, who was cheerful. *"Physically he was in his normal state of health and showed no signs of pain. He had no marks or injuries that I could see."*

221. Dindar heard of Timol's arrest and later of his death. When Timol's body was returned to his flat for burial, Dindar went to the flat to see the body. He narrates this experience in his affidavit as follows:

"24. I went to Ahmed's (Timol) family flat and walked amongst the women who were seated on the floor and asked to see the body of Ahmed. A family member removed the cloth that covered him, and my eyes fell upon the wounds on his body. I was appalled at the number of wounds and marks on him, which I suspected could not all be attributed to the fall."

222. Dindar attended the inquest in 1972, which he describes as a farce. He attended to *"know what the police pathologist would say about the microscopic examination of the wounds on his body."*

He continues:

"To my knowledge when a wound heals, initially there are polymorph nuclear white cells which are actively involved in the healing process. Once that is completed, macrophages are seen in the wound to do the final "cleaning up". In a fresh wound you would not see macrophages. If you see macrophages the wound has to be a few days old. Microscopic examination of Ahmed's wounds showed a few macrophages. The question the police pathologist was asked "how many days does it take for macrophages to appear first after the injury." He selectively quoted one paper from an Australian pathologist in which the macrophages were first seen on day 10. He ignored all other studies where macrophages have been seen in wounds much earlier. On the

basis of a few macrophages seen in Ahmed's wounds he concluded that they were 10 days old."

Ms Monica Dube

223. Ms Monica Dube ("*Dube*") is a Social Worker by profession, in private practice. She states in her affidavit that in 1982 she joined Centre for Social Development at Wits. That is where she met two friends, Terry Sacco and Maxine Hart. During or about June 1984, she and her two friends went to Botswana on a visit. She stated that for her it was a holiday.

224. In the early hours of 11 September 1984, four members of the Security Branch came to her home in Pimville, Soweto and arrested her. Dube was told that she was being held in terms of section 29 of the Internal Security Act 1982 (*the successor to section 6 of the Terrorism Act*). She was first taken to Protea Police Station, then to her mother's home in Meadowlands, Soweto, where they searched the house, threatening her mother that she will not see her again if she insisted on production of a search warrant.

225. From her mother's house, Dube was taken to John Vorster Square where she was interrogated about the trip to Botswana with her friends. Dube recalls an incident during her interrogation, when a man was brought to in. She narrates:

"...I was introduced to an (sic) as member referred to as MS. They called him shouting "MS, MS", he was a very big strong man. He gave me a terrible look. He had what I could describe as a no nonsense face. He said "What is wrong with you, can't you co-operate with the police?" I said there is nothing to cooperate about. He lifted me up, almost totally off of my feet, with only one hand under my armpit and said "do you think

Timol jumped or was he pushed? I was dead frightened. I said I think he jumped. He said "no we pushed him. And that is what is going to happen with you. I am going to push you."

27. Then he put me down, his sneering look and the way he grabbed me was very dehumanising. He left the room saying "now, I will sort out the other hardegatte"²⁸. I assumed he was referring to Maxine and Terry"

226. Dube states in her affidavit that she was made to sign a statement which she was not allowed to read. She was not physically assaulted, but deprived of sleep in the cells by a female police officer who kept her awake at night through repeated meaningless conversation. She was later released from detention. She heard later that the statement she was made to sign, whose contents she did not know, was used at the trial of Maxine. She was however not called to testify.

227. The evidence that follows is from the affidavits of former detainees who came forward after Sons testified, to dispute the allegations by Sons that he read about assault of detainees in the media. The deponents of the affidavits did not testify orally in Court and their evidence was not presented to Sons to comment thereon.

Mr Ismail Momoniat

228. Ismail Momoniat ("*Momoniat*") is a Deputy Director General in the National Treasury in the Government of the Republic of South Africa. He is a former activist who also testified in the inquest into the death of Dr Neil Aggett. He was in detention with Dr Neil Aggett at the time the latter met his death.

²⁸ An Afrikaans derogatory word for persons accused of being stubborn or arrogant.

229. Momoniat writes in his affidavit that on his first day of detention in April 1980, at John Vorster Square, he was taken to the cells by Captain Sons. Sons kept threatening him that he will make him eat pig meat.
230. Momoniat believes that Sons would have definitely been aware of the beatings or torture at John Vorster Square. *“This is because one could easily hear people when they were being assaulted or tortured, and sometimes one could even see assaults taking place through stained glass partitions. It is simply not true that a long-serving and dedicated security policeman like Captain Sons would not have heard or seen any assaults on detainees, particularly since he operated or had access to the same security branch floor at John Vorster Square.”*

Mr Parmananthan Naidoo

231. Mr Parmananthan Naidoo (“Naidoo”) grew up in a family of political activists and later he also became an activist. After the death of Timol he became one of the founders of Ahmed Timol Memorial Committee. He retired as ANC chief whip in the council of the City of Johannesburg in August 2012.
232. Naidoo narrates of his experience when he was arrested by Sons and other members of the Security Branch at his house in the presence of his family. They insulted and threatened him all the way to John Vorster Square. He was taken to the 10th floor where Majors Cronwright and Arbee began to assault him. This they did in the presence of Sons. He was held by the hair and had his head banged on the desk.

Mr Kevin Martin

233. Mr Kevin Martin ("Martin") is a semi-retired Civil Engineer Designer and former student activist. He states in his affidavit that he was arrested during or about July 1975 on his way to school. He was taken to the 9th floor of the John Vorster Square building. He was subjected to torture by Lieutenants Sons, Visser and sergeant Magoro. He was struck by Visser with his fists and when he fell down, both Visser and Sons repeatedly lifted him up by his arms and leg and dropped him on his back and head until he almost passed out. Sons then held him down as Visser sat on his chest and repeatedly kicked him with the heel of his shoe. Thereafter Sons pulled his pants down and squeezed his private parts.

234. Martin state further that he was tortured for an hour and then taken to a cell to heal without medication. It took a week for the swelling on his head to subside. He was released early in September 1975 without being charged.

Mr Alwyn Donovan Graham Musson

235. Mr Alwyn Donovan Graham Musson ("*Musson*") is an Information Technology consultant. He grew up at Bosmont Township and attended school at Chris Jan Botha High School where he started his student activism against racial divisions in sport. He became part of an organisation called Action Youth, which was formed while he was a student at Wits. In June 1983 Musson was arrested together with his father by Sons who took him to the 10th floor of John Vorster Square building after he was separated from his father on arrival. Sons gave him a pen and paper to provide him with the names of other activists who were part of Action Youth and left the office. Soon thereafter a white member of the Security Branch came in and

threatened to throw him out of the window if he did not provide the names. *“Sons returned to the office after about half an hour and became angry when he noticed that I had not written down anything, He then slapped me on the sides of my head with an open hand.”* I was later released and my father was released too.

Mr Hanif Mohamed Vally

236. Hanif Mohamed Vally (*“Vally”*) is the Deputy Director of the Foundation for Human Rights in Johannesburg. In 1977 Vally was detained in terms of the Internal Security Act (preventative detention) and held at Modderbee Prison in Benoni for 8 months. He participated in the 1980 student protests as an activist. He was arrested and taken to John Vorster Square by Security Branch police officers who worked with Sons. He was later accompanied by more police officers, including Sons to search at his flat and car. He was taken back to John Vorster Square where he was interrogated a number of times and Sons was part of the team. Vally recounts how he was stripped naked in the first session of the interrogation and Sons took off his spectacles and other policemen stated slapping and kicking him. Mr Paul Erasmus was present when he was assaulted.

237. Apart from a bundle of documentary evidence consisting of copies of newspaper cuttings, personal files of the police, building designs, publications and pictures of the autopsy and members of the Security Branch who interrogated Timol, this completes the evidence before Court.

EVALUATION

238. *In re Goniwe and Others*²⁹ (Inquest), the Court approached the test applicable in inquests as follows:

“The presiding officer at the inquest need go no further than to ask himself whether a prima facie case has been established against any particular person...”

And

“Bearing in mind the object of an inquest it is my opinion that the test to be applied is not “beyond reasonable doubt” test but something less stringent. In my opinion the test envisaged by the Inquest(s) Act is whether the judicial officer holding the inquest is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable and which, if accepted, could prove that the death of the deceased was brought about by an act or omission which involves or amounts to the commission of a criminal offence on the part of some person or persons.”

239. Murphy J in *FULL v NDPP supra* writes:

“[77]....The only question for the magistrate, in terms of section 16(2) of the Inquest(s) Act, was whether the death was brought about by conduct prima facie amounting to an offence on the part of any person. A prima facie case will exist if the allegations, as supported by statements and real documentary evidence available, are of such a nature that if proved in a court of law by the prosecution on the basis of admissible evidence, the court should convict.”

²⁹ 1994 (3) SA 877 (SE) at 879.

240. In arriving at a finding, this Court has to consider the entire evidence available on record and form a *prima facie* view.
241. The nub of this case is what really caused Timol to fall to his death. This is really the question. It is not about the cause of death, which in essence has been medically diagnosed as arising out of severe head and chest injuries consequent to the fall. This is the context within which the conspectus of the evidence should be understood.
242. In an attempt to respond to the question that lies at the heart of this case, the Security Branch fabricated a version that alleges that Timol, on his own, jumped out of the window of room 1026 at John Vorster Square to commit suicide. In order to support this narrative, the Security Branch proffered 3 reasons. Firstly that Timol during interrogation repeatedly expressed fear of being imprisoned for 20 to 25 years. Secondly, that he was scared that the 3 persons announced by Mr X to have been arrested, the Jacobsen brothers, will implicate him in criminal activity. Thirdly, that as a communist, he chose to commit suicide rather than betray his comrades. The magistrate was mindful of the inadequacy of these reasons and added the fourth that sought to explain the *ante mortem* injuries. His unsubstantiated reason was that Timol sustained the injuries in a brawl where he was pushed around.
243. The bulk of the evidence presented in the 2017 re-opened inquest mainly challenges the 4 reasons on which this version of suicide rests. The evidence of the former detainees, the medical doctors and the trajectory presents a version not considered in the 1972 inquest, in order to prove that Timol, like other detainees, was tortured to the extent that he could not have physically been in a condition to run towards the window, get out and propel himself to land on the spot identified by the Security Branch, within the time alleged by

Rodrigues. This evidence not only challenges the probability of the Security Branch version, but provides a counter to the magistrate's reason for the *ante mortem* injuries.

244. The evidence by members of the SACP is intended to demonstrate that Timol would not have committed suicide as suggested in the forged publication and that he was trained to embrace a possible conviction and long term prison sentence as a '*badge of honour*'. This evidence responds to the reasons advanced by the Security Branch that Timol was afraid to be imprisoned for 20 or more years and further that his suicide was inspired by directives in the Communist Party publication.

245. The evidence by former members of the police, Dutton and Erasmus as well as the 3 civilians who witnessed Timol's body during and immediately after the fall in the mid-morning, not only challenges the probabilities of the version that Timol jumped at about 15h50, but also supports the contention that Rodrigues's version, which is predicated on events occurring late in the afternoon, was fabricated and stage-managed as part of a cover up to conceal the facts around the death of Timol.

246. In regard to the reason advanced that Timol was afraid to be implicated by Quinton, Henry and Martin, no evidence was presented from either Mr X or the 3 people mentioned. In fact, Quinton was charged and tried. At his trial, no mention was made of Timol either by the State witnesses or any other person. Quinton was acquitted of the charges. The State had ample opportunity during that trial, even without Timol present to defend himself, to present evidence of a link between Quinton and him. That never happened. The Timol family, with reference to the evidence of Essop as to how he introduced Timol to the 3 brothers as well as the absence of any reference to

Timol in Quinton's trial, sought to demonstrate that the Jacobsen's story was fabricated to support the allegation of suicide.

247. Then there is the evidence of Nel on the mysterious disappearance of portions of the record containing the entire oral evidence of the police, during the 1972 inquest proceedings. Significantly, only page 3 of Rodrigues's affidavit dealing with the version as to how Timol is supposed to have jumped is missing. The impression one gets is that there was a deliberate attempt to destroy the evidence in order to frustrate any attempt to re-assess the evidence in case the inquest is re-opened.

248. The evidence presented in the 2017 re-opened inquest is thus in direct response and challenge to the conclusions and findings of the magistrate in the 1972 inquest. The task of this Court is therefore to evaluate all the evidence of the two inquests proceedings in light of the surviving record of the 1972 inquest and the further evidence received in the 2017 re-opened inquest. The evaluation of the evidence can thus no longer centre solely on the version of the Security Branch.

249. In his judgment of the 1972 inquest, the magistrate appears to have been constrained to reach a conclusion that would exonerate members of the Security Branch from culpability concerning Timol's death. He went out of his way, with no evidence in support, to proffer a view that the injuries on Timol's body which were inconsistent with the fall, were as a result of a "*brawl where he was possibly pushed around.*" The magistrate also concluded that Timol committed suicide as a result of a number of reasons. These reasons include fear of being identified by Quentin, Martin and Henry; fear of being imposed twenty years imprisonment and what turned out to be a forged document of the Communist Party purporting to direct its members to

opt to commit suicide rather than betray other comrades. These conclusions are the basis on which the finding of suicide by the magistrate is grounded.

250. The police's version, on its own, raised serious questions that called for answers. It seems to this Court that the magistrate also realised this fact, but somehow felt obliged to accept that version. He even went a step further to provide explanations where the version showed serious deficiencies. For example, in accepting the version that Timol was not assaulted, the magistrate went out of his way to express a view in the judgment, that Timol would not have been harmed since he was regarded as a "*big fish*" and to be of "*inestimable value*" to the Security Branch. Further, the magistrate went on to write in the judgment that it was clear that Timol "*and his followers were busy with a campaign of sabotage and even mass murder.*" There was no evidence that Timol was waging a campaign of sabotage and/or mass murder. Timol was distributing publications of the SACP, in opposition to the Apartheid order.

251. I turn to evaluate the evidence along the lines of the reasons advanced to support the conclusions and findings of the magistrate and then deal with the evidence of what caused Timol to fall.

The denials of assault on Timol

252. The ill-treatment of detainees is often visualised or expressed in the form of physical assault, i.e beatings of detainees. It is indeed so the physical assault, apart from being a common method to hurt and bring fear into a detainee, it is also easier to prove by reference to scars from injuries or evidence of medical treatment. However, there are other less mentioned forms of torture which leave no evidence

and are difficult to prove, such as sleep deprivation, long hours of standing and interrogation as well as electrocution.

253. This Court is of the view that on the basis of the evidence received, it would be misleading to refer only to physical assaults as the ill-treatment of detainees. Detainees were subjected to beatings at various level of brutality, with the least being only slapped once across the face. It nevertheless remains an assault, but not comparable to those who were hit with solid objects, punched and kicked. It needs to be stated that there are instances of detainees that were not subjected to beatings, such as Monica Dube and Gadija Cothia. It will be more accurate to deal with the subject of ill-treatment or abuse of detainees under the rubric of torture, as it includes all forms of abuse visited on the detainees.

254. Some of the police in their sworn affidavits, clearly eager to exonerate themselves from culpability and in anticipation of facing possible allegations of assault on Timol, stated in their affidavits that they did not assault Timol or that Timol was not assaulted in their presence. These officers included Rodrigues, Van Wyk, Bean, Gloy and Van Niekerk. The police affidavits and the magistrate's judgment deals only with assault and does not deal with other forms of torture such as sleep deprivation, electrocution, causing the detainee to stand for hours and subjecting the detainee to long periods of continuous interrogation. The police officers were aware that unlike assault, which leaves evidence of physical injuries, the other forms of torture do not leave visible physical evidence and would be difficult to prove.

255. During the 1972 inquest, when the legal representatives of Timol raised the issue of torture and linked it with the *ante mortem* injuries,³⁰

³⁰ See the affidavit of Bizos.

it was met with denials throughout the proceedings and ultimate rejection by the magistrate. These denials and rejection were made, in spite of the visible injuries on the body of Timol, sustained before his fall.

256. The Magistrate accepted the version of the police that Timol was not assaulted. He went further and stated that Timol was treated in a "*civilised and humane manner*". In his attempt to explain away the obvious injuries on Timol's body, which were clearly sustained before the fall, the Magistrate expressed a view that was not supported by any grain of evidence. He stated that the *ante mortem* injuries on Timol could be explained as "*a brawl where Timol was possibly pushed around and possibly also fell*".

257. The evidence presented by former detainees in the 2017 re-opened inquest indicates that they were subjected to various forms of torture. In particular the evidence of Essop, Jetham, Naik who were detained, interrogated on the 10th floor (Essop and Jetham) and 9th floor (Naik) in the same building and over the same weekend is relevant in determining whether Timol could have been tortured. The torture of Mohamed would not be of direct relevance as it occurred in Durban.

258. An attempt to call civilian witnesses would have been helpful to the magistrate. For example, it was clear even from the police version that Timol was arrested in the company of Essop. An obvious question that should have arisen is what happened to fellow detainee Essop. By raising this question, the magistrate would have found that Essop was detained, just like Timol, under Section 6 of the Terrorism Act for purposes of interrogation. The magistrate would have further found that both were interrogated from Friday evening of 22 October 1971 on the same 10th floor in different offices, at John

Vorster Square until 26 October (Essop) and 27 October (Timol); the magistrate would have again found that Essop was hospitalised from the 10th floor, on 26 October in a comatose condition; The magistrate would have also found that two Supreme Court³¹ Justices accepted on evidence that Essop was brutally assaulted during interrogation to a appoint where he became comatose, the day before Timol's death.

259. In rejecting the police denial of assault on Essop, the Supreme Court went into detail in giving reasons why they rejected Greyling's denial of assault and concluded that Essop was brutally assaulted and that an interdict should be granted to prevent further assaults. At this stage Essop was still under Section 6 of the Terrorism Act. The justices had this to say:

"The Colonel was unable or perhaps unwilling, to take the court into his confidence and give the true reason for this. Instead he dismissed the question with the answer 'I don't know'. In the light of what we have said, how can any court accept the Colonel's evidence on the aspects dealt with?"

260. The judgment in that case had been available as at February 1972, two months prior to the commencement of the 1972 inquest. It was a judgment of two Judges which the magistrate should have been aware of. Greyling was the commander of all the team of Security Branch members who were interrogating Timol, Essop and others at John Vorster Square. Under the circumstances, it is difficult to understand how the magistrate would have failed to take note of this finding by a Superior Court. Significantly, Greyling, being the commander of the interrogating teams, neither filed an affidavit nor testified as a witness in the 1972 inquest.

³¹ The then Transvaal Provincial Division, the predecessor to the present Gauteng Division of the High Court, Pretoria, occupying the same building.

261. The evidence of assault and other forms of torture of detainees presented in the 2017 re-opened inquest is so overwhelming, that the denial and lack of knowledge thereof by the three former Security Branch police officers who testified is disingenuous. Further, the fact that each one of them testified during the 2017 re-opened inquest that they knew nothing about assault apart from what they read in the media, is a demonstration that they were regurgitating a standard response, seemingly prescribed to all members of the Security Branch. Else, Sons and Rodrigues's conduct calls for censure. Their conduct must be investigated further with a view to raise appropriate charges.

262. It is improbable that the Security Branch would subject the detainees arrested with or linked to Timol to various forms of torture, but treat him differently. There is sufficient evidence before this Court to hold that the Security Branch have tortured the detainees arrested within or a day after Timol. This torture continued over the same weekend and in the same building. It has been consistent and sustained. This evidence establishes similar facts in regard to the case of Timol.

263. On the basis of the overwhelming similar patterns of torture on the other detainees, this Court accepts that Timol was tortured, which torture included physical assault.

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The ante mortem injuries on Timol

264. It is logical to expect that in inquest proceedings, one of the primary sources of evidence to determine the cause of death would be the autopsy (sometimes referred to as post mortem or medico-legal) report. While it is accepted that the autopsy report may inform on the direct cause of death, the agent directly responsible for the cause of death may not be apparent. Nevertheless, the autopsy report would

ordinarily be the first point of call. Fortunately in this case, it was made available during the 2017 inquest proceedings, since it is one of the documents which survived the mysterious disappearance of some of the 1972 inquest records.

265. On 29 October 1971, two days after Timol's death, the then District Surgeon, Dr Schepers, conducted an autopsy on the body of Timol and compiled a report. In that report, Schepers recorded the cause of death as being consistent with "Multiple Injuries". Under cross-examination during the hearing, Schepers changed his opinion and stipulated the immediate cause of death as "*Serious brain damage and loss of blood*".
266. Gluckman generally agreed with the findings by Schepers, in particular that certain serious injuries were consistent with the fall from a great height and these were on the right side of the body. There were bruises found on the body whose age was a subject of debate during the 1972 inquest. There was a long debate on the possible age of the bruises and lesions. A determination of the age of these injuries was a critical factor in establishing whether they were sustained while Timol was in detention or not. Schepers and Gluckman opined that the bruises indicate that the injuries could have been sustained between four and six days prior to death.
267. Koch for the police determined the injuries (*ante mortem*) as having been sustained between nine and twelve days before death, meaning they were sustained prior to Timol's arrest. This issue became the main bone of contention during the 1972 inquest proceedings.
268. The evidence by the Medical experts in the 1972 inquest raises some questions. Schepers buckled under the pressure of cross-examination during his evidence and changed positions contrary to his

observations and report. While he conceded that injuries like a cracked jaw bone and ribs were often the result of assault, he went on to opine that they could have been sustained by Timol bumping into furniture. He then described these injuries as possibly twelve days or older. Having described the injuries as being serious, under cross-examination he changed position by saying that they were not serious and potentially could be caused by every day accidents and sporting activity. He, however, admitted that they could also have been caused by assault.

269. The magistrate concluded by taking the view that the injuries were sustained five to seven days before death and could therefore not have been sustained during interrogation.

270. The two expert pathologists, doctors Holland and Naidoo, in their separate opinions, concluded that some of the *ante mortem* injuries were so serious that Timol could not have been in a state where he could walk unaided, eat or drink without difficulty or sustain consciousness. Their opinions are based on a study of Schepers's autopsy report. Naidoo in fact went further to study the portion of the 1972 inquest record that dealt with the evidence of the medical experts and the judgment by the magistrate.

271. Naidoo further opines that of the thirty five recorded injuries attached to the schedule prepared by Scheepers, approximately twenty five of these were sustained before the fall. Among these injuries was a serious injury on the calf, one on the toes, the other on the head and two others on both sides of the same hand. The argument of these doctors is that these injuries were sustained prior to the fall and could not have arisen as a result of the fall.

272. Counsel for the police submits that the Court should not place reliance on the opinion of these two doctors. The reason he advances is that their evidence cannot be better than that of doctors who performed the autopsy, namely Schepers and Gluckman. I do not agree. In the first instance the medico-legal report of Schepers and his conclusions were found wanting when the assessor, Simpson rose with Schepers that there were several other injuries that were visible on the photos but not included in the report. Secondly, under cross examination, Schepers found himself having to change his opinion as regards the cause of death. Consequently, the magistrate in formulating his conclusion relied on the views of Simpson, his assessor.

273. The evidence of Doctors Holland and Naidoo did not introduce new injuries, but shed light on the severity and what could have been the impact of the injuries on Timol before and after the fall. In their view, the evidence not caused by the fall contradicts the version of the police at least in two respects.

274. Firstly, the evidence of the Security Branch, including Colonel Van Wyk, Captain Bean, Sergeants Bower and Louw as well as arresting Officer Sergeant Kleyn, in a desperate attempt to extricate themselves from blame, testified that they did not notice any injuries on Timol. In particular, Bower and Louw testified that they were assigned to keep guard over Timol at night and they saw his torso free of injuries when he took his shirt off before he slept. If the statements of Bower and Louw are to be believed, then the magistrate's conclusion that Timol was injured in a "brawl" before his arrest, is incorrect. The pre-arrest injuries as ruled by the magistrate could have been visible to the two police officers. The magistrate accepted their evidence and failed to recognise the glaring inconsistency with the medical evidence.

275. Secondly, the opinions of Doctors Holland and Naidoo contradict that of Rodrigues. The injuries attributed to Timol prior to the fall, in particular on the toes and head, were such that he could not have moved with the alacrity and agility from the chair to the window without being assisted, as described by Rodrigues. Further, Rodrigues should have seen these injuries when, according to his evidence, he sat on a chair across the table opposite and facing Timol.
276. There is also the evidence of Essop that at the time he was arrested with Timol, the latter was fit and healthy. Essop is corroborated by Dr Farouk Dindar and Ms Gadija Chothia who submitted affidavits confirming that they saw Timol on 21st (*Dr Dindar*) and 22nd (*Ms Chothia*) of October 1971 and Timol was in good shape with no visible injuries.
277. The magistrate based his conclusion that Timol's *ante mortem* injuries were sustained prior to his arrest, on the discredited opinion of Koch. There is no other evidence supporting that conclusion.
278. In applying the principle of circumstantial evidence as set down in the seminal case of *R v Blom*,³² this Court accepts that there are overwhelming facts proven from which the only inference that can be drawn is that Timol was tortured, which torture includes physical assaults. The proven facts include *ante mortem* injuries.
279. This Court therefore accepts that there is incontrovertible evidence that Timol sustained the *ante mortem* injuries in detention while being interrogated.

³² 1939 AD 188.

The issue of Quentin, Martin and Henry.

280. The Magistrate further concluded that one of the causes for Timol to commit what is purported to be suicide was his fear of being exposed by witnesses identified by Mr X. These witnesses are Quentin Jacobsen, Martin and Henry. The probative value of this evidence from the police was not properly assessed as Mr X was never called to testify nor was Quentin, Martin and Henry called to testify.

281. Essop testified that he and Timol only met Quentin once after being introduced to him by a friend and relative. They shared an interest in photography. The introductions were made at Quentin's photographic studio on Pritchard Street, Johannesburg. Quentin was not a political activist and had no political affiliation. There was thus no political link between Quentin and Timol. This fact was confirmed when Quentin was arrested and prosecuted after Timol's death. At his trial, there was no reference to Timol at all.

282. The magistrate simply accepted the evidence of the Security Branch without question or corroborating evidence and concluded that the purported link between Timol and Quentin, which did not exist, is one of the reasons for Timol to commit suicide.

283. This Court finds no evidence to support the conclusion of the magistrate on this point and accordingly rejects it.

Fear of twenty years imprisonment and "Inkululeko Freedom" No 2, February 1972 document.

284. Members of the Security Branch allege in their evidence that during interrogation, Timol repeatedly expressed concern that he will be sentenced to twenty to twenty-five years. He is said to have done so

when he indicated to his interrogators that he accepts all the blame to himself and others were not to blame. Further, Van Wyk concludes his affidavit by stating as follows:

*“Ek is van mening dat Timol selfmoord gepleeg het omdat hy besef het dat die getuienis teen hom, verdoemend was en dat hy vir baie jare tronk toe sou moes gaan. Daarbenewens is dit ook bekend dat kommuniste eerder selmoord moet pleeg voordat hulle enige inligting aan die Polisie verstek”.*³³

285. The magistrate accepted the evidence that Timol was concerned about a possible twenty year sentence. He also relied on a document that was not formally admitted in evidence to express a view that Timol committed suicide on the basis of a call purportedly made by the Communist Party and stated in that document. That document is *“Inkululeko Freedom”*, Volume 2 dated February 1972. The Magistrate did not indicate who presented that document to him and why it was not placed before Court and the presenter examined as to its origin. The document referred to is *“Inkululeko Freedom”* No 2 of February 1972, which was issued by the SACP.

286. The evidence of Stephanie Kemp, Pahad and Kasrils above, demonstrate in detail how the SACP document on which the magistrate relied was a forged copy of the real one. It was forged by addition of a few paragraphs at the end, which proved not to conform to the language style and the policy of SACP not to mention names of individuals in publications. The forged document is purported to be issued by the *“Communist Party of South Africa”*, an organisation that no longer exists.

³³ Free translation: *“I am of the view that Timol committed suicide because he realised that the evidence against him was damning and that he would have had to go to prison for many years. In addition thereto, it is also well-known that communists would first have to commit suicide before they could provide any information to the Police.”*

287. The publications were in fact issued by SACP, which was a banned organisation in South Africa at that time and its leadership operated underground in exile out of South Africa. Its activities were carried out by underground units or cells of recruits in South Africa. Apart from the obvious spelling mistakes and naming of individuals, the reference to an organisation that ceased to exist in a publication that is dated four months after Timol's death was a giveaway. The magistrate failed to scrutinise the forged document.
288. Erasmus testified that the Security Branch routinely forged documents as part of a counter- revolutionary propaganda. He was attached to that unit in John Vorster Square when he joined the police in 1977.
289. Essop, Mohammed and Pahad testified that it would not have been in the nature of Timol to commit suicide. Pahad in particular testified that Timol had a girlfriend in London and looked forward to re-joining her. In addition, it was against Timol's religion to commit suicide. These were facts which members of the Security Branch were clearly not aware of when they conjured up the suicide narrative as a cover up.
290. Kasrils in his evidence also stated how each recruit into the SACP was made aware, during training, of the possibility of arrest, torture in detention, trial and possible lengthy prison sentences. The recruits were trained as to how to respond to these situations should they arise and in particular to embrace a trial and prison sentence as providing an opportunity to live to continue the struggle. A lengthy imprisonment should be regarded as a "*badge of honour*."

Evidence of the trajectory.

291. The evidence of Moodley, the Aeronautic Engineer, further contradicts Rodrigues' version that Timol jumped to his death. His

conclusions, which have been dealt with above, indicate that in terms of the trajectory, where the body landed in relation to the building, additional force was applied to accelerate his fall. He fell further from the trajectory which, if he had jumped, would have been nearer to the building itself. The scenarios 3 and 4 indicate that Timol was pushed. Rodrigues could not comment on it.

Evidence on the time of the fall.

292. The evidence of the time of the fall received by the 2017 re-opened inquest left the Court with two mutually exclusive versions. Civilian eye witness evidence by Matthis, Thoken and Adam state that the fall occurred mid-morning on 27 October 1971 between 09H00 and 11H00. In fact, one witness places the incident as having occurred between 10H00 and 10H30, at the time when he was on his tea break.³⁴

293. Members of the Security Branch, led by Rodrigues placed the time of the fall as being at 15H45 and 16H00 on the same date. It is clear that both versions cannot be true and that only one of them would be true. Kemp, who declared Timol dead at 16H00, alleges in his affidavit that he was called at about 15H55 and arrived at the scene at 16H00 whereupon he declared Timol dead. In his one paragraph statement, he mentioned that the body had recently died (*"hy was pas dood"*). Naidoo opines that Kemp's reference to *"pas dood"*, in all probability expressed his view in relation to the stage of decomposition of the body. A body begins the process of decomposition normally several hours after death. He then opines that it could be that Timol died early in the morning or even in the afternoon, he is unable to tell on a basis of the evidence. Kemp did

³⁴ See the evidence of Abdulla Mohammed Adam.

not give details in regard to the condition of the body as at the time when he declared it dead. It is thus left to a determination of probabilities based on the two versions, that of the police as against that of the civilians.

294. The relevance of the evidence on the time of the fall has a bearing on the credibility and reliability of the versions. More pertinently, it is critical in determining which version is fabricated.

The version of the Security Branch

295. The version of the police is that Timol, on his own initiative, jumped out of the window on the 10th floor of John Vorster Square and fell to his death. The magistrate concluded that Timol committed suicide. During the 1972 inquest, this version of the police was challenged by legal representatives of the Timol family. It emerged that there were contradictions and inconsistencies in the statements of the police in regard to what precisely happened. The primary witness and conveyer of this version in this regard was Rodrigues. His evidence has been dealt with in detail in this judgment. For purposes of evaluation, it is necessary to assess its credibility.

296. The contradictions start with Rodrigues himself. He testified in the 1972 inquest that when he entered room 1026, the police were interrogating Timol. Then he changed to state that Timol was not doing anything. This aspect of the evidence was further contradicted by Gloy and Van Niekerk who testified that when Rodrigues entered room 1026, Timol was writing a statement. In further contradiction, Rodrigues stated in his affidavit that after Timol fell, he rushed to Greyling's office. He is corroborated by Gloy who testified that immediately after the incident, he found Rodrigues in Greyling's

office. In the 2017 re-opened inquest he testified that he saw and met Greyling for the first time when Greyling, together with other officers on the 10th floor, came to room 1026 after Timol fell. He did not rush to Greyling's office, but to the corridor shouting alarm.

297. Rodrigues further gave different accounts as to what happened in room 1026. He was questioned at length about the scenario he painted in room 1026 concerning his version of events. The inconsistencies and improbabilities of that version were exposed, in particular, considering that at that time, he, Rodrigues was much younger, an athlete, a rugby player, tall and bigger than Timol. His version that he could not restrain him from jumping out of the window was improbable. In particular, it was put to Rodrigues that Timol could not have moved out the window as he described, as the window opened in the middle, leaving a narrow gap to go through without injuring oneself or tearing one's clothing. Further, that his version is not supported by the medical evidence which showed that Timol at the time, had been so tortured and assaulted that he could not, unaided, stand up from the chair and dash to the window and jump out in a matter of seconds as Rodrigues testified.

298. Rodrigues was also contradicted by Pattle, when the latter testified in 1972. Pattle testified that when he entered room 1026, there was no sign of struggle or chairs that had fallen. Rodrigues did not mention anything to him about stumbling over a chair. Rodrigues could further not explain the statement by Buys to the media, made two days after the death of Timol, that before Timol committed suicide, he suddenly jumped and rushed to the door, then turned and rushed to jump out of the window. Rodrigues denied having mentioned anything about rushing to the door. The version of rushing to the door was also repeated by Gloy, who like Buys, alleged that they were told this version by Rodrigues.

299. In 2017 Rodrigues introduced a new version concerning a suggestion made to him to include in his statement that he wrestled with Timol before the latter jumped. The impression gained by the Court from this statement was that Rodrigues wanted to paint a picture of a person who is independent and not easily influenced. He clearly fabricated this version so as to bolster the credibility of his evidence. He could not satisfactorily explain why he had not disclosed this aspect of his evidence in the affidavit, to the 1972 inquest or at any time thereafter. It seems to the court that this version was intended to bolster the credibility of its own story and to present him as a person who was stating the truth and being intolerant of any influence. This version is contradicted by his own statement that Buys asked him to add in his statement that Timol was not assaulted to which he agreed. The Court is of the view that there was no need for him to agree to any statement on assault as he was an officer from Compol Building in Pretoria who was employed as a salary clerk and therefore would not have known, on his own version, what goes on in the interrogation. He had repeatedly told the Court that he was not allowed to go into the area of interrogation as what goes on there was "*uiters geheim*" (utmost secrecy).

300. Rodrigues further revealed to the court that his statement which was made in November 1971 was written down by Buys in his presence. During questioning by the Court as to why he had made reference to assault on Timol in his affidavit, Rodrigues answered that Buys suggested that a sentence should be added in the affidavit, which would state that he did not assault Timol. He agreed to that suggestion. The affidavit which was written by Buys in the presence of Rodrigues, had a statement suggested by Buys which Rodrigues accepted and deposed to before the same Buys, attesting as

Commissioner of Oaths. This Court is unable to offhand recall any better example of evidence tempering and subversion of the truth on the part of both Buys and Rodrigues!

301. The magistrate ignored these material contradictions and inconsistencies on the version of Rodrigues and surprisingly accepted all police witnesses as being honest and truthful witnesses. The finding by the magistrate that Timol committed suicide rests primarily on Rodrigues' version. The Magistrate ignored the most obvious and material contradiction of Rodrigues' version by Brigadier Pattle. Pattle had a different version provided to him by Rodrigues as to what happened in Room 1026. The Magistrate in his judgment acknowledged the fact that Buys was aware of the two contradictory versions even as he took the stand. Ordinarily, such contradiction would have cast serious doubts on the credibility of Rodrigues' version. As Bizos stated, there was very little enthusiasm on the part of the magistrate to question this version of the police.

302. What also appears strange in the 1972 records is that of the 20 plus police officers who deposed to affidavits and testified in the 1972 Inquest, only 5 make mention of Rodrigues. These are Gloy, Van Niekerk, Pattle, Schoon and Buys. Schoon did not testify in 1972. Rodrigues testified that he went to the ground floor with Greyling in the elevator. Deysel says he went to the ground floor with Greyling in the elevator. Neither of the two makes reference to each other's presence. Further, Rodrigues is neither supported by any uniformed police officers who were on duty that day at the reception on the ground floor, nor by members of the Security Branch who were working on the 9th and 10th floor who, according to Rodrigues, came out of their offices when they heard him shout and went into 1026 to look for themselves. Neither of these witnesses nor their affidavits

were obtained and placed before the 1972 inquest proceedings or the 2017 re-opened inquest proceedings.

303. The mystery around the presence and role of Rodrigues at John Vorster Square at the time Timol fell, supports the contention that his version has been conjured up to conceal the truth.

304. It is not difficult to understand why the Rodrigues version lies at the heart of the 1972 inquest. It was the only version placed before the inquest by members of the Security Branch, Rodrigues being their main witness. The Security Branch took advantage of the fact that because of section 6 of the Terrorism Act, they, apart from the detainee, were the only persons privy to what transpired in the morning of the fateful day. The only other person who could have provided an alternative version in this case was Timol. Timol was not there to speak for himself.

305. It needs to be recorded that at the time Rodrigues gave evidence before the 1972 inquest, he already had a previous conviction of perjury.

Evidence of cover up.

306. There is evidence supporting the view that the statements by members of the Security Branch, the police officers investigating the death of Timol and the proceedings in the 1972 inquest were all part of an attempt to cover up or conceal the truth concerning Timol's death. This view is supported by the evidence of Dutton and Erasmus as well as the contradictions and improbabilities appearing in Rodrigues's version.

307. In the first instance, there is no evidence explaining why the police failed to hold an administrative inquiry in terms of the Police Act and Regulations, to determine whether any member of the police had contravened the Regulations by allowing Timol to escape while in police detention or custody. Such inquiry was never held. Sons further testified that it was totally against policy and the standing orders to leave a detainee, more so one of high profile, in the care of a single officer, let alone a salary clerk. There had to be no less than two police officers with a detainee at a given time. This view is confirmed by all former detainees held with Timol that there were always two or more members of the Security Branch in their presence, at any given time, rotating in teams. The statements of the police in their affidavits attest to the fact that they operated in pairs. These would be Kleyn and Thinnies (*arresting officers*); Van Wyk and Bean (*interrogators*); Gloy and Van Niekerk (*interrogators*); Bouwer and Louw (*overnight guards*); Liebenberg and Van Rensburg (*Investigators*) and Ras and Van Rensburg (*Investigators*). Why then was Rodrigues left alone with Timol, if his version is to be accepted as true? Having regard to Sons' evidence, it was against the regulations to leave a detainee under the care of one member of the Security Branch.

308. There was general substandard and sloppy investigation of the death of Timol by Buys and his team. According to Dutton, Buys, in conducting the investigation, broke every rule in the crime detection book. As stated, before taking statements from witnesses at the commencement of the investigation, Buys had claimed in the media that Timol had committed suicide. He personally commissioned the affidavits of witnesses, including that of Rodrigues as an investigator. During the 1972 inquest, while under cross examination, Buys collapsed and had to leave the court for medical attention. He never

returned to complete his cross examination but was able to resume work.

309. Dutton further testified that Buys' investigation of the crime scene was a disaster as it is littered with errors that suggest, on the police's own version, disregard of standard procedures at a crime scene. No effort was made to obtain forensic evidence on the ground where Timol fell as well as in room 1026; there was no cordoning of the crime scene; no photo of the body on the scene; no marking of the position of the body; no clothes and sample blood stains examination; no plan with measurements of the scene and no measurement of the depth of indentation where the body landed. No ambulance services or paramedics were summoned. Practically no forensic evidence was gathered.
310. Boffard testified that the removal of Timol's body from the shrubs could have accelerated his demise. Further, the removal of the body from the ground floor to the 9th floor before arrival of medical attendants and crime scene forensic investigators amounted to tampering with evidence.
311. Buys took statements only from members of the Security Branch who arrested, detained and interrogated Timol as well as those who assisted in the investigation of Timol's death. No attempt was made to obtain statements from civilian eye witnesses, other members of the Security Branch who were not involved in the interrogation of Timol, Uniformed Branch members at the reception next to where Timol fell and black members of the Security Branch.
312. The personal file of Rodrigues, as Dutton testified, reveal that he surprisingly received a commendation from the Commissioner of Police after he testified in 1972, although he had no record of having

distinguished himself as an outstanding officer in the performance of his duties. Such accolades from the Commissioner were a rare occurrence. Rodrigues was never promoted and he resigned two days after the delivery of the judgment of the 1972 inquest;

313. The evidence of Dutton and Erasmus corroborates that of the detainees that it was general practice for the police to torture detainees to a point of death. In the instance of death in detention, a cover-up story would be implemented so as to shield police from blame. This cover-up story would be handled by a unit within the Security Branch known as "*resident sweepers*". Later after Timol's death, Gloy who by then held the rank of Colonel during or about 1977 was part of the unit to cover up activities of members of the Security Branch who had contravened the law.

314. In their view, both Erasmus and Dutton admit that torture, including brutal assaults experienced by detainees were common occurrence and that there is no reason whatsoever to believe that Timol was handled differently. His death was a cover-up. In order to implement this cover-up strategy, the assistance of some selected members of the prosecuting authority, medical profession and magistracy were roped in to be part of the sham. Officials from these professions were carefully selected to support a cover-up version in the case of any judicial proceedings.

The view of this Court

315. Considering what has been stated above, this court is of the view that there is no merit or credibility in the evidence of Rodrigues and that of members of the Security Branch on their version. The version was clearly fabricated to conceal the real truth as to what caused Timol to fall. The Court rejects this version.

316. The evidence of the 2017 re-opened inquest, unmasked the cover up, but due to the absence of the interrogators who have all passed on, the real events leading to the push could not be established. However, the evidence *prima facie* and logically points out that at the time Timol was pushed either out of the window of room 1026 or at the roof top, he was in the company of members of the Security Branch in charge of his interrogation on duty. He could obviously not have been in a cell. These members were at least Gloy and Van Niekerk, as their police file records show and the evidence of Bower and Louw confirms. They were on duty at that time. The Court is unable to establish on the evidence whether there was anyone else with them.

317. It is the Court's *prima facie* view that the push occurred during interrogation under circumstances where the Security Branch involved, resorted to torture. The torture on Timol was applied with a view to extract information. Counsel for the family of Timol submits that the Security Branch are guilty of murder. Murder is committed intentionally (direct intent) or through *dolus eventualis*. There is no evidence supporting the view that the Security Branch had direct intent to commit murder. There are theories suggesting that possibility but no evidence to back that up. However, the evidence support murder through *dolus eventualis*. *Dolus eventualis* is present in instances where “ *the perpetrator foresees the risk of death occurring, but nevertheless continues to act appreciating that death might well occur, therefore ‘gambling’ as it were with the life of the person against whom the act is directed.*”³⁵

318. There are four reasons from the evidence why the Court is of the view that the members of the Security Branch interrogating Timol had the

³⁵ Director of Public Prosecutions, Gauteng v Pistorius 2016 (2) SA 317 (SCA), paragraph 26

requisite intent in the form of *dolus eventualis* to commit murder. Firstly, the methods of torture they applied on Timol's co-detainees were so brutal³⁶ that there was an element of recklessness with the manner in which they occurred. Secondly, the injuries on Timol sustained *ante mortem*, 35 in all, with various degrees of severity, demonstrate that there were no boundaries of respect for human life. Thirdly, the police on their own version removed the injured Timol from where he landed immediately after the fall, without summoning medical assistance, clearly in order to conceal the crime. The very act of his removal from the scene as he was alive, may have accelerated his demise due to the police's reckless conduct at the scene. Fourthly, there was a history of detainees having died in detention, which seemed not to have any deterrence on their conduct. Van Niekerk, one of Timol's interrogators on the day he died, already had a record of brutality at that time, which included convictions of two counts of assault (in which the victim died) and multiple complaints of serious assault and torture, in which he and Gloy were accused of. These referred to the assault on detainees with iron rods and electric shocks, some which occurred months before their interrogation of Timol. One such incident was in February of 1971. It is thus probable, on the evidence, that the Security Branch foresaw that their methods of interrogation carries the risk of death occurring, but nevertheless persisted unrestrained with the torture, appreciating that death might well occur.

319. The possibility of negligence is discounted on the basis that the police went out of their way to cover up the incident by fabricating suicide, rather than admit the incident as an accident, if it was so. There are few theories that were explored in argument as to how Timol was pushed, but due to absence of evidence, the Court cannot accept and

³⁶ Essop was admitted in a comatose condition at hospital while Naik had no control of his hands after the 'helicopter method'.

rely on them. . However, Timol did not jump as alleged. He was pushed by someone and there is thus a case that members of the Security Branch conducting interrogation at that time had to answer. Timol was in their custody as a detainee. They had complete control over him and they thus owed him a duty of care, for which they should have been held to account.

CONCLUSION

320. Having regard to the totality of the evidence of the 1972 inquest and the 2017 re-opened inquest, this Court concludes thus:

320.1 After his arrest on the night of 22 October 1971 and throughout the weekend, continuing to Monday 25, Tuesday 26 and Wednesday 27, Timol was interrogated by members of the Security Branch acting in teams and taking turns. This interrogation took place in Room 1026 and Timol, contrary to his detention warrant, was kept in that room and not once taken to a holding cell;

320.2 As with all other detainees who were arrested with and after him during the same weekend and in John Vorster Square, Timol was tortured by the interrogating members of the Security Branch in order to extract information out of him;

320.3 The torture included physical assaults which resulted in severe injuries. The injuries referred to were sustained before the fall and are distinct from those he sustained on his fall;

320.4 On 27 October 1971, Timol's interrogation was conducted by Gloy and Van Niekerk. At the time Timol fell, he was under the care of at least Gloy and Van Niekerk;

- 320.5 The personal file of Van Niekerk indicates how he had been implicated and facing charges together with Gloy in the assault and murder of detainees. Some of these occurred prior to the death of Timol while others continued even after the death of Timol. Thus on the day Timol died, it was during their turn to interrogate him and the records reflect that both were therefore in room 1026;
- 320.6 Consequently, the allegation by the Security Branch members that Timol was not assaulted is not true. Further, the conclusion by the magistrate that Timol was treated in a civilised and humane manner is also not correct;
- 320.7 The trajectory evidence by Moodley excludes the possibility of Timol having either dived or jumped out of the window of room 1026 on the day he fell. Instead, the trajectory calculations support the view that the cause of the fall was that Timol was pushed either from the window of room 1026 or from the roof of John Vorster Square building;
- 320.8 Three independent witnesses put the time of Timol's fall as mid-morning on 27 October 1971. This is in direct contrast to Rodrigues' evidence that Timol fell between 15H45 and 16H00. This Court accepts that Timol fell in the mid-morning and that Rodrigues, if ever he was in room 1026 later in the afternoon, was brought there to legitimise the cover up narrative;
- 320.9 The substandard and sloppy manner in which the investigation of Timol's death was conducted by Buys and his team supports the view that there was a clear intent to cover-up the incident through a fabricated version of suicide;

320.10 Timol's fall to the ground was as a result of being pushed either from window of room 1026 or from the top of the roof of the John Vorster Square building;

320.11 Consequently, Timol did not meet his death because he committed suicide. Timol died as a result of having being pushed to fall, an act which was committed by members of the Security Branch with *dolus eventualis* as the form of intent, and *prima facie* amounting to murder;

320.12 There is *prima facie* evidence implicating Gloy and Van Niekerk as the police officers who were interrogating Timol when he was pushed to fall to his death. Rodrigues, on his own version, participated in the cover up to conceal the crime of murder as an accessory after the fact of that murder, and went on to commit perjury by presenting contradictory evidence before the 1972 and 2017 inquests. A recommendation is made to have him investigated and prosecuted for these offences.

321. Ordinarily in an inquest, the court makes its finding in terms of section 16 (2) of the Act. This finding is made narrowly in answer to four questions. These questions are about (a) the identity of the deceased; (b) the cause or likely cause of death; (c) the date of death; and (d) 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.

322. In case of an inquest re-opened in terms of section 17A, subsection 3 (b) thereof provides thus:

“ (3) A judge holding an inquest that has been re-opened in terms of this section.....

(b) shall record any finding that differs from a finding referred to in section 16 (2), as well as the respect in which it differs;"

323. The finding by the magistrate in this instance is the finding referred to in section 16 (2). At the end of the 1972 inquest, the Magistrate made the following findings in terms of Section 16 of the Act:

(a) The identity of the deceased is Ahmed Essop Timol, an Asian male, 29 years old, born South African, teacher by profession.

(b) Date of death: 27 October 1971.

(c) Cause or probable cause of death: the deceased died because of serious brain damage and loss of blood sustained when he jumped out of a window of room 1026 at John Vorster Square and fell to the ground on the southern side of the building. He committed suicide.

(d) No living person is responsible for his death."

324. In regard to item (a) in the paragraph above, This Court is of the view that even in death, Timol deserves the dignity of the restoration of his citizenship, like all South Africans. He entered the struggle and gave his life for that. This Court will not identify him as "*an Asian male*", but differently as a South African citizen.

325. Item (b) in the findings of the magistrate, the date of death 27 October 1971, remains unchanged.

326. Item (c), Cause or probable cause of death. The finding by the magistrate on the cause of death follows the evidence of Schepers who buckled under cross examination. Initially when he testified, he opined as it appeared in the autopsy report, that the cause of death

was "*Multiple injuries*". Under cross examination he stated the cause of death as serious brain damage and loss of blood, which the magistrate accepted. This Court will follow the opinion of Naidoo that the death was caused by the *massive head (brain) and chest (vital centre damage and compromised respiration) injuries*. Further, and for reasons already stated in this judgment, this Court will record a different finding to that of the magistrate when he found that Timol jumped out of the window of room 1026 at John Vorster Square, fell to the ground on the southern side of the building and that he committed suicide. This Court came to a different conclusion that Timol did not "*jump out of the window of room 1026*", but was either pushed out of the window of room 1026 or rolled from the roof of the John Vorster Square building. Thus, he did not commit suicide but was murdered.

327. This Court will also record a different finding to that of the magistrate in regard to item (d) of his findings. He found that "no living person is responsible for Timol's death". It is ironic that 46 years after the death of Timol, the magistrate's finding is partly correct, as most of the main perpetrators this Court would have recommended for investigation and possible charges have since passed on.

328. The finding by this Court is that all members of the Security Branch involved with the interrogation of Timol or keeping guard over him in room 1026 are collectively responsible for the injuries sustained *ante mortem*. They were supposed to keep him in the police cell as the warrant for his detention stated. They did not do so, but kept him in room 1026 to conceal the torture.

329. In the first instance Timol was in their custody and they had a duty of care over him which they failed to exercise. Secondly, the Security Branch denied knowledge of the *ante mortem* injuries on his body,

which denies this Court found were a cover up. The Security Branch involved in the interrogation of Timol, inflicted the injuries through systematic and continuous torture. They intentionally and unlawfully applied brutal methods of torture on Timol.

330. This Court's *prima facie* finding is that members of the Security Branch who were interrogating Timol on the day he died, through an act of commission or omission, murdered Timol. This they committed through *dolus eventualis* as the form of intent.

331. Rodrigues placed himself on the scene as a party to the cover up to conceal the truth. He thereby *prima facie*, by his conduct became an accessory after the fact of murder. An accessory after the fact is " a person who renders assistance to someone else (perpetrator) who has committed an offence." ³⁷Corbett JA in **S v Morgan**³⁸ opines that the association of the accessory with the crime should take the form of helping the perpetrator evade justice. This is precisely what Rodrigues, on his own version, did.

332. Els should be investigated for misleading the Court that he only knows of the allegation of assault on detainees from the media. The police file records reflect that he was in attendance as one of the interrogators when Naik was subjected to the "helicopter" method of torture for which he lost the use of his hands.

333. Sons should also be investigated for testifying under oath that he heard of detainees' assault from the media. There are five witnesses who filed affidavits to dispute his statement.

334. Rodrigues should be investigated for making contradictory statements whilst under oath. He has a previous conviction on perjury.

³⁷ WA Joubert, "**The Law of South Africa**", Volume 6 paragraph 136.

³⁸ 1993 2 SACR 134 (A).

FINDINGS

335. Therefore, in terms of section 17A (3) (b), read with section 16 (2) of the Act, the Court finds as follows:

- (a) The deceased is Ahmed Essop Timol, a South African citizen aged 29 at the time of his death;
- (b) The cause of death is massive head (brain) and chest (vital centre damage and compromised respiration) injury;
- (c) The date of death remains unchanged as 27 October 1971;
- (d) Timol's death was brought about by an act of having being pushed from the 10th floor or roof of the John Vorster Square building to fall to the ground, such act having been committed through *dolus eventualis* as the form of intent and *prima facie* amounting to murder. There is *prima facie* evidence implicating Gloy and Van Niekerk who were on duty and interrogating Timol at the time he was pushed to fall to his death. Rodrigues, on his own version, participated in the cover up to conceal the crime of murder as an accessory after the fact, and went on to commit perjury by presenting contradictory evidence before the 1972 and 2017 inquests. He should accordingly be investigated with a view to his prosecution.

336. In terms of Section 17A (3) (c) of the Act, the record of the proceedings is hereby submitted to the Director of Public Prosecutions.

Recommendations

337. The 2017 re-opened inquest, the first of its kind in South Africa, has revealed a number of lessons to be learned. Of importance is that all branches of the state have to ensure that the boundaries set by the Constitution for the respect of Human Rights and dignity should never be crossed. It should be the task of all branches of the State to begin to develop a culture of intolerance to any form of violation of Human Rights.

338. One of the draw-backs with this re-opened inquest is the fact that the reopening came late in the day when most of the members of the Security Branch involved with the interrogation of Timol and the investigation of Timol's death had passed on. In addition, the Court had to do with the mysterious disappearance of part of the 1972 inquest record that dealt with the evidence of the police officials in Court, and in particular page 3 of the affidavit of Rodrigues which, according to the magistrate's judgment, explained how Timol fell. Consequently, the key police witnesses who would have been called to testify again in regard to the events preceding the fall were not available. It is therefore important for the future that the state ensures that the records of inquests are preserved, considering the fact that the Act provides for re-opening without any limitation as to time.

339. The inquest also revealed that there are many more families³⁹ who are seeking closure on the unanswered questions concerning the death of their relative in detention. They, like all families whose relatives died in detention, need healing. They need closure.

³⁹ The Judge's Registrar, Mr Lesibana Makwela received a number of inquiries from persons who needed assistance to find closure in cases of their relative having died in detention.

340. It is thus the view of this Court that the families whose relatives died in detention, particularly those where the inquest returned a finding of death by suicide, should be assisted, at their initiative, to obtain the records and gather further information with a view to have the initial inquest re-opened. The Human Right Commission, working in consultation with the law enforcements agencies, should be sufficiently resourced to take on this task.⁴⁰

341. It will be remiss of this Court not to address an issue on which Bizos' evidence put a spotlight. This is the impropriety role played by some in the magistracy, prosecuting authorities and medical experts in the past inquest proceedings. Bizos's evidence reveals the role of some of these public officials in being complicit in exonerating members of the Security Branch from the crimes they committed. The 1972 inquest into the death of Timol is one such example. From the outset, it had to take a Court order to allow Timol's family and their lawyers access to case documents, before the inquest commenced. The evidence of the 1972 inquest furthers demonstrate how the prosecution made no effort to obtain evidence other than that of the police and the magistrate attempting to explain away the ante mortem injuries, without any shred of evidence supporting his statement about a brawl.

342. Bizos also makes reference in his publication,⁴¹ to the inquest into the death of Steven Bantu Biko. The much publicised and documented unprofessional conduct of the doctors⁴² who testified in that inquest, illustrates the point. Doctors, like lawyers take an oath, in their profession it is a Hippocratic Oath.

⁴⁰ Without being prescriptive, it would assist if the Human Rights Commission and IPID are sufficiently resourced to undertake the task of preparatory work, in consultation with the NPA, for the re-opening of such inquest at the request of the families concerned.

⁴¹ **"No one to Blame"**

⁴² Dr Lang and Dr Tucker

343. Every professional lawyer and public official survives on integrity. Magistrates and prosecutors are lawyers participating in the administration of justice and are expected to discharge their functions in terms of the Oath they were sworn to uphold.⁴³ For all public office bearers of the State, an oath is sacrosanct. Apart from their knowledge of and experience in the practice of law, lawyers, in particular judicial officers, are expected to bring to bear their honesty, independence, personal and professional integrity and ability to act without fear or favour in the administration of justice. It is not ethical and proper on the part of a judicial officer to preside over or decide cases either out of fear; or in favour of a person, entity or institution; or in expectation of promotion or reward; or in advancement of some real or perceived interest. Judicial officers have to be loyal only to the Constitution and the cause of justice. Public officials in the administration of justice are enjoined by the law to jealously guard against casting aspersions on the integrity of the judicial system, by conducting themselves in a manner contrary to their oath of office. Such conduct has no place in a Constitutional Democracy.

S P MOTHLE
Judge of the High Court.
Gauteng Division, Pretoria.

⁴³ This Court acknowledges that by and large, in particular since the advent of the democratic dispensation, most magistrates, prosecutors and doctors in public service discharge their functions ethically and in accordance with the oaths they took. The views expressed do not include all magistrates, all prosecutors and all doctors who take their oaths seriously.

Evidence Leader:

Advocate JT Pretorius SC

Assisted by:

Advocate S Singh

Instructed by:

National Prosecuting Authority

For the Timol Family:

Advocate H Varney

Assisted by:

Advocate M Musandiwa

Instructed by:

Weber Wentzel inc., Johannesburg.

***For former Members of:
the Security Branch***

Advocate SJ Coetzee

Instructed by:

State Attorney, Pretoria.

***For the SA Police:
on watching brief***


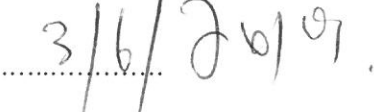
Advocate Lithole

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 76755/2018

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
	
SIGNATURE	DATE

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

MINISTER OF POLICE

Third Respondent

IMTIAZ AHMED CAJEE

Fourth Respondent

YASMIN SOOKA

First Amicus Curiae

DUMISA BUHLE NTSEBEZA

Second Amicus Curiae

MARY BURTON	Third Amicus Curiae
WENDY ORR	Fourth Amicus Curiae
GLENDA WILDSCHUT	Fifth Amicus Curiae
FAZEL RANDERA	Sixth Amicus Curiae
SOUTHERN AFRICA LITIGATION CENTRE	Seventh Amicus Curiae
PAN AFRICAN BAR OF SOUTH AFRICA	Eighth Amicus Curiae
LAW SOCIETY OF SOUTH AFRICA	Ninth Amicus Curiae

JUDGMENT

Flynote

Criminal Procedure – Permanent stay of prosecution – Delay in prosecution – section 35 (3) of the Constitution, 1996 in relation to the delay in prosecution – Factors to consider include the length of the delay, reasons the government relies on to justify the delay, the accused’s assertion of a right to a speedy trial, prejudice to the accused, nature of the offence and public consideration – new factor to add in is the interests of family and/or the victims of the crime – length of delay was unreasonable especially in light of political interference – age and infirmity are to be considered at sentencing - however, no trial prejudice and no exceptional circumstances present to justify radical and far reaching relief of a stay of prosecution – application for stay of prosecution dismissed.

Headnote

The Applicant seeks a permanent stay of prosecution with respect to a charge of murder and another charge. The Applicant alleges that he has suffered a delay in respect of the prosecution which results in an infringement of his right to fair trial in terms of section 35(3) of the Constitution, 1996. The charge of murder relates to the death of Mr Ahmed Timol, an anti-apartheid activist who died on or about 27 October 1971. This case comes before the courts after the reopening of an inquest in 2017 (2017 Inquest) conducted in 1972 following Mr Timol’s death (First Inquest) which

found that Mr Timol had committed suicide and no one alive was responsible for Mr Timol's death. The 2017 Inquest however found that Mr Timol was murdered.

The court discussed the factors to consider for a permanent stay of prosecution namely the length of the delay, the reasons the government relies on to justify the delay, the accused's assertion of a right to a speedy trial, prejudice to the accused, nature of the offence and public consideration. The court also added a new factor, namely, the interest of the family or victims of the crime.

The applicant alleged that he suffers memory loss as a result of his age and therefore will be prejudiced. The court provided that age and infirmity are considered at sentencing or prior to the trial. The court held that there is no prejudice to the accused as there is no evidence to prove that poor memory will taint the fairness of the trial as the State carries the burden of proving guilt beyond reasonable doubt.

The court was faced with the issue of political interference in the National Prosecuting Authority in finalising the prosecution of the applicant. The period in question was considered to be the period between 2003 and 2017. The court directed that the conduct of the relevant officials and others at the time needed to be brought to the attention of the National Director of Public Prosecutions for her consideration so that she may take any necessary action. The court concluded that although there was political interference, investigating it further in this court was not necessary.

The court held that while the delay in prosecution has caused some measure of prejudice, it cannot be said to taint the fairness of the proposed trial which the Applicant is entitled to. The court held the interests of justice and the societal need to ensure accountability for the commission of serious offences and the nature of the crime located in its historical context all militate against the granting of a permanent stay of prosecution. The court dismissed the application grounded in section 35(3) of the Constitution.

KOLLAPEN J (MOSHIDI J and OPPERMAN J concurring)**Introduction**

[1] In this application, the Applicant seeks a permanent stay of prosecution in respect of a charge of murder and one other charge. The application relates to events that span some 47 years and covers large periods of South Africa's painful and turbulent past as well as the steps taken to deal with and come to terms with that past in the building of a new future and society. In broad terms, it involves the death of the late Mr Ahmed Timol, attempts to uncover the truth of what happened to him, the State's decision to prosecute the Applicant for the death of Mr Timol and the Applicant's assertion that he is entitled to a permanent stay of prosecution.

The relief sought

[2] The relief the Applicant seeks is set out fully in the Notice of Motion and is described as follows:

1. "A declaratory [sic] order that the criminal proceedings instituted against the Applicant constitutes an unfair trial against the Applicant as is envisaged in section 35(5) of the Constitution of the Republic of South Africa, Act 108 of 1996.
2. A declaratory [sic] order that the criminal proceedings instituted against the Applicant constitute an infringement of his fundamental rights to a fair trial as is provided for in section 35(5) of the Constitution read with section 342A of the Criminal Procedure Act, Act 51 of 1977.
3. That the Applicant is granted a permanent stay on the charge of murder in the criminal proceedings against the Applicant relating to the death of the late Ahmed Essop Timol on or about the 27th of October 1971.
4. That the First and/or Second Respondents are prohibited from proceeding with the criminal prosecution against the Applicant on a charge of murder relating to the death of Ahmed Essop Timol.

5. That the First and/or Second Respondents are ordered to withdraw the criminal proceedings against the Applicant relating to the death of Ahmed Essop Timol.
6. That the Respondent(s) is/are ordered to pay the costs of this application only in the event of them and/or anyone of them opposing [sic] this application and in such instance only against the Respondent(s) who oppose /opposes this application.
7. Further and/or alternative relief."

[3] In *Sanderson v Attorney-General, Eastern Cape*¹ the Constitutional Court described the relief of a permanent stay of prosecution as being "radical, both philosophically and socio-politically"² and went on to observe that "[i]ndeed it prevents the prosecution from presenting society's complaint against an alleged transgressor of society's rules of conduct. That will seldom be warranted in the absence of significant prejudice to the accused."³

The Respondents

[4] The First to Third Respondents are State parties who all oppose the relief sought. The Fourth Respondent is the nephew of the late Mr Timol and was given leave by this Court to be joined as a party. Whilst he is a party in his personal capacity, he also speaks for the extended Timol family.

The Amici

[5] The applications by the *amici* were not opposed by any of the parties. An order was made at the hearing of the matter admitting them as *amici*. The Court was satisfied that it was in the interests of justice to do so and that they would

¹ 1998 (2) SA 38 (CC). *Sanderson* deals with the delay after a person has become an accused but the four factors distilled were accepted, with qualification, and applied in respect of a pre-trial delay. See *Bothma v Els and Others* 2010 (2) SA 622 (CC) at para [37].

² *Id* at para 38.

³ *Id*.

advance submissions that would be of assistance to the Court in adjudicating the matter.

[6] The first to sixth *amicus curiae* are former TRC commissioners who sought to offer their expertise and unique experience in matters related to reconciliation, amnesty, and the appropriate treatment of crimes committed under apartheid.

[7] The seventh *amicus curiae*, the Southern African Litigation Centre (SALC), has developed expertise in the area of human rights and international law and sought to offer its expertise in the area of the best international law practice in dealing with crimes against humanity.

[8] The eighth *amicus curiae*, the Pan African Bar Association of South Africa (PABASA) is a voluntary organisation of advocates committed to the values of the Constitution such as equality, freedom and dignity.

[9] The ninth *amicus curiae*, the Law Society of South Africa, is an association of attorneys who are committed to the rule of law and accountability for criminal conduct and was admitted on the basis of its experience in that area.

Background facts

The late Ahmed Timol: the man and the political activist

[10]The late Mr Ahmed Timol (Timol), a teacher by profession, was a passionate and courageous advocate for freedom and justice who became actively

involved in the political struggles in South Africa as a member of the South African Communist Party (SACP).

[11]On the night of 22 October 1971, at around 23h00, Timol and his colleague Salim Essop (Essop) were arrested at a roadblock when documents and pamphlets of the banned SACP were found in the boot of the vehicle they were travelling in. Both Essop and Timol were arrested and initially taken to Newlands Police Station from where they were transferred to John Vorster Square by members of the Security Branch.

[12]Essop testified during the Inquest opened in 1972 (1972 inquest) that the last glimpse he had of Timol was when he saw Timol with a black hood placed over his head, being dragged along by two Security Branch officers. Timol, according to Essop, seemed unable to walk normally and the two Security Branch officers were holding him up. Essop testified about the torture he suffered at the hands of the Security Branch officers, such as electrocution, and thought that Timol suffered the same fate, if not worse.

[13]On 27 October 1971 Timol died and the police, in whose custody he was at the time, said he had committed suicide by jumping from Room 1026 on the 10th floor of John Vorster Square. An inquest held in Johannesburg in 1972 came to the same conclusion and found that no person was responsible for his death. It also found that the Applicant was the only other person with Timol when the latter was said to have moved towards the window in Room 1026, opened it,

and jumped out despite unsuccessful efforts by the Applicant to reach Timol before he jumped.

[14]The Timol family were not satisfied with the finding of the 1972 Inquest Court and, determined to uncover the truth and seek justice, began a long process in which they undertook further investigations; obtained new evidence that was not placed before the 1972 Inquest Court; and prevailed upon the authorities and others to seek the reopening of the inquest into Timol's death. Those efforts spanned a long period of time and ultimately resulted in a decision by the Second Respondent to reopen the inquest.

[15]The second inquest was held in the Gauteng Division of the High Court of South Africa in 2017 (the 2017 inquest) before Mothele J. The Court heard evidence from a number of witnesses who knew Timol and who were in detention at the time he was. These witnesses were able to testify with regard to the methods of interrogation and torture that many detainees experienced at the hands of the Security Branch. The Applicant also testified in this inquest, as did members of the Timol family. The court also heard expert evidence from pathologists who concluded that the injuries suffered by Timol prior to the fall were so serious that Timol would not have been able to walk, eat, or drink unaided. The 2017 Inquest Court found that Timol's death was brought about by him having been pushed from the 10th floor or the roof of John Vorster Square with the necessary intent to kill in the form of *dolus eventualis*. The Court also found that the Applicant, on his own version, participated in the cover up to conceal the crime

of murder and that he be investigated with a view to being prosecuted for being an accessory after the fact in respect of the crime of Timol's murder.

[16]The findings of the 2017 inquest were in stark contrast to those of the 1972 inquest with the conclusion being that Timol had been murdered and that the Applicant had participated in the cover up to conceal the murder of Timol and committed perjury.

[17]Of relevance in this application are the events that led to the first democratic elections in 1994 and the agreements reached between the National Party and the liberation movements in dealing with the past which ultimately resulted in the promulgation of the Promotion of National Unity and Reconciliation Act (the "TRC Act").⁴ The Truth and Reconciliation Commission (TRC), which was established in terms of the TRC Act was tasked with establishing "as complete a picture as possible of the nature, causes and extent of the gross violations of human rights"⁵. It was also required to facilitate the granting of amnesty for those who had committed crimes with a political objective and who had made full disclosure of all relevant facts.

[18]The mother of Timol participated in the TRC process at a victims hearing seeking to know who killed her son and the circumstances under which he died. The Applicant did not participate in that hearing and in its final report, the Truth and Reconciliation Commission concluded that:

⁴ 34 of 1995.

⁵ The preamble of the TRC Act.

"[T]he commission finds that the SAP and in particular Colonel Greyling, Captain Bean, Sergeant Rodrigues, Warrant Officer Cloete, Sergeants FJ Ferreira, MC Pelsler and DL Carter were directly responsible for the death of Mr Ahmed Timol. The commission finds further that the inquest magistrate's failure to hold the police responsible for Ahmed Timol's death contributed to a culture of impunity that led to further gross human rights violations".⁶

[19]The Applicant did not apply for amnesty in terms of the TRC process and it was not disputed in these proceedings that the State retained the right to prosecute those who had committed crimes in the past if either they did not apply for amnesty or were unsuccessful in their application for amnesty.

[20]The finalisation of the work of the TRC as well as the amnesty process was concluded in approximately March 2002 when the TRC was dissolved by Presidential Proclamation. What should have followed, according to the submissions of the first to sixth *amici*, was what they describe as a 'bold prosecutions policy' which would require the State to prosecute those who had not applied for amnesty in order to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law. There was however no bold prosecutions policy rather what can only be described as a timid retreat.

[21]What occurred in the period from about 2003 until 2017 was that all investigations into TRC cases and other crimes of the past were stopped as a result of an executive decision taken at a high level that purported to interfere with the National Prosecuting Authority's prosecutorial decision making.

⁶ TRC Final Report, Volume 3, Chapter 6, page 542 at para 61.

[22]The First Respondent describes this interference as follows:

“The only conclusion to arrive at is that the delay in prosecuting the Applicant was not as a result of the First Respondent’s own doing or its malice- it was as a result of the political interference and the ‘severe political constraints’ to which the First Respondent was subjected”.⁷

[23]There was thus what can only be described as high level executive interference on investigating and prosecuting TRC crimes and other crimes of the past in the period from 2003 until about 2017. In an affidavit filed in other proceedings before this Court (*Thembisile Phumelele Nkadimeng v National Director of Public Prosecutions and 8 others*⁸) the former National Director of Public Prosecutions, Advocate Vusi Pikoli describes what he regarded as an assumption on the part of the then Minister of Justice that TRC matters will not be prosecuted. He says that he -

“found this to be a disturbing development as it appeared that at a political level there was an expectation that I would not prosecute TRC cases. I regarded such an expectation as unwarranted interference in my constitutional duty to prosecute without fear favour or prejudice”.⁹

[24]In the same affidavit he then deals with a Memorandum he prepared arising out of this improper interference and concluded:

I complained that such interference impinged upon my conscience and oath of office. I indicated that I was unable to deal with these cases in terms of the normal legal process and sought guidance on the way forward.”¹⁰

⁷ See First Respondent’s Supplementary Affidavit at para 2.12.

⁸ Gauteng Division, case no 35554/2015.

⁹ See Fourth Respondent’s Answering Affidavit, Annexure IC6 at para 49.

¹⁰ Id at para 52.

This Memorandum is dated 15 February 2007 and in September that year, Advocate Pikoli was suspended from office.

[25]The Applicant was arrested and charged with murder on 30 July 2018. He was brought to Court and released on bail. His case has been transferred to this Court where it is currently pending - awaiting the outcome of this application.

The legal basis upon which the relief is founded

[26]The application is advanced on the basis that the Applicant's rights in terms of Section 35(3) of the Constitution - to have his trial begin and conclude without delay - has been violated by the delay of some 47 years. This delay, he contends, has redounded to his prejudice and has undermined his right to a fair trial. He accordingly seeks relief on that basis.

[27]In addition, he argues that his prosecution is premised upon an improper motive as the 2017 Inquest Court did not recommend that he be investigated for murder, but rather as an accessory after the fact to murder and that the charge sheet which charges him with premeditated murder is accordingly advanced for an improper motive given the 2017 Inquest Court's findings.

Preliminary issues for determination

[28]Whilst the Applicant has sought to argue that he has advanced a proper case for the main relief he seeks, he has also raised a point *in limine* which may be conveniently dealt with at this stage.

In Limine

[29] It is argued by the Applicant that in the face of the undisputed political interference that was brought to bear on the prosecutorial machinery - and which I have described above - there is insufficient information before this Court that explains in detail how and why such political interference occurred. The Applicant contends that it is unclear whether the nature of the political decisions arrived at constituted an amnesty and/or a pardon and that this Court is accordingly hamstrung by the lack of such information in determining the relief.

[30] The Applicant therefore takes the position that the Court should not finalise the application before it but rather use its powers to make an order directing that all relevant information relating to the genesis and the detail of the political interference be placed before it before deciding the application.

[31] While the issue of the political interference is a matter of great seriousness, and is one I will deal with in greater detail, including the manner in which the evidence about the interference was revealed, I do not agree that the matter cannot be finalised in the absence of the details the Applicant contends for.

[32] While these details will no doubt be relevant in the writing of the history of this episode in our democracy - and no doubt more will emerge around it - the absence of such detail would not stand as an obstacle to this Court determining the issues before it. In particular, all of the parties are in agreement that there was political interference and that such interference may well have delayed the investigation and prosecution of the Applicant. It does

not take the matter any further to seek the finer detail of how the political interference materialised.

[33] In so far as there was a possible amnesty or pardon, I am of the view, for the reasons that will emerge, that whilst it is extremely unlikely that there was an amnesty or pardon, even if there was, its legal basis and legal validity would be highly questionable. I deal fully with those issues later in this judgment but for now, I am not persuaded that there is any merit in acceding to the request by the Applicant in respect of the point *in limine*.

[34] For these reasons the point *in limine* is not sustainable and is dismissed.

The merits

[35] A few preliminary observations may be necessary in locating the relief sought within its proper legal and factual context.

Pre-trial delay versus prosecution delay

[36] The legal basis for this application is founded upon the right contained in Section 35 (3)(d) of the Constitution which provides that:

“Every accused person has a right to a fair trial, which includes the right –

...

(d) to have their trial begin and conclude without unreasonable delay”.

It is not the case for the Applicant that there has been an unreasonable delay following the commencement of the prosecution in July 2018 and accordingly, this is not an application that activates the provisions of Section 342A of the

Criminal Procedure Act which deals with what was termed as "intra-curial delay" by the High Court in *State v Naidoo*¹¹. This application relates to the alleged delay in the investigation of the matter and the commencement of the prosecution.

The factors necessary to consider when determining relief for a permanent stay of execution

[37] In *Bothma v Els*¹² the Constitutional Court referred with approval to the approach taken in *Sanderson*,¹³ that in determining relief for a permanent stay of prosecution, the Court was required to engage in a balancing exercise in which the conduct of both the prosecution and the accused were weighed and the following considerations examined:

- a. The length of the delay;
- b. The reasons the government assigns to justify the delay;
- c. The accused's assertion of a right to a speedy trial; and
- d. Prejudice to the accused.

[38] The Court however, went on to caution that the above factors did not constitute a definitive check list and added a fifth factor - the nature of the offence and the public policy considerations that may be attached to it.¹⁴ This, in my view, also has relevance in these proceedings as the offence in question is the crime of murder allegedly committed during the apartheid era and, in respect of which,

¹¹ 2012(2) SACR 126 (WCC).

¹² 2010 (2) SA 622 (CC) at para 36.

¹³ *Sanderson v Attorney-General, Eastern Cape* 1998 (2) SA 38 (CC).

¹⁴ *Bothma* above n 9 at para 37.

there has been considerable legal and policy considerations that sought to guide the new democratic society in its approach to such crimes.

[39]A sixth factor may also become important. This relates to the interests of the family and/or the victims of the crime. The role and participation of victims has been a central feature in the approach to dealing with crimes committed in the past. A victim's interests and voice, whilst not dispositive, is an important part of the balancing exercise that *Sanderson* contemplates.¹⁵

Main issues for determination

[40]The following issues accordingly arise for determination and are not to be dealt with in an insulated fashion, but rather as part of a weighted balancing exercise.

The length of the delay

[41]While it remains the assertion of the Applicant that there was a delay of some 47 years from 1971 - when the crime was allegedly committed - to 2018 - when he was charged - the timeline of 47 years is more nuanced and complex than that and may be broadly divided into 3 periods.

I. The period from 1971 to 1994

¹⁵ *Sanderson* above n 10 at para 36.

[42]The relevance of this period and the 1994 cut-off date is that the approximately 23 years it spanned, covered the pre-democratic era. It was a time when a minority government was in power and one that was, in law, responsible for a system of arrest and detention without trial and under whose watch some of the most serious and systemic violations of human rights took place. The Applicant was in the employ of that government and in particular, in its security machinery. It hardly could have been expected from that government that the will to investigate such crimes as the murder of Mr Timol would have emerged and persisted, resulting in a proper investigation and charges being proffered.

[43]On the contrary, the 2017 Inquest found a cover up that was engineered, and of which, the Applicant was a part of and in respect of which he committed perjury. The conclusion of the TRC in this regard - that the First Inquest failed to properly hold the police accountable, thereby contributing to a culture of impunity - is also relevant in this context.

[44]It can therefore hardly be open to the Applicant to suggest that the 23 years from 1971 to 1994 could be characterised as constituting a delay when, objectively speaking, all of the legal and factual considerations to which I have referred, would have militated against any action on the part of the authorities by way of an investigation or a prosecution. The Applicant had elected to make himself a part of that system, had participated in its oppressive machinery, and allegedly sought to cover up his wrong-doing. Surely he cannot now be seen to reap a benefit from such a state of affairs and locating part of the culpability in the delay over those 23 years to that system. To allow him to do so would

seriously offend notions of fair play and the interests of victims that have become a central feature of our criminal justice system.

[45] Accordingly, whilst this period does chronologically fall into the timeline of 47 years, it should not, for the reasons given, be reckoned as constituting part of the delay.

II. The period from 1994 to 2002

[46] This period was characterised by the formation of a newly elected and democratic government. It included policy and legal initiatives to deal with the crimes of the past. An important aspect of these initiatives was the establishment of the TRC which created a process that allowed for victims to be heard as well as for perpetrators of crimes that were politically motivated to apply for and receive amnesty.

[47] During this time it would have been open to all who had committed crimes in the past with a political motive to come forward and apply for amnesty. Provided that full disclosure was made and the crime was committed with a political motive, a perpetrator would have been entitled to obtain amnesty.¹⁶

[48] The amnesty provisions in the TRC Act were not universally accepted, particularly by families of loved ones who were murdered during the pre-apartheid period. This difficulty was eloquently captured by the

¹⁶ Above n 4 at section 20(1) (a)-(c).

Constitutional Court in *Azanian Peoples Organization (AZAPO) v President of the Republic of South Africa*:

“Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty immune from constitutional attack, but the circumstances in support of this course require carefully to be appreciated. Most of the acts of brutality and torture which have taken place have occurred during an era in which neither the laws which permitted the incarceration of persons or the investigation of crimes, nor the methods and the culture which informed such investigations, were easily open to public investigation, verification and correction. Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof. Loved ones have disappeared, sometimes mysteriously and most of them no longer survive to tell their tales. Others have had their freedom invaded, their dignity assaulted or their reputations tarnished by grossly unfair imputations hurled in the fire and the cross-fire of a deep and wounding conflict. The wicked and the innocent have often both been victims. Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible, witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law. The Act seeks to address this massive problem by encouraging these survivors and the dependants of the tortured and the wounded, the maimed and the dead to unburden their grief publicly, to receive the collective recognition of a new nation that they were wronged, and crucially, to help them to discover what did in truth happen to their loved ones, where and under what circumstances it did happen, and who was responsible. That truth, which the victims of repression seek so desperately to know is, in the circumstances, much more likely to be forthcoming if those responsible for such monstrous misdeeds are encouraged to disclose the whole truth with the incentive that they will not receive the punishment which they undoubtedly deserve if they do. Without that incentive there is nothing to encourage such persons to make the disclosures and to reveal the truth which persons in the positions of the applicants so desperately desire. With that incentive, what might unfold are objectives fundamental to the ethos of a new constitutional order. The families of those unlawfully tortured,

maimed or traumatised become more empowered to discover the truth, the perpetrators become exposed to opportunities to obtain relief from the burden of a guilt or an anxiety they might be living with for many long years, the country begins the long and necessary process of healing the wounds of the past, transforming anger and grief into a mature understanding and creating the emotional and structural climate essential for the "reconciliation and reconstruction" which informs the very difficult and sometimes painful objectives of the amnesty articulated in the epilogue."¹⁷

[49] The cut-off date for amnesty applications was initially 14 December 1996 but was extended to 10 May 1997. The TRC was dissolved on 31 March 2002. On 15 April 2003, the President placed the final TRC Report before Parliament and directed that the National Director of Public Prosecutions institute prosecutions where appropriate.¹⁸

[50] This period in the 47 year timeline largely encompassed dealing with the past. During this time the process of victims and perpetrators coming forward was encouraged and it was certainly the view of the former TRC Commissioners that upon the conclusion of the Commission there would be a bold prosecutions policy to deal with perpetrators of crimes who never came forward to seek amnesty.

[51] The TRC report captures this desire in the following terms:

"... the need for an accountable amnesty provision which did not encourage impunity, while at the same time taking account of the rights of victims. Furthermore, it has always been understood that, where amnesty has not been applied for, it is incumbent

¹⁷ 1996 (4) SA 672 at para 17.

¹⁸ Government Gazette (Notice 1539 of 2008) (12 December 2008), 31723. See also the Fourth Respondent's answering affidavit, annexure IC7, the affidavit of Adv Anton Ackermann at para 13.

on the present state to have a bold prosecution policy in order to avoid any suggestion of impunity or of contravening its obligations in terms of international law.”¹⁹

[52] Accordingly, this part of the timeline, to the extent that it constituted a delay, was a delay of the kind that was regarded as necessary and important to allow a new society to come to terms with its past, to allow victims and perpetrators to take advantage of the opportunities created by the TRC Act, and to provide a mechanism – flawed, but the product of a historical compromise - to seek and find closure.

[53] It could not, in my view, be said to be a part of the delay when, by operation of the law, it was a period of hiatus that was contemplated by the TRC Act. Even if it could be regarded as a period of delay, then there are meritorious reasons why it was the kind of delay that could hardly be regarded as culpable. It was a historic and unique time in the history of South Africa. A difficult political compromise was being given effect to. The nation was collectively prevailed upon to give the process an opportunity to succeed in the hope that it would advance the twin objectives of reconciliation and reconstruction. It was imperative that South Africa embrace this process if it were to have any chance of growing as a new nation and overcoming the deep distrust and suspicion that characterised the relationship between its people for so long.

[54] That being the case, one then moves to deal with the third period. It is the delay during this period in which the Applicant locates his case.

¹⁹ TRC Final Report above n 6, Volume 6, Section 5, Chapter 1, page 595 at para 24.

III. The period from 2003 to 2017

[55] This is the period characterised by the political interference to which reference has already been made. There can be little argument that the political interference resulted in TRC cases (and one must assume the Timol case) not receiving the necessary attention by virtue of investigation that could have led to a decision to prosecute.

[56] There are, however, a number of issues that span this period – this includes the issues deemed necessary to consider by *Bothma* i.e. the reasons the government assigns to justify the delay; the accused's assertion of a right to a speedy trial; and the prejudice to the accused – which require special attention.

i. The nature of the interference and its impact on the Prosecuting Authority

[57] Whilst it is manifestly clear that the political interference materially affected the ability of the NPA to properly deal with the TRC cases in that the resources that were necessary to conduct proper investigations were not forthcoming, the NPA cannot, as it seeks to do, portray itself purely as a victim of the political machinations of the time. Whatever form the political interference took, the NPA was enjoined in terms of both its constitutional and legal responsibilities to act on behalf of society and protect the public interest.²⁰

²⁰ See First Respondent's Supplementary Affidavit, page 766 at para 2.30.

[58] Section 179(2) of the Constitution vests exclusive power in the NPA to institute criminal proceedings on behalf of the State,²¹ whilst Section 179(4) requires the NPA to exercise its functions without fear, favour or prejudice and requires the enactment of legislation to give effect to this requirement.²²

[59] That legislation is the National Prosecuting Authority Act²³ and provides as follows:

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

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

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

...

41 Offences and penalties

(1) Any person who contravenes the provisions of section 32 (1) (b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.”

[60] In these circumstances it must follow that the NPA had a duty to assert its authority and independence and resist the political interference. It cannot be

²¹ Section 179(2) of the Constitution provides:

“The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings”.

²² Section 179(4) of the Constitution provides:

“National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice”.

²³ 32 of 1998.

acceptable for it to simply have allowed, as it did, the manipulation of the criminal justice system in the serious manner in which it occurred.

[61] The constitutional design that is evidenced in South Africa's Constitution can only be advanced if the institutions of State accept and discharge their responsibilities in the manner contemplated. Unwavering fidelity to the Constitution and the law must, at all times, be displayed. It is therefore not open to the NPA to seek to absolve itself of its constitutional duty in failing to pursue the TRC cases.

[62] In *S v Basson*²⁴ the Constitutional Court described the importance of this duty in the following terms:

"... In our constitutional state the criminal law plays an important role in protecting constitutional rights and values. So, for example, the prosecution of murder is an essential means of protecting the right to life, and the prosecution of assault and rape a means of protecting the right to bodily integrity. The state must protect these rights through, amongst other things, the policing and prosecution of crime.

...

... By providing for an independent prosecuting authority with the power to institute criminal proceedings, the Constitution makes it plain that the effective prosecution of crime is an important constitutional objective. Where, therefore, a court quashes charges on the ground that they do not disclose an offence with the result that the state cannot prosecute that accused for that offence, the constitutional obligation of the prosecuting authority and the state, in turn, is obstructed. The constitutional import of such a consequence is particularly severe where the state is in effect prevented from prosecuting an offence aimed at protecting the right to life and security of the person. In these circumstances the quashing of a charge in an indictment will raise a constitutional matter."²⁵

²⁴ 2005 (1) SA 171 (CC).

²⁵ *Id* at paras 31 and 33.

[63] The necessity of an independent prosecuting authority was highlighted by the Constitutional Court in *Corruption Watch NPC and Others v President of the Republic of South Africa and Others*; *Nxasana v Corruption Watch NPC and Others*:

“At the centre of any functioning constitutional democracy is a well-functioning criminal justice system. In *Democratic Alliance Yacoob ADCJ* observed that the office of the NDPP “is located at the core of delivering criminal justice”. If you subvert the criminal justice system, you subvert the rule of law and constitutional democracy itself. Unsurprisingly, the NPA Act proscribes improper interference with the performance of prosecutorial duties.

...

Improper interference may take any number of forms. Without purporting to be exhaustive, it may come as downright intimidation. It may consist in improper promises or inducements. It may take the form of corruptly influencing the decision-making or functioning of the NPA. All these forms and others are proscribed by an Act that gets its authority to guarantee prosecutorial independence directly from the Constitution.”²⁶

[64] Of course it may well be asked, what was the NPA required to do in the face of high level political interference? Rather than simply succumb to it, it was open and incumbent upon the NPA to have brought this interference into the open. Victims of those crimes where investigation and prosecution was being suppressed certainly had the right to know what was happening and why such cases were not being prosecuted. Society as a whole had an ongoing interest in the work of the TRC and the follow up that the government had committed itself to. Parliament, which ultimately represents the legislative authority of the State, had a right to know when the letter and spirit of legislation that it had

²⁶ 2018 (2) SACR 442 (CC) at paras 20-21.

passed was being deliberately undermined. None of this occurred and the NPA must accordingly accept the moral and legal consequences of this most serious omission and dereliction of duty on its part.

[65] It is also for these reasons that the conduct of the relevant officials and others outside of the NPA at the time should be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular, to consider whether any action in terms of Section 41(1) of the NPA Act is warranted.

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

ii. The manner in which the Respondents have introduced the issue of political interference into evidence

[66] Very much related to the above, is the manner in which the NPA dealt with the disclosure of the acts of political interference in these proceedings. The main answering affidavit of the NPA was signed on 3 December 2018 and filed shortly thereafter. There was no mention made of the political interference that was brought to bear on the NPA. The Fourth Respondent then filed an answering affidavit in January 2018 wherein he set out, in considerable detail, the political interference. This included the affidavit deposed to by Adv Pikoli in the *Nkadimeng* matter as well as the Memorandum prepared by him in

February 2007 expressing his grave misgivings about such interference and his reluctance to go along with it.

[67] It was only after this affidavit was filed that the NPA then revealed the existence of the political interference and then also filed the affidavit of Adv Macadam which further detailed the extent of the political interference the NPA was subjected to. MacAdam's affidavit was signed on 1 November 2018, well before the NPA's answering affidavit was signed and filed. It begs the question as to why such an important affidavit was not filed as part of the answering affidavit when it was ready and presumably available to being filed.

[68] The suggestion that it was deliberately withheld from this Court is difficult to refute especially given its seriousness and the detailed allegations contained therein of political interference.

[69] This is not how an organ of State, that is meant to act without fear, favour or prejudice and in the public interest, should conduct litigation.

[70] In *Grootboom v NPA*²⁷ the Constitutional Court, in dealing with the manner in which state organs are expected to litigate and be of assistance to Courts, remarked as follows:

"There is another important dimension to be considered. The respondents are not ordinary litigants. They constitute an essential part of government. In fact, together with the office of the State Attorney, the respondents sit at the heart of the administration of justice. As organs of state, the Constitution obliges them to "assist

²⁷ 2014 (2) SA 68 (CC).

and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts."²⁸

iii. The question of whether an amnesty or pardon may have been granted and if so, the consequences thereof

[71]The Applicant, in dealing with what may have prompted the political interference, suggested that an amnesty or a pardon may have been given by the President in respect of TRC cases - including his. He contends that he may well have been the beneficiary of such an amnesty or pardon. At best, this assertion amounts to nothing more than speculation on the part of the Applicant as there is nothing on the papers to suggest that either an amnesty or a pardon was granted to the Applicant.

[72]While there were political attempts made to consider pardons and amnesties post the TRC process, none of them materialised. The Courts took the firm view, particularly in matters relating to pardons, that when such power was exercised, it triggered the duty to hear persons affected and that the exclusion of victims from such a process was irrational.²⁹

[73]Therefore, on this aspect there is simply no evidence of an amnesty or pardon being granted to the Applicant. Even if one was granted, it would, at best, have been a private process to the exclusion of victims and would not survive legal

²⁸ Id at para 30.

²⁹ See *Albutt v CSV* 2010 (3) SA 293 (CC) at para 69 where the Constitutional Court held:

"In my view, the address of former President Mbeki to Parliament itself evidenced and indeed recognised that, given our history, victim participation in accordance with the principles and the values of the TRC was the only rational means to contribute towards national reconciliation and national unity. It follows therefore that the subsequent disregard of these principles and values without any explanation was irrational. On this basis alone, the decision to exclude the victims from participating in the special dispensation process was irrational."

or constitutional scrutiny in the light of the observations of the Constitutional Court in *Albutt*.³⁰

iv. The effects of the delay and the Applicant's assertion to a speedy trial.

[74] Reverting then to the timeline of 47 years that the Applicant advances as being the period of the delay. It must follow that certainly the period from 1971 until 2003 must be excluded for the reasons already given. What remains, and what the Applicant has focussed on in a substantial manner, is the delay from 2003 until 2017. There can be little doubt that this constitutes a substantial period of time and the reasons advanced by the State - namely that of political interference - cannot serve to justify the delay. It is arguable that, excluding the process of the Second Inquest, had the necessary resources been made available to investigate the case and the evidence been placed before the NPA without any political interference, it may have been possible for a decision to prosecute to have been taken somewhere earlier within that 14 year period. That it did not happen, must be largely attributable to the political interference and the willingness of the NPA to yield to such interference.

[75] Whilst it must therefore follow that there was a delay of a lengthy period in bringing the Applicant to trial, this cannot be the end of the enquiry. In *Bothma* the Court, in dealing with a lengthy pre-trial delay which it described as "the extreme belatedness of the prosecution", located the enquiry in the following terms:

³⁰ *Id* at para 74.

“In this context, then, the delay in the present matter must be evaluated not as the foundation of a right to be tried without unreasonable delay, but as an element in determining whether, in all the circumstances, the delay would inevitably and irremediably taint the overall substantive fairness of the trial if it were to commence.”³¹

[76] Further, in *Sanderson* the Court, in dealing with time, observed that:

The amount of elapsed time is obviously central to the enquiry. The right, after all, is to a public trial “within a reasonable time after having been charged”. Understanding how this factor should be incorporated into the enquiry is not straightforward. In the United States and Canada, time is considered to be a “triggering mechanism” which initiates the enquiry and it also functions subsequently as an independent factor in the enquiry. In my respectful view, time has a pervasive significance that bears on all the factors and should not be considered at the threshold or, subsequently, in isolation.

Time does not only condition the relevant considerations, such as prejudice, it is also conditioned by them. The factors generally relied upon by the state - waiver of time periods, the time requirements inherent in the case, and systemic reasons for delay - all seek to diminish the impact of elapsed time.”³²

[77] Even though the delay would have resulted in some prejudice to the Applicant - the trial he is now required to face could have occurred much earlier - the question this Court is required to consider in the balancing exercise is not prejudice in isolation, but rather, as posited in *Bothma*, whether the delay would “inevitably and irremediably taint the overall substantive fairness of the trial if it were to commence”.³³

v. Prejudice to the Accused

³¹ *Bothma* above n 9 at para 35.

³² *Sanderson* above n 10 at paras 28-29.

³³ Above n 26.

[78] The Applicant argues that the lengthy delay will materially prejudice his right to a fair trial. In support thereof he states, “[a]s mentioned at this stage basically all the material witnesses passed away and/or disappeared and the memory of available witnesses, including my own memory, faded significantly because of the passage of time”.³⁴

[79] In *Bothma*, the Court in dealing with what would constitute irreparable trial prejudice said the following:

“These findings call for interrogation of what is meant by irreparable or insurmountable trial prejudice. Irreparable prejudice must refer to something more than the disadvantage caused by the loss of evidence that can happen in any trial. Thus, irretrievable loss of some evidence, even if associated with delay, is not determinative of irreparable trial prejudice. Irreparability should not be equated with irretrievability. Clearly, potential witnesses who have died cannot be revived. Documents that have gone permanently astray may not be capable of recreation. Irreparability in this context must therefore relate to insurmountable damage caused not to sources of testimony as such, but to the fairness and integrity of a possible trial. Put another way, to say that the trial has been irreparably prejudiced is to accept that there is no way in which the fairness of the trial could be sustained.”³⁵

[80] Also in *Wild and Another v Hoffert NO and Others* the Constitutional Court, having found that there was an unreasonable delay, nevertheless concluded that there was no trial related prejudice or exceptional circumstances to justify a permanent stay of prosecution.

“Those interests, so it was held, had to be taken into consideration in assessing the fundamental question whether there had been an infringement of the protection afforded by the constitutional imperative of a speedy trial. Although the starting point is to establish whether the time lapse between charge and trial is reasonable, time is

³⁴ See Applicant's Founding Affidavit at para 63.

³⁵ *Bothma* above n 9 at para 68.

not merely a trigger to an enquiry as to prejudice. It remains the most important consideration throughout the enquiry, bearing on the other considerations and, in turn, being coloured by them. Furthermore, other than is the case in some comparable jurisdictions, no formal line is drawn in our law between particular time spans regarded as acceptable and those that do not pass muster. Our approach, rather, is to make a flexible evaluation of the time elapsed in the context of and in conjunction with all other relevant features of the case, starting with the nature, gravity and extent of the prejudice suffered, or likely to be suffered, by the accused. The most invasive prejudice suffered by a person pending trial is obviously pre-trial incarceration, which entails not only loss of personal liberty but often loss of livelihood and the ability to maintain dependents. Ordinarily, therefore, this form of prejudice will weigh heavily in deciding how long a wait is reasonable."³⁶

[81] In examining the trial prejudice that the Applicant contends he will face, it is not in dispute that the Applicant has access to the full docket in the criminal trial the State seeks to pursue. The Applicant is at liberty to engage experts, if he regards that as necessary, in supporting his defence and importantly, the trial Court, in such proceedings, is constitutionally bound to ensure that the trial is conducted in a fair manner.

[82] The Applicant is currently on bail and his legal fees are being paid for by the State – these exclude the risk of pre-trial incarceration and the financial burden of funding his defence.

[83] The applicant alleges he suffers from memory loss due to old age. Notably, age and infirmity are generally considered at the stage of sentencing. In the case of *S v Hewitt*,³⁷ a 75 year old man convicted of the rape of two girls during the

³⁶ 1998 (2) SACR 1 (CC) at para 6.

³⁷ 2017 (1) SACR 309 (SCA).

1980's and the indecent assault of another girl in 1994 appealed his sentence of eight years imprisonment. The court expressed the view that "[r]egarding his age, whilst courts have considered oldness as a mitigating factor, it is certainly not a bar to a sentence of imprisonment".³⁸ Our courts have, prior to this case, also taken the position that old age is not a bar to imprisonment.³⁹

[84] More so, it is accepted that old age is not a bar to prosecution and imprisonment internationally. In *Papon v France*⁴⁰ the European Court of Human Rights dealt with the case of Maurice Papon who had been convicted of aiding and abetting crimes against humanity during World War II. He appealed his sentence on the basis of his age and ill-health. The court concluded that although Papon was 90 years of age and was ill, he would be under constant medical supervision and therefore there was no bar to his imprisonment.

[85] Similarly in the United States, the case of *Killen v State of Mississippi*⁴¹ which concerned the deaths of 3 persons by members of the Ku Klux Klan on 21 June 1964 is illustrative. In January 2005, Edgar Ray Killen, at the age of 80, was indicted for the deaths. He was found guilty of three counts of murder and was sentenced to serve 20 years for each count.

³⁸ *Hewitt* para 15.

³⁹ *S v Zinn* 1969 (2) SA 537 (A) at 542B-C.

⁴⁰ (No. 1) Application 64666/01.

⁴¹ 958 So. 2d 172 (2007) Mississippi Supreme Court.

[86] Furthermore, there is also no evidence that the alleged poor memory of the Applicant and other witnesses is likely to taint the fairness of the trial. If anything, that remains a neutral factor as it applies equally to the State and ultimately, it is the State that carries the burden of proving guilt beyond reasonable doubt.

[87] Indeed in *Wild* the Court made reference to the continuing remedy that an accused person enjoys during a trial to obviate any possible infringement of rights during trial in the following remarks:

“The conclusion that a permanent stay of prosecution is not appropriate relief to be granted to the appellants here, by no means puts paid to their rights under s 25(3)(a). Those rights and the duty to devise appropriate remedial relief for their infringement will continue throughout the trial. For example, it is trite that a judicial officer, when structuring sentence, is obliged to have regard to pre-trial detention and any other significant prejudice suffered as a result of the case hanging over the accused's head for a protracted period. Similarly, should it transpire that there had indeed been trial-related prejudice, this judgment would constitute no impediment to appropriate relief then being granted.”⁴²

[88] Hence age and infirmity are not grounds upon which the applicant can singularly rely as a form of prejudice. These are grounds which, generally, a trial court must consider at sentencing.

[89] In conclusion, while the delay has caused some measure of prejudice, it cannot be said that it will taint the fairness of the proposed trial or that such a trial, if it proceeds, will not of necessity incorporate the safeguards of fairness that the

⁴² *Wild* above n 30 at para 36.

Applicant is entitled to. In any event, the right to a fair trial is subject to the limitations envisaged in section 36(1) of the Constitution.

Nature of the Crime

[90] The charge the Applicant faces is one of murder and in *Zanner v Director of Public Prosecutions, Johannesburg*, the Supreme Court of Appeal observed that:

“The nature of the crime involved is another relevant factor in the enquiry. This is particularly so in the present case, considering its seriousness. The sanctity of life is guaranteed under the Constitution as the most fundamental right. The right of an accused to a fair trial requires fairness not only to him, but fairness to the public as represented by the State as well. It must also instil public confidence in the criminal justice system, including those close to the accused, as well as those distressed by the horror of the crime. It is also not an insignificant fact that the right to institute prosecution in respect of murder does not prescribe. Clearly, in a case involving a serious offence such as the present one, the societal demand to bring the accused to trial is that much greater and the Court should be that much slower to grant a permanent stay.”⁴³

[91] Similar sentiments were expressed in *Bothma* where the Court alluded to, what it termed, the “profound societal interest in bringing a person charged with a criminal offence to trial.”

“The judgment in *Sanderson* points out that in determining reasonableness it is not only the interests of the accused that must be borne in mind. In making a value judgment, courts must be constantly mindful of the profound social interest in bringing a person charged with a criminal offence to trial, and resolving the liability of the accused. When a permanent stay of prosecution is sought this societal interest will loom very large. “The entire enquiry must be conditioned by the recognition that we are not atomised individuals whose interests are divorced from those of society. We all benefit by our belonging to a society with a structural legal system; a system which

⁴³ 2006 (2) SACR 45 (SCA) at para 21.

requires the prosecution to prove its case in a public forum." The judgment notes that "[w]e also have to be prepared to pay a price for our membership of such a society, and accept that a criminal justice system such as ours inevitably imposes burdens on the accused.

...

The more serious the offence, the greater the need for fairness to the public and the complainant by ensuring that the matter goes to trial. As the popular saying tells us, 'Molato ga o bole' (Setswana) or 'ical'aliboli' (isiZulu) there are some crimes that do not go away."⁴⁴

[92] The seventh *amicus curiae* also urged the Court to seriously consider the nature of the crime in determining the relief sought. They contended that the facts advanced in support of the crime of murder, which is reflected in the indictment, would also sustain a conclusion that the alleged crime in question would constitute a crime against humanity of apartheid. Alternatively, it would constitute a crime against humanity of persecution on racial or political grounds; further alternatively, a crime against humanity of murder. They, together with the eighth *amicus curiae*, argued that each of these offences triggers an obligation in terms of customary international law on the part of the South African government to investigate and prosecute such offences.

On that basis, the seventh *amicus curiae* contend that the application for a stay of prosecution should be refused as to grant it would undermine South Africa's ability to discharge its obligations in terms of international law.

In addition it has urged the Court to construe the charge sheet as constituting the elements necessary to found a crime against humanity, alternatively to use its inherent power to correct the charge sheet to reflect the legal

⁴⁴ *Bothma* above n 9 at paras 41 and 77.

characterisation of the offence as a crime against humanity, further alternatively, to refer the charge sheet back to the First Respondent for reconsideration.

[93] The charge sheet read with the summary of substantial facts locate the alleged crime within the apartheid system which is described in the summary of substantial facts as “a system of institutionalised racial segregation and discrimination that was in existence from 1948”. The State, however, has not elected to charge the Applicant with committing a crime against humanity. I have doubts whether under such circumstances it is open to the Court to amend the charge sheet or to direct that the State reconsiders the charge sheet.

Section 86 of the Criminal Procedure Act, upon which the *amicus* relies on for this submission, provides for the amendment of the charge sheet in very limited circumstances and in the main deals with charge sheets that are defective for want of any essential averments therein and instances where there is a variance between an averment in the charge sheet and the evidence led in Court.⁴⁵ Clearly section 86 is not of application here.

In addition, and given the principle of the separation of powers, the independence of the prosecutorial authority, and its role as set out in Section

⁴⁵ Section 86 (1) provides:

(1) Where a charge is defective for the want of any essential averment therein, or where there appears to be any variance between any averment in a charge and the evidence adduced in proof of such averment, or where it appears that words or particulars that ought to have been inserted in the charge have been omitted therefrom, or where any words or particulars that ought to have been omitted from the charge have been inserted therein, or where there is any other error in the charge, the court may, at any time before judgment, if it considers that the making of the relevant amendment will not prejudice the accused in his defence, order that the charge, whether it discloses an offence or not, be amended, so far as it is and in any other part thereof which it may become necessary to amend.

179 of the Constitution, it may be inappropriate and outside the boundaries of judicial authority for a Court to direct that the charge sheet be amended as the *amicus* suggests. This especially in a matter where the State has already decided to prosecute. It may well be different if one was dealing with a refusal to prosecute which is not the case here.

[94] In argument, counsel for the seventh *amicus*, in response to a question from the Court, accepted that if the prosecution of the Applicant were to continue, that would be a proper discharge of the international obligations South Africa has in terms of international customary law. Under such circumstances it becomes unnecessary to make a determination on whether this Court is dealing with conduct which goes beyond laying the basis for a murder charge but also constitutes a crime against humanity. That argument may well be possible and indeed a compelling one, but given the relief I intend proposing, there would be no need to deal with it and make a determination thereon. Of course it would be open to the State, if they so desire, to reconsider the charge sheet, alternatively, to leave it as it is but upon conviction (if that was to follow) to argue in mitigation that the conduct of the Applicant would also have constituted a crime against humanity. Those are matters for the future and for the Trial Court.

The interest of the victims and the family

[95] While the interests of the victims and family can never be dispositive in an application of this nature, in the context of this application, those interests

warrant mention. The Timol family have, for many years, simply sought to establish what had happened to the late Ahmed Timol and the circumstances that led to his death. They persisted in seeking the truth and finding a measure of justice and, for a long time, their efforts seemed to come to nothing. They were not in search of revenge, but rather the truth and participated in the victims hearing of the TRC. They also implored the Applicant to come forward and reveal all. They accepted that the prospect of amnesty being granted to those responsible for the murder of Timol, was one that was real and a prospect that was contemplated by the TRC Act.

[96] It was largely through their efforts that a decision was taken to reopen the Inquest and the Second Inquest was ultimately held. Now that a decision to prosecute has been taken, and someone is at least indicted for the death of Timol, they too are entitled to the justice that has eluded them for so long. Whatever the outcome of the criminal trial may be, they have an interest in ensuring that there is a proper process to ventilate the truth of what occurred and for the Applicant's guilt or innocence to be determined in a court of law. It will no doubt bring a measure of closure after almost 50 years.

Conclusion on the unreasonable delay challenge

[97] In conclusion, whilst it is accepted that there was a delay that would correctly be characterised as unreasonable in its duration and in respect of the justification advanced for it, there is no evidence that the delay will result in trial prejudice nor are there any exceptional circumstances present that would justify granting the radical and far reaching relief the Applicant seeks.

[98] If anything, the interests of justice; the societal need to ensure accountability for the commission of serious crimes; and the nature of the crime located in its historical context all militate against the grant of the relief sought.

[99] The application grounded in section 35(3) of the Constitution accordingly falls to be dismissed.

Improper Motive

[100] The second thrust of the Applicant's challenge is that the prosecution has been advanced for an improper motive. In this regard, he contends that the Inquest Court concluded that he be investigated for his role as an accessory after the fact to murder and not in respect of the crime of murder.

[101] He therefore concludes that the State, in charging him with the offence of murder, acted on an improper motive as it was a decision not supported by the findings of the Inquest Court.

[102] The Respondents' stance is that the Inquest Court never excluded the possibility that the Applicant be charged with murder and that its conclusions are, nevertheless, not definitive of the charge the State may elect to bring. In addition, they point out that the evidence led at the Inquest Court may well sustain a charge of murder on the basis of *dolus eventualis*.

[103] One has to guard against the temptation to utilise this hearing to determine the strength of the case the Applicant is to meet in the criminal proceedings the

State has initiated. This is not the forum for the ventilation of such issues and, as the ninth *amicus curiae* has pointed out, the Applicant has remedies to deal with those issues, including the utilisation of section 22(c) of the NPA Act and Section 174 of the Criminal Procedure Act. Motive and, reasonable and probable cause, should not be conflated. We are satisfied that the evidence intended to be presented at trial, meets a basic threshold and that the applicant has sufficient remedies available to him to deal with the nature and quality of the evidence intended to be presented against him.

[104] In any event, the First Respondent, without admitting in any manner that the prosecution was brought with an improper motive, argues that the motive will, in any event, be irrelevant. It relies on the dicta in *NDPP v Zuma* to the following effect:

“The court dealt at length with the non-contentious principle that the NPA must not be led by political considerations and that ministerial responsibility over the NPA does not imply a right to interfere with a decision to prosecute. This, however, does need some contextualisation. A prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition, reasonable and probable grounds for prosecuting are absent, something not alleged by Mr. Zuma and which in any event can only be determined once criminal proceedings have been concluded. The motive behind the prosecution is irrelevant because, as Schreiner JA said in connection with arrests, the best motive does not cure an otherwise illegal arrest and the worst motive does not render an otherwise legal arrest illegal. The same applies to prosecutions.

This does not, however, mean that the prosecution may use its powers for ‘ulterior purposes’. To do so would breach the principle of legality. The facts in *Highstead Entertainment (Pty) Ltd t/a ‘The Club’ v Minister of Law and Order* illustrate and explain the point. The police had confiscated machines belonging to Highstead for the purpose of charging it with gambling offences. They were intent on confiscating further machines. The object was not to use them as exhibits – they had enough exhibits already – but to put Highstead out of business. In other words, the confiscation had

nothing to do with the intended prosecution and the power to confiscate was accordingly used for a purpose not authorised by the statute. This is what 'ulterior purpose' in this context means. That is not the case before us. In the absence of evidence that the prosecution of Mr Zuma was not intended to obtain a conviction the reliance on this line of authority is misplaced as was the focus on motive."⁴⁶

[105] There is, in my view, nothing to suggest that the prosecution was advanced for an improper motive.

Costs

[106] None of the parties seek an order as to costs and have cited the *Biowatch* principle in support thereof.⁴⁷

Concluding remarks

[107] This, in many respects, is a difficult case. Not necessarily on account of the legal issues it raises, but rather to the extent that it compels us to revisit our troubled past; examine what occurred there; recognise the need for reconciliation; and the consequences that invariably went with it. Importantly, this case reaffirms that justice and the truth were never meant to be compromised during all that our young society sought to do in dealing with its troubled, turbulent and shameful past.

[108] The refusal of a permanent stay of prosecution is not a signalling that we are required to be vengeful to those who are alleged to have committed serious crimes in the past but rather, an affirmation that the principles of accountability

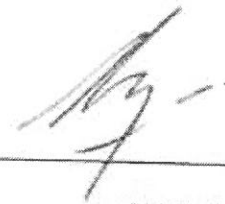
⁴⁶ 2009 (2) SA 277 (SCA) at paras 37-38.

⁴⁷ *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC) at para 21.

and responsibility for breaching the rules of society stand at the doorway of our new constitutional order.

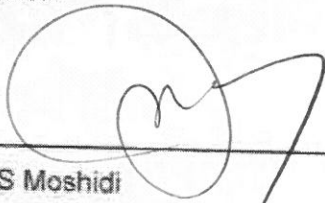
Order

- [1] The application is dismissed
- [2] No order is made as to costs



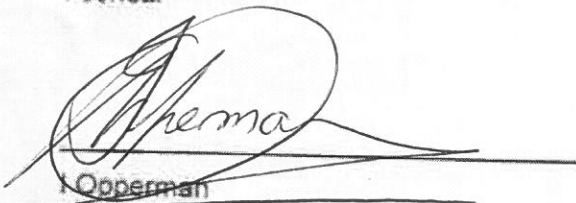
NJ Kollapen
Judge of the High Court of South Africa
Gauteng Division, Pretoria

I concur



DSS Moshidi
Judge of the high court of South Africa
Gauteng, Local Division, Johannesburg

I concur



I Qopperman
Judge of the High Court of South Africa
Gauteng, Local Division, Johannesburg

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Instructed by:	The Director of Public Prosecutions
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Instructed by:	State Attorney
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Instructed by:	State Attorney
Counsel for the Fourth Respondent:	Adv H Varney Adv T Scott
Instructed by:	Legal Resources Centre and Webber Wentzel
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Instructed by:	Lawyers for Human Rights
Counsel for the Eighth <i>Amicus Curiae</i> :	Adv Ngcukaitobi Adv S Kazee Adv J Grant
Instructed by:	Mchunu Attorneys

Counsel for the Ninth *Amicus Curiae*:

Adv G Breytenbach SC

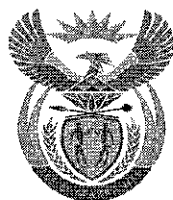
Adv B Tshabalala

Instructed by:

Mkhonto Ngwenya Incorporated Attorneys

Date of hearing: 28th and 29th March 2019

Date of Judgment: 3 June 2019



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 1186/2019

In the matter between:

JOAO RODRIGUES

APPELLANT

and

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS OF SOUTH AFRICA**

FIRST RESPONDENT

**THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

SECOND RESPONDENT

THE MINISTER OF POLICE

THIRD RESPONDENT

IMITIAZ AHMED CAJEE

FOURTH RESPONDENT

Neutral citation: *Rodrigues v The National Director of Public Prosecutions and Others* (1186/2019) [2021] ZASCA 87 (21 June 2021)

Coram: MAYA P, CACHALIA and DLODLO JJA and LEDWABA and POYO-DLWATI AJJA

Heard: 6 November 2020

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 11h30 on 21 June 2021.

Summary: Right to a fair trial – s 35(3)(d) of the Constitution – whether a lengthy delay in commencing criminal prosecution of charges, including murder, allegedly caused by political interference caused the appellant trial-related prejudice justifying a permanent stay of prosecution.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Kollapen, Moshidi and Opperman JJ sitting as a court of appeal):

The application for leave to appeal is granted and the appeal is dismissed.

JUDGMENT

Ledwaba AJA (Maya P, Dlodlo JA and Poyo-Dlwati AJA concurring):

Introduction

[1] The appellant, Mr João Rodrigues, was indicted in the Gauteng Division of the High Court, Johannesburg on a charge of murder and defeating and/or obstructing the administration of justice. The murder charge related to the death of the late Mr Ahmed Essop Timol, on 27 October 1971, at John Vorster Square Police Station. The appellant has not yet pleaded in the criminal trial. He filed an application, which was heard by a Full Court of the Division, seeking:

1. A declaratory order that the criminal proceedings instituted against the Applicant constitutes an unfair trial against the Applicant as is envisaged in section 35(5) of the Constitution of the Republic of South Africa, Act 108 of 1996.

2. A declaratory order that the criminal proceedings instituted against the Applicant constitute an infringement of his fundamental rights to a fair trial as is provided for in section 35(5) of the Constitution read with section 342A of the Criminal Procedure Act, Act 51 of 1977.

3. That the Applicant is granted a permanent stay on the charge of murder in the criminal proceedings against the Applicant relating to the death of the late Ahmed Essop Timol on or about the 27th of October 1971.

4. That the First and/or Second Respondents are prohibited from proceeding with the criminal prosecution against the Applicant on a charge of murder relating to the death of Ahmed Essop Timol.

5. That the First and/or Second Respondents are ordered to withdraw the criminal proceedings against the Applicant relating to the death of Ahmed Essop Timol.'

[2] The Full Court (Kollapen J and Moshidi and Opperman JJ concurring) dismissed the application and refused leave to appeal. The appellant then brought an application for leave to appeal in this Court, which was referred to oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013. The parties were further directed to address the court on the merits.

Amici Curiae

[3] The Southern Africa Litigation Centre and certain former Commissioners of the Truth and Reconciliation Commission (the TRC), namely Yasmin Sooka, Dumisa Buhle Ntsebeza, Mary Maria Burton, Wendy Orr, Glenda Wildschut and Fazel Randera, successfully applied to this Court to be admitted in the proceedings as amici curiae. In addition to filing heads of argument, they were also granted leave to make oral submissions during the hearing of the matter.

Condonation

[4] The appellant sought condonation for the delay in the filing of the record. In his application he ascribed the delay to the effects of the Covid-19 lockdown and the peculiar nature of his funding arrangement with the State. He explained that he is not allowed to incur any litigation costs or expenses without the prior authorisation of the State Attorney and that his attorney's request for authorisation to obtain the record was not answered, probably due to the Covid-19 lockdown. His attorneys ultimately procured the record at their own cost. But by then the period within which it should have been filed had already expired.

[5] The application was not opposed, and given the somewhat unusual circumstances relating to the funding arrangements of the appellant's litigation costs, as well as the effect of the national state of lockdown, I am satisfied that the appellant gave a full and proper explanation for the delay, which justifies granting the condonation application.

Application for leave to appeal

[6] The application for leave to appeal was advanced on the basis that the Full Court erred in concluding that the delay in bringing the prosecution will not taint the fairness of the trial and violate the appellant's right to a fair trial. The appellant submitted that the court erred in finding that he was not being prosecuted for an improper motive and that the court erred in not finding that the alleged political interference by the Minister of Justice and the State President, by stopping the prosecution of TRC cases, caused the unreasonable delay and had the effect of tainting the fairness of the trial he is required to face. He argued that a substantial number of further prosecutions of similar cases involving alleged offences perpetrated during the apartheid-era by police officers, who did not seek amnesty for the offences from the TRC, would follow in future. They would raise the same issues relating to fairness of such prosecutions, as in this case, and it was therefore imperative to get clarity and finality on the approach to be followed by courts in such matters. These factors, he contended, were sufficient to convince the court to grant him leave to appeal.

[7] The Full Court dealt with these contentions when it refused the application for leave to appeal. In my view, the issue of the alleged political interference by the Executive and the State President in the prosecution of crimes such as the present one and its ongoing impact and relevance for prosecutions that may still be instituted in future is certainly relevant. It, inter alia, raises the important

question of what effect, if any, political interference, as a matter of principle, has on the operations of the criminal justice system. For that reason, I think that there is a compelling reason to grant leave to appeal.

[8] The merits of the matter should therefore be considered. But in doing so, this Court should exercise the caution expressed by Ponnau JA in *Hattingh v Furman and Others N.O.*,¹ that the granting of leave to appeal does not suggest in any manner whatsoever that an appellant in such circumstances has made out a case for success on the merits of the appeal because different considerations come into play in the determination of an application for leave to appeal, as opposed to an appeal on the merits.

The merits

[9] In considering the merits of the appeal, I will briefly set out some of the relevant factual background. The late Mr Timol, a political activist and member of the South African Communist Party (SACP), was arrested on 22 October 1971 at a roadblock after the South African Police found pamphlets of the then banned SACP in the boot of his car. He died whilst in detention, on 27 October 1971. In the inquest held in 1972, the appellant's testimony was that Mr Timol opened a window of Room 1026 on the 10th floor of John Vorster Square and jumped out to his death before he could be stopped. The Presiding Magistrate concluded that Mr Timol committed suicide and that no person was responsible for his death.

[10] A second inquest was held in 2017 before Mothle J after recommendations were made to the second respondent, the Minister of Justice and Correctional Services, for the re-opening of the inquest of the deceased in terms of s 17A of the Inquests Act 58 of 1959. In October 2017, Mothle J concluded that Mr Timol

¹ *Hattingh v Furman and Others NNO* [2020] ZASCA 123 (SCA).

was pushed from Room 1026 of John Vorster Square with the necessary intent to kill him and that his death was preceded by torture at the hands of the police, resulting in serious injuries to Mr Timol. He further found that the appellant participated in a cover up to conceal the crime of murder and ordered that he be investigated with a view to being prosecuted.

[11] The appellant was thereafter arrested and charged with the murder of Mr Timol, on 30 July 2018, and then released on bail in the amount of R1 000. His first appearance in the Gauteng Division of the High Court, Johannesburg was on 18 September 2018. The trial court is awaiting the final outcome of this application.

Period before appellant indicted

[12] The period between the death of Mr Timol and the arrest of the appellant is about 47 years. The Full Court aptly divided this period into three sub-periods. The first period is the period from 1971 to 1994 related to the time when the former apartheid government was still in power and when the inquest findings of 1972 concluded that no one was responsible for the death of Mr Timol and immunised the appellant from prosecution. There was no will in the Office of the Attorney General of the day to challenge the inquest ruling and it cannot be ruled out that the Government could have also ensured that the truth about Mr Timol's death was suppressed.

[13] The second period, 1994 until 2002, was characterised by the transition to democracy and the work of the TRC. This included the amnesty mechanisms which were open to those who may have committed political crimes in the past. They had the opportunity to come forward and apply for amnesty. If they were successful in their applications for amnesty they would be insulated from future

prosecutions, but if they were unsuccessful or chose not to apply for amnesty, the risk of future prosecution remained open.

[14] The third period is the period from 2003 until 2017. This is, in my view, the most crucial period, because it relates to the period when the alleged political interference by the Executive, the alleged amnesty granted by the State President and the alleged agreement between Government and other interested parties occurred.

Grounds of appeal

[15] The main grounds of the appellant's appeal, which were also raised before the Full Court and comprehensively addressed by it, were that the envisaged prosecution will infringe the appellant's rights in terms of s 35(3) read with s 12 of the Constitution of the Republic of South Africa, 1996 (a) to have a trial that is procedurally fair and is not instituted and/or prosecuted with an unlawful and/or improper motive; (b) to have the trial begin and be concluded without unreasonable delay; (c) to be informed of the charge against him with sufficient detail to answer it; (d) to adduce and challenge evidence effectively; and (e) to remain silent and not incriminate himself. The appellant further alleged that he was granted amnesty and that there was an agreement that he would not be prosecuted.

[16] In supporting his grounds of appeal, the appellant, who is now an octogenarian, contended that it was unfair to charge him some 47 years after the death of Mr Timol. He further argued that the reason for the delay not to prosecute him was a deliberate decision of the National Prosecuting Authority (NPA), because of the interference by the Executive and the State President.

[17] According to the record, Advocate Vusi Pikoli, who was the National Director of Public Prosecutions (NDPP) during the second period, complained about the interference of the Government when he wanted to prosecute apartheid-era perpetrators who had not applied for amnesty or were denied amnesty. It was not contested that from 2003 to 2017, investigations into the TRC cases were stopped as a result of an executive decision. This was indeed interference with the NPA.

[18] On the issue of whether or not there was undue delay before the appellant was charged, he contended that the delay should be calculated from 1971. The NPA, on the other hand, argued that the period should be calculated from 2018 when the appellant was charged.

[19] It should first be noted that before an accused person can be charged, a police docket is opened and the matter is investigated. Thereafter the Office of the Director of Public Prosecutions (DPP) determines if the accused person should be charged, or if charges should be withdrawn, or if they decline to prosecute.

[20] To determine whether or not there was any undue delay or if, as happened in this case, an inquest should be held, all relevant factors, including the time when the accused person is charged, should be considered. The period before the accused person is charged is important and cannot be ignored. The court should carefully consider whether any delay could be calculated to infringe the accused's right to have his trial begin and be concluded without unreasonable delay under s 35(3)(d) of the Constitution.

[21] The Full Court dealt with the first period (1971 to 1994, totalling 23 years), in detail. I agree with its finding for the reasons it gives that the said period, which

was a pre-democratic era, should not be taken into account in the determination of the delay.

[22] It should be noted that the appellant did not apply for amnesty during the second period (1994-2002) and that it is common cause that those who did not apply for amnesty accepted the risk of future criminal prosecution. This was also the view expressed in the final TRC report that made reference to the need to put in place a bold prosecutions policy to avoid suggestions of impunity or of the South African Government and the NPA not complying with their constitutional mandate to police and prosecute crime.

[23] It is clear, therefore, that if there was any delay in the second period of eight years, it was beyond the control of the prosecution and was largely due to the operation of the Promotion of National Unity and Reconciliation Act 34 of 1995 (TRC Act) and the political circumstances that existed at the time.

[24] As I have said, any person who may have been involved in politically motivated crimes of the past and who elected not to use the mechanisms of the TRC to seek and obtain amnesty, could face the risk of prosecution in the future. There is nothing unfair or inequitable about such a policy. In any event, this accords with what was described as the constitutional obligation upon the State to prosecute crimes in *S v Basson* 2005 (1) SA 171 (CC) paras 31-33, where the Court said:

‘The question that arises is whether the quashing of the charges gives rise to a constitutional matter. In our constitutional State the criminal law plays an important role in protecting constitutional rights and values. So, for example, the prosecution of murder is an essential means of protecting the rights to life, and the prosecution of assault and rape a means of protecting the right to bodily integrity. The State must protect these rights through, amongst other things, the policing and prosecution of crime.

The constitutional obligation upon the State to prosecute those offences which threaten or infringe the rights of citizens is of central importance in our constitutional framework. The effect of the High Court's judgment in this case, given the interpretation of s 319 by the SCA and its previous jurisprudence, is that the State will be prevented from prosecuting the accused on the charges which were quashed, without the State being given an opportunity to appeal the correctness of that decision. This case is different from those in which a charge is quashed, but where the State is able to supplement the charge-sheet in a manner that enables the prosecution to take place. This course is not open to the State here.

The importance of the State's duty to prosecute crime is implicit in s 179(2) of the Constitution, which provides that:

"The prosecuting authority has the power to institute criminal proceedings on behalf of the State, and to carry out any necessary functions incidental to instituting criminal proceedings."

By providing for an independent prosecuting authority with the power to institute criminal proceedings, the Constitution makes it plain that the effective prosecution of crime is an important constitutional objective. Where, therefore, a court quashes charges on the ground that they do not disclose an offence with the result that the State cannot prosecute that accused for that offence, the constitutional obligation of the prosecuting authority and the State, in turn, is obstructed. The constitutional import of such a consequence is particularly severe where the State is in effect prevented from prosecuting an offence aimed at protecting the right to life and security of the person. In these circumstances the quashing of a charge in an indictment will raise a constitutional matter.'

[25] In my view, the Full Court correctly summed up the effect of the period spanning 1994 to 2002 in paras 52-53 of its judgment, where it said:

'Accordingly, this part of the timeline, to the extent that it constituted a delay, was a delay of the kind that was regarded as necessary and important to allow a new society to come to terms with its past, to allow victims and perpetrators to take advantage of the opportunities created by the TRC Act, and to provide a mechanism – flawed, but the product of a historical compromise – to seek and find closure.

It could not, in my view, be said to be a part of the delay when, by operation of the law, it was a period of hiatus that was contemplated by the TRC Act. Even if it could be regarded as a period of delay, then there are meritorious reasons why it was the kind of delay that could hardly be regarded as culpable. It was a historic and unique time in the history of South Africa.

A difficult political compromise was being given effect to. The nation was collectively prevailed upon to give the process an opportunity to succeed in the hope that it would advance the twin objectives of reconciliation and reconstruction. It was imperative that South Africa embrace this process if it were to have any chance of growing as a new nation and overcoming the deep distrust and suspicion that characterised the relationship between its people for so long.'

The period 2003 - 2017

[26] It was during this 14 year period that the Executive adopted a policy position conceded by the State parties that TRC cases would not be prosecuted. It is perplexing and inexplicable why such a stance was taken both in the light of the work and report of the TRC advocating a bold prosecutions policy, the guarantee of the prosecutorial independence of the NPA, its constitutional obligation to prosecute crimes and the interests of the victims and survivors of those crimes.

[27] All these considerations, either viewed individually or collectively, should have stood in the way of any such a moratorium on the prosecution of TRC era cases. That it happened despite the constitutional, legal and other considerations suggests disdain for those important considerations and interests. The Full Court rightly recommended a proper investigation into these issues by the NDPP and a determination whether any action in terms of s 41(1) of the National Prosecuting Authority Act 32 of 1998 (NPA Act) was necessary.

[28] Section 179(2) of the Constitution vests exclusive power to the NPA to institute criminal proceedings on behalf of the State and s 179(4) requires the NPA to exercise its functions without fear, favour or prejudice and requires the enactment of legislation to give effect to this requirement.

[29] That legislation is the NPA Act which provides in relevant part:

‘32 Impartiality of, and oath or affirmation by members of prosecuting authority -

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

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

...

41 Offences and penalties

(1) Any person who contravenes the provisions of section 32(1)(b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.’

[30] The ineluctable conclusion in all the circumstances is that political decisions were taken by the Executive which may have affected the investigation and prosecution of the TRC cases. Be that as it may, however, whether the nature of the political decisions amounted to a lawful pardon or amnesty – an issue which was not raised in the Full Court and which the appellant can still raise during the plea proceedings in the trial – remains unclear on the available evidence. I agree entirely with the Full Court’s finding that while the issue of political interference is a matter of great seriousness, the absence of detail as to why it occurred was not an impediment to the determination of the matter. There is simply no evidence showing how the political interference impacts on factors relating to whether the substantial fairness of the trial is tainted.²

[31] It is firmly established that an application for the permanent stay of prosecution should not be easily granted. In *Sanderson v AG Eastern Cape*,³ the Constitutional Court pointed out that such an application has the effect of

² *Bothma v Els* [2009] ZACC 27; 2010 (2) SA 622 (CC) para 35.

³ *Sanderson v AG Eastern Cape* 1998 (2) SA 38 (CC).

depriving society of presenting a complaint against someone who has transgressed its rules. This is such a central feature of any functioning democracy that it should never become diluted or distorted. On the contrary, any application for a stay must be considered in the context of how it impacts on the ability and the imperative of the State to carry out this important function.

[32] In *Bothma v Els*,⁴ the Constitutional Court reiterated the approach taken in *Sanderson*. It held that in determining relief for a permanent stay of prosecution, the court is required to engage in a balancing exercise in which the conduct of both the prosecution and the accused are weighed and the following considerations examined: the length of the delay, the reasons the government assigns to justify the delay, the accused's assertion of a right to a speedy trial and prejudice to the accused. The Constitutional Court, however, did not regard these factors as constituting a closed list and indicated that the nature of the offence and the public policy considerations that may be attached to it would also be a relevant consideration. It is ultimately a value judgment the court brings to bear after a proper consideration of the evidential material relating to the relevant factors.

[33] The Full Court dealt with each of these factors in some detail. I do not intend to repeat what is contained in its judgment and its conclusions in this regard as the appellant did not take issue with that analysis, with which I agree. I cannot find that the Full Court erred in exercising the value judgment that it did or that it misdirected itself in any manner justifying the interference of this Court.

[34] There is another important factor to consider. In *Zanner v Director of Public Prosecutions, Johannesburg*,⁵ this Court said:

⁴ Footnote 2.

⁵ *Zanner v Director of Public Prosecutions, Johannesburg* [2006] ZASCA 56; 2006 (2) SACR 45 (SCA) para 21.

'The nature of the crime involved is another relevant factor in the enquiry. This is particularly so in the present case, considering its seriousness. The sanctity of life is guaranteed under the Constitution as the most fundamental right. The right of an accused to a fair trial requires fairness not only to him, but fairness to the public as represented by the State as well. It must also instil public confidence in the criminal justice system, including those close to the accused, as well as those distressed by the horror of the crime. It is also not an insignificant fact that the right to institute prosecution in respect of murder does not prescribe. Clearly, in a case involving a serious offence such as the present one, the societal demand to bring the accused to trial is that much greater and the Court should be that much slower to grant a permanent stay.'

These comments apply with equal force in this case.

[35] The appellant did not complain that there was a delay to charge him after the ruling of Mothle J in the inquest and did not contend that any evidence upon which criminal charges against him could be formulated before those proceedings. Neither did he complain that after his first court appearance in July 2018, the NPA unreasonably delayed in proceeding with the trial. The provisions of s 342A(1) and (2) of the Criminal Procedure Act 51 of 1977⁶ are, therefore, not applicable. Ultimately, there is no evidence that the 47 years pre-trial delay would inevitably taint the overall fairness of the trial.

⁶ Section 342A. Unreasonable delays in trials:

'(1) A court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness.

(2) In considering the question whether any delay is unreasonable, the court shall consider the following factors:

(a) The duration of the delay;

(b) the reasons advanced for the delay;

(c) whether any person can be blamed for the delay;

(d) the effect of the delay on the personal circumstances of the accused and witnesses;

(e) the seriousness, extent or complexity of the charge or charges;

(f) actual or potential prejudice caused to the State or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of cost;

(g) the effect of the delay on the administration of justice;

(h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued;

(i) any other factor which in the opinion of the court ought to be taken into account.'

[36] The appellant has been furnished with copies of the police docket, a summary of substantial facts and the indictment. His version of the events of 27 October 1971 in the inquest in no way suggests that his memory has faded due to old age as he contended before us. In any event, as the Full Court pointed out old age and infirmity would be relevant at the sentencing stage and are not grounds upon which the appellant can rely upon as a form of prejudice.

[37] The right to adduce evidence and challenge the State's evidence can best be dealt with during the trial proceedings. The appellant testified at the second inquest proceedings and challenged the evidence led there. He knows exactly what case the State intends to put forward. Furthermore, the fact that he has been charged with premeditated murder whilst Mothle J, in his judgment, referred to him as an accessory does not, in my view, assist the appellant because the Judge did not prescribe the charges to be preferred against the appellant. The NPA has the prerogative to formulate charges based on the available evidence.

[38] In passing, it is interesting to note that the appellant seeks a permanent stay of the proceedings in respect of the murder charge only. However, the evidence that would be presented by the State in respect of the second charge of defeating the ends of justice or obstructing justice is inextricably interwoven with the death of Mr Timol. One is left wondering as to the appellant's stratagem in this regard.

[39] For all these reasons, I am not persuaded the appellant has established that he has or will likely suffer trial-related prejudice if he is not granted a permanent stay of prosecution and is brought to trial. The trial court will be best suited to deal with any issue of potential prejudice. The appeal must, accordingly, fail.

[40] Regarding the issue of costs, based on the nature of this case, it is not appropriate to make an order of costs against the appellant.

[41] In the result, I make the following order:

The application for leave to appeal is granted and the appeal is dismissed.

A P LEDWABA
ACTING JUDGE OF APPEAL

Cachalia JA

[42] I have read the judgment of Ledwaba AJA (the first judgment). The facts pertaining to this appeal and much of the law have been set out in detail by the court a quo, and recounted in the first judgment. I agree with the conclusion in the first judgment that the court a quo correctly dismissed the appellant's application for his prosecution to be permanently stayed. My reasons differ slightly. I, however, disagree with the first judgment that the appellant has made out a proper case for the appeal to be entertained by this Court. There were no compelling reasons to entertain this appeal, much less reasonable prospects of success. I would accordingly dismiss the application for leave to appeal against the order of the high court. My reasons follow.

[43] It is apparent that even though the appellant sought broadly formulated and overlapping relief in the court a quo,⁷ what he wanted in substance was a permanent stay of his prosecution. This is how the court a quo understood it and, which counsel, who appeared on his behalf in this Court, confirmed.

⁷ Paragraph 1 above.

[44] Before I deal with what appear to be the main grounds for the stay application, the appellant advanced two other grounds, also to support the stay application. First, he contended that the President had granted him a pardon or amnesty in terms of s 84(2)(j) of the Constitution.⁸ Secondly, he argued that there was an agreement by the Government involving the President, the Minister of Justice and the NPA not to prosecute apartheid-era crimes. There is no merit in either of these complaints.

[45] As regards the pardon or amnesty allegedly granted by the President, the appellant did not make out any case, much less provide any facts to support this startling written submission in his heads of argument. In addition, because the President is the sole bearer of all obligations pertaining to pardons under s 84(2)(j) he had to be joined in these proceedings because of his legal interest in the matter, but was not.⁹ The court a quo therefore correctly rejected this ground.

[46] The same criticism may be made regarding the second equally astonishing ground, ie that there was an agreement by senior State officials, including the President, not to prosecute politically motivated apartheid-era crimes. This argument was advanced for the first time in the appellant's written heads of argument in the present application. It must fail for the same reasons as the first ground. In addition, if there was any such secret agreement, it would probably be unlawful and unconstitutional, and would fall to be set aside on multiple grounds. It is unnecessary to explore this question further in the judgment.

[47] It bears mentioning, as I pointed out earlier, that the appellant seeks only a stay of prosecution. But what he has done is simply merge these arguments

⁸ Section 84(2)(j) of the Constitution provides that the President is responsible for 'pardoning or relieving offenders and remitting any fines, penalties or forfeitures'.

⁹ *Minister of Justice and Constitutional Development v Chonco* [2009] ZACC 25; 2010 (4) SA 82 (CC) paras 40 and 44.

regarding an agreement or pardon, which are not supported by any facts, to buttress the case for a permanent stay of his prosecution. If there was a pardon or *lawful* agreement pertaining to the prosecution of apartheid-era crimes that would be the end of the matter. There would be no need for a stay application. Put differently, the speculative amnesty or agreement not to prosecute these crimes are irrelevant to the stay application and were advanced for no reason other than to add colour to the stay application.

[48] I now turn to the appellant's main grounds in support of the application for a permanent stay of the prosecution. These were: firstly, the unreasonable delay of 47 years in instituting the prosecution; secondly, the alleged political interference and pressure on the NPA from senior government officials not to prosecute apartheid-era crimes, which contributed to the delay; thirdly, that the decision to prosecute the appellant on a charge of murder was made for an improper purpose, as it was not supported by the findings of the Inquest Court; fourthly, the alleged infringement of his right to adduce and challenge evidence occasioned by the delay and the State's failure to respond properly to his request for further particulars to the charges against the appellant; and finally, that the NPA and the Minister of Justice allegedly withheld relevant information from the court *a quo* in response to the stay application.

[49] Before I deal with these grounds it is noteworthy that the law regarding stays of prosecution is settled and straightforward. The court *a quo* dealt with the important cases on the topic and applied them, as did the first judgment. I shall not burden this judgment by referring to them. The appellant does not suggest that the court *a quo* – constituted by three judges – misdirected itself either in regard to the applicable legal principles or the facts. He simply wants this Court to grant his application for leave to appeal on the grounds that this Court may come to a different conclusion.

[50] The cases on this topic have all been concerned with delays in the commencement of a trial where reliance has been placed on the constitutional right of an accused, in s 35(3)(d) of the Constitution, to have his trial begin and conclude without unreasonable delay. Briefly stated, where there has been an unreasonable delay – and there can be no quibble that in this case the delay was extraordinary – the central enquiry is whether the accused's trial-related interests have been prejudiced by the delay. For the courts have made clear that an unreasonable delay does not per se infringe the accused's right to a fair trial.

[51] Permanent stays are almost never granted following delays in the commencement and conclusion of a trial.¹⁰ This is because a permanent stay is an exceptional remedy. It may only be granted where the delay is egregious and has resulted in irreparable trial-related prejudice. Moreover the trial-related prejudice must be demonstrably clear ('definite not speculative'). More often than not, where there is a delay, but no clear trial-related prejudice, there are a range of less drastic remedies available to ameliorate any broader prejudice an accused may suffer. These include a mandamus requiring the prosecution to commence the trial forthwith, denying it a postponement of the trial or awarding damages to an accused following an acquittal.

[52] Apart from the delay and the consequent prejudice to the appellant that may have resulted therefrom, the other grounds relied upon by the appellant to support the stay are either speculative or amenable to being ameliorated through less drastic remedies. The first is the accusation of political interference that resulted in the initial decision not to prosecute apartheid-era crimes, including the present case, and contributed to the delay. The NPA disclosed this interference

¹⁰ The exception is *Broome v Director of Public Prosecutions, Western Cape and Others; Wiggins and Another v Acting Regional Magistrate, Cape Town and Others* 2008 (1) SACR 178 (C). That case turned on its narrow facts where the court held that the loss of evidence occasioned by the delay of 7 years had caused irreparable prejudice to the accused in preparing a proper defence.

but insisted there was no trial-related prejudice. Allied to this ground is the contention that the prosecution is being pursued for an improper purpose, which overlaps with the case of political interference being made. The court a quo rejected both contentions. Its conclusions cannot be faulted.

[53] I should add that the fact of this political interference in the decision not to initially prosecute apartheid-era crimes was the main ground advanced by the appellant to argue that this was a compellable reason for this Court to grant leave. The first judgment inclines to granting leave on this ground, but in the absence of any demonstrable trial-related prejudice I am constrained to disagree that a proper case for leave was made out. And this Court has already dealt with the problem, as I point out below.

[54] The contention that political interference has tainted a decision to prosecute – or not to prosecute – has gained increased currency in recent years as individuals who wield political power seek to shield themselves from being held to account for their actions in criminal courts. One such case, is that of the erstwhile President of the Republic, Mr Jacob Zuma, who has sought to avoid being prosecuted on, inter alia, the ground that there was political interference in the original decision not to prosecute him, which tainted the subsequent decision to prosecute him.

[55] The issue arose pertinently in *National Director of Public Prosecutions v Zuma*,¹¹ even though it did not concern a permanent stay specifically. In dealing with Mr Zuma's allegation that there had been political interference with a prosecutorial decision not to prosecute him, which he claimed had tainted the subsequent decision to prosecute him, the court said the following:

¹¹ *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) para 37.

‘A prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition, reasonable and probable grounds for prosecuting are absent . . . which in any event can only be determined once criminal proceedings are concluded. The motive behind the prosecution is irrelevant . . .’

[56] Applying this dictum to the present matter, it is apparent that the political interference that admittedly happened did not make the decision to prosecute the appellant wrongful. If, therefore, the prosecution is not wrongful, and no trial-related prejudice has occurred as a result of this interference, the remedy of a permanent stay is simply not competent. The fact that the NPA and the Minister did not disclose the full extent of the political interference when it filed its first set of answering affidavits, is to be deprecated, but is not a ground to grant a permanent stay. There is, therefore, no reason to revisit this question in this case.

[57] The allegation that the prosecution for murder is being pursued for an improper purpose is similarly groundless. The appellant contends that the Inquest Court found that there was sufficient evidence for him to be prosecuted as an accessory after the fact to murder, but not for murder. The NDPP is not bound by findings of an Inquest Court. It has a discretion to charge an accused with any crime, the only qualification being that there is reasonable and probable cause for the prosecution on a charge. If there is not – a matter that can only be decided if the appellant is acquitted on the murder charge – he will be entitled to pursue a damages claim against the NDPP. He, therefore, has a remedy and is not entitled to a permanent stay on this ground either.

[58] The contention that the appellant’s right to adduce and challenge evidence is being infringed by the failure of the prosecution to provide him with further particulars to prepare for trial is utterly hopeless. He complains that in having to respond to the charge of murder allegedly committed in the execution of a

common purpose, he requested further particulars regarding the precise acts he is alleged to have committed in furtherance of the common purpose. The NDPP, he says, has refused to answer the questions insisting that the case is based on circumstantial evidence. It also refuses to provide clear answers to questions pertaining to the alleged torture that Mr Timol endured before his death and the acts allegedly committed by the appellant in this regard.

[59] The appellant is represented by experienced counsel. He would therefore be aware that this is a complaint that can only be entertained by a trial court. He has a remedy to object to the charge and apply to the trial court to compel the production of the particulars under s 85 of the Criminal Procedure Act 51 of 1977.¹² If the court is persuaded that the application is well-founded, and orders that the particulars be furnished to the appellant, he may apply for the charges to be quashed, if the prosecutor fails to do so. That would have the same effect as granting a permanent stay. The appellant therefore conflates a possible remedy for the delivery of further particulars with the drastic remedy for a permanent stay. This complaint is, therefore, irrelevant to his present application for a permanent stay. The court a quo rightly rejected it.

[60] What remains is the delay itself. The first judgment, with respect, correctly holds that there is no basis to interfere with the court a quo's conclusion that there is no evidence that the delay in this case will result in any trial-related prejudice. The fact that there was political interference that contributed to the delay takes

¹² Section 85. Objection to charge:

(1) An accused may, before pleading to the charge under section 106, object to the charge on the ground –

(a) ...

(b) ...

(c) ...

(d) that the charge does not contain sufficient particulars of any matter alleged in the charge ...

(e) ...

(2)(a) If the court decides that an objection under subsection (1) is well-founded, the court shall make such order relating to the amendment of the charge or the delivery of particulars as it may deem fit.

(b) Where the prosecution fails to comply with an order under paragraph (a), the court may quash the charge.'

the matter no further. The Timol family have also been victims of this delay; they have waged what can only be described as a heroic struggle with dogged determination to bring the alleged perpetrators of these crimes to trial. The public interest demands that their efforts are not in vain.

[61] It must be mentioned that once the appellant pleads and his trial proceeds, it shall be the duty of the trial judge to ensure the fairness of the trial. The court will be aware that because the trial is proceeding many years after Mr Timol's death, the evidence available to the State and the defence may be less than satisfactory. As the Canadian Supreme Court has observed with regard to an accused's difficulties caused by an inordinate delay:

'Difficulty may well be experienced by an accused in gathering rebuttal evidence . . . [T]he potential for such difficulty is likely one of the reasons why the prosecution bears the heavy onus of *proving all aspects of guilt beyond reasonable doubt*. In that regard the criminal [justice] system has always taken into consideration that it will occasionally be difficult for an accused to demonstrate innocence, and has removed the need to do this, by putting a high onus of proof on the Crown.'¹³

The trial court will thus have to be astute to whatever deficits there may be in the evidence because of the passage of time, and which may have prejudiced the appellant in conducting his defence. And, if it appears that there are shortcomings in the evidence as a result of which the appellant has been prejudiced in preparing or conducting his defence, this will redound to his favour. He will also have an opportunity to appeal against the judgment if the trial court misdirects itself in this regard.

[62] In conclusion, the appellant has not demonstrated any legal or factual basis that he has any reasonable prospects of success in an appeal. Neither has he

¹³ *R v Carosella* [1997] 1 SCR 80 para 105, cited with approval in *Bothma v Els* [2009] ZACC 27; 2010 (2) SA 622 (CC) para 81.

advanced a compellable reason for this Court to entertain the appeal. The order I would thus make is that the application for leave to appeal is dismissed.

A CACHALIA
JUDGE OF APPEAL

APPEARANCES

- For the appellant: J G Cilliers SC (with S J Coetzee SC)
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- For the 1st, 2nd and 3rd respondents: K Tsatsawane SC (with T Seboko)
Instructed by: The State Attorney, Pretoria
The State Attorney, Bloemfontein
- For the 4th respondent: H Varney SC (with T Scott)
Instructed by: Legal Resources Centre, c/o Webber
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Webbers Attorneys, Bloemfontein
- For the 1st amicus curiae: B Meyersfeld (with S Nakhjavani)
- For the 2nd amicus curiae: K Pillay SC (with K Premhid)

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 445/2019

CASE NO: 139/1985

REPORTABLE: YES / NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED.

04 MARCH 2022

In the matter of:

**THE RE-OPENED INQUEST INTO THE DEATH OF
DR NEIL HUDSON AGGETT**

JUDGMENT

MAKUME J:

INTRODUCTION

[1] Dr Neil Hudson Aggett (Neil) a 28-year-old medical practitioner turned trade Unionist died on the 5th February 1982 whilst being held in custody at the then John Voster Square Police Station in terms of Section 6 (1) of the Terrorism Act No. 83 of 1967.

[2] His lifeless body was found hanging in cell number 209 on the 2nd floor. A scarf or cloth of Kenyan origin was found around his neck and tied to the grill.

[3] Neil was the youngest in the family of 3. He was born in Kenya in the year 1955. The family emigrated to South Africa early in 1960 and settled in the Cape Colony where the young Neil later qualified as a medical practitioner in the year 1976 from the University of Cape Town.

[4] During his days at the University he met an equally human rights conscious medical student Elizabeth Floyd (Liz). A romantic relationship developed between them and after Neil qualified the two lived together in a cottage on a wine estate. Liz told the court that it was a simply home with no electricity.

[5] Neil was against taking part in the military activities of the South African Army having seen how they dealt with the 1976 Soweto Youth uprising. He became a conscription dodger, left Cape Town and settled in Johannesburg where he joined the trade union movement for no salary whilst working part time as a medical practitioner at the then Baragwanath Hospital (Chris Hani) as well as other clinics in Soweto including Tembisa Hospital.

[6] It was during this time that he met a number of trade union and human rights activists amongst then Oscar Mphetha, Frank Chikane, Maurice Smitthers, Barbara Hogan, Parmanaith Naidoo, Firoz Cachlia, Jan Theron and others.

[7] It is that association that attracted the attention of the security branch police to him. Liz had by then joined him and they both lived a modest life in a flat in Fox Street, Johannesburg. Liz had also in the meantime become qualified as a medical practitioner. It seems that it was their style of living which the security police could not understand why a young white couple with good qualifications chose to abandon all privileges that were available to white people and associated with people who according to them where intend to topple the white minority government.

[8] On the 27th November 1981 in the early hours Neil and Liz were arrested whilst spending the night at a friend's place in Crown Mines. Liz was taken to Hillbrow police station whilst Neil was taken to Pretoria and later to John Voster Square both in terms of Section 6 of the Terrorism Act. They never saw each other again.

[9] On the morning of the 5th February 1982 the security police announced that Neil had committed suicide by hanging himself in his cell overnight. When the news was broken to Liz at about 10am she screamed "You killed him" referring to the security police. That has indeed been the belief of not only the progressive South African community but also international organisations.

[10] His death in detention drew wide spread international attention and condemnation that had not been seen since the death of Steve Biko and Ahmed Timol (both in detention). Workers downed tools, commemoration rallies were organised addressed by prominent Community and Human rights activists amongst them the late Bishop Tutu at Wits University and elsewhere.

[11] Neil was the first white person to die whilst in police custody. In the Citizen Newspaper of the 8th February 1982 it was reported that General Mike Geldenhys the then commissioner of police had released a statement that "Dr Neil Aggett 28 a Transvaal Secretary for the Food and Canning Workers Union was found hanged in his cell at Security Police headquarters and everything indicated he had taken his own life."

[12] An Inquest was held in 1982 presided over by Magistrate Kotze who found that no one was to blame for the death. Kotze accepted the version of the police despite overwhelming evidence to the contrary.

[13] That finding was never accepted by the family, the international community and the large friends and colleagues of Neil. It left the family devastated, the legal community asked questions, newspapers reported widely and condemned the finding. It was to the South African Government business as usual starting with Timol, Biko, Mapetla Mohapi etc. They all took their own lives to withhold information and protect their friends who were organising a revolution to take over the government.

[14] With the advent of the democratic dispensation in South Africa in 1994 renewed attempts were made to find the truth about Neil's death. The law firm

Webber Wentzel duly assisted by private investigators as well as counsel went about gathering evidence which enabled them to approach the National Director of Public Prosecution (NDPP) with information that had not been available or had not been properly considered by the Magistrate who conducted the Inquest in the year 1982. The office of the NDPP made recommendations to the Minister of Justice and Correctional Services for a reopening of the Inquest in terms of Section 17(A) (1) of the Inquest Act 58 of 1959 ("the Act"). After some years it was only when the present Minister of Justice Honourable Lamola took office that the matter was expedited. The Minister in turn issued a directive to the Judge President of this Division to designate a judge to preside over the re-opened Inquest. This is the second such Inquest following that of Ahmed Timol which was presided over by my brother Mothle J during the year 2017.

[15] It was brought to my attention by the evidence leader during the pre-hearing meeting that because of the long wait since 1994 some documents had gone missing and attempts were being made to search for some in archives, some witnesses especially those involved in the arrest and detention period had passed away.

[16] Despite these shortcomings it did not deter the evidence leader to proceed and present available evidence in the form of affidavits in the first Inquest as well as affidavits by persons who had been detained prior to and during Neil's death. Some former detainees not only deposed to affidavits but availed themselves freely and gave oral evidence before this court. This court is indebted to all of them as it is their evidence which was widely publicised in the media that assisted in informing not only this court but the general public as to what exactly used to happen on the 10th floor of John Voster Square those days. One of the detainees Naidoo told this court that during his torture the Security Branch Officer told him that the 10th floor which they referred to as "Timol" floor will be renamed Naidoo when they are finished with him.

[17] David Smuts a Namibian Judge in his book titled "Death Detention and Disappearance" writing about the activities of Koevoet a South African Police Unit as to how they treated Swapo detainees and other insurgents in the 1980s writes as follows:

“A system of torture was central to political trials (and for that matter: to detention without trial) in Namibia in the 1980s. Not only were the defendants subjected to torture to extract confessions and admissions but witnesses were also detained and tortured. This was because there were frequently civilian collaborators who would be tortured to incriminate insurgents and other civilians’ collaborators who would then be charged under the Terrorism Act. Once information was coercively obtained from witness detainees they would be threatened with prosecution or further incarceration unless they testified along the lines of what had been extracted from them by third degree methods. Almost all defendants ended up making confessions and admissions after undergoing gruelling torture.”

[18] The Sharpeville Massacre on 21 March 1960 had opened a new chapter in the history of political violence in South Africa. It led to the banning of the African National Congress (ANC) and the Pan Africanist Congress (PAC). It is those bannings and the resultant torture of their members that drove thousands of South Africans even those not aligned to the two political movements to leave the country and go into self imposed exile.

[19] The late Adv George Bizos a renowned and well respected Human Rights Lawyer writing in his book “No one to Blame” said the following:

“The acquittal of the political leaders at the end of the Treason Trial in 1961 probably marked the end of the administration of justice in accordance with generally accepted procedural safeguards, such as habeas corpus. And when the African National Congress (ANC) embarked upon the armed struggle in December 1961 it gave Voster the excuse he needed, if indeed one was needed, to introduce detention without trial. The Sabotage Act of 1962 was passed to allow house arrest despite heavy criticism, mainly from organisations such as the Congress of Democrats and the Black Sash. In 1967, Section 6 of the Terrorism Act Empowered the Police to prolong detention without trial for an indefinite period. Generally, a prisoner is at the mercy of his or her captors, that is why in most civilised countries procedural

safeguards, have been introduced such as visits by doctors senior officers and members of the family and the companionship of fellow prisoners. Detention without trial in South Africa did away with all that even judges who had the right to visit prisoners at any time were effectively excluded from visiting political detainees. No wonder many detainees died in detention. The only witnesses to the circumstances of their detention were policemen or prison warders, but the shots were called by the Security Police who were charged with ensuring the safety of the state and were a law unto themselves. They could hold detainees for as long as they liked keep them awake by working shifts, deprive them of reading material isolate them from humanity.”

EVENTS THAT LED TO THE ARREST AND DETENTION OF NEIL

[20] It is common cause that Neil was a dedicated medical practitioner and trade union organiser. In his own words he was an idealist. He only wanted the best for his country and identified with the oppressed people of South Africa. He was deeply offended by the inequalities imposed on black people and other people of colour under the Apartheid system.

[21] Neil chose to use his skills, his education and energy to make a meaningful difference to the oppressed and in this regard he chose to intervene as a doctor/trade unionist in the areas of health and care

[22] When the ANC leadership went into exile and others arrested and jailed, those left inside the country recruited others to start mobilising. One of those recruited was a young student activist Ms Barbara Hogan. Marius Schoon and Jeanette Curtis who were in exile and based in Botswana instructed Barbara to set up a dead letter box. If she needed to report anything to Marius and Jeanette she would do it in writing and leave such document at a certain place where it would be picked up by an ANC courier person who would then take that document outside of the country.

[23] Barbara opened a post box under a false name in Johannesburg. She had been taught how to encode documents as a result any document she sent out used codes not actual names, and the courier who she did not know and never met had a duplicate key to the box.

[24] Miss Hogan (Barbara) was at that time involved in support work for the trade union, consumer boycotts and various other community related activities. She met Neil and Liz whilst all three worked for the Industrial Aid Society in the late 70s around 1977 – 1979. It was at that time that National Intelligence a separate structure within the security police branch started following up on the activities of all the white people who were either sympathetic or actual members of the banned ANC. Barbara became a target and was being followed.

[25] During or about June 1981 and in the process of carrying out instructions from the ANC in exile she was asked to compile a list of the names of persons in the country with whom she was working. She did so and compiled a list which she titled "Close Comrades" (See exhibit 3.5.21). The document itself had categories. The first three names were those of Cedric De Beer, Gavin Anderson and Auret Van Heerden. She indicated that she met with the three regularly and all three were deeply committed to the ANC. Then followed the names of Frank Haysom and Alan Fine. Alan worked in the trade union movement and was a good friend of Marius Schoon and Jeanette Schoon. The last group which she titled to be a reference group consisted of Neil Aggett, Liz Floyd, Merle Favis, Mohammed Vally Moosa, Ishmail Momoniat and Monty Nasoo. It is this last group that she says she strategized with in the trade union movement, she valued their opinion, their wisdom as well as their experiences and insight in working with people. To her they were an advisory group and she never discussed ANC activities with them. She also never tried to recruit them to be ANC members. This last group was only engaged in consumer boycott issues in support of trade union workers. Their work was legitimate and above board.

[26] The last group consisted of Barbara Creecy, Barbara Klugman, Joanne Yawiton, Jo-Anne Smithers, Neil Coleman and Jane Barrett. These were a younger

group of activists who post 1976 became very committed and involved in organising the black working class.

[27] That list titled "Close Comrades" was intercepted by the security police and on the 22nd September 1981 Barbara Hogan, and Barbara Klugman were arrested. The raid and arrest was carried out by one Major Arthur Benoni Cronwright whose name would later appear prominently in the detention. He according to Barbara was a very aggressive and extremely angry person his staff referred to him as "Hitler".

[28] Acting on this list the security police followed Neil and Liz and watched their movements and ultimately arrested both of them in the morning of the 27th November 1981. Neil was first taken to Pretoria then later to John Voster Square whilst Liz was held at Hillbrow SAP and later to Bronkhorspruit.

THE INQUEST ACT 58 OF 1959 AS AMENDED BY SECTION 1 OF ACT 145 OF 1992 ("THE ACT")

[29] Inquests including re-opened Inquests are regulated by the Act stated above. The purpose of holding an inquest is to investigate the circumstances of death that occurred from other than natural causes and where a prosecutor has declined to prosecute.

[30] Section 17A(1) of the Act provides thus:

"The Minister may on the recommendation of the Attorney General concerned, at any time after the determination of an inquest and if it deems it necessary in the interest of justice, request a Judge President of a Provisional division of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designed shall re-open such inquest."

[31] During or about June 2016 the pro-bono department of the law firm Webber-Wentzel acting on behalf of the Aggett family threatened National Prosecuting Authority with litigation to compel them to reopen the inquest. This threat fell on deaf ears. Three years later during April 2019 the present Minister of Justice Honourable

R Lamola announced the re-opening of the Neil Aggett inquest. This happened during the same week when one of Neil's interrogators Warrant Officer Stephen Whitehead passed away. Evidence will show that Warrant Officer Stephen Whitehead played a major role in events that eventually led to Neill's death. It is accordingly regrettable that he was not there to put his version of events.

[32] This re-opened inquest is neither an appeal nor a review of the initial inquest held in 1982. It is however, a reconsideration of the entire evidence considered by the initial inquest at the time of death which for one or other reason was not or could not be considered during the initial inquest proceedings and has now become available.

THE SECURITY LEGISLATION IN OPERATION AT THE TIME OF THE ARREST AND DETENTION OF DR NEIL AGGETT

[33] It is common cause that both Neil and Liz were detained in terms of Section 6 of the Terrorist Act number 83 of 1967. That Act defined Terrorism as anything that might endanger the maintenance of law and order in the Republic of South Africa. It authorised detention of persons for a period of 60 days which is renewable at the pleasure of the security police for purposes of further interrogation. It was only the commissioner of police subject to the directives from the Minister who was authorised to release such a detainee "when satisfied that such a detainee has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by that detainee's further detention."

[34] Section 6 prohibited access to detainees and excluded judicial intervention by the courts to enquire into conditions of detention. It placed the wellbeing of detainees completely at the mercy and discretion of security police officers who were a law unto themselves and when anything happened to the detainee they were the only eye witnesses to such occurrences and could do as they wish with the quality of evidence they chose to present to the courts.

THE SECURITY BRANCH OFFICES AND ENTRANCES AT JOHN VOSTER SQUARE

[35] At the inspection in loco held on the 21st January 2020 the following is an outlay and access to the security branch offices including the detention cells.

[36] The second floor comprises of a number of solitary confinement cells. It is a square building located at the rear of the John Voster Square and comprises of three floors. Three of the right angled corridors are for male detainees the further one is separate for female detainees. Black and White detainees were locked alongside each other.

[37] There are two ways or routes to access the security cells including the interrogation offices located on the 9th and 10th floors. The first is via the main charge office then you walk to a flight of stairs on the ground floor. These stairs lead you directly to the second floor. The second route is via the parking garage at the back of the building. The second floor as well as the 9th and 10th floors can also be reached via a separate lift situated at the ground floor close to the flight of stairs.

[38] When one reaches the second floor either via the lift or the stairs there is a locked gate at which is a Black security guard who will then open for you to proceed to a separate charge office where a register is kept to sign your name and your reasons for being there.

[39] There is in that charge office an inventory room where all the personal items of detainees are kept and recorded. An officer is in charge of that and when a detainee requires something it is recorded in a register which is kept in that room.

[40] There is also a consultation room used by medical practitioners' who come to consult with detainees. It is also used by Magistrate who come and consult with detainees.

[41] There is an open area on the second floor which is used as an exercise area by detainees under supervision.

[42] Each cell on the second floor comprises of a solid door and an inner grill. The grill is about 1 meter away from the solid door. The grill is locked with a normal lock as well as with a padlock. The officer who is stationed at the entrance to the second floor cells keeps the key to the cell door whilst the padlock key is kept by the White Warrant Officer in charge and when he knocks off at 16h30 that padlock key is kept in an office in the main charge office on the ground floor.

[43] Inside each cell is a toilet, a hard cement bed and a blanket. The solid door on the outside of each cell has a peephole through which the officer guarding the detainees will peep to see if an inmate was still inside or not.

[44] At the inspection in loco the court observed and was informed that access to the second floor cells could also be accessed via a corridor behind the charge office without anyone noticing.

[45] The diagram depicting the second floor also indicate that there is a gate opposite second floor cell B24A which leads directly to the staircases descending to first floor cell A52 which route bypasses the second floor charge office.

[46] The Tenth floor where all the interrogations took place was strictly occupied by members of the security branch and was accessed via the 9th floor using a dedicated lift. Entrance is through the parking garage. There is always a security branch officer sitting inside a bullet proof glass cubicle. The two dedicated lifts to this floor compulsorily stop on the 9th floor. There are four other lifts that service the rest of the building.

[47] The 10th floor aptly known as "Timol Heights" named after Ahmed Timol a detainee who was pushed to death from that floor during 1971 houses a number of offices where interrogations took place it also according to witnesses had a room called "Ware Kamer" (truth room). It is structured in a way that it is noise proof. Evidence by Maurice Smithers one of the detainees at the same time as Neil revealed that Neil was seen in office number 1012 performing excersises. He could see that from office number 1019 where he was taken for questioning.

DR NEIL AGGETT'S INVOLVEMENT AND ACTIVITIES THAT LED TO HIS ARREST AND DETENTION

[48] Shortly after qualifying as medical practitioner Neil worked as an intern at Umtata Hospital. He later moved to Tembisa hospital. It was during this time that he developed an interest in trade unionism. He and Liz lived together in a flat in Fox Street, Johannesburg. He had made up his mind that he will not undergo military training. Whilst working at Baragwanath hospital he developed an interest in emergency surgery probably as a result of what he was exposed to at that hospital.

[49] Oscar Mpetha a South African trade union leader and founder member of SACTU (South African Congress of Trade Union) came up to Johannesburg from Cape Town to open a branch of The Food and Cannery Workers Union (FCWU). He stayed with Neil and Liz and in the process recruited Neil into the Trade Union Movement. Neil was later to be mentored by amongst others Emma Mashinini who ran CAWU (Congregated and Allied Workers Union of South Africa) as well as Thozamile Gqwetha and Sisa Njikelana from a sister union called SAAWU (South African Allied Workers Union).

[50] Neil's interest had developed and he began to work full time in the emerging labour movement whilst doing part time work at Baragwanath hospital. Whilst working as an organiser he was not paid any salary.

[51] It was this association with the trade union movement that drew the attention of the security police to him and Liz. Lieutenant Whitehead was assigned to follow and watch his and Liz's movements. Amongst the people that he had come into contact with was Miss Barbara Hogan an underground member of the ANC.

[52] Barbara Hogan as she testified was tricked by the security police and the list of "Close Comrades" that she had compiled for the information of the ANC in exile landed in the hands of the security police. In the list was Neil's name. Barbara was arrested and whilst in detention Neil and a number of other trade unionists and underground ANC members were taken into custody in a security swoop during November 1981. In the mind of the security police they had cracked the inside

operation of the ANC and were now preparing for the second and biggest Treason Trial since the 1956 Treason Trial.

THE ROLE PLAYERS IN THE DETENTION OF DR NEIL AGGETT 1981 TO FEBRUARY 1982

[53] Major Arthur Cronwright the then head of the Security Branch at John Voster Square was desperate to use the "Close Comrades" list to prove a wider conspiracy. In the list Neil was described by Barbara Hogan as belonging to the Advisory/Reference group and was never referred to an ANC member.

[54] Captain Martin Naude was the first to interrogate Neil from around the 15th December 1981 until about the 23 December 1981. He came from East London and was relieved of that duty early in January 1982. His evidence in 1982 as well as in the reopened inquest was consistent he could not link Neil with any involvement with the banned ANC or SACTU and according to him Neil should have been released.

[55] Lieutenant Stephen Whitehead took over the interrogation of Neil from January 1982 shortly after Captain Naude had left. He with the assistance of one Schalkwyk a Railway Police Officer intensified the interrogation from that period until the death of Neil. Whitehead had come to the conclusion that the statement made by Neil to Captain Naude was insufficient hence the intensified effort to get a confession. Whitehead passed away in the year 2019.

[56] Johan Nicholas Visser together with Captain Swanepoel interrogated Neil on the 30th January 1982 from 06h00 to 18h00. Visser occupied an office on the 9th floor and was in control of the "non-whites" department dealing with ANC matters.

[57] Joseph Petrus Woensdregt, together with Whitehead and Nicholas Johannes Deetlefs interrogated Neil on the 30th January 1982 from 18h00 until the following morning at 3am on the 31st January 1982.

[58] Magezi Eddie Chauke, joined the Security Branch during November 1981 and was stationed at John Vorster Square. His duty was to escort detainees from their

cells on the second floor to interrogation offices on the 10th floor and back. He at times sat in with Whitehead and Schalkwyk during Neil's interrogation. He told the Court that he did not take part in interrogation and merely sat there at times reading a newspaper.

[59] The 1982 Inquest judgment indicates that all in all the deceased Dr Neil Aggett was interrogated by 14 (fourteen) security police officers who took shifts that culminated in the non-stop 62hour interrogation that commenced on the 28th January 1982 until the 1st February 1982. This interrogation was authorised by Major Arthur Cronwright.

THE 1982 INQUEST PROCEEDINGS

[60] The procedure about checking on detainees in their cells was narrated by amongst others Constable Mosoeu Paul Sehloho. He was a Constable stationed at John Voster Square in the Security Branch office. He reported for duty at 21h45 on the evening of the 4th February 1982. At 22h30 he accompanied Sergeant Agenbach and Warrant Officer Marais on an inspection of the cells on the 2nd floor. He testified that both Agenbach and Marais entered cell 209 and spoke to Dr Neil Aggett who told them that all was in order. He closed the door and they left to do inspection of other detainee cells.

[61] Sehloho testified that at about 11h00pm he alone went on an inspection of the cell but this time he only peeped through the opening on the door. He noticed Dr Neil Aggett lying on his bed reading.

[62] At 1h30am the 5th February 1982 he accompanied Sergeant Agenbach on an inspection of the cells and after opening cell 209 Sergeant Agenbach went in and then called him in he saw the body of Dr Neil Aggett hanging on a scarf from the inside grill door. Warrant Officer Marais was called.

[63] Sehloho testified that in terms of the standing order or procedure he is supposed to peep through each cell door at 1 hourly intervals. When asked why on this particular day he did not visit the cells at Midnight and at 1am he answered that:

"I thought everything was still in order because those detainees were not troublesome."

[64] Something happened to Dr Neil Aggett between 23h00 on the night of the 4th February 1982 and 1h30am on the morning of the 5th February 1982. The 1982 Inquest was tasked to find out if his death was caused by any act or omissions on the part of any person and to make a finding therein.

[65] Of importance Constable Sehloho under cross-examination confirmed that at times the security police do come at night to take away detainees and bring them back in the morning but that on the night of the 4th February 1982 no security officer came there to remove any detainee. He did not know Warrant officer Stephen Whitehead. Sergeant Agenbach and Warrant officer Marais said the same.

[66] At the conclusion of the hearing before Senior Magistrate P Kotze on the 20th December 1982 he made the following findings in concluding that Dr Neil Aggett committed suicide:

- i) That Neil was a man devoted to a cause and worked with a number of close associates to achieve his goal.
- ii) That during the period of detention Neil disclosed particulars of his activities and more important names of his associates.
- iii) That the disclosures must have brought about a feeling of uncertainty about his future and the realisation that steps could be taken against his associates. The possibilities of a sense of guilt towards his associates, a sense of betrayal of his friends and associates.
- iv) That he had to face some of his associates and to admit the disclosures, an anticipation or feeling of rejection by them could not be excluded.

[67] In the final analysis the Magistrate Mr P Kotze concluded that Dr Aggett's death was not brought about by any act or omission involving or amounting to an offence on the part of any person.

[68] Evidence presented on behalf of the Aggett's family which included sworn affidavits by fellow detainees was to the effect that Dr Aggett had been subjected to intense interrogation which included a continuous period of 62 hours of sleep deprivation and assault and torture that drove Dr Aggett to suicide. It was argued that Major Cronwright and Lieutenant Stephen Whitehead knew that suicide was a likely result of their unlawful conduct and took no steps to prevent this when in fact it is their duty to safeguard detainees.

[69] In dismissing the version presented by the Aggett family the Magistrate accepted the version of the police that Dr Aggett was well and in good condition and decided to take his life because he had a sense of guilt, that he had exposed other people to arrest and detention and rather than face humiliation and embarrassment from his associates he decided to take his own life.

[70] In accepting the versions of the various police officers the Magistrate made serious errors of judgment. His decision was a product of a conspiracy by the security police to subvert justice. He failed to note that this was a big cover up by the police or even if he did notice it he justified their version on dubious grounds.

[71] Amongst the glaring dubious summaries of the version, the Magistrate in justifying why it was not possible for Sergeant Agenbach and Warrant Officer Marais to have done hourly visits between 22h30 and 01h30 on the 4th to the 5th February 1982 the Magistrate says the following:

“Sergeant Agenbach and his colleagues were criticised for not visiting the cells regularly and quite right so. But I find no reason to believe or think that more visits to the cells would have prevented the hanging.”

[72] I find this conclusion astonishing to say the least and can only be attributed to the fact that the Magistrate decided to accept the evidence of Constable Sehloho

and that of Sergeant Agenbach the two who were in charge of the cells on the second floor during the 2 hours when no visits were done. Sehloho says he did not do visits on an hourly basis because the detainees were not troublesome on the other hand Agenbach says he did not do the visits between 10h30 and 1h30am because everything was in order and that he was busy with other work.

[73] The Magistrate in summarising this aspect says that Agenbach visited the cells at 12h45 and yet only discovered the body of Dr Aggett at 1h30am. On the other hand, Sehloho says it was only at 1h30am that Agenbach came to him to instruct him to open the gate leading to the cells so that he goes and does inspection.

[74] What I find further strange about these purported cell visits that night is that Constable Andre Martin who was also on duty with Sehloho and Agenbach made an entry of cell visits at 12h56 (Exhibit T) and then the Magistrate noted that Agenbach only visited the actual cell no 209 at 1h25am. The entry of a cell visit at 12h45 was at the instance of Agenbach who instructed Constable Martin to make that entry which was in fact a false entry. The question to be asked is why did Agenbach instruct Martin to make such an entry which was false. This in my view clearly indicates that Agenbach knew that something untoward was happening to Dr Aggett either that he was being carried back to his cell from an interrogation and torture or that some other unlawful act was being done to him in the cell.

[75] Keith Coleman a Section 6 student detainee told the 1982 Inquest that a few days before his death Dr Neil Aggett was unresponsive and seemed to be in deep thought. He also told the court that Neil had told him about an assault on him when his shirt was torn. This he said was done because his interrogators wanted to put more pressure on him and had taken away his privileges to an extent that he Coleman had to now and then give Dr Aggett something to eat like sweets as well as cigarettes.

[76] Thabo Lerumo a detainee told the 1982 Inquest that when he saw Dr Aggett in the second half of January 1982 he no longer looked happy. His manner of walking had changed. He was walking with some difficulty and did not look healthy

and was no longer laughing easily. The day before his death namely the 4th February 1982 he saw Dr Aggett in the company of Constable Chauke and another police officer it was at about 3pm to 4pm. Dr Aggett was not walking normally and tears were running down from his eyes and did not respond to greetings.

[77] Sisa Njikelane a detainee also testified that when he saw Dr Aggett in January 1982 he appeared morose and very depressed. Earlier during the same month, he had met Dr Aggett in the medicine room and Aggett pointed to him a red mark on his right arm.

[78] Jabu Ngwenya also testified about the state of depression that he saw on Dr Aggett while in detention during January 1982 and when he last saw him on the 3rd February 1982 he could not walk properly he walked wide legged.

[79] Aurett Dennis Van Heerden a detainee also told the 1982 Inquest that until early January 1982 Neil was in a fit mental and physical state but later noticed that he was limping. Neil told him that he had been assaulted on the 10th floor and forced to do extraneous exercises whilst naked.

[80] In the morning of the 4th February 1982 Van Heerden noticed Neil in a very slumped over and listless position. He looked like a Zombie. Neil walked with very little purpose, he dragged his feet and shuffled along.

[81] Later that evening whilst asleep Sergeant Agenbach did a cell visit to him and left. At some stage during the night he could hear commotion in the passage outside his cell. He heard voices and footsteps he also noticed people peering at him through the peephole of his cell door. His lights were still on. He had a feeling that the worst had happened. The next morning, he learnt that Neil had committed suicide. He made a statement which Major Conwright refused to accept telling him that his men worked hard to protect South Africa from terrorists.

[82] The Magistrate dismissed and disbelieved the evidence of the witnesses who testified about the events of the 3rd and 4th February 1982 on flimsy basis for example Keith Coleman testified about Neil's condition and yet the Magistrate

concentrated on the issue of the torn shirt as if it was the main issue and failed to address Coleman's observation.

[83] Similarly the witness Thabo Lerumo's evidence was dismissed without any factual basis save to mention that he was uneasy in the witness stand. That may well be so but it does not weaken his evidence which was corroborated by that of Coleman and Aurett Van Heerden to the effect that on the morning of the 4th February 1982 Neil walked with difficulty.

[84] The Magistrate also treated the evidence by Sisa Njikelane in the same manner as that of Thabo Lerumo. All that the Magistrate concluded was that Sisa Njikelane was hesitant in his replies without being specific. This is despite Njikelane's evidence that he met Dr Aggett who looked morose and that Aggett showed him a red mark on his hands.

[85] Mr Jabu Ngwenya's evidence about the condition of Dr Aggett was in the same breath dismissed on the basis that he was arrogant and selective without being specific. This is despite his evidence being corroborated by Njikelane, Lerumo and Coleman specifically about his observation on the 3rd February 1982.

THE 2019 RE-OPENED INQUEST

[86] This re-opened inquest as already indicated started off in January 2020 and has been fraught with difficulties caused by the time delayed during which time some of the witnesses who testified during 1982 had passed away others have faint memories and some documents could no longer be traced including the docket.

[87] I have already set out the picture and layout of the detention cells and the 9th and 10th floor interrogation offices which this court observed during the inspection in loco in January 2020.

[88] An inspection of cell 209 in which the deceased Dr Neil Aggett was found hanging demonstrates that access into it is through two doors. The outer door being

a solid one with a peeping hole and the inner door made of steel grill with a separate lock.

[89] Mr Colin Savage an Architect inspected the building plans of John Vorster Square as it was during 1982. He testified that besides the access points already indicated herein it would have been possible to gain access to the security cells on the second floor through the female cells via a door that had by now been sealed up.

[90] When cell 209 was inspected on the 5 February 1982 a number of items were found therein which should not have been there. Nyampula one of the 1982 police witnesses who also testified in this re-opened inquest described it as a "five-star cell"

[91] Despite evidence to the contrary the 1982 Inquest accepted that Dr Aggett was treated well based on the evidence of the security police. In this re-opened hearing this court has heard evidence by detainees who were in detention prior to and during Aggett's detention and after his death. There was also placed before me transcripts of several amnesty Application hearings before the Truth and Reconciliation Commission by Senior Security Police Officers. This evidence in no uncertain terms proves firstly that detainees were subjected to torture, sleep deprivation and assaults. Secondly as Paul Erasmus a former Security Branch Officer testified it was a culture in the Security Branch to cover up evidence of ill treatment to detainees. Erasmus provided information regarding the activities of the Security Branch in particular manufacturing of evidence. He testified about the secret trip sanctioned by the Head Office during 1982 when he and Stephen Whitehead went to Sommerset West at the house of Dr Aggett's parents in search of evidence to prove that Dr Aggett was suicidal and therefore took his own life.

[92] Erasmus gave evidence on the Security Police training courses. In his affidavit dated the 11th February 2020 which was not challenged he detailed that the following were methods employed during interrogation of detainees namely:

- i) Sleep deprivation.
- ii) Assault always with a flat hand so as not to leave any mark.

- iii) Forced and strenuous exercises that would bring a detainee to a point of complete exhaustion so that he or she loses concentration.
- iv) Making a detainee strip naked.
- v) Crunching in a squatting position for a long time including standing and balancing on a plank or bricks.
- vi) Electric shocks, strangulation and suffocation using a wet bag.

[93] Erasmus told this court that the Security Branch were a law unto themselves. He indicated that they retained keys off site which they could use to enter the second floor cells and avoided second floor control office. They could gain access to the detainees in their cells without creating any paper trail.

[94] I do not in this judgment deem it necessary to repeat the evidence of each and every witness in detail save in so far as it relates to the happenings and treatment meted to Dr Aggett between the 24th January 1982 to the 4th February 1982 including the period referred to as the 62 hours of continued interrogation and torture.

[95] It is common knowledge that in the 1982 Inquest the Magistrate accepted evidence by the Security Police and in particular dismissed any notion that detainees in particular Dr Aggett was tortured and assaulted. In his words Dr Aggett committed suicide because he had divulged information about his colleagues and that those disclosures brought about a feeling of uncertainty and discomfort to him.

[96] According to the Magistrate Kotze Dr Aggett felt that he had betrayed his friends and associate and was embarrassed to meet them and face rejection and as an escape route Dr Aggett decided to end his life.

[97] Both Constables Nyampule and Makhetha whose duties amongst others included escorting detainees from their cells on the second floor to the 10th floor for

interrogation informed this court that they were aware of assaults and torture on detainees during 1981 and 1982 but were scared to tell the 1982 Inquest Court about their observation.

[98] According to Nyampule detainees would be kept for interrogation for long hours and he would often find that a detainee had not been returned to their cells by 16h00 when he knocked off and would only be returned to their cells the following morning having obtained keys after hours from the Uniformed Police stationed on the second floor cells.

[99] Constable Nyampule concluded that the absence of cell visit by the night duty staff comprising of Constable Sehloho, Sargent Agenbach and Warrant Officer Marais for a period of three hours in the late evening to the early morning of the 4th to 5th February 1982 was extraordinary and should have been the subject of a disciplinary enquiry which thing never happened.

[100] Both Nyampule and Paul Erasmus testified that it was irregular for McPherson to have permitted that Dr Aggett keep the Kikoi cloth with him in his cell as this was contraband. Once more no disciplinary action was taken against McPherson.

[101] Maurice Smithers a detainee had testified and was cross-examined at length by Adv Schabot and De Vries during the 1982 Inquest when he detailed about what he observed on the 25th January 1982 when Dr Aggett was being assaulted and tortured in office 1012. In opposing his version the security police tendered a statement by Constable G Makhetha who had on that day escorted Aggett to the tenth floor for interrogation.

[102] In this inquest Constable Makhetha told the court that what he testified to in 1982 was a lie fabricated for him by Major Cronwright. He testified that whilst he was waiting on the 10th floor to take Smithers to an optometrist he saw Whitehead and two other police officers making Dr Aggett exercise by jumping up and down, running on the spot and being hit with what looked like a rolled up newspaper. He now corroborated what Smithers said during 1982. Constable Makhetha testified that he agreed to lie to the court in 1982 because he was intimidated by the security police

and feared for his life. He confirmed that his statements before the first inquest were all false.

[103] Two former detainees in the persons of Sisa Njikelane and Jabulani Ngwenya testified not only about the assault and torture on them by various security police officers during the period December 1981 to February 1982 including their observation of Dr Aggett a few days before his death. They testified in 1982 as well as in this reopened inquest. They were cross-examined at length on why certain aspects of their evidence was not there in their testimony in the 1982 inquest. They responded that they were scared because of the presence of a number of their interrogators who sat in court as they would have then been subjected to harsher methods of interrogation or even be killed.

[104] Nicolas Deetlefs one of Aggett's interrogators during the long weekend of 62 hours' interrogation told the Court in the re-opened inquest that there was pressure put on him and others by Major Crownright not to disclose in the 1982 inquest evidence that Whitehead had left him with Aggett on the night of 30th January 1982 also that he should not tell the inquest court that he had told him Cronwright that he was worried that Aggett would commit suicide.

[105] He conceded that he was aware that some detainees were assaulted on the 10th floor though he himself did not assault any detainee including Dr Aggett. He testified that whilst he lied in 1982 about certain aspects he is now telling the truth as there was no longer any pressure on him to protect fellow members of the security branch.

[106] Deetlefs confirmed the culture of protecting fellow officers and stated that Major Cronwright stressed the fact that it was in the interest of the country that it be protected from communists and the African National Congress.

[107] He testified further that during the time when he was alone with Dr Aggett on the night of the 30th January 1982 Dr Aggett disclosed to him about the involvement of Johan Theron in labour unrest and that this disclosure upset him.

[108] Joseph Petrus Woensdragt testified about his involvement with Dr Aggett on the night of the 30th January 1982 when Deetlefs and Whitehead interrogated Aggett. He as in 1982 denied any ill treatment on Dr Aggett and further said that he was not aware at that time that Aggett had been on interrogation non-stop since the 28th January 1982.

[109] He testified further that Dr Aggett wrote a four-page statement that evening about the involvement of Jan Theron in labour unrest but could not recall the exact contents thereof.

[110] What is strange is that it is that four-page statement that was telexed to Security Branch Head Office the following day which was meant to result in further arrests and detention. The Security police refused to produce that four-page statement in the 1982 inquest neither was it produced in this re-opened Inquest. The police claimed national security for their refusal to produce that four-page statement and the telex. When Deetlefs was asked what the four-page statement contained he replied as follows:

“I would lie; I would have to lie. If I have to tell you what was contained in those pages.”

[111] Similarly Woensdragt responded at this re-opened enquiry that he was not present when Aggett made a four-page confession. He however, said that he did have a look at the information therein but cannot recall what it contained. He denied under cross-examination that the four-page confession was a cover up by the police to bolster their suicide theory. He persisted that the four-page document had serious incriminating evidence against Aggett's friends.

[112] I am not persuaded that anything incriminating was in that four-page document. I also have serious doubts that such a document ever existed. It was one of the cover-up incidents to distance the security police from the death of Aggett.

[113] Former detainees in the persons of Ms Barabra Hogan, Reverend Frank Chikane, Jabu Ngwenya, Sisa Njikelane, Ismail Momoniat, Keith Coleman, Liz Floyd

all testified about the torture and assault at the hands of the Security Police at John Vorster Square during and after the death of Dr Aggett. They corroborated each other in all material aspects and confirmed the methods of assault as detailed by Paul Erasmus a former Security Branch Officer.

[114] The late Advocate George Bizos in his affidavit both in this re-opened inquest as well as the re-opened Inquest of Ahmed Timol pointed out that apartheid era inquest Courts tended to minimise evidence of ill-treatment of detainees. He went on to say that improbable testimony of police witnesses was invariably rubber stamped by Inquest Magistrates especially of police versions that deceased detainees were treated with care and consideration.

EVENTS OF THE 4TH JANUARY 1982 TO THE 5TH FEBRUARY 1982

[115] It is against this background that I now wish to deal with what happened to Dr Aggett which led to his death in the early hours of the 5th February 1982.

[116] On the 4th January 1982 Dr Aggett was interrogated by Van Schalkwyk, Captain Naude as well as Whitehead all of them members of the Security Police. The interrogation took place from 10h00 until 15h15. Dr Aggett in his statement to Sargent Blom said that Van Schalkwyk assaulted him in the presence of Whitehead by slapping him and also squeezing his testicles. This was vehemently denied by both Van Schalkwyk and Whitehead and as already indicated the Magistrate accepted the version of the two police officers.

[117] On the same day as well as on the 6th January 1982 the Inspector of detainees Abraham Johannes Mouton as well as Magistrate AJ Wessels were denied access to consult with Neil Aggett. McPherson lied to both officials by telling them that Dr Aggett was out on investigation when he knew very well that he was present on the 10th floor where he was being interrogated and assaulted.

[118] It was only on the 18th January 1982 that Magistrate Wessels was able to consult with Dr Aggett who told him about the assault on him that had taken place on the 4th January 1982 Aggett had an injury on his forearm that corroborated the event.

This injury was also noted on the post-mortem report. Nothing was done about this complaint until the 4th February 1982.

[119] On the 25th January 1982 Maurice Smithers a detainee as well as one Constable Mohanoe Gerdens Makhetha noticed Aggett being assaulted by being struck with a rolled up paper Aggett was also forced to do strenuous exercises for many hours interrogation took place from 8h25 to 15h45. He was assaulted by Whitehead, Du Bruyn and Carr all Security Branch Officers. Once again the Magistrate Kotze accepted the denials by the Police Officers and dismissed the evidence of Maurice Smithers on flimsy grounds by pointing out contradiction which were not material for instance that he had spelt his name differently on two separate statements. He also dismissed Smithers evidence on the basis that Dr Aggett did not mention the assault to Sargent Blom on the 4th February 1982. Also that Neil Aggett never told Auret Van Heeden about these assault.

[120] Magistrate Kotze made a fundamental error both in law and on fact when he disbelieved Smithers only to believe Constable Makhetha who has now in the re-opened inquest said that he was instructed to lie to the 1982 Court. Constable Makhetha testified in the re-opened inquest and said that it was a norm to deny any assault on detainees should such allegation be stated.

[121] The long weekend interrogation of Dr Neil Aggett commenced on Thursday the 28th January 1982. This was after Dr Aggett had penned a number of statements which Whitehead had simply torn because they did not contain the type of confession that he wanted Aggett to agree to. He with the permission of his leader Major Cronwright decided to step up interrogation. They then devised a plan to keep Aggett awake for long periods and in order to achieve that Whitehead enlisted the services of other Security officers to go on shift work working in pairs day and night questioning Dr Aggett with the intention to break him so that he confesses to being an active member of the banned ANC and SACP.

[122] Whitehead, Carr and De Bruin interrogated Aggett from 08h25 until 14h41 on the 28th January 1982. When they knocked off they handed Aggett over to Johann

Lucas at 16h18. Aggett was kept on the 10th floor until 06h00 on Friday the 29th January 1982 all the time being interrogated.

[123] When Lucas and Whitehead knocked off at 06h00 they handed him over to De Bruin who kept him awake with questions and assault until 16h00 on Friday the 29th January 1982. During this time Aggett was given electric shocks. Sergeant Blom to whom Aggett made a statement on the 4th February 1982 confirmed that electric shocks constitute serious or grievous bodily harm. She also confirmed that Dr Aggett told her that he had been electrically shocked. She also conceded that it was necessary to have taken Aggett to see a Doctor but according to her Dr Aggett said he does not need any medical attention. When cross-examined by the late Adv George Bizos, Blom gave a series of conflicting reasons why she did not deem it necessary to take Dr Aggett to the doctor. The Magistrate in the 1982 inquest did not deal with that anomalous situation in his findings.

[124] From 16h00 on Friday the 29th January 1982 up to 06h00 on Saturday the 30th January 1982, Dr Neil Aggett was continuously in the presence of Whitehead and De Bruin who applied electric shocks on him and from 06h00 till 18h00 on the 30th January 1982 Dr Aggett was in the presence of Captain Visser and Captain Swanepoel who continued to interrogate him.

[125] When Visser and Swanepoel knocked off they handed him over to Woensdragt, Deetlefs and Whitehead who kept him awake until the following morning the 31st January 1982 at 3h30 am when they took him to his cell on the second floor.

[126] Dr Aggett in his statement to Sergeant Blom on the 4th February 1982 complained about this long interrogation and lack of sleep and when she was cross-examined by Adv Bizos during the 1982 inquest Blom downplayed and minimised the effect of such long interrogation. The Magistrate Mr Kotze in a strange finding on this aspect said the following in his judgment:

“At the instance of Lieutenant Whitehead and with the approval of Major Cronwright Dr Aggett was kept and interrogated on the 10th floor from the

28th January 1982 until 3h30 am on the 31st January 1982. On the evidence before us I cannot find without any reasonable doubt or on the preponderance of probabilities that this was not done with his consent and collaboration. I cannot find that he was deprived of sleep or ill-treated in any unlawful manner.”

[127] The Magistrate made this disgusting finding notwithstanding the fact that Aggett in his statement on the 4th February 1982 complained about the long interrogation and lack of sleep during which he was slapped electrocuted and his scrotum squeezed. It therefore boggles my mind how he Mr Kotze came to the conclusion that Dr Aggett agreed to all that.

[128] Adv George Bizos in referring to the conduct of Magistrates during that era pointed out that the majority of apartheid era Magistrates had no real desire to reach the truth. They saw it as their duty to protect organs of the state such as the police. They the Magistrate’s tendered not to interrogate police versions vigorously and accepted ridiculous versions like in this matter that detainees preferred to commit suicide when “the truth about them had been found.”

[129] On the 4th February 1982 Sergeant Blom-Visser took a statement from Dr Aggett at about 9h45am which statement she later handed over to her superiors and did nothing further because according to her the suspect Lieutenant Whitehead was her senior and in terms of the rules she as a junior police officer cannot investigate any case against her seniors. In my view this is when all things started going wrong. Dr Aggett was now left to the mercy of Whitehead, Cronwright and others to decide how to discipline him how dare he makes such a serious complaint against a senior ambitious security police branch officer.

[130] Sergeant Blom-Visser when testifying in the re-opened inquest used her marital surname of Visser. Her evidence regarding taking of the statement and how she went about was consistent to a large extent with what she told the court in the inquest. However, under cross-examination in the re-opened inquest she played ignorant about whether she knew that prior to the death of Aggett other detainees namely Wellington Tshazibane, Elmon Malele, Mathews Mabelane had died whilst in

security police custody at John Vorster Square she said she did not know. I find that not possible to believe. She clearly was still playing the cover-up card.

[131] Dr Aggett in making a statement to Sergeant Blom (Visser) related two incidents of assault the first that took place on the 4th January 1982 wherein he pointed out Whitehead, Chauke and Van Schalkwyk as the culprits. The second incident took place over the long interrogation weekend when he was deprived of sleep and was assaulted by Whitehead who had blind folded him and electrocuted him. Aggett also showed her a scratch on his left radial nerve pulse. Aggett told her that despite him having complained to Warrant Officer McPherson, McPherson did not make arrangement that he be seen by a doctor.

[132] In the 1982 inquest Sergeant Blom (Visser) was cross-examination at length as to why she did not take Dr Aggett to see the district surgeon at first she had told the court that she did not do it because the security police were still busy with interrogating Dr Aggett she later said it is because Dr Aggett said he does not want to be taken to a doctor. Now in the re-opened inquest whilst being led by Adv Singh in evidence she testified as follows:

Ms Singh: you also told Major Cronwright that as they were busy with him, you were making arrangements or you made arrangements for him to be taken to the district surgeon. Am I correct?

Mrs Visser: That is correct.

Ms Singh: When did you make arrangements to take him to the district surgeon ma'am?

Mrs Visser: When I went to excuse myself.

Ms Singh: Ja?

Mrs Visser: No just a second no arrangements were made. No arrangements were made. Sorry I am withdrawing what I said with Aggett investigation, my hands were tied I could not do anything further.

Ms Singh: When I asked you earlier as to whether you had arranged medical attention before you changed your mind you said yes you went to

Major Cronwright and you spoke to him and told him that arrangements had been made for him to be taken to the doctor where did you get that from.

Mrs Visser: It is long usually that is what happened.

[133] Mrs Blom (Visser) clearly contradicted herself on a very material aspect of this case. She hid behind the issue of seniority and later shifted the blame of not having taken Dr Aggett to the district surgeon to her commander and later said it is the duty of the security police to see to it that detainees be taken to a doctor. Mrs Blom (Visser) was clearly still on the trajectory to protect Whitehead and Cronwright even at this late stage when it is known that both have passed away.

[134] If she now says that she had told Cronwright and her own superiors that Dr Aggett needs medical attention Why did Cronwright and Whitehead in their evidence in 1982 say there was nothing wrong with Dr Aggett and that he was in good spirits that afternoon.

[135] In the late hours of the night of 4th February 1982 into the early hours of the 5th February 1982 three detainees namely: Sisa Njikelane; Keith Coleman and Jabu Ngwenya heard commotion and observed unusual activity in the corridor of the second floor. In particular Keith Coleman saw four figures hurrying past and thereafter all the cell windows were banged closed one by one and the main gate to the cell block was slammed and locked.

[136] Of great importance is what Sisa Njikelane told the court namely: that he heard the main gate being opened and several low voices and when he heard that he stood on top of the toilet seat and looked out into the passage where he saw approximately six persons carrying Aggett in the direction of lifts. He says they carried Dr Aggett in the way Muslims carry their dead at funerals and they were moving quickly. Jabu Ngwenya saw police officers who stood in front of each cell door observing the peephole into the cell corridor.

[137] This incident described by the three detainees is of crucial importance. The incident must have taken place during the period when no cell visitings were recorded by the night duty staff it is the period between 22h30 and 1h30am. It is at

that time that something was done to Dr Aggett which led to his death. The question that remains is who were those people seen by the three detainees in the corridor.

[138] Sisa Njikelane was adamant that when he stood peering into the corridor he saw Dr Aggett being carried shoulder high the people carrying him were moving from the lifts towards the showers.

[139] Under cross-examination by Adv Coetzee Sisa Njikelane maintained that he did not tell the 1982 court about that incident because he was scared that his interrogators who were in court all the time would have later subjected him to further torture or even kill him. Mr Njikelane informed the court that when he consulted with his attorneys Mr David Dison he did relate to him that version.

[140] When pressed further by Adv Coetzee on that issue Sisa Njikelane expanded in response as follows:

Mr Njikelane: "But I am trying to also to illustrate the State of mind I was in and I never saw myself as just an individual. I was part of a whole. Maybe if my Lord can be allowed to, to..... you know even David Dison himself from time to time he was quite harsh with me saying that I was not forthcoming when I was testifying. I cannot remember whether I did respond to him or whether I just spoke internally because to me I just could feel for him when he was saying that because in his view I must say as much as I can and in my view I am measuring what I can say because I do not know what will happen to me and my conclusion or my view is that the greatest of probabilities is that whatever I say determines my future relations with the special branch and I knew that even in future I was still going to interact with these people. Whether through a bullet in my head down the line or whether through detention inside with more tortures in whatever form."

[141] It must be recalled that Mr Njikelane had been in and out of detention even before the detention of Dr Aggett. His second arrest took place when he was at the Aggett residence in Johannesburg so for all intents and purposes he knew a lot about the activities of Dr Aggett. In my view to protect himself and with the type of

fear he had for the police he in his view was justified to withhold that crucial information.

[142] Keith Coleman who was detained in a cell facing the long corridor heard a commotion in the early hours of the 5th February 1982. He ran to the window of his cell and saw figures going past a moment later all windows were slammed closed. He could not make out who were the officer walking past.

[143] He was released from detention on the 26th March 1982 and immediately placed under a banning order. Later he was to be called as a state witness in the case against Barbara Hogan and Cedrick Mayson.

[144] Mr Coleman did not see much save for the fact that the people moved from the main gate leading into the second floor cells inwards to the rest of the cells. When he heard this commotion he was in cell B3 which is close to the main gate.

[145] Mr Jabu Gabriel Ngwenya also testified in both inquests. He saw Dr Aggett being assaulted on the 10th floor on the 25th January 1982 by Whitehead and others. This information he did not tell the 1982 inquest and when asked the reason why his response was that he was scared because the security police had in the past killed people and as for him one day they picked him up and one of them stabbed him and they left him for dead. He felt vulnerable even though he had been released at the time he testified in 1982.

[146] Mr Ngwenya further testified about his chance meeting with Dr Aggett on the 3rd February 1982 in the room where they keep clothing and Dr Aggett told him that he had been badly tortured and also showed him a wound on his forearm. He concluded his evidence with what he saw in the early hours of the 5th February 1982. When he heard a commotion in the corridor he peeped through the window and saw a number of white police officers moving about. They closed- the window and blocked the peepholes. Mr Ngwenya found that to be strange.

[147] This evidence although not presented during the 1982 Inquest corroborated that of Keith Coleman to a large extent. The possibility is that the commotion they

heard or witnessed could have been at the time the security police were rushing to Dr Aggett's cell after he had been found hanging. This only leaves the evidence on Sisa Njikelane who is the only one who says he saw Dr Aggett being carried shoulder high in the corridor.

[148] Shortly after Sargent Blom-Visser had taken the statement from Dr Aggett she not only informed Major Cronwright about who the suspects were she handed the docket to her senior one Ferreira. It is common knowledge that Whitehead got to know about the accusation levelled against him and this angered him and 15 hours later Aggett was dead. Whitehead, Carr and Warrant Officer De Bruyn confronted Dr Aggett and Whitehead said to Aggett: "Is this the way you treat us now after we have been so good to you."

[149] This remark by Whitehead cannot and should not have been viewed in isolation in the 1982 inquest. It came against the background of Neil having been kept awake for 62 hours and each day Whitehead told Neil that he has not as yet told the truth.

Whitehead's affidavit filed in the 1982 inquest reads like a well-rehearsed cover up story parts of which reads as follows:

"Om 06h00 het ek weer van diens gegaan. Dit was 1981/01/30. Dieselde dag om 18h00 het ek weer diens rapporteur. Ek het toe weereens gemerk dat daar nog n paar leemtes in sy verklaring is, wat Dr Aggett moes opklaar. Ek het hom toe weer in verband met die leemtes ondervra."

[150] That rewriting of one statement went on for the next three days. It is therefore inconceivable that the interrogation and re-writing could have been taking place in a manner described by Whitehead as being peaceful and orderly. He was lying.

[151] In his affidavit filed in the 1982 Inquest Whitehead said the following after Dr Aggett had rewritten his statement over and over again:

“Ons het tot die gevolgtrekking gekom dat of Dr Aggett ons nie die volle besonderhede van sy bedrywighede in die betrokke organisasies verskaf het, dat hy sekere inligting waaroor ons beskik het van ons weerhou. As gevolg hiervan het on besluit dat Dr Aggett nou meer intesief ondervra moes word en om die kontinuïteit van die ondervraging te behou het ek nie die nodigheid gesien om hom terug na die selle teneem en ook om dat daar behoorlike fasiliteite in die kantoor vir hom beskikbaar was om behoorlik te kan rus.”

[152] This statement marked the start of the 62 hours non-stop interrogation by various officers. He was assaulted and tortured simply because he did not confess to being a member of any banned organisation.

[153] Dr Aggett was taken back to his cell at 3h30 am on the 4th February 1982. The police claimed that the 62-hour interrogation session with Aggett was a success because according to him Aggett had confessed and implicated a number of his comrades. The police who were ultimately believed by Magistrate Kotze argued that it is those disclosures that led to Dr Aggett committing suicide that evening. This is despite the fact that no evidence besides what Deetlefs and Whitehead had told the court was produced to prove the comrades betrayal story.

[154] The strange thing about that betrayal story is that no one alleged to have been named by Aggett was ever arrested. Once more Whitehead and Deetlefs lied in order to cover up their assault and torture on Dr Aggett during the 62 hours of interrogation.

[155] The late Adv George Bizos writing in his book “No one to Blame” at page 110 said the following about Whitehead:

“By the time Aggett had written and indexed a statement 75 pages long. The police were not satisfied, Aggett added 28 more pages. These too it turned out were insufficient for Aggett’s ambitious young interrogator. Lieutenant Whitehead had been with the Security Police for about six years. He was a determined man when he assumed command of Aggett interrogation on

Monday 25 January 1982, the day he heard of Aggetts complaint to the Magistrate and the same day that Smithers saw Aggett assaulted on the tenth floor. The suspect whom Whitehead had been watching for three years was finally within his grasp here at last, was a chance to prove that Aggett was involved in the illegal activity he had long suspected."

[156] Constable Paul Sehloho, Andre Martin, Stephen Enslin, and Sergent Agenbach as well as Warrant Officer Marais were the police officers on duty the night that Dr Aggett was found dead in his cell. The Standing operation and procedure is that cells be visited every one hour. However, this did not happen on the night of the 4th February between 22h30 and 1h30am of the 5th February 1982. This was a serious transgression which was never followed by any disciplinary hearing against the three police officers.

[157] There were contradiction in the evidence of Paul Sehloho and that of Agenbach as to what Dr Aggett did when they inspected his cell at 22h30 one said Dr Aggett made a thumbs up whilst the other one said that Aggett spoke and said he was fine. There is also the unexplained entry by Stephen Enslin of a visit having been done at 12h30 by Agenbach when in fact no visit was done.

[158] The Magistrate Kotze in his analysis of the evidence of the above mentioned police officers concluded that their evidence about the fact that nobody from outside including members of the Security Branch had no access that night to the cells was not contradicted or disputed. He said that he could find no inherent improbabilities that reflect adversely to their evidence he accepted their evidence as reliable. This finding leaves much to be desired and proved beyond doubt that Kotze was not prepared to subject the anomalies in that evidence to much scrutiny. We have now heard in this reopened inquest that Security Branch Officers had access to the cells and to the detainees at any time they wished. The fact that Aggett was returned to his cell at 3h30am on the 31st January 1982 proves that. Joseph Nyampule a retired Police Officer who worked on the 2nd and 10th floor during that period testified in the reopened inquest that the Uniform Branch had their own set of keys so did the Security Branch these were kept by Major Cronwright. He further testified that access to the second floor was also possible through the charge office. He also

emphasised that there was a way to access the second floor without going through the front charge office.

[159] The detainees Frank Chikane, Prema Naidoo, Barbara Hogan including Nyampule the police officer all testified that belts, shoelaces, scarfs were not allowed in detainees' cells because these were items that could be used by detainees to harm themselves. The question that was not answered in the 1982 inquest is how come all the banned items found their way into Dr Aggetts cell was it not a way to encourage him to commit suicide. When Agenbach and Marais last visited his cell at 22h30 they must have been aware of all the contraband and yet did nothing to remove same.

[160] Auret Van Heerden had expressed a fear so did Deetlefs who decided to keep quiet about the possibility of Aggett committing suicide. It must also be recalled that two days earlier during that long weekend interrogation one of the police officers said that he does not think that Dr Aggett will hold on for any longer. Deetlefs testifying in the reopened inquest said that after Dr Aggett had told him about Jan Theron being the leader of the underground movement he foresaw the risk that Dr Aggett may take his own life. It must be mentioned that he did not say so in the 1982 Inquest. He added that he did not mention it because they were threatened.

[161] He told the reopened inquest that both Major Cronwright and Lieutenant Whitehead threatened him not to tell the truth. It was an instruction from Major Cronwright that members of the Security Branch needed to stay together and not split. Clearly indicating covering up for each other and support each other at all costs. Major Cronwright told them they are all there for one purpose being to fight Communism. Deetlefs also conceded under cross-examination by Adv Varney that he committed a crime by not reporting assault on detainees and thus covered up crimes committed. Covering up was routine practice within the Security Branch.

[162] Deetlefs whilst admitting that electric shocks as a form of torture was used on detainees on the 10th floor found it difficult under cross-examination to tell the court how did he know about that and who in particular applied electric shocks on the

detainees he kept on saying that it was a general thing and commonly and spoken about in the corridors.

[163] I have no doubt that Deetlefs in responding to this question was trying his best to distance himself from the electric shock or torture treatment. On the one hand he was covering up for Whitehead and Cronwright and on the other hand he projected himself as a smart interrogator who never used any form of assault or torture on detainees. I have no hesitation to say that he was clearly lying he not only knew about this he observed it and probably also used electric shocks whilst interrogating detainees. Finally, under further cross-examination Deetlefs conceded that at some stage he did use force during interrogation and he stopped as he noticed that it was not yielding any positive results. He used to slap detainees across the face. He admitted that he used physical assault on Barbara Hogan.

[164] Deetlefs who had been left alone with Dr Aggett during the night of the 30th January 1982 told the court in 1982 and in the reopened inquest that Dr Aggett mentioned Jan Theron, Oscar Mphetha, Auret Van Heerden and others as members of SACTU and that they were involved in organising workers to sabotage the economy of the country. When it was put to him that SACTU was not a banned organisation and also that in fact no action was taken by the police against the people Aggett had named, Deetlefs gave a nonsensical answer namely that there are different units in the police force. The statement that Deetlefs called the breakthrough statement was nothing and incriminated no one in fact it never existed.

[165] When Deetlefs told Whitehead and Cronwright about his fears that Aggett may commit suicide he says that Whitehead kept quite and he attributed this to the fact that Whitehead was inexperienced. Major Cronwright heard and understood him and did not tell him if he will take any steps. He left it there because Cronwright is his senior. He formed the opinion that both Whitehead and Cronwright did not take that statement seriously. He however conceded that both Major Cronwright and Lieutenant Whitehead were under a legal duty to protect the well-being and lives of detainees.

[166] The question that remains to be answered is whether Deetlefs having admitted that he lied during the 1982 inquest makes him an accessory after the fact in respect of the direct deeds and omission by Cronwright and Whitehead which led to the death of Aggett. What is of further importance is that Deetlefs heard Dr Aggett say he does not wish to live any longer and that he cannot forgive himself. This according to Deetlefs, Aggett said at the time that Whitehead was in the process of sending the four page telefax to head office and yet nothing was done.

[167] When it was put to Deetlefs that the whole issue about the four-page telex was a fabrication and that it was put up as a story to back up the police version as an explanation for suicide, Deetlefs vehemently disputed this and stood by his word that it did happen.

[168] If it is true as Deetlefs says that Aggett had incriminated people like Jan Theron and others and he was aware that Aggett had threatened suicide then they as the police should have had an interest in seeing to it that Aggett lives to give evidence against the people he had incriminated. The fact that all of them said nothing about Aggett having said he does not wish to live anymore proves that it did not happen that way. Aggett never contemplated suicide. What makes it further improbable is if he did say it why then go all the way to his High School and break into his parents' home in Somerset West in search of evidence to back up their ridiculous version that Dr Aggett committed suicide.

[169] The story of suicide becomes more ridiculous and a joke, when Deetlefs testified that he heard in the corridors of John Vorster Square that Dr Aggett hanged himself with a table cloth that his family had brought to him to have his lunch on. We all know that no table cloth was used in the hanging in any case table cloth would never have been allowed inside a detainee's cell.

[170] However, what is of importance is to note that in the final analysis Deetlefs conceded and admitted the following:

- i) That he slapped Barbara Hogan and made her sit under a table whilst being interrogated.

- ii) That he insulted and verbally abused Reverend Frank Chikane by calling him a Kaffir-Predikant.
- iii) That it was routine for members of the Security Branch as a whole which included fabricating of evidence and lying under oath.
- iv) That he Deetlefs was forced by his seniors to lie and cover up in the case of Dr Neil Aggett.

[171] When cross examined by Adv Mlotshwa he agreed that he lied under oath when testifying in the case of assault against him by Barbara Hogan. Despite that the Magistrate believed him and acquitted him. He told this court he did so in order to protect his senior amongst them Lieutenant Whitehead. His exact words were as follows:

“Ek was deur my senior offisiere by die veiligheidstak daartoe gedwing en ek het nie ander keuse gehad nie alhoewe dit teen my grein is om sulke leuns te vertel. Ek was aangese on vals te getuig ten einde die aander lede van die veiligheidstak soos onder andere spesifiek Lieutenant Woensdregt a sook Lieutenant Whitehead te beskerm”

[172] Deetlefs conceded further that as far as he could recall during his time no Security Branch Officer was ever convicted of having assaulted a detainee. There was a lot at stake for the Security Police in respect of the Aggett inquest hence a lot of preparation was done for the inquest itself which included the trip by Paul Erasmus and Lieutenant Whitehead to Somerset East. The Police bugged the offices of George Bizos and rehearsed evidence.

[173] When it was put to him that a tie and five pairs of socks were found in Dr Aggett's cell after his death and also that the Police did not do cell visits between 22h30 and 1h30am on the 4th to 5th February 1982, Deetlefs said that the Police were negligent. He agreed that the responsible Police Officer should have been charged for neglect of duty by the Department. He also conceded that interrogation

was allowed to take place in the detainees cell he himself did it in 1985 in respect of Helena Pastoors.

[174] Deetelfs also told this court about a room situated on the 10th floor which was referred to as the “Waarheid kamer” or truth room. It was not occupied by anybody. It was completely sealed and had no windows.

[175] Deetlefs confirmed that Stanza Bopape was electrocuted and died on the 10th floor of John Vorster Sqaure and thereafter the Police took his body to Mpumalanga where the body was blow-up and thrown in a river full of crocodiles. He confirmed that the security police as usual covered up for each other and lied to the public that Stanza Bopape escaped en route to Vereeniging and was never seen again. It is on record that senior Police Officers namely of Hendrick Mostert, Charles Zeelie, Jacobus Engelbrecht and Johan Van Der Merwe applied for Amnesty which was granted after they told the truth.

[176] Deetlefs agreed with Counsel when it was put to him that if the Security Police successfully covered up and lied to the public about the disappearance and death of Stanza Bopape it goes without saying that they also covered up details leading to the death of Dr Aggett.

[177] In answering questions by the court Deetlefs said that he had no knowledge about Trade Unions and was not aware if SACTU was a banned organisation. In short he conceded that there was nothing specific that he wanted Aggett to tell him save that he had been told that the Trade Unions were busy planning to sabotage the economy of the country his actual words were as follows:

Court: So you did not want anything from him?

Deetlefs: Nee Edele want ek het nie geweet wat wat hy my kan vertel want ek het die Vakbonde nie geken nie.

[178] Dr Neil Aggett was the first White made detainee to die whilst in police custody at John Vorster Square. The events following the death of Steve Biko were

still fresh in the minds of the public and the international community, the security police had to do something to make certain that they are not to blame for the death. The big cover up as testified to by amongst others Paul Erasmus and Deetlefs commenced immediately on the discovery of the body of Dr Aggett.

[179] It is a known fact that where there is suspicion of a crime the scene should be cordoned off until arrival of forensic. When the photographs and fingerprint expert Mr Charles Wynand Lambrecht arrived at 3h40 am on the second floor the cell was full of Police Officers with some standing in the corridor in front of the cell. This does not exclude the possibility that the scene may have been contaminated already.

[180] Testifying in the 1982 Inquest James Agenbach a Sergeant told the court that at 12h45 am he and Constable Sehloho were first to find the body of Dr Aggett hanging on the grill and yet later it turns out that it was only at 1h30am when the body was found. What is further strange is that he cannot remember if the lights were on or off in the cell when he found the body this is despite the fact that at 22h30 he saw Aggett on his bed reading:

[181] Warrant Officer Lamprecht testifying in the reopened inquest told this court that when he arrived on the second floor there were a number of police officer in and around the cell and corridors. He took four photos of Dr Aggett whilst hanging on the grill and did not take any photos after the body had been brought down. He says he did not do it because the pathologist was already there and it is them who take such photos. He cannot remember if the light was on or off when he took photos and later looked for fingerprint. He had a torch and a lamp which he uses when doing crime scenes at night. He says visibility was good even though he cannot remember if the lights in cell 209 were on or not.

[182] When he took the photos Captain Victor the investigating officer pointed out to him what photos to take. It was pointed out to Lamprecht that in the 1982 inquest the four photos were not handed in he could not explain why and said that he handed up the photos to the investigating officer.

[183] Lamprecht testified as he did in 1982 that only one identifiable fingerprint was uplifted on the grill. He explained how he went about processing the bar by using an aluminium powder and a fingerprint brush. He dusted the whole area around where the deceased was hanging. He first dusted the back of the grill whilst the body was still hanging and after it was taken down he did the front portion.

[184] He elaborated that he found fingerprints not one fingerprint on the bars and out of all fingerprints found only one identifiable one being that of Dr Aggett was found. When asked what happened to other fingerprints Mr Lamprecht responded by saying that they were in fact not fingerprints but just marks on the bar itself. The identifiable fingerprint was found directly above the knot of the material on the bar.

[185] When Mr Lamprecht was asked a pertinent question as to how he managed to reach the top of the grill in order to locate the identified fingerprint his answer was in my view amazing he says the following:

Lamprecht: My Lord believe or not I do not recall, I do not know if they brought a ladder for me or whether I climbed there myself. I am honest I do not remember.

Ms Singh: But you would agree that you would have had to use some method to get a top.

Lamprecht: That is correct my Lord.

[186] What is critical and was not analysed by Magistrate Kotze in the 1982 inquest is the following:

- i) Why is it that only one fingerprint was found on the back of the vertical bar linking same to Dr Aggett.
- ii) What happened to the folien which indicated that other fingerprints were uplifted though not identifiable?

- iii) How did Warrant Officer Lamprecht manage to climb unassisted to the top most bar and take a picture there.

[187] Constable Thabo Mathupe testifying in the reopened inquest in relation to fingerprints taken in the cell and surfaces of the steel bar said that if he had attended the scene in 1982 he would have lifted more fingerprints by using various techniques available at the time. Mathupe's evidence on this aspect was corroborated by Mr Zietse Alberte a fingerprint expert who said that he would have expected that there be more fingerprints available on the steel-bars if Dr Aggett climbed up the grill, to attach the scarf and then hang himself. Frank Dutton a police specialist investigator with 38 years of experience in the police service also testified that the crime scene investigation into the death of Dr Aggett was done in such a way as to cover up real events.

[188] Mr Dutton had serious complaints regarding the manner in which the forensic investigation of cell 209 was carried out. He was particularly sceptical about the lack of proper photographs fingerprints and the fact that Captain Strugwig colleague of Lieutenant Whitehead removed the body of Aggett from the grill.

[189] The only photographs of Aggett's body in the reopened inquest were obtained from an SABC documentary and sourced by the law firm Webber Wentzel the attorneys for the Aggett family. Photos showing his body hanging as well as after it had been placed on the floor are missing there are suspicions that they were intentionally removed and destroyed by those who persist with the cover up.

[190] Dr Steve Naidoo an independent forensic pathologist who was briefed by the Aggett family in the reopened inquest to study records of the original inquest and to provide a specialist forensic pathology opinion on the cause, mechanism and nature of the death of Dr Aggett noted the following shortcomings:

- i) Firstly, he noted that the state pathologist failed to attend the scene of death contrary to the provisions of Section 3.4 of the Manual for the performances of Post Mortem (Form GW7/71) Dr Naidoo opines that had the state pathologist attended the scene there would have been a more accurate

time of death rather than the estimation done by the police. Also that he would have been able to give a more precise nature of the ligature and intricacies of its knot as it was found around the neck and lastly the state pathologist would have been able to give an on-site assessment on the capability of the deceased to mount onto the bars to suspend himself successfully.

ii) Secondly Dr Naidoo expressed concern that autopsy examination was hurried up and conducted within 7 hours and that the family had not been given adequate information about the circumstances of the death so as to enable them to make timeous arrangements to appoint their own pathologist. That is why Dr Botha the family pathologist arrived late when Dr Kemp had already commenced with the autopsy examination. Dr Botha was prejudiced and placed at some discomfort of having to content with an already opened body, he could not have had an opportunity to examine the ligature as it appeared around Aggett's neck.

iii) Dr Naidoo also questioned the failure of the post mortem report examination to include comprehensive and wide subcutaneous skin flap dissection under the skin of the trunk and limbs to look for concealed bruising. This would according to him been helpful in view of the history of torture and assault on Dr Aggett.

[191] Dr Kemp in his testimony had mentioned a triangular injury described as a fresh bruise over Dr Aggett's upper right scapula. Dr Naidoo regards this injury as unlikely to have been caused or resulted from Dr Aggett convulsing while hanging or pinching his skin against the bars. He is of the view that this fresh bruise was an ante-mortem injury from blunt force impact such as a fall or an assault at some time before the suspension.

[192] Ismail Momaniat one of the detainees saw Dr Aggett on the 3rd February 1982 and they were both on the first floor to be signed out. He noted that Aggett appeared to be in a terrible and dazed state, Aggett did not respond to his greetings on that day. The condition that he saw Aggett in made him doubt that Aggett had the

physical capacity and strength to commit suicide in the manner described by the police.

[193] Firoz Cachalia a detainee at the same time as Aggett saw him a day before his death being the 4th February 1982. He says that Aggett looked like he was at breaking point. He could not speak to him as there were about six police officers in the charge office.

[194] Mr Ronald Kasrils a veteran of the ANC/SACP movement testified about a document titled Inkululeko Freedom, February 1972 which he and the late Joe Slovo authored. He disputed that the original document had instructions that SACP members should rather commit suicide than to betray the organisation. This was a document that the Magistrate De Villiers relied heavily on in the Timol inquest in 1982. Mr Kasrils indicated that suicide was never a policy of the SACP.

[195] The evidence of Thabo Mothupi as well as that of Mr Albertze analysed together demonstrate that Aggett would not have been able to climb up the grill on his own unassisted. Thabo Mothupi is a fingerprint technician stationed at the Johannesburg Central Police Station. Mr Albertze is also a fingerprint expert. Besides their observation of the poor quality of the photographs both of them simulated the climb up the grill where Aggett was found hanging. Under cross-examination it was put to Mothupi that only the left forefinger of Aggett was found on the grill he responded that Aggett would have gripped the bar with his whole hand leaving prints of his palm, thumb and fingers.

[196] Mr Albertze performed a simulating in cell B18 on the second floor. He asked a colleague to climb the bars to see where he would touch and how he would climb up such bars and he took photos. That exercise left various fingerprints on the bars. His colleague made five (5) points of contact with the bars when climbing the grill. A second simulation after the bars had been cleaned also produced the same results which enabled him to lift five developed set of fingerprints that were clearer than when the bars were dusty.

[197] Commenting on the evidence of Charl Wynand Lambrecht who only found one fingerprint on the grill above the knot on the back of the bar Mr Albertze indicated that one would have expected to find a sequence of fingerprints which would include at least the middle finger and possibly the ring finger and pinkie when lifting those prints.

[198] The taking and uplifting of the single finger print by Lambrecht is in my view undermined by inherent improbabilities attached thereto. Albertze used a stepladder to get to the top of the grill and had both his hands free to take pictures. On the other hand, Mr Lambrecht now says he could not recall if he used a stepladder to carry out his work on the grill. If Mr Lambrecht struggled to get up to the top how then did he manage to take a picture that only produced one identifiable fingerprint.

[199] Lambrecht confirmed that when he climbed up the grill he was wearing latex gloves and said that he had dusted those sections which would have been disturbed by his touching and pressure before ascending. He confirmed that he was not challenged by dust when attempting to lift the prints. He conceded that in 1982 he did not say anything about dust on the grills.

[200] Cross-examined by Adv Varney, Mr Lambrecht conceded that if the folien was available it would have depicted a number of prints and not one. This evidence he did not tell the 1982 inquest. No one could say what happened to the folien Mr Lambrecht answer was as follows:

Lambrecht: M'Lord I can only comment on it that would the folien have been available in the court, we could all see how it was made and the fingerprints in relation to one another that might be on the folien but it would not have only been one visible print.

Mr Varney: You see the problem we have Mr Lambrecht is there is literally a great deal of suspicion about what happened to Dr Aggett and everybody wants to put their minds at rest as to what actually happened and one has already heard the questions put to you by Adv Singh for the State, that there might have been other ways of getting the print there and if there had been a

reference in the first inquest proceedings to evidence to show that it was not just a solitary identifiable print but at least a series of prints even if the other prints were not necessarily that good, that would have helped the first court and certainly this court to come to a more definite finding on the matter.

Mr Lambrecht: That is why I am referring to the importance of the folien which unfortunately is not available. That would have shown it because I would never just take a small piece of folien and litt one print. I also cannot recall what was on the folien.

[201] The evidence by Frank Dulton who had been appointed to also investigate cases arising out of findings of the TRC and was also the first Chief Investigator of the Directorate of Special Operation (DSO) also known at the Scorpion Summarised the cover up relating to the death of Dr Aggett and many other detainees.

[202] Mr Dutton testified about his interaction with Eddie Chauke a former Security Police Officer on the 4th November 2015. Chauke was part of the Aggett's interrogation and was present at the last interrogation on the 4th February 1982. Chauke told Dutton that Whitehead had been angry with Aggett for opening an assault case against him and that in a rage Whitehead tore up Aggett's written statement. Whitehead exclaimed that it was all lies and that they will get the truth out of Aggett. Chauke told him that it was the intention of Whitehead to resume the interrogation later that night.

[203] Dutton concluded that the version put up by the Security Branch before the first inquest amounted to fabrication and a cover up to conceal the abuse and torture of Aggett and the conduct of the Security Branch Police in relation to his death.

[204] Captain Martin Johan Naude who had been called up from East London to assist in the interrogation at John Vorster Square had concluded in January 1982 that Aggett should be released because according to him there was nothing linking him to the so-called big treason swoop. Naude admitted that Aggett had made it clear to him that he was not a supporter of the ANC. In conclusion Dutton conceded

that it had now been proved that Security Police covered up crimes and where necessary they misled courts of law by fabricating evidence.

[205] Joseph Petrus Woensdregt was also involved in the interrogation of Dr Aggett on the night of the 30th January 1982. He Deetlefs and Whitehead worked together that evening. Woensdregt disputed Deetlefs evidence that he and Whitehead left him alone for a period of 5 hours with Aggett. In fact his whole evidence during 1982 and now is a denial or knowledge of any assault or torture on any detainee. This is despite wide evidence already given at TRC and in this inquest. He in most instances when confronted with real evidence refused to respond and claimed the right not to incriminate himself.

[206] It was put to Woensdregt that his statement that he was surprised why Aggett had complained to Sgt Blom-Visser since according to him Aggett was happy to spend the night in the 10th floor interrogation office than to go to his cell was a fabrication and a continuation of the cover-up that he conducted in 1982. It was put to Woensdregt that he misled the 1982 inquest and that he is continuing to do so in this inquest his response was that he will not break the oath he took. He told the court that when he joined the Security Branch he took an oath of secrecy not to disclose matters relating to certain issues about the Security Branch and to date hereof he still consider himself bound to that secrecy.

[207] That statement clearly indicates that Woensdragt still owes allegiance to the now disbanded and disgraced Security Branch Police. He does so despite overwhelming evidence of cover-up, murder deceit and torture which was placed before the Truth and Reconciliation Commission by his seniors. He is unrepentant. It is also interesting to note that him and Deetlifes were also involved in the interrogation of Ernest Dipale who also died by hanging in his cell at John Vorster Square in August 1982 a mere six months after the death of Dr Aggett.

[208] Woensdragt could not tell the court what the contents of the so called 4-page statement made by Aggett entailed save to say that Aggett incriminated his colleagues. Woensdragt like Deetlefs and one Visser all claimed not to know that Aggett had been kept awake since the 28th January 1982.

[209] Nicolas Johannes Visser and Captain Daniel Swanepoel both interrogated Agget from 6am to 6pm on the 30th January 1982 where after they handed him over to the team of Whitehead, Deetlefs and Woensdragt at 6pm. He like Woensdragt denied any knowledge of abuse against detainees perpetrated by his colleague save to say that he heard about assaults generally.

[210] Visser testified that he was not briefed about Aggett and also that he did not have any knowledge about Unions and claimed that Aggett was cooperative and the atmosphere was friendly. However, with all that being said he made a report to Whitehead at the end of his shift at 6pm that Aggett wants to talk the truth. He himself did not get from Aggett what that "truth" entailed. He also strangely does not recall the names that Aggett disclosed to him and Swanepoel. It is clear to his court that this talking of the truth was nothing else but a build-up and foundation that Deetlefs, Whitehead and Woensdragt worked on from 6am to 3h30am on the 31st January 1982.

[211] Visser whilst claiming not to have known that Aggett had been deprived of sleep for approximately 50 hours prior to him and Swanepoel taking over told this court that he would not have changed his approach to interrogate. The questions and answers went this way:

Mr Varney: So Mr Visser if I am hearing you correctly even if you had known that he had been kept awake for approximately two days you would have done everything the same, you would have continued with this abusive treatment, you would have kept him awake for another 12 hours in other words you would have continued to torture him by way of sleep deprivation.

Mr Visser: I was also going to talk to him.

Mr Varney: Because this was your instructions and so regardless of any knowledge of prior abuse and sleep deprivation since you were instructed to carry on for 12 hours you would have simply done that.

Mr Visser: That is what I said.

[212] Mr Visser is correct the instructions were to wear him out through continuous questioning Visser was carrying out the plan devised by Major Cronwright and Lieutenant Whitehead to intensify questioning. It is therefore not surprising that when Deetlefs, Woensdragt and Whitehead took over it was a continuation that resulted in the "so called" four-page incriminating statement.

[213] Roelof Jacob Venter was also a member of the Security Branch at John Vorster Square although he did not interrogate Dr Aggett he in his amnesty application before the TRC in respect of his conduct in the Barbara Hogan investigation admitted that when he interrogated detainees he applied the following forms of pressure on them namely:

- i) interrogation for long hours not always during the day.
- ii) prolonged standing.
- iv) tearing up statement after completion.
- v) push ups, running and sit ups.
- vi) insults.

[214] Venter also told this court that he had been trained that when torturing a detainee, he should make sure that no marks visible are left. He agreed with the statement and evidence by Deetlefs that "there was no space to split or accuse other members of irregularities. They had to stand together and cover each other in order to protect the security branch." He accused former National Party President FW De Klerk and PW Botha for having abandoned the Security Branch and praised General Johan van der Merwe and Brigadier Cronje for having stood up for the Security Branch.

[215] Adv Varney put to Venter affidavits deposed to by various detainees namely: Prema Naidoo, Ishmail Momonial; Monty Narsoo in which they accused him of various forms of torture and assault. Venter denied the allegation. When it was put to him that he applied for Amnesty in respect of the assault with grievous bodily harm committed on Ms Reagan Shope, Venter responded that he did so on the advice of his lawyer. He gave the same nonsensical answer in respect of his amnesty application for assaulting Barbara Hogan.

[216] Mr Venter is clearly not telling this court the truth about what happened in police detention whilst he blames others. He cannot explain why he applied for amnesty. He has not played open cards and his evidence falls to be dismissed as false and misleading. He still is of the intention to cover up.

[217] Venter's partner in the interrogation of Aggett was Daniel Elardus Swanepoel. He as a young officer in the police force went on a security course which focused on banned organisations.

[218] Daniel Elardus Swanepoel a member of the Security Branch in Benoni together with Johan Nicholas Visser commenced interrogating Neil at 6am on the 30th January 1982 until 6pm when they handed him over for further interrogation to Whitehead, Woensdragt and Deetlefs.

[219] Both Swanepoel and Visser down played the interrogation methods they used in their interaction with Aggett. They said Neil was relaxed and did not show signs of exhaustion. They denied being aware that Neil had been kept awake since the 28th January 1982. They presented to this court a false evidence that though they heard that other interrogators tortured and assaulted detainees they themselves did not do so.

[220] In particular Swanepoel denied having smacked a detainee Ishmail Momonial but admitted that he may have made him stand for long periods. This last concession is corroborated by former police officers Paul Erasmus and Frank Dulton. Gideon Makhetha also a former police officer testified that a detainee Paul Langa was made to stand for 3 days after which he had swollen legs that looked like Elephant legs.

[221] Swanepoel and Visser jointly interrogated Neil about his Trade Union activities and possible involvement in the banned ANC. Visser was the senior of the two and he gave Swanepoel a general briefing. Swanepoel said that apart from information he had from informers he had no documents with him. Later during the day Neil told them that he now wanted to tell them the truth but there was not time as

their shift ended at 18h00. He claimed all along that Neil was physically and mentally relaxed which was a lie.

[222] Later in his evidence Swanepoel agreed that he made detainees run on one spot and further conceded that statement that he obtained from detainees were never made freely and voluntarily. He agreed that in the 1982 inquest he never admitted these acts of torture and yet in this inquest he still maintains that his 1982 evidence was correct as there was no physical torture. This is a clear act of still covering up.

[223] Under cross-examination by counsel from the Aggett family Swanepoel maintained that he had no regrets about his role in the security police because according to him he acted strictly within the law. He further disingenuously denied that there was a culture of cover up within the Security police. He claimed that if it had ever come to his knowledge that a crime had been committed during interrogation he would have reported it. This he said despite agreeing that he knew that members of the security police were required to do everything within their ability to protect the country against communism and the ANC. He however persisted that there was no cover up in respect of the death of Neil Aggett by the security police having produced a fabricated document allegedly penned by the communist party urging its members to commit suicide rather than tell the truth.

[224] Swanepoel admitted that sleep deprivation was a cruel and torturous form of interrogation and accepted that it was aimed at undermining the physical and mental health of detainees, disorientating them and weakening their resistance to questions.

[225] In the final analysis Swanepoel conceded that he had no intelligence linking Neil to the activities of the ANC and SACTU and that in effect all he wanted was a confession by Neil in which he implicates himself. He agreed that eventually the so called sensitive information allegedly given by Neil betraying his comrades amounted to nothing. Visser as a senior was pathetic and denied knowledge of assault and sleep deprivation and in the process perjured himself.

[226] The last hours of Neil's life were precipitated or triggered by Detective Blom (Visser) who after taking down a statement from him on the morning of the 4th February 1982 in which Neil implicated Whitehead in assault, torture and electrocution went ahead to tell the suspect Whitehead what Neil said. It is therefore not surprising that shortly after Blom-Visser had left Whitehead angrily confronted Neil about this.

[227] This act by Sergeant Blom-Visser was not only unprocedural but put Neil's safety in danger. According to Frank Dulton what should have happened is that once Neil had made the complaint Whitehead should have been removed from the interrogation. It was also strange that Sergeant Blom-Visser did not make arrangements to refer Neil to the district surgeon for medical report. All this in my view amounts to an orchestrated cover up.

[228] It was put to Mrs Blom-Visser by counsel for the Aggett family as follows:

Mr Varrney: So you are agreeing that the suicide in those circumstances, within hours of making a detailed statement in which he wants a reckoning is just very odd and very strange?

Mrs Visser: I agree.

[229] Evidence by both Constables Daniel Hendrick Zeelie and John Edward Lloyd demonstrates that procedures in respect of keeping of contraband items in the detainee cells was not followed judging by the inventory of items found in Neil's cell after his death. The question to be asked is why did the security police allow that, was it not a way of trying to prove that he was well looked after by the police when in fact the contrary was the truth? When Zeelie was reading out the contents of items found in Neil's cell he laughed and commented that he had never come across a detainee who was permitted to keep all his items of clothing in his cell to him it did not make sense. He was shocked to be told that amongst the items found was a tie for which there was no receipt. He agreed that on hindsight he himself should never have handed the kikoi scarf to Neil on the 11th December 1981.

[230] In the final analysis Zeelie conceded that in the circumstances all items found in Neil's cell may have been used to dress up the cell to create the impression that he was treated well.

[231] Mr Jan Theron a trade unionist who worked with Neil in the trade union movement confirmed that he never at any stage disclosed his ANC involvement to Neil and between him and Neil it was all about union work which was above board. Accordingly, there was no disclosure in the so called four-page document that could have made Neil to feel he had betrayed him. If there was such a document, he was never arrested and or interrogated about it by the security police. Theron told the court that he believes that the document was nothing more than a fabrication by the security police to justify the death of Neil and exculpate themselves of any wrong doing.

HOW DID DR NEIL HUDSON AGGETT DIE AND WAS THERE ANY PERSON RESPONSIBLE FOR THAT OR DID NEIL COMMIT SUICIDE?

[232] In this reopened inquest this court is called upon to make and record any finding that differs from the findings in the 1982 Inquest Section 17A (3)(b) reads as follows:

“3 A judge holding an inquest that has been reopened in terms of this section:

(b) shall record any finding that differs from a finding referred to in Section 16(2) as well as the respect in which it differs.”

[233] The findings by Magistrate Kotze in this matter is the finding referred to in Section 16(2). At the end of the inquest the Magistrate made the following finding in terms of Section 16 of the Act:

- a) The identity of the deceased person Neil Hudson Aggett.
- b) Cause of death: Suicide by hanging.

- c) Date of death: 5th February 1982.
- d) The death was not brought about by any act or omission involving or amounting to an offence on the part of any person.

[234] There is in my view sufficient evidence that was placed before this court that the conduct of the security police led directly to the death of Dr Neil Hudson Aggett. Not only did some of those security police who testified in 1982 concede that they lied but there is evidence which emerged during the TRC amnesty hearing by amongst other General Van der Merwe that the Security police committed acts of torture and assault on detainees in the name of getting rid of the ANC and communism.

[235] The version of the security police is that Neil on his own initiative got hold of the Kikoi scarf, then climbed up the grill to a point where he was able to use both his hands to tie a knot around one of the bars after tying it around his neck and then slid down thus constricting his neck until he died. This must have taken place sometime between the hour of 22h30 on the 4th February 1982 and 1h30am on the 5th February 1982.

[236] There is evidence supporting the view that statements by members of the security branch, the police officers investigating the death of Dr Aggett and the proceedings in the 1982 inquest were all part of an attempt to cover up or conceal the truth about how Dr Neil Aggett died. This view is supported by the unchallenged evidence of Frank Dutton, Paul Erasmus, Joe Nyampule and Gideon Makhetha all former police officers.

[237] This cover up started firstly with failure by the police to explain why no disciplinary action was taken against McPherson, Marais for failing to conduct inspection of the calls between the hours 22h30 and 1h30am. Secondly no action was instituted to find out why so much contraband was found in Neil's cell including a tie. Makhetha testified that this was totally against standing orders.

[238] The scene was tampered with in contravention with the standing rules. Frank Dutton's view which is unchallenged is that the police investigation failed on numerous counts firstly when the investigation commenced it was clear that the investigator had already adopted a view that Aggett had committed suicide. It is therefore not surprising that shortly thereafter the top brass which must have included major Cronwright and Hennie Muller instructed Stephen Whitehead to go look for evidence that may support that conclusion hence the trip to Somerset West by Whitehead and Paul Erasmus to look for evidence at Aggett's school and his home for any evidence of Aggett being suicidal. The question is if they were convinced that he committed suicide why go all the way to the Western Cape in search of non-existent evidence.

[239] Ms Jill Burger Aggett's sister as well as Dr Liz Floyd his partner all expressed the sentiment that there is no way that Neil would have contemplated suicide. This court has no reason not to accept that. Neil had made a detailed statement to Detective Blom-Visser on the 4th February 1982 in which he sought that those who tortured him be dealt with now why would he take his life instead of awaiting the outcome of his complaint?

[240] In Dutton's view the conduct of Sergeant Blom (now Visser) in immediately informing the suspects about the complaints of assault against them was reckless and improper. Hence Eddie Chauke a former security branch officer told Dutton that Whitehead was so angry about Aggett opening a case of assault against him and in a range he Whitehead tore the 28-page statement that Aggett had been working on for weeks.

[241] Chauke told Dutton that when he last saw Neil Aggett it was at 3pm on the 4th February 1982 Aggett was visibly upset and depressed. Whitehead and the other white membership of the interrogating team said that they intended to resume further interrogation later that night.

[242] Neil did not commit suicide he was killed by members of the security police between 22h30 and 1h30am of the 5th February 1982. I have come to this conclusion because of the following unchallenged facts with appear herein.

[243] Dr Neil Aggett had been subjected to torture and sleep deprivation and no food for a period of 62 hours.

[244] His co-detainees Jabu Ngwenya, Ishmail Momoniat, Thabo Lerumo and Prima Naidoo "testified how he looked like a day before on the 3rd and 4th February 1982. One of them said he was like a Zombie whilst the other said he did not respond when greeted.

[245] In his weakened state caused by further electric shocks after he had laid a complained there was no way that he could have managed to climb up the grill and tie the kikoi around his neck and the grill.

[246] There has been no explanation why only one fingerprint being that of Neil was picked up on the grill. If it was him going up there would have been multiple fingerprints of him on the grill.

[247] The witness Thabo Mothupi testified that to climb to the top of the cell Neil would have touched at least 3 or 4 bars. Mothupi noted that the deceased would have gripped the bar with his whole hand leaving prints of his palm, thumb and finger.

[248] Mr Sietze Sibon Albertze a fingerprint expert corroborated the evidence of Thabo Mothupi and even performed an exercise of climbing up the grill. That exercise left various fingerprints on the bars. His colleague made five points of contact with the bars when climbing the grills.

[249] Professor Johan David Laubscher a chief government pathologist testifying in the 1982 Inquest was asked to comment if it is possible for the deceased to have gone up the grills himself he responded as follows: "

"Edelagbare die opset hier is vir my die volgende dat om hierdie eindresultaat te bereik naamlik om die liggaam dan in hierdie houding te plaas sekerlik as daar nie 'n blok and tackle beskikbaar was nie sou daar 'n

hele aantal persone nodig gewees net. Ek sou reken ten minste vyf om die leggaam dan in hierdie posisie te plaas op so n manier dat daar nie wesenlike naspeurbare fisiere versteurings is nie.

[250] There is evidence that Neil had not been taking meals for a few days. This explains why he walked sluggish and did not respond to other detainees who tried to speak to him. Jabu Ngwenya told the 1982 court as well as the reopened inquest that physically Neil looked depressed, his shoulders were slumped, he walked with very little purpose, he dragged and shuffled his feet along.

[251] When Whitehead became aware that a case of assault and torture had been opened against him he became infuriated and confronted Neil about that. Whitehead was more concerned about his career progression in the security branch and would not permit this complaint to stand in his way more so that he over 62 hours had failed to get a confession or admission from Neil. In his view the best was to get rid of Neil and eliminate him. After all this was one of the security police methods.

[252] Whitehead new that he had the support and backing of his superiors like major Cronwright and Theunis Swanepoel (also known as Rooi Rus).

[253] The Security police had access to the second floor cells at any time of the day and night. They could use the alternative entrance identified by the Architects Messrs Savage and Dodd Mr Savage testified that a detainee could be taken out of his cell through the gate that leads to the woman's section of the second floor and then down either staircase or the lift without being signed out at the control office. He concluded that it follows that the security police would access the male section without passing through the control office.

[254] We now know from the evidence of Joe Nyampule that detainees would be taken out of their cells during the day for interrogation and investigation and would never be back in their cells at 16h00 when the day shift knocks off only to find that the detainee was brought back late at night or in the early hours of the morning.

[255] Auret Van Heerden testified in the 1982 Inquest that on the night of the 4th February 1982 that Sergeant Agenbach arrived at his cell opened it and just shouted greeting at him. Later that night he heard a commotion. Auret repeated this evidence in the reopened inquest. Sisa Njikelane saw Neil being carried shoulder high along the corridor in the same manner muslim carry their dead.

[256] It was at that time i.e. between 22h30 and 1h30am that Neil was being carried back to his cell by members of the security branch after he had been tortured to a situation of unconsciousness.

[257] Black security police officer who were in possession of the keys to all the cells where according to Gideon Makhetha instructed to lie under oath. Nyampule one of them testified in the reopened inquest that they were treated like children, they had to do as they were told. He says they were forced to turn a blind eye to the inhuman condition of detainees. Paul Sehloho who was in possession of the key to cell 209 including McPherson who was in charge did not testify in the reopened inquest. I have no hesitation that in the 1982 Inquest they were instructed by Major Cronwright or Brigadier Muller to lie and tell that court that no security branch officer came to take Neil out of his cell that night.

[258] Dr Steve Naidoo a specialist forensic pathologist testifying in the reopened inquest at the instance of the Aggett family told this court that medical evidence indicates that the physiological trigger for death was the stopping of the heart by the carotid sinus pressure by the ligature (which causes immediate cardiac arrest) and or bilateral carotid artery occlusion. He says that this means that Aggett was alive at the time of suspension and it was the suspension that killed him however he says this could have happened in a conscious or unconscious state. The same medical findings would result with a conscious or unconscious person.

[259] Dr Naidoo referred to five (5) possible causes of unconsciousness namely: intoxication of some sort, concussion (traumatic), electric shock induced, hypoxia/anoxia from carotid arterial obstruction. Dr Naidoo added that these five possible causes of unconsciousness. If such unconsciousness had occurred it would

not necessarily have been mutually exclusive to one another and that a combination of one or several occurring together cannot be excluded.

[260] Electric shock and suffocation using a wet cloth was one of the methods that Whitehead and all other security officers were trained to use in order to get a detainee to confess.

[261] Whitehead was frustrated after having subjected Neil to 62 hours of torture that he had nothing positive to report. The complaint against him just exacerbated the whole issue. When Neill could not recover his consciousness they took him back to his cell and propped him up and hanged him.

[262] They then filled up his cell with all the good things in an effort to cover up. Magistrate Kotze found that the evidence provided by the security police was unblemished. He concluded that the evidence by the police relating to the night Neil died was uncontradicted this is hardly surprising because only security branch police were present and decided all forms of cover up. This included the evidence by Professor Jan Plomp who despite having never met Neil Aggett concluded that Neil was suicidal.

[263] The evidence of Professor Charl Vorster a qualified clinical psychologist and that of Professor Jan Adriaan Plomp a qualified psychologist contradicts each other in respect of Neil being suicidal. It is surprising that Magistrate Kotze preferred the evidence Professor Jan Plomp over that of Professor Vorster without any plausible or convincing reason. Plomp amongst others says that the issue of the telex was the trigger to commit suicide. We know that no such telex existed. It was therefore surprising that Magistrate Kotze concluded that he was satisfied that Professor Plomp was an unbiased and honest witness and yet said nothing about the evidence of Professor Charl Vorster.

[264] The Magistrate Kotze misdirected himself on a number of issues for example:

- a) He curtailed cross-examination by counsel for the family.

- b) He disallowed detainees' statements that disclosed torture.
- c) He knit-picked the smallest inconsistencies in the detainees' testimony.
- d) He disregarded testimony by detainees because they were in custody for political crimes.
- e) He accepted evidence by the security police without question.

[265] I have no doubt that Mr Kotze was biased from the onset in the conduct of the inquiry. He did not have an open mind to find out what happened between 22h30 on the 4th February 1982 and 1h30am on the 5th February 1982. His intention was to find out why Neil committed suicide and nothing more or less. His finding as to how Dr Neil Aggett died and as to whether it was brought about by any act or omission falls to be set aside.

[266] It is strange that both Woensdragt and Deetlefs in their motivation and application to be medically boarded said that Neil committed suicide on the following day after they had interrogated him which means the 31st January 1982 or the 1st February 1982. Woensdragt himself under cross examination by Adv Varney for the Aggett family said that he after they had interrogated Neil had no suspicion that Neil would commit suicide. He does not know where Deetlefs got that because he did not tell the court in 1982.

[267] Mr Paul Erasmus in his evidence told the court that detainees would be strangled until they were of the believe that they were on the brink of death. This he said would be done by placing a wet bag over the detainee's head and suffocating him until near unconscious.

[268] The evidence presented in this reopened inquest directly challenges the conclusion and findings of the Magistrate in the 1982 inquest. This court is accordingly tasked with evaluating all the evidence of the two inquest proceedings taking into consideration whatever is left available of the 1982 inquest and the further evidence received in this inquest.

[269] The Magistrate concluded that Neil committed suicide by hanging himself as a result of the following reasons:

- a) That Neil was a man who was devoted to a cause who could with a number of close associates to achieve his goals.
- b) That during his period of detention Neil disclosed particulars of his activities and more important the names of his associates.
- c) That these disclosures must have brought about a feeling of uncertainty about his future and the realisation that steps could be taken against his associates. The possibility of a sense of guilt towards his associates a sense of betrayal of his friends and associates is large.
- d) He had to face some of his associates and to admit the disclosures an anticipation or feeling of rejection by them could not be excluded and lastly that he had been told that a close friend of his could not provide him with a portable radio in the cell.

[270] An examination of the reasons preferred by the Magistrate will demonstrate that the Magistrate was at pains to at all costs exonerate the security police in the death of Neil Aggett.

[271] Firstly it is correct that Neil was devoted to the cause of the workers. This is evidenced by the fact that he agreed to serve the union without being paid. I find no valid reason why will this be a reason for him to commit suicide rather than pursue the ideas of bettering the workers' conditions. The fact of the matter is that the security police could not accept that Neil decided on this course rather than make lots of money as a doctor. One of the police officers said that in the reopened inquest. His sister Ms Jill Burger and his partner Dr Liz Floyd without mincing words told this court that Neil would never commit suicide he still had a long way in enhancing his medical qualifications. Sergeant Blom-Visser agreed with this.

[272] Secondly the Magistrate says one other reason is that Neill disclosed particulars of his activities and also named associates and this caused him embarrassment therefore decided to take his life. In the first place this is speculation by the Magistrate. There was no evidence placed before the 1982 inquest as to what Neil's activities were which he disclosed which were unlawful. Neil told them that he was a member of a legal trade union and denied being a member of any banned organisation. In any case Neil must have mentioned the name of Jan Theron and that of Oscar Mphetha because they were union officials. If there was anything sinister about that the question remains why no arrests were made pursuant to that disclosure.

[273] The reason that Neil anticipated a feeling of rejection from his close associates for having disclosed their names is in my view speculative and nonsensical. According to Visser and Deetlefs Neil made the disclosure on the 30th January 1982. The question is why would he then wait four days then decide to commit suicide and in fact after laying a complaint of assault against Whitehead and other police officers. Similarly, the reason that Neil committed suicide because a friend could not provide him with a radio in the cell is in my view laughable and has no merit.

THE DENIALS OF ASSAULT ON NEIL AGGETT BY THE POLICE

[274] The ill-treatment of detainees is often expressed in the form of physical assault. This form of assault is easier to prove because it leaves marks like scars and bruises. However, there are other forms of torture that were applied to detainees which did not leave any evidence for medical practitioners this include sleep deprivation, standing for long hours whilst being interrogated, suffocation with wet bag, sitting on an imaginary chair and being made to run on one spot whilst naked for long hours as well as electrocution.

[275] Despite overwhelming evidence by detainees in the 1982 inquest about the various forms of assault meted out to them the Magistrate preferred the evidence of the police and in one sentence said the following.

“I have already dealt with the possibilities ingrained in the allegation of assault, sleep deprivation and other forms of ill-treatment and concluded that nothing of that kind is proved.”

[276] The finding that Neil consented to be deprived of sleep for 62 hours boggles one mind it is so far from the truth and reality that it falls to be rejected with the contempt it deserves. The Magistrate without further enquiry accepted the lies from the police. If Neil consented, then why did he lay a complaint on the 4th February 1982.

[277] Visser was a defendant in an action by Auret Ven Der Heerden against the police in which action Auret cited various forms of assault and torture on him despite the court finding in Van Heerden's favour Visser persisted in his denial about the assault. He claimed to have been in the then South West Africa (now Namibia) when the case was instituted. The police must have settled the civil claim on the basis of their admission of such acts and nothing else.

[278] The evidence of assault and other forms of torture of detainees presented before this reopened inquest especially by Prima Naidoo, Reverend Frank Chikana, Jabu Ngwenya, Sisa Njikelane, Barbara Hogan is so overwhelming that the denial and lack of knowledge thereof by the security officers namely Chauke, Deetlefs, Woensdragt, Visser and Swanepoel who all testified in the reopened inquest is disingenuous and amount to an act of cover up.

[279] This court accepts on the basis of overwhelming similar pattern of torture on other detainees that Neil Aggett was tortured which torture included physical assault.

DR NEIL AGGETT PHYSICAL CONDITION SHORTLY PRIOR TO HIS DEATH

[280] It is common cause that Dr Neil Aggett was in a weakened condition since the long weekend of interrogation and torture. One detainee described his movement as sluggish and shuffling. He also said to another detainee that he had been tortured and that he cannot take it anymore. Dr Naidoo an expert pathologist testified that

Neil must have been unconscious when being popped up the grill either through suffocation, electric shock or intoxication of some sort.

[281] Paul Erasmus testified that the security police routinely covered up for each other. He cited the case of Stanza Bopape who it later appeared in the TRC hearing was killed at John Vorster Square by electrocution then the police with the assistance and advise of the branch had his body thrown in the crocodile river in Mpumalanga. It is therefore clear that the death of Dr Neil Aggett was a big cover up of the truth and this involved all the security police who were there on the morning of the 5th February 1982. This view is supported by the evidence of Frank Dutton and Paul Erasmus. Major Cronwright took it upon himself to write out statements for the Black police officers so that their evidence should fall in line with the general scheme of cover up. Sergeant Joe Nyampule testified to that.

[282] Evidence of cover up is further supported by the sloppy investigation conducted as well as failure to hold administrative enquiries in terms of the Police Act concerning certain breaches of protocol and police orders. Frank Dutton testified that at the time the investigation commenced it was clear that the investigators had already adopted the view that Aggett had committed suicide. This he said fell short of the required level of impartiality which requires an open mind as to the cause of death. In his view the selected investigator Captain Carel Victor who was attached to the detective branch at John Vorster Square was unlikely to act independently in the face of senior officers such as Brigadier Rooi Rus Swanepoel and Hennie Muller who were overseeing the investigation on the death of Neil Aggett. In particular Brigadier Rooi Rus took charge of the death scene in cell 209 in the early hours of the 5th February 1982 even before the arrival of any forensic pathologist. Frank Dutton reminded this court that Brigadier Rooi Rus Swanepoel interrogated Suliman Salojee on the day he fell to his death from the 7th floor of Greys Building in Johannesburg on the 9th September 1964 and also that he interrogated James Lenkoe on the day Lenkoe allegedly hanged himself in March 1969.

[283] There are a number of issues and events which if the Magistrate had applied his unbiased mind to the facts and evidence would have indicated that the police version was a lie and a sham meant to cover up the truth. One of the most obvious is

the non-disclosure of the 4- page document wherein Aggett is said to have incriminated others and the second most glaring is the mission by Lieutenant Whitehead who was a suspect to the core together with Paul Erasmus on a fishing expedition aimed at coming up with evidence of Aggett's possible suicidal tendencies.

[284] Mr Frank Dutton makes the point which in my view sums up the involvement of the security police in the death of Dr Neil Aggett that is that the gap in cell visits during the late night of 4th February and early morning of 5th February 1982 may not have been a mere coincidence. This he says may have been orchestrated to permit the death scene. There is ample evidence and indication that support this view I have dealt with same elsewhere in the judgment.

[285] The evidence of Dutton and Erasmus corroborated that of the detainees that it was general practice for the police to torture detainees to a point of death. In the event death occurs whilst in detention a cover up story would be devised and implemented so as to shield security police from blame. According to Dutton and Erasmus the cover up story must be handled by a unit within the security branch known as "resident sweepers."

CONCLUSION

[286] Having heard all the evidence I have come to the conclusion that Dr Neil Hudson Aggett was killed by members of the security branch. The evidence of Detainee Coleman supported by that of Jabu Ngwenya and Sisa Njikelane is vital. It is clear that something happened between 22h30 on the 4th February 1982 and 1h30am on the 5th February 1982.

[287] The fact remains that Aggett was assaulted and tortured. The suspects were known to him and he told Sergeant Blom-Visser who they were. Those suspects included Lieutenant Whitehead who became angry and promised to carry on with further investigation.

[288] Lieutenant Whitehead was extremely obsessed with getting his way with Aggett. After Martin Naude had given a report early in January 1982 to the effect that he could find nothing to justify further detention of Dr Neil Aggett, Lieutenant Whitehead removed him from further involvement and directed that Naude go back to East London.

[289] It is also clear that the claim by Deetlefs supported by Woensdregt and Whitehead that Neil produced a four-page document in which he incriminated his comrades was nothing but a fabrication used to justify the reason why he committed suicide. Warrant officer Deetlefs was probed as to the contents of that apparently explosive and sensitive information and was unable to give any precise details of what it contained not only in this reopened inquest but also in the 1982 inquest. The subsequent telex to Head office relaying that four-page sensitive information was never produced.

[290] It is therefore clear that this was a fabrication concocted to explain to the 1982 inquest some kind of basis that supposedly led to Dr Aggett taking his own life. This was followed by a well-orchestrated cover up engineered from the top police structure within the security branch.

[291] It is clear that Dr Neil Aggett had had enough of the torture and made a complaint on the 4th February 1982 and judging by his character he was prepared to proceed with the claim and it is for that reason that he died within 15 hours after making the complaint.

[292] When Liz Floyd asked Deetlefs "who was killed" he responded "Someone close to you." It is significant that Deetlefs did not tell Liz about suicide. It therefore means that he knew that Dr Aggett had been killed. It is also not surprising that when Whitehead was asked if he will be applying for amnesty in respect of the death of Dr Neil Aggett he responded to Dr Pretorius one of the TRC investigators that he will not apply for amnesty and as regards Neil's death he blamed Paul Erasmus. He told the investigators that Paul Erasmus strangled Dr Aggett with a wet towel.

[293] Accordingly it is my well-considered view that Dr Neil Aggett did not commit suicide he was killed by members of the security branch at John Vorster Square.

[294] There is evidence implicating Lieutenant Stephen Whitehead in the killing duly assisted by unknown police officers. There is also evidence that officer Vissers, Deetlefs, Chauke, Woensdregt and Swanepoel participated in the cover up in 1982 and in this court by denying knowledge of assault and torture. I recommend that investigation be undertaken in this regard.

FINDING

[295] In the result and in terms of Section 17A (3) (b) read with Section 16(2) of the Act this court finds as follows:

- a) The Deceased is Dr Neil Hudson Aggett.
- b) Cause of Death was hanging.
- c) Date of death 5th February 1982.
- d) The death was brought about by acts committed by members of the security branch stationed at John Vorster Square amongst them Lieutenant Stephen Whitehead and Major Arthur Cronwright.

DATED at JOHANNESBURG this the day of MARCH 2022

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES:

DATE OF HEARING : 20 January 2020 to December 2021
DATE OF JUDGMENT : 04 March 2022

EVIDENCE LEADER : Adv JJ Mlotshwa
: With him Adv Singh

INSTRUCTED BY : Office of the Deputy Public Prosecution

FOR AGGETT FAMILY : Adv Varney
: With him Adv Scott
: And Adv Fakir

INSTRUCTED BY : Messrs Webber Wentzel

FOR IMPLICATED SAPS : Adv Coetzee
(previous SAPS)

FOR CURRENT SAPS : Adv A Amojee

PROSECUTION POLICY DIRECTIVES

Policy Directives issued by the
National Director of Public Prosecutions

1 February 2024

The Policy Directives are confidential and, unlike the Prosecution Policy, Code of Conduct and United Nations Guide on the Role of Prosecutors which are public document and may be made available to members of the public on request, the Policy Directives and circulars are not public documents. Where legislation requires the issue and publication or tabling in Parliament of policy and/or directives these are available separately and are also published on the NPA website and intranet.

The Policy Directives are amended from time to time in order keep abreast with legal and process changes and other developments. Amendments come into effect on the first day of the month following approval unless otherwise specified. Prosecutors are invited to submit suggested amendments or additions for consideration to directives@npa.gov.za.

Document Control Page										
Document title	PROSECUTION POLICY DIRECTIVES									
Creation date	2 March 2015									
Effective date	1 February 2024									
Digital name	Prosecution Policy Directives with effect from 1 February 2024									
Digital location	t.b.d.									
Password Protected	Indicate with X	Yes		No	X					
Status	Indicate with X	Draft		Final	X					
Version	V1.4									
Owner title, name and contact details	National Director of Public Prosecutions 012 845 6000									
Author title, name and contact details	Adv B Smith, Deputy Director of Public Prosecutions 012 845 6000									
Contributors	Members of the Prosecuting Authority									
Distribution	Members of the Prosecuting Authority									
Security classification Indicate with X	Restricted		Confidential	X	Secret		Top Secret			
Revision	Version Nr	Revision Date	Revision Details					Revised by		
Revisions:	01/06/15	08/04/2019	Amendments to Part 11 to explicitly deal with minimum sentences and essential infrastructure offences; Amendment to Part 19 to ensure references are made to 'definitions, interpretations and exceptions' in charge sheets.					B Smith		
	V1.0	01/07/2021	Replacement of Part 44 due to amendments to Part 44 and the inclusion of mutual legal assistance in this part.					L Mgiba		
	V1.1	01/06/2022	1. Replacement of Parts 11 and 12 dealing with matters justiciable in the Regional and High Courts. 2. Inclusion as Part 50 the Trafficking in Persons Directives issued in 2016.					B Smith		
	V1.2	01/07/2022	Replacement of Part 25 dealing with mental observation and inclusion of enquiry regarding declaration of persons as dangerous criminals.					B Smith		
	V1.3	01/12/2023	Replacement of Part 8 dealing with prosecution of certain categories of persons following review.					B Smith		
	V1.4	01/02/2024	Insertion of Part 51: Corporate Alternate Dispute Resolution					B Smith		

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PART I: INTRODUCTION

1. The National Director of Public Prosecutions ("the National Director") has, in accordance with section 179(5)(b) of the *Constitution of the Republic of South Africa, 1996* ("the Constitution"), and section 21(1)(b) of the *National Prosecuting Authority Act, 32 of 1998* ("the NPA Act"), issued Policy Directives which must be observed in the prosecution process.
2. The Policy Directives first came into operation on 1 November 1999 and are updated and amended from time to time.
3. Unless otherwise indicated or implied the Policy Directives are binding on all members of the National Prosecuting Authority ("the NPA"). These Directives are intended to set uniform norms and standards in prosecutorial practices. They deal with the professional duties of prosecutors and do not purport to regulate purely administrative matters.
4. As from 1 November 1999, all previous Attorney-General Circulars issued to prosecutors, as well as all instructions, guidelines and memoranda issued to prosecutors or state advocates concerning the performance of their professional tasks, were withdrawn.
5. All other circulars, codes (including the code "Staatsaanklaers") or instructions issued by the Department of Justice purporting to regulate the professional conduct of prosecutors were replaced by these Directives.
6. In these Directives, unless it appears otherwise from the context, any reference to a **"DPP"** means a reference to—
 - (a) a Director of Public Prosecutions;
 - (b) a Deputy DPP heading an NPA Office at the seat of a High Court;
 - (c) a Special Director;
 - (d) an Investigating Director; or
 - (e) a person appointed by the Minister to act in one of the capacities referred to above.
7. The Head of the Asset Forfeiture Unit (AFU) may issue general instructions to members of the AFU which are not inconsistent with these directives. Copies of such circulars must be forwarded to the National Director.
8. A DPP may issue circulars with general instructions to prosecutors under his or her authority, which are not inconsistent with these Directives. Copies of such circulars must be forwarded to the National Director.
9. In so far as these directives govern internal processes, nothing in this document should be construed as creating any rights in respect of any person or body outside the NPA in addition to any rights provided for in the law.
10. Prosecutors who fail to comply with the directives will be dealt with according to the disciplinary procedures of the NPA.

PART 2: AUTHORITY TO PROSECUTE**A. Prosecuting Authority**

1. The NPA Act, which came into operation on 16 October 1998, created a single National Prosecuting Authority. In terms of the NPA Act all prosecutions are instituted in the name of the State.
2. The National Director is required to authorise certain prosecutions in writing, such as:
 - (a) The institution of a prosecution of a person for incest who was a child at the time of the alleged commission of the offence (section 12(3) of the *Criminal Law (Sexual Offences and related matters) Amendment Act, 32 of 2007*).
 - (b) The institution of a prosecution for an offence in terms of the *Criminal Law (Sexual Offences and related matters) Amendment Act, 2007*, where the provisions of section 61 of this Act relating to extra-territorial jurisdiction apply.
 - (c) The institution of a prosecution for an offence related to torture outside the territory of the Republic (section 6(2) of the *Prevention and Combatting of Torture of Persons Act, 13 of 2013*).
 - (d) The institution of a prosecution related to the acquisition, possession of or performance of certain activities relating to nuclear material, restricted material and nuclear related equipment and material without the necessary written authorisation of the Minister for Energy (section 56A of the *Nuclear Energy Act, 46 of 1999*).
 - (e) The institution of a prosecution relating to the use or threatened use of a weapon of mass destruction (section 26A of the *Non-proliferation of Weapons of Mass Destruction Act, 87 of 1993*).
 - (f) The institution of a prosecution for a racketeering offence as described in section 2(1) of the *Prevention of Organised Crime Act, 121 of 1998* (POCA).
 - (g) The institution of a prosecution under chapter 2 of the *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 33 of 2004* (POCDATARA).
3. In terms of section 5 of the *Implementation of the Rome Statute of the International Criminal Court Act, 27 of 2002*, no prosecution may be instituted against a person alleged to have committed the crimes of genocide, crimes against humanity and war crimes without the authorisation of the National Director. Similarly, the section provides that only the National Director may decide not to prosecute such a person.
4. In terms of section 110A of the *Criminal Procedure Act, 51 of 1977*, the National Director may instruct that a South African citizen who committed an offence outside of the Republic, but could not be prosecuted by the courts of the country where the offence was committed due to diplomatic or similar immunity, be prosecuted within the Republic, where the offence is also an offence under South African law.
5. The *Implementation of the Geneva Conventions Act, 8 of 2012* also provides for extra-territorial jurisdiction over persons committing offences in relation to or failing to prevent grave breaches of the Conventions, providing jurisdiction to any court within the Republic. The Minister of Justice, in consultation with the Chief Justice and after consultation with the National Director, in writing designates an appropriate court to try such person.



**Written submissions to the Committee on Justice and Constitutional Development of
the South African Parliament**

Date of submissions: 12 February 2025

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I. Introduction

1. The [Foundation for Human Rights](#) (FHR) is a non-profit human rights organisation, which, among others, works towards criminal accountability for Apartheid-era crimes, in particular for gross human rights violations where amnesty was refused by the Truth and Reconciliation Commission (TRC) or was not applied for. As part of its Programme on [the Unfinished Business of the TRC](#), the FHR provides active assistance to survivors and victims' families in 24 cases arising from the TRC process. Together with other civil society organisations, and as a member of the [South African Coalition for Transitional Justice \(SACTJ\)](#), we have also lobbied for meaningful reparations.
2. When the Deputy National Director of Public Prosecutions (DNDPP) reported to Parliament on 21 November 2023, it was suggested that families and civil society organisations working with these matters should be given an opportunity to share their views and experiences. We are pleased that families and civil society have been given this opportunity, which will greatly benefit the Committee.
3. The FHR has been engaging with the National Prosecuting Authority (NPA) and the Directorate for Priority Crime Investigations (DPCI) on the TRC cases since 2005, and while there has been some progress, there are a number of issues that require further scrutiny and improvement. We will deal with these matters in greater detail in the remainder of our submission, but these include capacity and resource constraints, a lack of effective and strategic oversight and coordination, inconsistent policies, and prolonged delays in securing legal funding for former state officials. As a result, far too many of these cases remain stalled, jeopardising accountability and denying justice to victims and their families.
4. In order to not overwhelm the submission with unnecessary details, we refer the Committee members to two key resources, which cover the relevant issues substantially:
 - 4.1. [The FHR submission to the Ntsebeza inquiry](#) (18 May 2023).
 - 4.2. [Constitutional Damages founding affidavit and annexes](#) (20 Jan 2025)
5. We begin our submissions by addressing the key issues of our submission, which focus on:
 - 5.1. The TRC-dedicated capacity within the NPA and DPCI, along with the key challenges in the current approach.

- 5.2. Legal costs issues, which could see the collapse of the Cradock Four reopened inquest and all future inquests involving former state officials.
 - 5.3. Concerns regarding judicial processes.
 - 5.4. The need for an Independent Commission of Inquiry into political interference and the recent constitutional damages litigation.
 - 5.5. Reparations.
6. We also highlight the unaddressed request from survivors and victims' families to meet with President Ramaphosa. While we acknowledge that this matter falls outside the JPC's mandate, we felt it was important for the Committee to be aware of the request.

II. TRC Dedicated capacity within the NPA and DPCI

A. Background

7. Early attempts to investigate and prosecute apartheid-era political crimes involved initiatives such as the setting up of the investigative and prosecutorial unit headed by the Transvaal Attorney General, Dr J D'Oliveira in 1994, which successfully prosecuted Eugene De Kock and Dirk Coetzee, or the Investigation Task Unit (ITU), which was established by the Police Ministry in 1994 to investigate hit squad activity in the KwaZulu Natal region.
8. However, the cases investigated by two specialised units, the ITU and the D'Oliveira, cannot be referred to as 'TRC cases' as they were pursued independently of the TRC around the same time of the TRC's operations. The two specialised units, helped to pioneer the approach of prosecution led investigations in South Africa, with prosecutors and investigators working together as teams under one roof, with proven success.
9. In early 1999, a working group called the Human Rights Investigative Unit (HRIU) was established within the NPA by the then NDPP, Bulelani Ngcuka, on the initiative of the then Minister of Justice, Dullah Omar. The part-time head of the Unit was Adv Vincent Saldanha, and his deputy was former prosecutor, Adv Brink Ferreira. It was mandated to review, investigate and prosecute TRC cases in which perpetrators had been denied amnesty or in which perpetrators had not applied for amnesty. The HRIU continued operations until 2000, however it instituted no prosecutions.
10. In 2000, the dockets held by the HRIU were transferred to the DSO, more widely known as the Scorpions. A working group was established within the DSO to handle the TRC

cases known as the Special National Projects Unit (SNPU), which was headed by Advocate Chris Macadam. It appeared that the NPA devoted few resources to the SNPU. The SNPU operated until 2003, but like the HRIU, it too instituted no prosecutions.

11. On 24 March 2003, the Priority Crimes Litigation Unit (PCLU) was created within the NPA by Presidential Proclamation. Under the same proclamation, Anton Ackermann SC was appointed to head the unit. Macadam was transferred from the DSO to become the Deputy Director at the PCLU. Part of the PCLU's mandate was to deal with the TRC cases.
12. In May 2003, NDPP Ngcuka decided that all TRC-related cases in which amnesty had not been granted were 'priority crimes' in terms of the PCLU proclamation. According to Ackermann, this resulted in more than 400 investigation dockets being transferred to the PCLU. Official duties commenced during July 2003.
13. However, before the PCLU could get going, the political interference intervened which prevented the unit from carrying out its mandate in respect of the TRC cases.¹ The few cases the staff managed to get off the ground were the ones that had been previously investigated with largely complete dockets. Political interference suppressed the bulk of the TRC cases post the winding up of the TRC and 2017, when the historic inquest into the death in detention of Ahmed Timol took place.²
14. In January 2019, the NPA implemented a decentralisation policy in relation to the TRC cases in which the cases were transferred from the PCLU to the NPA's provincial offices. Already a large number of suspects and witnesses had died before trials or inquests could commence, and more were dying.³
15. The decentralisation policy failed to deliver any tangible results and accordingly the FHR called for an urgent change of direction and lobbied for specialisation.⁴ The FHR and families called for the creation of a specialised unit or an Investigating Directorate where prosecutors and investigators could work together to solve these cold cases. This approach was rejected, with the NPA and DPCI opting to establish 'TRC Components' in 2021, which were operationalised in 2022.

¹ We provide some high-level background to the political interference in the section V(A) of these submissions. The details of the apparent political interference can be consulted in [the constitutional damages founding affidavit](#).

² For the list of accountability efforts during this period see [the constitutional damages' founding affidavit](#) paras. 112-120.

³ See par. 419 of the [constitutional damages' founding affidavit](#).

⁴ See e.g., https://unfinishedtrc.co.za/wp-content/uploads/2023/01/2020-01-13-FHR-Opinion_Exploring-Legal-Options_Apartheid-era-Crimes_130121-FINAL.pdf

16. While the establishment of the TRC Components within the NPA and DPCI has been welcomed, it has failed to address key underlying challenges in the investigations and prosecutions process. These issues include:

- 16.1. Lack of clear accountability – While the NPA’s TRC Component falls directly under the Deputy NDPP responsible for the National Prosecution Services (NPS), it provides little or no strategic direction or oversight over the TRC cases.
- 16.2. The TRC Component remains largely opaque. It remained nameless for several months. We are only aware of one full time state advocate serving in the Component. It does not appear anywhere on the NPA’s website, and no contact details are offered to the general public. We are not aware of the staff compliment or the nature of the work they do.
- 16.3. While the Component reports to the Deputy NDPP it has no full-time dedicated head. Given the Deputy NDPP’s onerous responsibilities for the entire prosecution service, he or she cannot be expected to devote adequate time to these cases.
- 16.4. In respect of the TRC cases, the buck does not appear to stop with anyone. Queries in relation to cases are bounced around between the Component and the provincial offices.⁵ Nobody seems to be able to take full and final responsibility for the cases. Prosecutor turnover on cases also seems to be high.
- 16.5. While “dedicated” prosecutors have been appointed in the provinces, they do not report to the Component but to their DPP, who may have other priorities. The TRC Component maintains an arm’s length from the cases and state repeatedly that they cannot get involved in the cases. It enjoys no authority over provincial prosecutors and seems to be a largely toothless and ineffectual body.
- 16.6. Failure to make decisions – In some cases, investigations appear to continue indefinitely without any prospect of a decision from the NPA. Any decision is better than no decision. A decision allows families to respond, pursue a review, or explore other avenues such as an inquest or a private prosecution. Without a

⁵ For example, in the Pebco 3 case family representatives provided a 150-page dossier to the NPA in the Eastern Cape in November 2023. It took more than a year to get a meeting with the prosecutors, who then informed the families that they could not respond to the dossier because head office had only recently given them permission to look at it. This conflicted directly with the ‘decentralisation policy’ which stated that the provincial offices of the NPA were in charge of the TRC cases.

decision, families are forced into lengthy and resource-draining legal battles to compel the conclusion of investigations and a decision from the NPA.

We deal with the following issues pertaining to the NPA's TRC Component in more detail:

B. NPA and DPCI Components – Composition and Structure

17. There is little information on the functions of individuals working at the NPA's and DPCI's TRC Components. Transparency on who they are and their responsibilities will help families escalate their concerns more effectively and encourage the public to share potentially valuable information.
18. The latest NDPP report before the Justice Portfolio Committee regarding the TRC cases took place on 17 September 2024. The report disclosed that the NPA had deployed 16 'dedicated prosecutors' to the TRC cases, while the DPCI had 24 dedicated investigators (down from 25 prosecutors and 40 investigators [reported before the Committee on 25 November 2022](#)).
19. As far as we understand, the dedicated prosecutors have been on 3-year contracts, which has contributed to uncertainty and high turnover. By way of example:
 - 19.1. Since June 2021, four different prosecutors have handled the case involving the 1977 death in detention of Matthews Mabelane, where a decision on an inquest has still not been made.
 - 19.2. The PEBCO 3 case has also been repeatedly reassigned, with multiple prosecutors involved since its initial investigation by Advocate De Oliveria's Special Investigations Unit in 1997.
 - 19.3. The prosecutor assigned to handle the enforced disappearance of Iggy Mthebule, a former MK operative who vanished at the hands of the Security Branch in Johannesburg in 1987 was informed a few days before a meeting with the family and their legal representatives that her contract had not been renewed.
 - 19.4. In a welcome development, in November 2024, the Minister of Justice and Constitutional Development stated in a written response to a parliamentary

question that 19 permanent TRC posts had been created.⁶ The public and this Committee should be informed about how many of the current TRC prosecutors' contracts have been made permanent and what plans exist for filling the remaining vacancies.

20. Apart from the cases that we support, we do not know who the other prosecutors are working exclusively on the TRC cases. There has also been no indication of what the "dedication to the TRC cases" means. It may mean that the prosecutors are dedicated because they devote 100% of their time to the TRC cases, but it does appear that some prosecutors have other responsibilities as well.

C. Never-ending investigations and slow decision-making process

21. While we acknowledge the capacity and resource constraints within both the DPCI and the NPA, as well as the challenges of investigating decades-old political crimes, this does not excuse the slow rate of progress with these cases. With each passing year, the likelihood of resolving the TRC cases diminishes as suspects and witnesses pass away. Some of the cases covered in the document "FHR-supported TRC cases" **[Annex 1]** i.e., PEBCO 3, Neil Aggett, Bayempini Mzizi, Rick Turner, or Matthews Mabelane highlight these key issues.

D. The Cases under investigation

22. At the 17 September 2024 meeting, the NPA stated that 104 unnamed new investigations had been opened since late 2021 and that a total of 126 unnamed cases were under investigation, down from the 137 cases mentioned at the JPC meeting in November 2023. It is unclear how the cases progress and how they are being tracked. The only information provided is through reports, largely devoid of detail, made to the Justice Portfolio Committee.

23. According to a presentation made by the NPA to the Portfolio Committee on Justice and Constitutional Development on 17 September 2024, 30 matters had been finalised, but the NPA only disclosed the finalised Aggett, Dipale, Haffejee, Haron and Sokhulu inquests. We believe that the Portfolio Committee and the general public have a right to know which other cases have been finalised, and what the result of that finalisation has been.

⁶ The National Assembly for a Written Reply, PQ NO. 1755, Date of Publication of the Internal Question Paper 18/11/2024, Mrs E N Ntlangwini (EFF) to ask the Minister of Justice and Constitutional Development: [436] [Question submitted for oral reply now placed for written reply because it is more than quota (Rule 137(8))].

- 23.1. In relation to ‘matters on the criminal roll’ the presentation referred to the COSAS 4, Nokuthula Simelane and Nyoka cases, as well as S v Botha and Others (connected to the Kubheka case) and S v Schoon and Others (connected to the Mngomezulu case) which were both remanded to November 2024 and described cryptically as “state attorney – legal representation”. Under the heading of “Indictments” the NPA refers to three unnamed “indictments to be served pending verification of addresses of perpetrators”.
- 23.2. Under the heading ‘Notable Inquests’ 15 matters are mentioned, but most appear to be stalled. In six cases, judges have apparently not been appointed, five are described as “shortage of capacity”. One (Cradock 4) was described as a “challenge with representation”. Only the Mthunsi Njakazi inquest had commenced, while the Oupa Madondo and Highgate Hotel cases were scheduled for November 2024 and January 2025 respectively. The presentation also claimed that memoranda for unnamed inquests were underway.
24. The NPA has repeatedly refused to disclose the names of the deceased in the 137 cold cases under investigation to the FHR and the general public, citing flawed "security" reasons. Publicly releasing this list would enable the FHR and society at large to monitor the progress of investigations and prosecutions, ensuring greater transparency and accountability from the NPA and DPCI, and it would encourage the public to provide information and leads on the cold cases.

E. Prosecutorial Strategy

25. Given the passage of time and the challenges of investigating decades-old cases, it remains unclear how the NPA prioritises these investigations. It is also important to determine whether the NPA adopts a strategic approach by linking cases through similar fact evidence, recurring patterns, shared modus operandi, common perpetrators etc.
26. In early 2023, the NPA informed us that they were in the process of developing specific guidelines for prosecutors (“a prosecutorial strategy”) handling TRC-related cases. A similar indication was included in the report prepared by Advocate Ntsebeza, published in February 2024.
27. Although we were promised an opportunity to provide input on such guidelines, there has been no follow-up from the NPA, nor any indication as to whether the guidelines have been finalized.

III. Legal costs

28. The issue of reasonable legal representation costs for former police and military officers—whether as witnesses in inquests or as suspects/accused in criminal trials—has been a systemic challenge, repeatedly delaying inquest and trial proceedings. The legal costs issue is twofold:

28.1. There is a blatant disregard for established case law and a lack of consistency in how SAPS, SADF, ministries and the State Attorney's office handle cost applications by accused persons and inquest witnesses (former military or police officers). Unfortunately, the NPA acts as a passive observer rather than ensuring that timely arrangements for legal representation are made.

28.2. A lack of state resources to ensure that survivors and victims' families are legally represented in inquests.

A. The Precedent and the settled legal cost issue

29. The state is obliged to pay the legal costs of former police and military officials who carried out operations on behalf of the apartheid state. This principle was established in the [2018 judgment in the Coetzee case](#), where the SAPS was ordered by the High Court to pay the legal fees of former Security Branch officers accused of the murder of Nokuthula Simelane in 1983. The State Attorney also arranged the legal support of implicated former police officers in the Timol, Aggett and Haffejee inquests, as well as the criminal trial of Joao Rodrigues, who was charged with murder of Timo but passed away in 2021 before he could face justice. However, it appears that the State has now abandoned legal precedent and past practice.

30. The legal cost issue delayed trials by several years in the cases of Nokuthula Simelane and the COSAS 4, when the SAPS refused former police officers' applications for legal support. The families in both these cases had to intervene in order to resolve this question, which was delaying both trials. This issue also delayed trial proceedings in the Caiphus Nyoka, Ntombikayise Priscilla Kubheka and Musawakhe 'Sbho' Phewa matters, as well as in the Hoosen Haffejee and Cradock Four inquests.

31. Most recently, in the trial concerning the murders and forced disappearances of Phewa and Kubheka, two of the five accused recently passed away after repeated postponements, largely due to the unresolved question of costs for legal representation.

32. The court in *Coetzee* ruled that SAPS was the successor in title to the SAP and hence, it assumed the latter's liabilities and responsibilities, and that kidnappings and extra judicial killings carried out by the Security Branch were authorised and part of state sanctioned policy. In particular, the court found that

"It would be in a public interest if this trial commences as soon as possible to ensure justice not only to the applicants, but to the fourth applicant and her family as well, and society as a whole. It is further in the public interest that the applicants should have proper legal representation and a fair trial as soon as possible. The commencement of the trial has already been unduly delayed due to the decision not assist the three applicants with payment".

33. In the *COSAS 4* case, the lawyers for the families intervened in the criminal trial and [litigated](#) against the SAPS. It resulted in [a court order](#) issued by Mokgoatlheng J on 4 May 2022 compelling the SAPS to pay Christiaan Rorich's legal costs. The SAPS belatedly took this order on appeal, which was [opposed](#) by the families. On 5 December 2022 the FHR sent [an open letter](#) to the Minister of Police asking him to change course on the question of legal costs. Leave to appeal was [dismissed](#) on 12 January 2023. The SAPS then petitioned the Supreme Court of Appeals but abandoned its appeal in April 2023.

34. In this context, the SAPS' continued and repeated refusal to fund former security officers in the *Craddock 4* case is perplexing and difficult to justify.

B. CRADOCK 4 Inquest - Disregard for the case law & inconsistency in approach

35. On 2 September 2024, the commencement of the third *Craddock Four* inquest was postponed to June 2, 2025. The postponement occurred notwithstanding strenuous efforts made on behalf of the families to ensure a timely start. Legal representatives of the former South Africa Police (SAP) and South African Defence Forces (SADF) witnesses complained that they were notified too late by the NPA to prepare for the inquest and were not able to secure state funding for their legal costs.

36. On 2 September 2024, Judge Beshe ordered that all applications for legal costs should be filed, and their outcomes decided by the relevant state authorities by no later than 2 December 2024. The applications by Christoffel Pierre "Joffel" van der Westhuizen, Gerrit Nicholas Erasmus, Izak Johannes "Krappies" Engelbrecht, Craig Michael Williamson and Eugene Alexander de Kock were all refused. This was notwithstanding the aforementioned legal precedent and past practice.

37. On 3 October 2024, the families' lawyers filed an application with the Eastern Cape Division of the High Court to secure the early evidence on commission of former Lt. Gen. Joffel van der Westhuizen, citing his ill health and advanced age, in accordance with s 15 of the Inquests Act.⁷ However, because his lawyers have not secured legal funding, this application has been suspended indefinitely.
38. The decision to deny funding for former security officers in the Cradock 4 case is likely to cause the inquest to collapse again on 2 June 2025. There is now insufficient time to resolve this issue through internal appeals or litigation prior to the next hearing date. Indeed, if not resolved soon, it will cause the permanent collapse of the inquest given the advanced ages of the few surviving suspects and witnesses.
39. Indeed, it is likely to likely to cause the demise of all future inquests involving former state officials from the apartheid-era. It will also cause the prolonged delay and likely collapse of the few criminal trials that are before the courts.
40. Given established legal precedent and past practice it is unclear why state agencies are now reversing course. What is urgently needed is high level policy intervention. Given the small and fading window of opportunity to pursue these cases, and given that they are extremely limited in number, this Committee should call on the relevant ministries and departments to immediately drop their objections and pay reasonable legal costs⁸ in these matters so that they can proceed before it is too late.

C. Costs of families' legal representation

41. State-funded legal representation for families and survivors in inquests is not provided for under South African law. They are placed at a disadvantage compared to former state officials who are entitled to state-funded legal representation due to their prior employment in state security agencies.
42. Survivors and victims' families have a right to legal support in terms of s 34 of the Constitution. The unique context of TRC-related cases imposes a moral and legal obligation to assist the victims' families.

⁷ He is 83 years old. Other suspects are equally old. Gerrit Nicholas Erasmus, former Lt General and head of the Port Elizabeth Security Branch, is 88 years old. Izak Johannes "Krappies" Engelbrecht, former Major General and head of the SAP's Counter Intelligence department, is 85 years old. Craig Michael Williamson, former head of Security Branch Intelligence, is 75 years old. Lukas Daniel "Neil" Barnard, former Director of the National Intelligence Service died on 10 January 2025. Eugene Alexander de Kock, former head of the Security Branch's Vlakplaas Unit, is 75 years old.

⁸ In this regard there should be strict monitoring of such costs. In addition, not all inquests and trials require representation by two counsel. Also, rather than employing private attorneys, where feasible, state attorneys should act as attorneys and brief counsel.

43. Legal Aid South Africa has declined to provide legal support for inquests. However, a compelling case exists for extending funding to parties participating in inquests involving TRC cases.

43.1. The constitutional principles of access to justice (section 34 of the Constitution), equality (section 9), dignity (section 10), and fairness provide strong support for state-funded legal aid.

43.2. In *Magidiwana and Others v Legal Aid South Africa*⁹ the Pretoria High Court ordered Legal Aid SA to pay the legal costs of the surviving mineworkers in the Marikana commission of inquiry. The High Court held that “*whether the right to representation arises will depend on the context of each commission and would only be granted in exceptional and rare circumstances.*” The ruling emphasised that, in exceptional cases, state-funded legal representation may be necessary to uphold constitutional values such as fairness, accountability, and access to justice. This judgment was upheld by both the [SCA](#) and [CC](#).

43.3. The rationale in *Magidiwana* applies equally to inquests involving TRC cases, and this Committee is urged to call on Legal Aid SA to support such cases.

44. Governments in the UK, Canada, Ireland, New Zealand and Australia have recognised the need to fund legal representation for families involved in inquests or state inquiries. In many cases, this funding was secured only after significant public pressure, advocacy, and legal challenges—reinforcing the principle of fair access to justice.

45. The issue recently arose in the Cradock 4 inquest when one of the family representatives filed an 11th hour application against Legal Aid SA and the Department of Justice and Constitutional Development, seeking funding for legal representation. This application will not be resolved in the courts by 2nd June, and unless resolved at a policy level, is also likely to cause a long postponement of the reopened inquest.

IV. Proceedings before courts

A. Concerns regarding the current judicial processes

46. Efforts to bring apartheid-era perpetrators to justice are being hamstrung by court backlogs and other challenges faced by the judicial processes.

⁹ [\[2014\] 1 All SA 76 \(GNP\) \(14 October 2013\)](#)

47. Our concerns draw on our experiences from the reopened inquests and criminal proceedings. In particular, we have observed the following key challenges:

- 47.1. A court backlog is often a reason for delays and long adjournments.
- 47.2. Judges sometimes take a long time to prepare judgments or decisions.
- 47.3. We can only speculate what the reasons are for the delays, but the burden placed on judges by existing court rolls delays trials from starting, and from being completed, and judgments from being finalised. Dedicated courts and judges could alleviate this.
- 47.4. They should also be receptive to the needs and concerns of victims and families.

48. These examples demonstrate the need for dedicated courts, where TRC cases would not be unduly impacted by the ordinary court rolls and where such cases could receive priority allocations. Careful attention should be paid to experience and competence. This is because the TRC cases are typically seen as sensitive and controversial, given their role in shaping our history.

B. Dedicated TRC Courts

49. The FHR believes that only a dedicated and focused capacity can salvage the TRC cases and deliver justice. Similarly to Sexual Offences Courts and Specialized Commercial Crimes Courts, the dedicated TRC courts could be established under section 34 of the Constitution and can operate within pre-existing judicial structures and will not require legislative amendments or the duplication of resources.

50. The dedicated courts would:

- 50.1. Expedite proceedings and prioritize outstanding cases.
- 50.2. Concentrate judicial expertise, similar to specialized courts.
- 50.3. Adopt victim-sensitive measures, as seen in Sexual Offences Courts.

51. We accept that there are too few TRC cases to warrant the appointment of full-time dedicated judges. We would suggest compiling a pool or roster of judges who could be drawn upon to hear cases as and when required. The dedicated TRC courts would:

- 51.1. Judges would be selected based on legal expertise, and compassion.
- 51.2. While maintaining regular workloads, they would prioritise TRC cases.
- 51.3. Judge Presidents would manage case assignments and ensure efficiency.
- 51.4. These courts would operate within existing judicial structures without requiring new legislation or additional resources.

V. Independent Commission of Inquiry into Political Interference

A. Background

52. Political interference has seen the suppression of hundreds of murder and disappearance cases from the apartheid-era. Families and the former TRC commissioners [have repeatedly called](#) on the President to establish a commission of inquiry into this interference. These calls have fallen on deaf ears. As mentioned above, most of the TRC cases cannot be revived as suspects, witnesses and family members have died. As a result on 20 January 2025, some 25 families [launched a major case](#) against the President and government for constitutional damages and an order compelling the President to establish an independent commission of inquiry.

53. It is no longer in dispute that there was political interference resulting in the government and NPA decision to neither investigate nor prosecute any of the several hundred serious TRC cases in which amnesty had been denied or not applied for.¹⁰ However, while some evidence has been uncovered in the previous court cases (*Nkadimeng* and *Rodrigues matters*),¹¹ the full reasons and modus operandi behind the suppression of the TRC cases are not known. The background to the political interference and the efforts of the families to secure truth and justice are set out in detail in the [founding affidavit](#) of Lukhanyo Calata in the aforesaid litigation.

¹⁰ High profile NPA officials have provided affidavits to this effect during the 2015 legal proceedings launched by Thembi Nkadimeng, who sought to compel the NPA to make a prosecutorial decision in the 1983 murder of her sister, Nokuthula Simelane. This was confirmed under oath by senior officials representing the NPA in 2019 and 2021 Rodrigues's stay of prosecution proceedings with the High Court and the Supreme Court of Appeal expressing their dismay at how such interference could take place in our new constitutional order. See e.g., [Rodrigues v National Director of Public Prosecutions of South Africa and Others](#) (76755/2018) [2019] ZAGPJHC 159; [2019] 3 All SA 962 (GJ); 2019 (2) SACR 251 (GJ) (3 June 2019). [Rodrigues v National Director of Public Prosecutions and Others](#) (1186/2019) [2021] ZASCA 87; [2021] 3 All SA 775 (SCA); 2021 (2) SACR 333 (SCA) (21 June 2021), see in particular, paras. 26 – 30, 54.

¹¹ 3554/2015, Application to compel in the Simelane matter: [An Index to the Notion of Motion and Funding Affidavit ; Notice of Motion and Founding Affidavit and Annexures](#); *Rodrigues v NDPP & Others*, Case No.: 76755/18, Gauteng Division. Full record of the permanent stay of prosecution proceedings can be accessed here: <https://www.ahmedtimol.co.za/rodrigues-high-court-sca-papers/>.

54. Advocate Dumisa Ntsebeza was appointed in early 2023 to review the reforms within the NPA regarding the investigations and prosecutions of the TRC cases. He submitted his [final report to the NPA](#) on June 30, 2023. The NPA made the report public seven months later, on 18 February 2024. The report urges the President to set up an independent, public and open commission of inquiry to look into the political interference and the suppression of the TRC cases by the Executive in the period 2003-2017.

B. Constitutional Damages and Commission of Inquiry Litigation

55. On 20 January 2025, together with twenty-five survivors and families of victims who were forcibly disappeared or killed during South Africa's fight for democracy, we [filed a court application](#) against the President, the Government, the Ministers of Justice, the Minister of Police, the NDPP and the SAPS Commissioner. The applicants are seeking three types of relief:

55.1. A **declaration** that the political interference was a violation of the rights of the families and survivors to equality, human dignity and the rule of law.

55.2. **Payment of R167 million in constitutional damages** to affirm constitutional values and vindicate the rights of applicants by supporting their pursuit of inquests, private prosecutions, and related litigation, as well as enabling commemoration, memorialisation and public education on the TRC.

55.3. A declaration that the President's refusal to set up **an independent commission of inquiry** into the suppression of the TRC cases is unconstitutional and violates the rights of families and survivors, and for an order directing the President to establish a commission of inquiry.

56. On 23 January 2025, the application [was formally launched](#) at the Constitution Hill in the presence of victims' families, survivors, the former TRC commissioners, media and broader civil society. Lukhanyo Calata, the son of the late Fort Calata, who is also a lead applicant in the case, together with Tshidiso Motasi (the son of murdered Richard and Irene Motasi) and Alegria Nyoka (the sister of murdered Caiphus Nyoka) spoke about the betrayal and the need for justice and closure.

57. At the time of writing no notices of opposition had been filed, even though the 10 February deadline had passed. However, the State Attorney's Office indicated that it had received instructions to oppose.

58. The families are disappointed but not surprised at the approach of the state. If the President and government were serious about dealing with the lapses of the past it would have indicated its willingness to settle, by agreeing to a commission of inquiry and entering into negotiations on the constitutional damages, which could include exploring partnerships with the families and their organisations. Instead, it appears that the state wishes to kick the ball down the road engaging in years of litigation, which will excuse them from taking the necessary steps in the short term.

VI. Reparations

A. Background

59. The TRC developed and recommended to the government a comprehensive reparations; including urgent interim (individual) reparations, final (individual) reparations, symbolic reparations, institutional reforms, and community rehabilitation. The recommendations also included health and social services, psycho-social support services, education, and housing.¹²

60. However, the state has failed to adequately implement the recommendations. Instead, the state stopped statement taking for victims and survivors after 18 months; and then limited reparations only to those victims who had made statements and who were listed as victims in the TRC report. Many who would have otherwise qualified were excluded. The state further significantly limited the amount of reparations provided to persons identified by the TRC, compared to the reparations recommended by the TRC.¹³ The government's flawed and arbitrary approach to reparations were finalised and implemented without meaningful input from civil society and victims' groups.¹⁴

61. The government's implementation of reparations has been limited to interim reparations, the once-off payments of R30,000, basic and higher education benefits and commemorative measures such as reburials and other ceremonies. Other reparations measures proposed by President Mbeki and accepted by Parliament in

¹² See TRC Report, vol. 5, ch.5, pp.96-113.

¹³ E.g., The TRC-recommended monetary compensation was lowered down to R30,000 once-off payment from R126 000; medical benefits and housing have still not been supplied after two decades; and educational benefits have only been provided since 2014 to a small percentage of those identified by the TRC.

¹⁴ Parliamentary Monitoring Group, Ad-Hoc Committee on Reparations, Final Report: Adoption, 24 June 2003. Available at: <https://pmg.org.za/committee-meeting/2624/>; UN Human Rights Committee, Concluding observations on the initial report of South Africa, Addendum: Information received from South Africa on follow-up to the concluding observations, CCPR/C/ZFA/CO/1/Add.1, 09 June 2017, par. 4. See also, Oupa Makhalemele, "Still not talking: Government's exclusive reparations policy and the impact of the 30 000 financial reparations on survivors", Centre for the Study of Violence and Reconciliation, 2004, available at: <http://www.csvr.org.za/docs/reconciliation/stillnottalking.pdf>

2003—including medical assistance, housing assistance and community rehabilitation—have been implemented on an ad hoc basis or not at all. Symbolic reparations and monuments have been assigned to the Department of Arts and Culture.

62. Since 2014, the Department of Justice’s TRC Unit, responsible for the coordination and monitoring of the reparations’ implementation, has developed draft regulations on housing and community rehabilitation and has piloted the draft community rehabilitation in a few communities, this process has been controversial and strongly contested by civil society over lack of transparency and public consultation.
63. Victims of gross human rights violations have repeatedly called upon the state to revisit the limited and failed reparations provisions put into place in 2003. Since 2022, demonstrators from the civil society movement, the Khulumani Galela Campaign, have slept outside the Union Buildings, and then the Constitutional Court, calling upon government to address these failures. Elderly Galela Campaign protesters have now spent over a year sleeping outside the Constitutional Court calling for government to meet with them. Their basic demands have not been addressed despite repeated promises from the Presidency and the DOJ.

B. The Closed List Policy

64. A key point of contention between the government, civil society, and victims has been the so-called "closed list policy, which states that only those victims who appeared before and were granted victims status by the TRC should receive reparation. This “policy” unlawfully excludes thousands of victims from accessing reparations recommended by the TRC.
65. Victim groups and civil society have been urging government for many years to revisit the closed list policy, as this has proven to be extremely harmful to South Africa’s post-apartheid recovery.
66. The exclusion of the thousands of victims from the provision of reparation violates a number of constitutional rights including the right to life, dignity and equality.
67. The closed list is not enshrined in the Promotion of National Unity and Reconciliation Act, No. 34 of 1995 (the Act) or any other law. It was merely an initial recommendation of the TRC made in Vol 1 of its 1998 report.¹⁵

¹⁵ Vol 1 Ch 4, Subsection 15, p 86, paras 133 – 136.

68. Four years later, the TRC accepted that it erred in making a recommendation for a closed list. In 2002 in the final volume of its report (Vol 6) the TRC firmly revoked the “closed list” and called on the government to abandon that policy. In Volume 6 the TRC recognised the injustice and inequity of the closed list and stated that “*it was no longer appropriate*” and “*potentially dangerous for South Africa*”.¹⁶
69. The government incorporated the initial recommendation for a closed list but avoided acknowledging that the closed list recommendation had been firmly withdrawn by the TRC.¹⁷ To this day, government and Parliament have never responded to the issues raised by the TRC in Vol 6 of its Final Report, setting out the serious shortcomings of the closed list and why it was highly inappropriate for South Africa.¹⁸
70. On 1 November 2024, the SACTJ sent [a memo](#) to the Deputy Director General: Constitutional Development, DOJ titled “Abandoning the Closed List”. The memo set out how Parliament and the President erred in adopting the closed list in 2003 and called for the resolving of this decades old error, without the need to amend the TRC Act or resort to damaging and time-consuming litigation.
71. Since the closed list is not a matter of law, there is no need to amend the TRC Act, or any other law. What is required is fresh action on the part of Parliament and the President.
72. It is evident from the report of Parliament’s Ad Hoc Joint Committee on Reparations dated 24 June 2003,¹⁹ that neither the Joint Committee nor the President considered the TRC’s final recommendation not to proceed with the closed list.²⁰ Accordingly, it is necessary that this issue be revisited.
73. This lapse or oversight warrants:
- 73.1. the reconvening of the Joint Committee or equivalent committee (such as the Justice Portfolio Committee which has assumed oversight of TRC matters) to consider anew the Vol 6 recommendations, and

¹⁶ Vol 6, Sect 2, Ch 8, p 176, paras 46 – 55; and Vol 6, Sect 4, Ch3, p 575, paras 29 - 32.

¹⁷ Vol 6, Section 4, Ch 3, p 575; Vol 6, Section 5, Ch 7, Subsection 4, p 730.

¹⁸ Vol 6, Sect 5, Ch7, p 730, para 36.

¹⁹ Available at: <https://pmg.org.za/committee-meeting/2624/>

²⁰ The definitions of “victim” and “gross violation of human rights” in s 1 of the TRC Act are not time-bound (aside from the time period in which the violations occurred) or linked to identifications or determinations by the TRC. Both are substantive definitions which, on their own terms, include all victims of gross violations of human rights, not merely those identified by the Commission or its committees.

73.2. if it deems appropriate, to make fresh recommendations to Parliament, and

73.3. if approved by Parliament, for onward transmission to the President to effect the necessary regulations in terms of s 27(2) of the TRC Act.

74. There is nothing in the Act preventing the reconvening of the Joint Committee or equivalent parliamentary committee. Accordingly, there is no need to amend the TRC Act or enact a new statute.

75. To date, there has been no response to the memo from the DOJ. This Committee is urged to initiate the long overdue changing of course on the Closed List. It should hold a special sitting to reconsider the TRC's Vol 6 recommendations on this issue, and if it finds that a change is warranted, it should make fresh recommendations to Parliament. If approved by Parliament, the President will be obliged in terms of s 27(2) of the TRC Act to make regulations giving effect to this decision.

C. *The Post-TRC Registration of Victims*

76. It should be noted that, unlike many other countries, South Africa excluded victims not listed in its truth commission report from receiving reparations after the commission's closure. It is a shameful distinction. All other countries with credible truth commissions regarded their commission's victims' lists as preliminary lists, and they provided for post commission registration programs.²¹

77. Countries such as Brazil, Peru, Guatemala and Sierra Leone established ongoing victim registration procedures well beyond the winding up of their truth commissions.²² In other countries that had limited victim registration periods, such as Argentina and Chile, the registration programs were frequently reopened or extended. In Chile, 20 years after the restoration of democracy and 15 years after the registration of victims of enforced disappearance and killings had been finalized, the government reopened the victim registration process.²³

²¹ TRC of S. Afr. Report, Volume 6, § 5, Ch. 7: Recommendations, ¶ 37 (Mar. 2003) ("It needs to be noted that, in many other countries which have gone through similar processes, victims have been able to access reparation many years after the truth commission process has been completed.")

²² Naomi Roht-Arriaza, *Reparations, Decisions and Dilemmas*, 27 HASTINGS INT'L & COMP. L. REV. 157, 171 (2004) ("In Brazil, . . . a 1996 law . . . sets up a commission to process ongoing claims."); Milagros Salazar, *Rights—Peru: At Last, Reparations for Civil War Victims*, GLOBAL GEOPOLITICS & POLITICAL ECONOMY (Feb. 9, 2011), (noting that Peru's victims' registry is not yet completed); Due Process Law Foundation, *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, 1, 7-30 (2007), (describing in detail the ongoing Guatemalan reparation process); Justice in Perspective, (noting that the National Commission for Social Action (NaCSA) has been designated by the Sierra Leone government to implement reparations.")

²³ Roht-Arriaza at 170-72

78. The government in establishing a post-TRC registration program could partner with local victim groups and civil society organisations. These groups could help to identify possible victims and assist applicants in gathering the necessary information and documentation. Government could also seek to partner with NGOs experienced in the creation and running of victim registration programs.
79. Lastly it should be noted that a post TRC-registration program will not open the floodgates.
- 79.1. In the first place, some 27 years have elapsed since the TRC closed its doors to victims. A large number of victims or dependents of victims have passed away.
- 79.2. Anyone wishing to register as a victim will need to demonstrate that he or she is a victim as defined in s 1 of the Act, which will require putting up some documentary proof.
80. In reality this means that the numbers are not going to be significant and will hardly put a strain on the national fiscus.

C. President's Fund

81. The President's Fund was established in 1998 as the designated fund from which reparations were to be financed, as per the requirements of Section 42 of the Promotion of National Unity and Reconciliation Act. The President's Fund is located in the DOJ, which is the Fund's 'controlling entity' and is responsible for the administration (including staffing and operations) and regulation of the Fund.
82. The [South African Coalition for Transitional Justice](#) (a collective of 13 civil society organisations and individuals invested in the field of transitional and transformative justice) analysed the President's Fund Annual Reports from 2006 to 2023 and found no substantial issues such as mismanagement or fraud. However, concerns remain regarding under-expenditure, the level of reporting, and some unexplained investments.
- 82.1. As of 2023, there was R1,93 billion of unspent monies in the President's Fund, all ring-fenced for reparations.
- 82.2. From 2006 to 2023, the total expenditure (covering both administrative costs and reparations) from the President's Fund has generally been below 1% of the Fund's net assets. Since 2006, the government has spent approximately R199

million on reparations, representing only 15% of the PF's surplus for this period (most of once-off payments accounting for the majority of the Fund's expenditure was made before 2006). This indicates that only a small portion of the available funds has been disbursed over the years. In some years, expenditure on reparations was less than R1 million, with the bulk of costs assigned to administration. For example, in 2014, only R471,798 was spent on reparations, while R675,377 was allocated to administrative costs.

82.3. Since 2017, the Public Investment Corporation (PIC) began diversifying the PF's investments beyond fixed deposits, including unlisted companies like Isibaya. The President Fund's Annual Reports do not provide adequate justification for these investments, which fall outside its mandate of conservative investment strategies.

82.4. Neither the President's Fund nor the DOJ provides a comprehensive, consolidated reporting system on the implementation of reparations. Although relevant departments are responsible for reporting their progress, the fragmented nature of this process results in a lack of clarity regarding the overall status of reparations. The absence of a unified reporting mechanism hampers accountability and transparency in how reparations are implemented.

D. Latest developments

83. Since the closure of the TRC, survivors and civil society groups have repeatedly attempted to engage with the government (including this Committee) on the issue of reparations, but without success. There has been little political will to address the matter, despite nearly R2 billion remaining unspent in the President's Fund.

84. On 16-17 October 2024, the SACTJ held a National Conference on Reparations, which brought together survivors, civil society groups and the government. Despite assurances of support for the Conference, neither the Minister nor the Deputy Minister attended the conference in person. The Minister shared words of support via a pre-recorded message.

85. As per the Executive Summary of the SACTJ Conference Report: "The reparations conference highlighted critical gaps in the current TRC reparations implementation by the South African government and called for renewed commitment to transparency, inclusivity, and urgency in delivery of reparations. The DOJ&CD acknowledged these issues, expressing intent to work collaboratively with SACTJ and victim groups to establish a more responsive, empathetic multisectoral approach to reparations. The

proposals to set up two working committees: a Legal Technical Committee and a Reparations Committee, provide a focussed and progressive conference outcome.”

86. Despite the agreement between survivors, SACTJ, and the DOJ to collaborate on reparations, there is increasing concern that the establishment and operationalization of the two committees may take a long time. Given the limited time left to address this issue comprehensively, a firm political solution is needed—one that is not stalled by bureaucratic processes within the DOJ and demonstrates a clear political commitment to resolving the reparations question in its entirety.

VII. Survivors and Families write to the President Ramaphosa

87. We also wish to place on record that on 3 December 2024, thirty-two survivors and family representatives wrote to President Cyril Ramaphosa requesting that he holds an imbizo on truth, justice, and reparations not later than on 13 February 2025 **[Annex 2]**.

87.1. The survivors and families observed that “*Given the little time that is left to bring us a semblance of justice, there is an urgent need for a multi-stakeholder and collaborative approach to the investigations and prosecutions of the TRC cases.*” They requested that the ibizo be organised by the President and attend by the Minister of Justice and Constitutional Development, the Minister of Police, the Minister of Defence, their deputies, as well as the National Director of Public Prosecutions and her deputy.

87.2. The survivors and families have never been granted the courtesy of a meeting with the President, nor have they received an apology for the decades of delays in investigating and prosecuting the TRC cases. Time is not on our side—it is time to act now.

88. The letter has yet to be acknowledged, which highlights the need for greater engagement from the government with the many survivors and families still seeking justice. This is especially important as South Africa marks 30 years of constitutional democracy—an achievement made possible by the sacrifices of so many whose loved ones continue to await recognition and accountability.

VIII. Recommendations

A. Improved investigations and prosecutions of the TRC cases

89. **Investigating Directorate or Special Unit under a Special Director:** The Committee should request an explanation from the NPA regarding the reasons behind the policy

decision to set up TRC Components instead of an Investigating Directorate or a Special Unit under a Special Director with investigators and prosecutors housed under the same roof.

89.1. The NPA should be urged to rethink the ‘TRC Components’ approach and recommend the creation of an Investigating Directorate or Special Unit under a Special Director. This would significantly improve the quality of investigations and prosecutions. Such a dedicated capacity would enhance case coordination and ensure that TRC matters are pursued effectively.

90. **More resources for the prosecutions of the TRC cases:** The Committee should urge the NPA to make more resources available to the TRC cases to enable the prosecutors to adequately perform their functions without undue delay. There is a legal and moral argument to be made that these cases require contracted and integrated efforts to be timely addressed. Some TRC teams within the provinces are under-staffed and hence, unable to perform their functions appropriately.

91. **Developing a TRC prosecutorial strategy:** The NPA should be urged to urgently finalise and share a prosecutorial strategy with the relevant stakeholders for input and comments. If adopted in an open and transparent process, the prosecutorial strategy could enhance the efficiency of investigations and prosecutions, and improve public trust in the work of the NPA and DPCI.

92. **The TRC Components Organisational Structure:** The Committee should request that the NPA and DPCI publish on their respective websites the organisational structure of the components with clear lines of accountability and the relevant contact details, as well as the number of investigators and prosecutors allocated to the TRC cases in the respective provinces. Similarly, the NPA should advise the Committee and the relevant stakeholders to what extent the prosecutors are exclusively “devoted” to the TRC cases.

93. **The public release of the list of the TRC cases under investigation:** The Committee should urge the NPA:

93.1. to publish the list of names of the TRC cases to allow for monitoring to foster transparency and accountability; and to encourage the public to come forward with leads and information.

93.2. to publish more information on blockages in TRC cases in its reports, particularly where it refers to “shortage of capacity.” The Committee should

request the NPA to provide a complete list of "finalised" cases, including case details and the reasons behind the final decisions.

94. ***Written justification of the NPA's decisions:*** The Committee should urge the NPA to always provide a written explanation for the reopening or opening of an inquest instead of proceeding with a prosecution. The decision should be shared with the victim's family and legal representatives for the family.

B. Addressing the legal costs debacle

95. ***A directive on the legal costs in the TRC cases:*** The Committee should request the Department of Justice to facilitate an urgent high-level meeting on the issue of state-funded legal representation for the former military and police officers, and families and victims, participating in inquests and trials related to the TRC cases.

95.1. The case law on the question of the state funded legal representation for the former security officers is clear and settled. Hence, the high-level meeting involving the DOJ, SAPS, SANDF, the State Attorney Office, the Legal Aid SA and the NPA should be called urgently to decide on a framework for covering the reasonable costs of the legal representation for the former security officers in both inquests and criminal trials. As inquests and criminal trials are in danger of imminent collapse, the DOJ should be required to report back to the Committee as a matter of urgency.

96. ***Support to victims:*** This Committee is urged to call on Legal Aid South Africa to support victims, survivors and family members to participate in inquests dealing with apartheid-era crimes.

C. Commission of Inquiry & Constitutional Damages

97. This Committee is urged to call on the President and government not to waste public funds on years of litigation, but rather to act expeditiously by agreeing to a commission of inquiry and entering into negotiations to adequately address the deeply violated rights of apartheid-era victims, survivors and family members.

D. Dedicated TRC Courts

98. The Committee should request the Department of Justice to explore the establishment of dedicated courts, as was done for Sexual Offences Courts before their statutory recognition. The DOJ should be asked to assess the possibilities of setting up dedicated courts for the TRC cases, including the required budget. The DOJ should be

required to report back within three months of the Committee's request. The DOJ should be required to seek inputs from civil society and other interested parties.

E. Recommendations on Reparations

99. ***Addressing the closed-list policy:*** The addressing of the closed-list policy impasse through, *inter alia*, a special sitting of this Committee, has been set out in detail above.
100. ***Fast-tracking the establishment of two multi-stakeholders' committees:*** The Committee should request the DOJ to fast-track the setting up of two committees, which were agreed to at the 2024 National Conference. The Committees should include survivors and would be created to improve communication between civil society and government.
101. ***Acknowledging the Constitutional Court protesters and solving the crisis:*** The government must engage with the elderly protesters at the Constitution Hill, who have been ignored for too long.

F. Reporting on the Unfinished Business of the TRC

102. Since redressing the crimes of the past requires a multi-disciplinary approach, it is recognised that this Committee (which is confined to the justice portfolio) does not have the power to extend its oversight role to other key role players responsible for the implementation of the TRC recommendations, such as the SAPS, Departments of Health, Human Settlements, Social Development and Sport, Arts, and Culture.
103. Accordingly, consideration should be given to inviting other key stakeholders, as and when necessary, to joint portfolio committee meetings. Alternatively, consideration could be given to the creation of a 'Special Portfolio Committee on matters arising from the TRC'. Further alternatively, the parliamentary "joint committee" created in terms of s 1 read with s 45 of Act 34 of 1995 (the TRC Act) could be revived.
- 103.1. Such a Special Portfolio Committee or Joint Committee, comprising representatives of the Justice, Police and other portfolio committees could play an oversight role in respect of the TRC recommendations, and hear from SAPS/DPCI, NPA and other departments. The current system of having separate committees overseeing different aspects of the post-TRC implementation process is disjointed and ineffective.

103.2. Victims' groups and civil society organisations should be an integral part of these processes and they should be invited to submit reports and appear before the Committee to present their perspectives and experiences.

IX. Annexes

Annex 1: The List of the FHR-Supported Cases – 12 February 2025

Cases supported by the FHR on the instructions of the families

	Case	Progress
1.	Nokuthula Simelane 1983 Torture & Enforced Disappearance & Murder	<p>[Trial] Nokuthula Simelane was an anti-apartheid MK operative who was abducted, tortured and murdered by the Security Branch of the South African Police in 1983.</p> <p>Following the family's efforts to engage with the NPA and DPCI, and the filing of an application to compel in 2015, four perpetrators were charged with Nokuthula's murder in 2016. Since then, two accused have passed away, and the trial of the remaining two, Willem Coetzee and Anton Pretorius, has faced repeated delays, including a dispute over legal costs for the accused, in which SAPS was ordered by the court to pay. Further delays arose in June 2022 when Willem Coetzee's legal team claimed he was mentally unfit to stand trial.</p> <p>The judicial inquiry into Coetzee's fitness to stand trial was initially scheduled for 2023 but was postponed to January 2024 due to multiple procedural hurdles. Additional delays occurred when the accused sought access to the state psychiatrist's report, an application that was dismissed in August 2024. The section 77 inquiry under the Criminal Procedure Act (CPA) into Coetzee's fitness to stand trial faced further postponements throughout 2024. It resumed on 27–31 January 2025, only to be postponed again following the defence's request to consider a potential cross-examination of the state psychiatrist.</p> <p>The case has now been provisionally postponed to 26 February 2025 for an update on the status of the witness and to 20–21 May 2025 for either the witness's testimony (if the defence decides to call them) or for the advocates to present their arguments for judgment.</p>
2.	PEBCO 3 1985 Kidnapping & Murder	<p>[Investigation] In the PEBCO 3 case, three leading civic activists, Siphon Samuel Charles Hashe, Twasile Champion Galela and Qaqawuli Godolozzi, were abducted in May 1985 from the Port Elizabeth airport in a joint Vlakplaas and Security Branch operation. The activists were taken several hundred kilometres away to the remote Post Chalmers farm where they were viciously tortured and murdered.</p> <p>Only 2 members of the Vlakplaas unit involved in the PEBCO 3 hit remain alive today. Former Vlakplaas Warrant Officer, Gerhardus Cornelius Beeslaar, is about to turn 87 years old; and Joseph Tshepo 'Joe' Mamasela is in his 70s. Former Vlakplaas Colonel Roelf Venter died on 28 July 2024.</p> <p>In November 2023 the families shared with the NPA a detailed 147-page</p>

		<p>memorandum setting out the evidence against the last surviving suspects. It took more than a year to get a meeting with the prosecutors. At the meeting, the prosecutors declined to respond to the memo, claiming that the NPA head office had until recently withheld permission for them to work on the case.</p>
3.	Matthews Mabelane 1977 Death in Detention	<p>[Investigation] According to the police version, Soweto Students Representative Council member, Matthews ‘Mojo’ Mabelane, who was detained at John Vorster Square Police Station, fell to his death while attempting to escape out of the window from a 10th floor interrogation room on 15 February 1977.</p> <p>The Mabelane family do not believe the official version that nobody was to blame for his death and have been pushing to reopen the inquest for several years, without success.</p> <p>This struggle was spearheaded by Matthews' father, Philip Mabelane and his brother, Lasch Mabelane. Philip died on 9 May 2018, while Lasch died on 6 August 2020, without reaching closure.</p> <p>On 1 August 2024, the family’s legal team submitted detailed representations to the NPA seeking the reopening of the inquest. The representations included two expert forensic reports which explained why the police version was untenable.</p> <p>In October 2024, the NPA, DPCI, the legal team representing the family, the FHR and the family members attended the visit to the John Vorster Square to inspect the crime scene. To date the NPA has still not made a decision whether to reopen the inquest or not.</p>
4.	Richard & Irene Motasi 1987 Murder	<p>[Investigation] Richard Motasi was a policeman based at the Hammanskraal Police College. The then Northern Transvaal Security Police compiled a file on him which suggested that he was an ANC agent giving sensitive information over to the ANC in Zimbabwe and Johannesburg. Richard and Busisiwe were shot dead by the Security Branch on 1 December 1987 at the family’s Hammanskraal home, in their son’s Tshidiso Motasi presence.</p> <p>Nobody has ever been prosecuted for these crimes even though several of the killers did not apply for amnesty. At least three of the killers have died, including the notorious Jaques Hechter who died on 20 July 2023.</p> <p>The legal team representing the family believe there is a basis for prosecuting the surviving perpetrators.</p>

5.	<p>COSAS 4 1982 Murder & Crimes Against Humanity</p> <p>FHR supports all 4 families.</p>	<p>[Trial] Eustice “Bimbo” Madikela, Peter “Ntshingo” Matabane, Fanyana Nhlapo, and Zandisile Musi were students from Kagiso, and members of the Congress of South African Students (COSAS), an organisation affiliated with the then-banned ANC. Collectively known as the COSAS 4, their lives were forever altered on February 15, 1982, when they were lured to an explosive-rigged pump house in Krugersdorp by informers associated with the Security Branch.</p> <p>Thlamedi Ephraim Mfalapitsa and Christiaan Siebert Rorich have been charged with kidnapping and murder, with additional charges of crimes against humanity added later. Since 19 November 2021, the criminal matter has been remanded 29 times. Delays in the trial initially ensued due to SAPS's refusal to cover Rorich's legal costs. Once that issue had been resolved, the defence employed Stalingrad tactics to delay the trial by launching parallel civil litigation, seeking declaratory and interdictory relief on the charge sheet, even though they had already lodged an objection in terms of section 85(1) of the Criminal Procedure Act (CPA) to the crimes against humanity charges.</p> <p>These tactics were brought to the attention of DJP Sutherland, who in a series of case management meetings ordered that the criminal trial commence on 18 November 2024, commencing with the hearing of the Section 85(1) objection. This hearing commenced on 20 November with arguments being concluded on 22 November 2024. Judgment is now awaited and the trial has been postponed to 14 April 2025.</p> <p>Since Rorich’s legal team claimed to be unavailable for an April trial, Judge Dosio ordered Mr. Rorich to arrange a new legal team.</p>
6.	<p>Caiphus Nyoka 1987 Murder</p>	<p>[Trial] Caiphus Nyoka was an anti-apartheid student activist and East Rand COSAS leader, Caiphus Nyoka. Caiphus was killed by members of the SAP Riot Unit and the Benoni Security Branch at his family home in Daveyton on 24 August 1987.</p> <p>On 20 March 2023, the State Attorney filed charges against the three accused for the murder of Caiphus Nyoka. Following multiple delays, the matter was postponed to 19 February 2024 for a pre-trial hearing, and was set down for trial from 22 April 2024 to 3 May 2024.</p> <p>The indictment of the fourth accused in April 2024 led to a further postponement of the case. In a significant development, one of the accused, Johan Marais, confessed to the murder and pleaded guilty on November 12, 2024. The court convicted Marais based on his guilty plea and adjourned the proceedings until January 27, 2025, for sentencing. The sentencing has been postponed to 25 March 2025 for a progress update on the accused’ psychological report and 14 April 2025 for sentencing.</p> <p>The criminal trial for the remaining co-accused commenced on November 18, 2024, with all defendants pleading not guilty. The trial</p>

		included an inspection in loco in Daveyton on the third day and proceeded with testimonies of a few witnesses. The trial has been postponed to 12 May 2025.
7.	<p>Cradock 4 1985 Kidnapping & Murder</p> <p>FHR supports Calata, Mhlauli and Mkonto families.</p>	<p>[Inquest] Fort Calata, Matthew Goniwe, Sicelo Mhlauli and Sparrow Mkonto (known as the Cradock Four) were abducted, tortured, murdered and their bodies burned by the Security Branch of the erstwhile South African Police on 27 June 1985.</p> <p>In July 2021, Lukhanyo Calata filed an application to compel the NPA and DPCI to conclude the investigation and make a prosecutorial decision but the litigation was put on hold to allow the NPA and the police to finalise the investigation. The FHR's and families' legal team also submitted a detailed analysis of the available evidence, recommending prosecutions of some of the surviving suspects.</p> <p>The last surviving individual against whom there was prima facie case, H B du Plessis, passed away in mid-June 2023.</p> <p>In early 2024, the Minister of Justice announced the reopening of the third inquest into the deaths of the Cradock 4 activists. The inquest was scheduled from 2-27 September 2024. However, on 2 September 2024, the inquest was postponed to June 2, 2025. The postponement occurred notwithstanding strenuous efforts by the families to ensure a timely start. Legal representatives of the former South Africa Police (SAP) and South African Defence Forces (SADF) witnesses complained that they were notified too late to prepare for the inquest and were not able to secure state funding for their legal costs.</p>
8.	<p>Neil Aggett 1980 Death in Detention</p>	<p>[Inquest concluded] Dr Neil Hudson Aggett was a medical doctor and trade union organiser who was found hanging in his cell at John Vorster Square, after 70 days in police custody on 5 February 1982.</p> <p>In 2020 and 2021, the reopened inquest into his death in detention took place at the Johannesburg High Court, with closing arguments on July 1 and 2, 2021. On 4 March 2022, Judge Makume handed down his judgment which overturned Magistrate P Kotze's decision of nobody to blame and held that Aggett's death was attributable to foul play by the Security Branch.</p> <p>Judge Makume also found that former Security Branch officers Nicolaas Johannes Deetlefs, Johannes Nicolaas Visser, Joseph Petrus Woensdregt, Daniel Elhardus Swanepoel, Roelof Jacobus Venter and Magezi Eddie Chauke had persisted with their cover-up in the reopened inquest and committed perjury. He recommended that they be investigated with a view to prosecution.</p> <p>Nearly three years later, the NPA has still not made a decision. Deetlefs passed away in September 2023. In October 2024, the prosecutor assigned to the Aggett case (the same who was handling the Mthebule matter) left the NPA before completing her work. Following multiple</p>

		requests for information, the NPA appointed a new prosecutor at the beginning of February 2025.
9.	Ntombikayise Kubheka 1987 Kidnapping & Enforced Disappearance & Murder	<p>[Trial] Ntombikayise Priscilla Kubheka, an MK operative, was abducted, tortured, and murdered near Winklespruit by the Security Branch in May 1987.</p> <p>Following the initial inquest in October 2022, the NPA decided to charge several individuals with murder.</p> <p>The first court appearance of four accused—Hendrik Johannes Petrus Botha, Salmon Johannes Gerhardus Du Preez, Martinus Dawid Ras Jnr, and Jakob Albert Coetzer—took place at the Umlazi Magistrates' Court in May 2024, followed by a subsequent hearing in August.</p> <p>The case was then postponed to 12 November 2024 to allow the accused to finalize their legal representation. In the same month, a fifth accused, Lawrence Gerald Wasserman, was charged and added to the proceedings. However, Wasserman passed away shortly after his indictment.</p> <p>At the latest court hearing on 28 January 2025, the court was informed of Coetzer's passing. The matter was then transferred to the Durban Magistrates' Court, where a pre-trial conference is scheduled for 5 March 2025. The State Attorney has yet to finalize legal representation for some of the accused.</p>
10.	Musawakhe Phewa 1987 Kidnapping & Enforced Disappearance & Murder	<p>[Trial] Musawakhe 'Sbho' Phewa was an underground Umkhonto we Sizwe (MK) operative from Lamontville, KwaZulu Natal. Sbho was forcefully disappeared and murdered at the hands of the Security Branch in May 1987. The Kubheka and Phewa cases are linked and have therefore been joined. The update above also applies to the Phewa case.</p>
11.	Hoosen Haffejee 1977 Death in Detention	<p>[Inquest concluded and no prosecution] On 13 September 2023, Judge Nkosi handed down a lengthy judgment in the reopened inquest, which confirmed the family's belief that Dr Haffejee did not commit suicide but was brutally tortured and died at the hands of the Security Branch of the South African Police (SAP). Judge Nkosi recommended that the NPA bring criminal charges against surviving police officers and individuals implicated in Haffejee's murder and cover up of the crimes..</p> <p>In November 2024, the family's legal team received confirmation from the NPA that they would not proceed with prosecution, citing a lack of independent evidence to charge the individuals.</p>

12.	Imam Haron 1969 Death in Detention	<p>[Inquest concluded] Abdullah Haron, also known as Imam Haron, was a prominent South African Muslim cleric and anti-apartheid activist. He was tragically killed in detention on September 27, 1969, by the Security Branch of the apartheid-era South African Police Force.</p> <p>In the reopened inquest, the Western Cape High Court ruled on 9 October 2023 that the late Imam Abdullah Haron was not a victim of an accidental fall on a flight of stairs at Caledon Square police station but was tortured to death by the apartheid Security Branch officers.</p> <p>The 1970 inquest's findings that he died of heart problems was overturned, and the judge referred his findings to the NPA for potential prosecution of any surviving state employees involved in Haron's death.</p> <p>Judge Thulare held the Security Branch of the South African Police responsible for the acts and omissions leading directly to the death of Imam Abdullah Haron. He also ordered that certain individuals who were involved in the death and cover-up of the death of Imam Haron be referred to the Director of Public Prosecutions (DPP). Judge Thulare also ordered that the medical practitioners responsible for Haron's medical care while in detention and the state pathologist responsible for the post mortem, be referred posthumously for 'the attention' of the Health Professions Council.</p>
13.	Dr Rick Turner 1978 Murder	<p>[Investigation] The case relates to the murder of anti-apartheid activist Rick Turner in Durban in 1987. In the late 2023, the NPA have indicated to the FHR and the legal representatives for the families that they wish to reopen an inquest into the Turner's death.</p> <p>On 1 March 2024, the NPA advised the lawyers for the Turner family that they had requested the Minister of Justice to reopen the inquest into the 1978 murder of Dr Rick Turner in Durban. While awaiting the appointment of a judge to preside over the inquest, the NPA revealed that the Minister of Justice had never been approached, and that the investigation remained unresolved.</p>
14.	Highgate Massacre 1993 Murder & Attempted Murder	<p>[Inquest] In the Highgate Hotel Massacre, a group of balaclava-masked men shot dead five patrons at the hotel bar in East London and injured seven others on 1 May 1993. The families and survivors of the massacre have been seeking the truth for decades. Nobody applied for amnesty and no arrests were made. No inquest was held in the immediate aftermath of the attack.</p> <p>In 2023, the NPA indicated to the legal representatives for the families and survivors of the 1993 Highgate Massacre that an inquest will be held. The first two weeks of the inquest took place from 27 January to 7 February 2025 at the High Court in East London. The inquest hearings will resume on 24 March 2025.</p>

15.	Nicholas Ramatua 'Boiki' Tlhapi 1986 Kidnapping & Enforced Disappearance & alleged Murder	<p>[Inquest] On 20 March 1986, Nicholas Ramatua 'Boiki' Tlhapi, an activist from Ikageng, Potchefstroom, was arrested near Stilfontein along with others. Detained under Section 29 of the Internal Security Act, he was held at Jouberton Police Station, where he was allegedly tortured and assaulted. Boiki disappeared after his arrest, and despite the family's efforts, neither he nor his remains have been found.</p> <p>On 7 November 2024, the NPA confirmed in writing that the Minister of Justice had approved the reopening of the inquest into the death of "Boiki" Tlhapi. On 13 December 2024, the Minister of Justice requested the Judge President of the North-West Division to designate a judge to preside over the reopened inquest.</p>
16.	Ignatius Mthebule 1987 Kidnapping & Enforced Disappearance & alleged Murder	<p>[Investigation] Ignatius "Iggy" Mthebule was a student activist with AZASO and later a commander of an underground ANC unit in the Transvaal. In 1987, apartheid agent Joy Harnden allegedly infiltrated his unit, leading to his identification by the SAP Security Branch, after which he disappeared. His whereabouts remain unknown.</p> <p>The prosecutor assigned to handle the enforced disappearance of Iggy Mthebule was reportedly informed just a few days before a meeting with the family and their legal representatives in October 2024 that her contract with the NPA had not been renewed.</p>
17.	Bayempini Mzizi 1977 Death in Detention	<p>[Investigation] Bayempini Mzizi, a traditional healer linked to MK, was arrested on 9 July 1977 for suspected terrorism and detained for over 35 days, during which he was brutally tortured. On 13 August 1977, he was found hanging in his cell at Brighton Beach Police Station, 10 days after Dr. Hoosen Haffejee's death there under similar circumstances.</p> <p>In February 2021, lawyers representing the son of the late Bayempini Mzizi who died in detention in 1977, submitted representations to the NDPP, requesting the reopening of the inquest into Mzizi's death and its consolidation with the reopened inquest into Hoosen Haffejee's death.</p> <p>In response, the NPA Head Office acknowledged that there were grounds for reopening the inquest and joining it with the Haffejee inquest but stated that the decision rested with the DPP in KwaZulu-Natal due to the decentralisation of TRC cases. The NPA has never made a formal decision on the matter citing the ongoing investigation.</p> <p>Mr. Mfhilelwa Mzizi, the son of Mr. Mzizi who initially instructed the FHR to act on the family's behalf passed away in 2023.</p>

18.	Mxolisi Jacobs 1986 Death in Detention	<p>[Investigation] Anti-apartheid youth activist Mxolisi ‘Dicky’ Jacobs was arrested by the Security Branch in Upington in June 1986 and spent 129 days in detention until he was found hanging in his cell on 22 October 1986.</p> <p>In 2024, the family’s legal representatives shared a memorandum with the NPA and the DPCI setting out the available evidence. The family continues their search for truth and justice.</p>
19.	Anton Fransch 1989 Murder	<p>[Investigation] Anton Fransch, a COSAS member and MK commander, played a key role in the anti-apartheid struggle. After military training in Angola, he returned to South Africa. On 17 November 1989, at just 20 years old, he died in a seven-hour battle with security forces.</p> <p>The investigation is progressing and the collaboration with the NPA has been going well.</p>
20.	Ashley Kriel 1987 Murder	<p>[Investigation] Ashley Kriel, a prominent anti-apartheid activist and member of uMkhonto we Sizwe (MK), was shot and killed by the South African Police in Cape Town on 9 July 1987. In 1999, the Truth and Reconciliation Commission granted Jeffrey Benzien amnesty for his part in the killing. Benzien passed away in November 2024.</p> <p>The investigation is on-going and different strategies are being explored.</p>
21.	Storey “Luke” Mazwembe 1976 Death in Detention	<p>[Investigation] Mr Luke Mazwembe was a member of the Western Province Workers Advice Bureau and of the South African Student Association. He was detained under section 22 of the General Law Amendment Act No 62 of 1966 on 2 September 1976. He was reported to have been found dead in his cell at Caledon Square police station, Cape Town, the same morning 2 hours after being detained.</p> <p>The investigation is ongoing.</p>
22.	Batandwa Ndondo 1985 Murder	<p>A former student activist who was abducted, shot and killed by a member of the Transkei Security Branch and a group of Vlakplaas askaris at Cala, Transkei, on 24 September 1985. The commander of Vlakplaas and an askari were granted amnesty for the incident, while the Transkei Security Branch member was refused amnesty.</p> <p>The FHR has gotten involved in the matter only recently and is conducting preliminary activities.</p>
23.	Gaborone Raid 1985 Cross-Border Attack & Murder	<p>[Investigation] On 14 June 1985, troops crossed into Botswana as per the orders of General Constand Viljoen in the hopes of finding members of the ANC who were in exile. During the raid, 12 individuals, including a six-year-old boy, were killed.</p>

Other TRC cases where the FHR has a substantial interest in the matter

24.	Adriaano Louis Bambo 1991 Murder & Crimes Against Humanity	<p>[Investigation] Adriaano Louis Bambo was killed the Security Branch in 1991. Bambo was an informer for the Security Branch and he was killed, allegedly to prevent him from exposing the role of the Security Branch in the murder of Nokuthula Simelane and others.</p> <p>The FHR does not represent the family but has engaged in the matter due to its connections to the Simelane case.</p>
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From: The victims' families and survivors of apartheid-era gross human rights violations

To: President Cyril Ramaphosa
Union Buildings
Private Bag X1000,
Pretoria 0001

Via email: president@presidency.gov.za; malebo@presidency.gov.za;
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ssaid@justice.gov.za; mamotshekga@parliament.gov.za

Date: 3 December 2024

Re: Meeting with survivors and families of victims of apartheid era political crimes

Dear President Ramaphosa,

We write to you as survivors and families of victims of apartheid-era gross human rights violations to request a meeting with yourself, the Minister of Justice and Constitutional Development, the Minister of Police, the Minister of Defence, their deputies, as well as the National Director of Public Prosecutions and her deputy.

For decades, we have been struggling for truth, justice, and closure. Our sacrifices and those made by our loved ones laid the foundation for South Africa's democracy and its enshrined freedoms. Yet, our calls for justice, recognition, adequate reparations and formal apologies have been persistently ignored. We have not as yet been heard by the President.

We refer to [letters sent by victims' representatives and former commissioners](#) of the Truth and Reconciliation Commission (TRC) in 2019, 2020, and 2021, urging you to establish an independent, public commission of inquiry into political interference, to issue formal apologies to victims and their families, and to investigate and prosecute apartheid-era political crimes without delay. These pleas have fallen on deaf ears.

The loss of our loved ones at the hands of the apartheid regime has robbed us not only of emotional support but also of the stability and security they provided as parents and family members. We were left in states of profound financial hardship and social vulnerability, struggling to rebuild our lives in their absence. The pain of their loss is further compounded by the haunting, unresolved questions surrounding their deaths or disappearances. This has deepened the wounds of injustice and intensified the lingering sense of betrayal by a system that has yet to deliver accountability and truth.

Some of the signatories to this letter have instructed their lawyers to institute legal proceedings against the President for his failure to appoint an independent commission of inquiry into the political interference; as well as a claim against the government for constitutional damages in respect of the hundreds of TRC cases that have been suppressed.

While we acknowledge recent efforts by the National Prosecuting Authority (NPA) and the Directorate for Priority Crime Investigations (DPCI) to address apartheid-era political crimes, particularly through the establishment of TRC components, these have been limited and progress has been painfully slow. Time is not on our side. Many of our mothers, fathers and other family members have passed away without ever learning the truth about what happened to their loved ones. We must act now, or as a nation, we will carry the burden of regret forever.

It takes many years to have cases investigated. Cases that are opened or reopened for inquests often take over a year just to have a judge allocated and hearing dates set. Additionally, legal representation for suspects is not handled in a timely manner, causing further delays in proceedings. In some cases, the decision-making process within the NPA is slow moving. This is exacerbated by systemic challenges within the enforcement agencies and the justice system, which continue to obstruct the timely investigation and prosecution of apartheid-era political crimes.

As we celebrate the 30th anniversary of the South African Constitution and approach the 30th anniversary of the Promotion of National Unity and Reconciliation Act 34 of 1995—which established the Truth and Reconciliation Commission—we request that you hold an imbizo on truth, justice, and reparations. **We ask that you meet with us at your earliest convenience, but no later than February 13, 2025.**

Given the little time that is left to bring us a semblance of justice, there is an urgent need for a multi-stakeholder and collaborative approach to the investigations and prosecutions of the TRC cases. For this reason, we respectfully request a meeting with Your Excellency, along with the following members of the government:

- 1) The Minister of Justice and Constitutional Development
- 2) The Minister of Police
- 3) The Minister of Defence
- 4) Their respective deputies
- 5) The National Director of Public Prosecutions
- 6) The Deputy National Director of Public Prosecutions
- 7) Head of the DOJ&CD's TRC Unit.

For the reasons stated above, we request that the following items are included on the meeting's agenda:

1. The establishment of an independent and public commission of inquiry, with the necessary powers of compulsion under the Commissions Act, into the suppression of the TRC cases, as recommended in [Advocate Ntsebeza's June 30, 2023 report](#).
2. The state's disproportionate allocation of resources, which favours apartheid-era perpetrators of gross human rights violations, while offering minimal support to survivors and their families, in particular in respect of legal fees.
 - a. Former police and military officers who served the apartheid regime benefit from state-funded legal representation, while victims' families and survivors must rely on personal resources, pro bono lawyers and assistance from institutions like the FHR.
3. Systemic challenges within the justice system, including inadequate investigations and prosecutions, judicial blockages, and a policy framework that limits the role of victims in criminal proceedings.
4. The National Prosecuting Authority's inaction on the recommendations stemming from reopened inquests.
5. The issue of reparations.

We look forward to your early response.

Yours faithfully,

1. Alegria Nyoka, sister of the late Caiphus Nyoka
2. Bonakele Jacobs, brother of the late Mxolisi 'Dicky' Jacobs
3. Curara Mazwembe, daughter of the late Luke 'Storey' Mazwembe
4. Dorothy Calata, daughter of the late Fort Calata, one of the Cradock 4 activists
5. Edgar Mushwana, cousin of the late Ignatius 'Iggy' Mtebule
6. Foszia Turner Stylianou, widow of the late Dr Rick Turner
7. Hlekani Rikhotso, sister of the late Ignatius 'Iggy' Mtebule
8. Lonwabo Mkonto, son of the late Sparrow Mkonto, one of the Cradock 4 activists
9. Lukhanyo Calata, son of the late Fort Calata, one of the Cradock 4 activists
10. Lyndene Page, sister of the late Deon Harris, one of the Highgate Massacre's victims
11. Maide Selebi, sister of the late Eustice Madikela, one of the COSAS 4 activists
12. Mandisa Hashe, daughter of the late Siphon Hashe, one of the PEBCO 3 activists
13. Marc Fransch, brother of the late Anton Fransch

14. Mbuso Khoza, son of the late Musawakhe 'Sbho' Phewa
15. Mkontowesizwe Godolozzi, son of the late Qaqawuli Godolozzi, one of the PEBCO 3 activists
16. Mogapi Tlhapi, brother of the late Ramatua Nicholas 'Boikie' Tlhapi
17. Muhammed Haron, son of the late Imam Haron
18. Neville Beling, a survivor of the Highgate Massacre
19. Nombuyiselo Mhlauli, widow of the late Sicelo Mhlauli, one of the Cradock 4 activists
20. Nomonde Calata, widow of the late Fort Calata, one of the Cradock 4 activists
21. Nontombi Nama, sister-in-law of the late Champion Galela, one of the PEBCO 3 activists
22. Nontuthuzelo Hashe, daughter of the Siphon Hashe, one of the PEBCO 3 activists
23. Nyaniso Goniwe, son of the late Mathew Goniwe, one of the Cradock 4 activists
24. Patience Nhlapo, aunt of the late Fanyana Nhlapo, one of the COSAS 4 activists
25. Sammy Shibambo, son of the late Ignatius 'Iggy' Mtebule
26. Stephen Mabelane, brother of the late Matthews Mabelane
27. Tefo Tlhapi, brother of the late Ramatua Nicholas 'Boikie' Tlhapi
28. Thuli Kubheka, daughter of the late Ntombikayise Kubheka
29. Tumani Calata, daughter of the late Fort Calata, one of the Cradock 4 activists
30. Tryphina Mokgatle, sister of the late Zandisile Musi, one of the COSAS 4 activists
31. Tshidiso Motasi, son of the late Irene and Richard Motasi
32. Tsholofelo Matabane, sister of the late Peter Matabane, one of the COSAS 4 activists



National Prosecuting Authority
South Africa

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To: MR XOLA NQOLA, MP
CHAIRPERSON
PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL
DEVELOPMENT

And to: DR ZAID KIMMIE, EXECUTIVE DIRECTOR
FOUNDATION FOR HUMAN RIGHTS

From: ADV. S. BATOHI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Subject: RESPONSE BY NPA TO SUBMISSIONS MADE BY THE
FOUNDATION FOR HUMAN RIGHTS (FHR) TO THE PORTFOLIO
COMMITTEE ON JUSTICE AND CONSTITUTIONAL
DEVELOPMENT

A PURPOSE OF MEMORANDUM

1. This memorandum is prepared pursuant to written submissions made by the Foundation for Human Rights (FHR) dated 12 February 2025, to the Portfolio Committee on Justice and Constitutional Development (hereinafter JPC) and the subsequent appearance before the JPC on 19 February 2025. The submissions made by FHR to the JPC are attached, marked **Annexure A**.
2. At the close of the meeting, the NPA was requested to respond in writing to submissions made by FHR to both FHR and the JPC.

B THE GRAVAMEN OF SUBMISSIONS BY FHR

3. Despite FHR acknowledging that there has been progress on TRC matters since 2021, they levelled criticisms against the NPA's TRC Component, particularly in relation to

the following: the slow pace of progress and decision making; dedicated capacity within NPA and DPCI; the migration of TRC matters to the Divisions; challenges in respect of specific matters in which they appear; lengthy postponements; complaints in respect of specific matters under investigation; allocation of judges and dates in reopened inquests and formal inquests; legal representation for suspects/persons of interest; and systemic challenges within law enforcement agencies and the justice system.

C PROGRESS MADE ON TRC MATTERS WHERE FAMILIES ARE REPRESENTED BY FHR

4. FHR submits that they appear on behalf of 24 families, whose names they have listed on Annexure A (Annex 1: List of FHR supported cases). It is disputed that progress, particularly on TRC matters where families are represented by FHR, is slow.
5. To demonstrate the progress that has been made, the period 2021-2025 has been identified hereunder, with a concentrated focus on matters where FHR is involved.
6. Although all TRC matters are important and must be prioritised, irrespective of whether there is legal counsel for the family/victim or not, substantial progress has been made on TRC matters, specifically those cases where FHR is involved, and which were identified, prioritised and fast tracked. This is as a direct result of investigations by dedicated TRC investigators from the Directorate for Priority Crimes Investigation (DPCI) and prosecution-guided investigations by prosecutors dedicated to TRC matters only.
7. Prior to September 2021, there were 59 TRC matters under investigation by the Priority Crimes Litigation Unit (PCLU), a component established in 2003 within the NPA and mandated, amongst other duties, to manage and direct TRC investigations and prosecutions. In 2019, all TRC matters were migrated from PCLU to the respective Divisions in which offences or crimes were committed. Apart from the fact that crimes are investigated within the jurisdiction within which they are committed, there is greater capacity within the offices of the DPPs, in which Divisions the matters reside. Furthermore, in most matters, witnesses, similar fact detainees and family members of the victim reside in the area where the incident occurred.

8. On 30 January 2023, a meeting was held between NPA/DPCI and FHR wherein FHR was requested to furnish to DPCI a list of all matters in which they appeared. As investigations fall within the purview of DPCI, it was important to obtain a Power of Attorney in respect each matter, which as a legal document authorises the agent to act on behalf of the principal in specific matters and allows for delegation of decision-making authority. It was imperative that the families represented by FHR be identified to DPCI who are tasked to investigate TRC matters, before any information could be shared with FHR.
9. On 23 April 2023, FHR furnished communications which lists matters, in which FHR appears on behalf of families. Since 2023, more matters have been added to the list of FHR matters as per Annexure A of their submissions.
10. Column A hereunder, depicts the FHR matter under investigation. Column B depicts the status of the matter.
11. As indicated in Column B, DPCI still must obtain the Power of Attorney in respect of the most recent matters indicated by FHR.

Column A: Name of FHR matter	Column B: Progress to date
Dr Neil Hudson Aggett (Aggett)	The inquest into the death of Dr Aggett was re-opened in 2019. Evidence was led in 2019. On 4 March 2022, the original inquest finding was overturned. It was referred to the NPA for consideration of the findings of the inquest. Legal representatives for the family from Webber Wentzel attorneys engaged with the prosecutor who had been seized with the matter. Adv Varney appeared for the family at the re-opened inquest.
Mr Matthews Mabelane (Mabelane)	On 29 January 2025, the Minister of Justice and Constitutional Development (The Minister) approved the re-opening of the inquest into the death of Mr Mabelane. The legal representatives for the family, Bowmans Gilfillan, applied directly to the Minister to re-open the inquest. There is engagement between Bowmans Gilfillan and the DPP's office in Johannesburg in respect of updates on the matter and the way forward.

Column A: Name of FHR matter	Column B: Progress to date
Mr Babla Saloojee (Saloojee)	The matter is in the C phase of investigation. There were challenges relating to the payment of experts to reconstruct the scene and provide an opinion. The motivation letter in respect of quotations for two additional experts has been escalated to DPCI. The opinion of an independent pathologist has been obtained. In the meeting with Apartheid Era Victims Family Group (AVFG), the spouse of Saloojee was represented by a family spokesperson, Mr Imtiaz Cajee. A power of attorney must be sourced from FHR.
Mr Ignatius Mthebule (Mthebule)	This matter is at an advanced stage of investigation. However, statements are being sought from comrades of Mthebule at Luthuli House. A meeting was also held with the family member of Mthebule to ascertain additional avenues to pursue more leads as part of the investigation. All people of interest have refused to cooperate. The victim is still missing. The family is represented by Eversheds Sutherland attorneys who are engaging with the NPA.
COSAS Four	Two former police officers have been charged criminally for Murder and Crimes against Humanity (CAH). There were several applications and challenges in this matter including challenges to the charge of CAH, applications by the Southern Africa Litigation Centre (SALC) to be joined as friends of the court in criminal proceedings, a review application of the decision of the TRC, refusal by SAPS to cover the reasonable costs of legal expenses of one of the accused persons, etc. The judgment on the charge of CAH has not yet been delivered. The trial date has been set for 14 April 2025. Legal representatives, Webber Wentzel, appear as watching brief on the matter. Advocate Varney appeared on behalf of the family.
Mr Caiphus Nyoka (Nyoka)	Four former police officers have been charged criminally for murder and defeating the ends of justice. On 12 November 2024, Mr Johan Marais was found guilty of murder. The matter has been postponed to 25 March 2025 for a pre-sentence report. The trial against the remaining accused (Engelbrecht and two others) was separated and evidence was heard during December 2024. The case against the remaining accused will resume on 12 May 2025 and continue until

Column A: Name of FHR matter	Column B: Progress to date
	30 May 2025. Mr Jos Venter, from Webber Wentzel, appears as watching brief on the matter.
Mr Sweet Sambo (Sambo)	A decision to close the file was taken by the DPP Mpumalanga during March 2023. The suspects in the matter were granted amnesty viz Mr Eugene de Kock and three others. Messrs McIntyre, Els and Venter were charged with assault with the intent to do grievous bodily harm under case number SH 177/92. They were acquitted. They were subsequently charged with murder. Their special plea was successfully upheld. The matter is considered finalised.
Cradock Four	The Minister approved the re-opening of the third inquest into the deaths of the Cradock Four in January 2024. The inquest was set to commence during September 2024. The NPA was ready to proceed. The matter did not proceed in September 2024 because the funding of legal fees for people of interest from SANDF and SAPS, had not yet been finalised. The NPA, to fast track the process, intervened and communicated with the office of the State Attorney, as early as 5 June 2024, with no success. The NPA therefore denies the allegation made by FHR in their submissions that legal representatives of SAPS and SADF witnesses stated that they were notified too late by the NPA to prepare for the inquest and were therefore unable to secure state funding. The State Legal Representation Policy, the SAPS National Instruction 1 of 2017 and the SANDF application, and the Undertaking with respect to the Defence by the State Attorney was also shared with all legal representatives. Other stakeholders were also engaged by the NPA to expedite the processing of legal representation. Moreover, the legal representatives for Mr Mbulelo Goniwe, the Goniwe family and Cradock Four community, Adv Ngcukaitobi, SC were also advised that their clients' application for the costs to be covered by Legal Aid South Africa had been declined. The application was made a year prior to the set down of the matter. The postponement was not opposed as all parties agreed that people of interest must be represented. The same approach was followed in respect of witnesses and the Cradock community. The lengthy postponement was not at the behest of the State but rather on the request of counsel for the family,

Column A: Name of FHR matter	Column B: Progress to date
	<p>Advocate Varney, who advised he was unavailable in November 2024 when all other counsels were available. He shared dates which suited his availability only in mid-2025. The matter was postponed to 2-20 June 2025. The instructing attorneys are Cliffe Dekker Hofmeyr (CDH) with Advocate Varney as counsel. Several meetings have taken place between the NPA and CDH and other counsels involved in this matter. As of February 2025, Legal Aid Board will assist the community of Cradock Four after there was an intervention. Adv Ngcukaitobi, SC has advised that funding has been secured for his clients. Despite a court order made by Judge Beshe in respect of dates by which applications for reasonable legal costs of people of interest were to be considered, applications for financial assistance were refused in February 2025.</p>
Highgate Hotel	<p>The DPP in the Eastern Cape took a decision during 2024 that a formal inquest be held. The date for the inquest was confirmed in line with the availability of counsel for the families. On 27 January 2025, the formal inquest was opened and commenced with evidence being led. The proceedings continued until 7 February 2025. The inquest resumed on 24 March 2025 with further evidence led. CDH are the instructing attorneys with Adv Varney as the counsel. Several meetings have taken place with Advocate Varney, CDH and the NPA.</p>
PEBCO Three	<p>Legal representatives have met with the NPA during December 2024 and February 2025 regarding challenges on the matter. The way forward was discussed. A decision will be taken in this matter. Instructing attorney CDH and Advocate Varney appear on behalf of the family and have engaged in several meetings with the NPA.</p>
Dr Rick Turner (Turner)	<p>The DPP took a decision that a formal inquest will be held in the High Court. The legal representatives of the family, Legal Resource Centre (LRC), have engaged and liaised with the NPA on the way forward. Advocate Varney has also liaised with Advocate Charles du Plessis from the NPA who has been seized with the matter.</p>
Mr Adriaano Bambo (Bambo)	<p>There is no valid written power of attorney provided by FHR to DPCI. However, on the intervention of the coordinators, and on request of the counsel of Webber</p>

Column A: Name of FHR matter	Column B: Progress to date
	Wentzel's Mr Venter, a meeting was facilitated between the DPP Mpumalanga, DPCI and Mr Venter, to engage on certain issues raised. The meeting provided no new leads to DPCI. Mr Venter from Webber Wentzel attorneys also appeared on behalf of the family of Ms Simelane and has engaged with the NPA on several occasions.
Sgt Richard and Irene Motasi	The matter is at an advanced, sensitive stage of investigations. A power of attorney must be secured by DPCI from FHR.
Ms Nokuthula Simelane (Simelane)	This matter is also on the criminal court roll where an inquiry in terms of section 77(3) of the Criminal Procedure Act 51 of 1977 is underway in respect of one of the two remaining accused who alleged that he suffers from a neuro degenerative condition and is therefore unable to follow proceedings. After a medical assessment and mental observation at Weskoppies Hospital, he was found fit to stand trial. There have also been several challenges in respect of payment of legal fees by SAPS, the inclusion of drafting of charges of CAH, the death of two of the four original accused, and the death of counsel and instructing attorney. The matter has been postponed to 19-22 May 2025 for finalisation of evidence in respect of the section 77 enquiry. Mr Jos Venter from Webber Wentzel appears as the watching brief on this matter. He liaises with the NPA and DPCI.
Mr Sons and Mr Els	A decision was taken on 7 July 2023, to decline to prosecute any person in connection with the matter. The charges against Messrs Sons and Els stemmed from the re-opened inquest into the death of Mr Ahmed Timol where the inquest court made certain findings and recommendations. Webber Wentzel appear as watching brief on the matter.
Gaborone Raid	The matter is under investigation where information has been requested via Mutual Legal Assistance (MLA). The investigator from FHR, former Brigadier Marion liaised with the investigator from DPCI on this matter. CDH appears on behalf of the matter.
Operation Zero Zero	This matter is in the C Phase of investigation where a decision must be taken. This matter is a sensitive one

Column A: Name of FHR matter	Column B: Progress to date
	with several senior ranking officials involved. A power of attorney must be secured from FHR.
Ms Ntombikayise Kubheka (Kubheka)	As a result of investigation by DPCI, the NPA took a decision to charge five people who were charged for murder. This matter is on the criminal court roll and stems from an inquest proceeding where proceedings were stopped and converted into criminal proceedings in terms of section 21(2) of the Inquests Act, 58 of 1959. There are challenges in this matter as SAPS does not want to fund the legal representation of the accused. The matter is on the court roll for 9 April 2025. A power of attorney must be secured as there were challenges pertaining to the one originally furnished.
Mr Sbo Phewa (Phewa)	This matter is linked to that of Ms Kubheka. As a result of investigations by DPCI, the NPA took a decision to charge five people who were charged with murder, which stemmed from an inquest proceeding which was converted to criminal proceedings in terms of section 21(2) of the Inquest Act, 58 of 1959. The matter is on the regional court roll but there are challenges where SAPS refuses to pay for the legal expenses of the accused persons. The matter is on the court roll for 9 April 2025. A power of attorney must be secured.
Dr Hoosen M Haffejee (Haffejee)	As a result of investigations by DPCI and the NPA during 2017, the NPA applied to the Minister to re-open the inquest into the death of Dr Haffejee, which was re-opened and evidence was given where families, detainees and people of interest, testified at proceedings. The original inquest finding was overturned on 13 September 2023. The inquest record was referred to the NPA for consideration and during September 2024, the DPP took a decision and declined to prosecute anyone in connection with the death. The family was advised of the decision.
Mr Nicholas Thlapi	As a result of investigations by DPCI, the NPA applied to the Minister to re-open the inquest into the death of Mr Thlapi which application was approved in October 2024. Pre- court preparations are underway. Counsel for the family have also been engaged. A person of interest has been advised to apply for legal

Column A: Name of FHR matter	Column B: Progress to date
	representation to avoid any challenges that may arise. Bowmans Gilfillan Incorporated appear on behalf of the family and have liaised with the NPA.
	As a result of investigation by DPCI, a decision was taken in 2022 to apply to the Minister to re-open the inquest into the death of Mr Haron. The Minister approved the re-opening of the inquest. Evidence was led of the family, detainees and persons of interest, and on 9 October 2023, the original inquest finding was overturned. The matter is in the process of a decision being taken. Webber Wentzel attorneys liaise with the NPA. Advocate Varney appeared for the family at the re-opened inquest.
Mr Bayempin Msizi (Msizi)	This matter was joined with that of Dr Haffejee but ultimately no evidence was presented on the Msizi matter. Both Haffejee and Msizi died within days of each other at Bright Beach Police station under almost identical circumstances. FHR appeared on behalf of the Msizi family. Despite thorough investigations, the post-mortem records, photo albums and docket cannot be traced. The family has been approached and is kept updated of the challenges in this matter. Without the necessary records, it is difficult to reconstruct the scene. Investigation is ongoing. Garlicke and Bousfield appear on behalf of the Msizi family. They liaise with the NPA.
Mr Mxolisi Dickie Jacobs	There are challenges in the investigation of this matter. To support the reconstruction of the scene, photograph albums, inquest records, postmortem records etc are required. Despite a diligent search, the Department of Correctional Services and SAPS cannot trace the documents. Investigations are ongoing. Mr Munier Ismael of Haffejee, Roskam Savage Attorneys, legal representative for the family, liaises with the NPA.
Mr Anton Fransch	Investigations by DPCI are at an advanced stage with expert reports obtained. An additional expert report is outstanding as the expert is on long leave. This is delaying the decision on the matter. An alternate expert has been sourced. ENS attorneys appear on behalf of the family and liaises with the NPA.

Column A: Name of FHR matter	Column B: Progress to date
Mr Ashley Kriel	The matter was under investigation by DPCI prior to 2021. Witness statements and a second opinion of pathologists have been received. The report of an additional expert is awaited as the experts are in the employ of the State and have other duties to attend to. ENS attorneys appear on behalf of the family and liaise with the NPA.
Mr Storey Luke Mazwembe	The matter has been under investigation since 2022. Department of Public works (DPW) has been approached to furnish the investigator with the structural plans for the reconstruction where it is alleged the deceased hung himself. There are challenges at DPW where there is a shortage of personnel to assist with the extraction of the plan of the cell. There was an intervention. It is expected that the structural plans will be provided shortly. A second opinion from a pathologist is in the process of been procured. Webber Wentzel appears on behalf of the family and liaises with the NPA.
Mr Batandwa Nondo	Adv Ngcukaitobi appears on this matter.

12. Another matter in which progress was demonstrated, and which has not been mentioned by FHR is the re-opened inquest of Mr Ahmed Timol. FHR represented the family and instructed Advocate Varney. The findings of the original inquest were overturned on 12 October 2017. The inquest record was thereafter referred to the NPA for consideration. As a result of further investigations undertaken by DPCI, the NPA took a decision to charge Mr. Rodrigues. He appeared in court on 29 July 2018. Unfortunately, Mr. Rodrigues passed away on 7 September 2021 before any evidence could be led.

13. FHR also submits that there is little information on the functions of individuals working at the NPA and DPCI TRC Components. Structured engagements are taking place between FHR's instructing attorneys, the NPA and DPCI as indicated in the table above.

D ANALYSIS OF PROGRESS ON FHR MATTERS POST SEPTEMBER 2021

Matter	Inquest re-opened and finalised	Inquest re-opened/formal inquest	Criminal Court roll	Under investigation-Phase A-B or C	Finalised	Power of attorney to be obtained
Aggett	X			X		
Mabelane		X				
Saloojee				X		
Mthebule				X		
COSAS Four			X			
Nyoka			X			
Sambo					X	
Cradock Four		X				
Highgate Hotel		X				
PEBCO Three				X		
Turner		X				
Bambo				X		X
Mr and Mrs Motasi				X		X
Simelane			X			
Sons and Els					X	
Gaborone Raid				X		X
Operation Zero Zero				X		X
Kubheka			X			X
Phewa			X			X
Haffejee	X				X	
Tlaphi		X				
Haron	X			X		
Msizi				X		
Jacobs				X		
Fransch				X		
Kriel				X		
Mazwembe				X		
Ndondo						X
	3	5	5	9	4	7

14. As indicated above, apart from other TRC matters, progress has been made on matters in which FHR appears.
15. TRC matters relate to incidents that occurred decades ago. Whilst it is acknowledged that time is of the essence, poorly investigated or inadequately guided cases cannot be placed on the court roll. Ultimately, a decision on a docket or an inquiry can only be taken once all the evidence is collated. Suspicion and conjecture are not evidence.
16. The NPA is not bound by the findings of an inquest court. Once an inquest is finalised, it is referred by the court to the NPA for a decision. In all matters, decisions will be taken on available evidence. It is therefore incorrect to say that there is an inaction on re-opened inquests. Incomplete transcribed records sometimes are the cause of delays in taking decisions. However, this is not the case in all matters. The State v Rodrigues is an example of charges being instituted once an inquest was completed. A decision was also taken on the Haffejee, the Sons and Els matters.
17. The NPA has often been criticised for poorly and ill-considered decisions made in matters. Challenges to expediting investigations include lack of dockets; lack of postmortem reports; deceased or ailing witnesses, victims and persons of interest; missing experts; and significant amounts of information that was destroyed in 1995, on instructions of senior ministers.

E THE TRC COMPONENT AND CRITICISMS LEVELLED AGAINST THE CURRENT APPROACH

18. Even though FHR submits that the establishment of the TRC component within the NPA and DPCI is to be welcomed, it claims that it has failed to address key underlying challenges in investigation and prosecutions and that it remains unclear how the NPA prioritises investigations, which is a factor that inevitably impacts on progress.
19. Although clarity on the structure, composition and roles and responsibilities of the TRC component has been provided to FHR since January 2023, further elaboration is

provided on the composition of the TRC Component, the approach to prioritising matters and the progress made on matters.

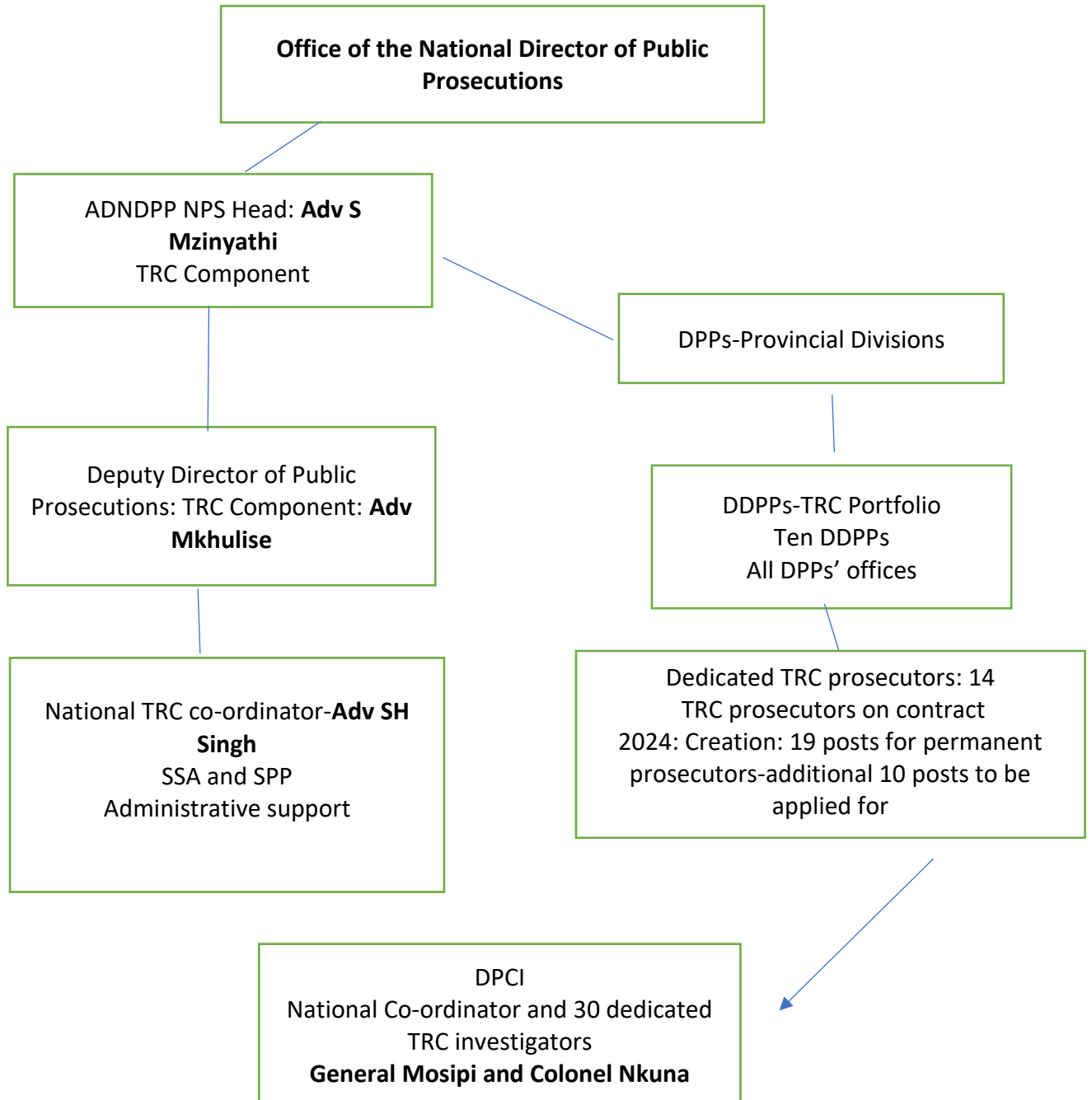
F PRIORITISATION OF TRC MATTERS BY BOTH NPA AND DPCI

20. **Creation of a TRC Component:** During September 2021, a separate portfolio known as the TRC Component was established within the office of the Deputy National Director of Public Prosecutions: NPS (DNDPP: NPS), Adv De Kock to prioritise TRC matters. A National TRC co-ordinator, Advocate SH Singh, was appointed, whose duty was to specifically oversee TRC matters, and co-ordinate and assess progress of TRC matters in all Divisions.

21. **Appointment of a National co-ordinator-DPCI:** DPCI followed a similar route during 2022 by also appointing a National TRC co-ordinator, Colonel M Nkuna, to drive progress on investigations in TRC matters.

22. **Capacity:** The National TRC Component within NPS was expanded with the appointment of a Special Director of Public Prosecutions in April 2022, Adv Matzke, within the office of the DNDPP: NPS, to assist with strategic oversight of these matters. A Deputy Director of Public Prosecutions (DDPP) and administrative personnel were also appointed to oversee and support the progress on TRC matters. Two additional state advocates have also been added to the TRC Component.

ORGANOGRAM OF THE TRC COMPONENT



23. **Appointment of TRC Nodal Points at DPP offices:** Since 2019, all TRC matters have been migrated to the office of the DPPs within whose jurisdiction the offences occurred. Senior managers were appointed in each office. Within every Division, DPPs have assigned a DDPP or a Senior State Advocate (SSA) to oversee the TRC Portfolio. Within every Division, all TRC prosecutors hold the rank of SSAs who guide investigations on all TRC matters. The dedicated prosecutor is accountable to the DDPP seized with the TRC Portfolio, who in turn is accountable to the DPP. All decisions are taken by the office of the DPP. On TRC matters, the DPP is accountable to the DNDPP: NPS and ultimately the NDPP.
24. **Appointment of dedicated prosecutors and investigators on contract:** Prior to 2021, the NPA approached the Minister of Public Service and Administration (DPSA) to obtain a deviation from the normal recruitment process to appoint dedicated TRC prosecutors on a three-year contract, as opposed to the usual one-year contract to deal with TRC matters. DPCI also appointed investigators to prioritise investigations into TRC matters. Prosecutors and investigators were thereafter appointed on a three-year contract. The contracts were then extended for a year and in line with policy could not be extended. The prosecutors and investigators dedicated to TRC matters, deal exclusively with TRC matters.
25. **Appointment of permanent dedicated TRC prosecutors:** Commitment by the NPA to the TRC process continued and has now resulted in the approval for the creation of nineteen (19) permanent prosecutor posts in 2024, who will continue to be dedicated to TRC matters only. The process is underway to apply for an additional ten (10) posts to ensure continuity in prosecution-guided investigations and, where appropriate, prosecution of TRC matters. The handover and updating of the permanent prosecutors on the progress on TRC matters will be carefully monitored by the DPP's offices.
26. **Action Plan:** To proactively plan on how to ensure progress on TRC matters, it was necessary to reflect on what matters were under investigation, what were the obstacles preventing finalisation of matters, and how to focus on progress on the cases. It was important to adopt practical and actionable steps. After conducting an audit and critically analysing progress from the monthly reports from the Divisions, a two-pronged approach was followed, aimed towards the upskilling of both prosecutors and investigators. Whilst all prosecutors can prosecute a matter and investigators can

investigate a criminal case, investigating cold cases is unique and therefore requires a unique approach. The biggest hurdle was the tracing of dockets containing postmortem records, witness statements, photo albums of crime scenes etc and guiding investigations in the absence of critical documents.

27. **The approach:** An action plan was requested from each Division in which they had to indicate the volume of matters under investigation and an investigative and prosecution guided plan of action to expedite investigations, identify challenges with solutions, and fast track matters. An audit of TRC matters under investigation in 2021 revealed that 59 matters throughout the Divisions were under investigation. PCLU had also identified a further 55 deaths in detention that still needed to be registered for investigation. A process was formalised between the TRC Component and DPCI, to formally refer the outstanding matters for investigation. A Referral Form was developed which provided important information relating to the victim, his/her family, testimony at the TRC, whether they were still missing or deceased, contact details of family members, suspects if named, and other relevant details to assist the investigation. All matters under investigation are registered by DPCI whose function it is to prevent, combat and investigate national priority crimes, including TRC matters.
28. **Focus on quality investigations:** Senior DPCI management were engaged. The focus was on how best to conduct quality investigations into TRC matters even where there were challenges. Ordinarily, when a crime is committed, there is a docket which is immediately registered, witnesses consulted, the scene photographed, and victims identified. This was not the case for TRC matters. The TRC focussed on the period 1960-1994 with many cases being decades old.
29. **Decisions:** Ultimately, quality evidence collated by dedicated investigators would allow the prosecutor to decide whether to prosecute a perpetrator/s, or request that an inquest be re-opened or held, or decline to prosecute, and inform the family of the decision. All evidence and leads had to be thoroughly investigated. On instruction of the NDPP, a victim-centred approach is followed. Families must be kept fully informed of all developments in their matters. Where traceable, families are kept abreast of investigations and all decisions are communicated to families and legal representatives. DPCI also took a decision to trace families of victims by placing

information in newspapers through their media liaison officers in the respective areas where the deaths occurred.

30. **Self-Imposed time frames:** Self-imposed time frames for completion of investigations and decisions are encouraged. This, together with a critical assessment of the monthly feedback report, enables the Component to monitor progress on all matters under investigation. Apart from the NPA/DPCI accountability sessions that take place in all the Divisions, best practice is encouraged within the Divisions, where prosecutors and investigators have monthly feedback sessions on progress made and investigations are guided.
31. **Progress and the methodology to gauge progress:** In order to assess whether there was impact being made on TRC matters with action plans implemented, it was important to monitor and evaluate progress. Prosecutors needed to be specific about what investigations had taken place monthly. It was no longer acceptable to simply advise that investigations were ongoing. A methodology to gauge progress on the matters was jointly agreed to between prosecutors and investigators. From monthly reporting, investigations were assessed by placing them into three phases/categories: Medium A (0-33% of investigation completed): Investigation was assessed with the initial investigations to be completed, for example obtaining of the original case docket, postmortem records, photographic albums, witness statements, death certificates, etc. Medium B (34-65% of investigation completed): Most of the investigation had been completed with a decision to be made on either obtaining expert reports/trajectory experts/ballistic experts/crime scene reconstruction etc, to either prove or disprove a version, and Medium C (66-100% of investigation completed): this is the final part of the investigation where expert reports that have been obtained would enable the prosecutor and investigator to make an informed decision; or when the investigation is nearing completion and a decision needs to be taken.
32. **Joint accountability sessions:** During 2022, a platform was created when joint accountability sessions were held between investigators and prosecutors within the divisions. It was a novel unprecedented approach which also involved both the National coordinators, the DPP, DDPPS seized with TRC matters, and senior management and provincial heads of DPCI. The purpose thereof was to expedite progress on TRC matters, share and expose divisions to developments in other divisions, share best

practice, assess the blockages and action steps to remove the challenges. These include access to documents held in possession of other departments, declassification of documents etc where the investigators and prosecutors within the divisions experience challenges in accessing them. On rare occasions, family member/s may be invited by the DPP, to introduce him/her to the investigators or prosecutors. However, families are engaged separately and do not form part of our sessions.

33. **Primary purpose of accountability sessions:** At sessions, progress on every matter which is under investigation in the Division, is critically analysed to assess progress/no progress. Both investigators and prosecutors account, in the presence of DPPs and DPCI senior management, for the progress or lack thereof on the matters. The performance of each Division is gauged on a month-to-month basis. This is shared with all the Divisions. It offers a more realistic view of the progress on TRC matters. Accountability was and remains imperative.
34. **The sessions:** The volume of matters under investigation within each Division guides the duration of the joint accountability sessions which are held over two or three days. Where there are training sessions involved, this may take place over five days. Skills sharing and preparation for trials and inquests also take place well in advance, and are held over 3-5 days, attended by prosecutors, investigators and National coordinators. All sessions are intensive and leave little room for blame. All challenges raised are actioned and interventions identified where necessary. During 2024, 11 accountability sessions and 14 skills sharing sessions were held.
35. **Fast tracking of matters:** Matters are identified for fast tracking wherein all resources are pooled to expedite and finalise the investigation into a specific matter. Whilst all matters are important, matters which are identified for fast tracking are those where consideration is given to the age of the matters, seriousness of the offence, age of the accused and / or persons of interest, as well as the interests of the victims.
36. **Sharing of best practice:** The joint accountability sessions provide an opportunity to share best practices in other Divisions, provide updates on legal challenges on pending TRC matters in court, guide on challenges pertaining to access to documents, stakeholder engagement, progress within the specific Divisions, etc. Their purpose is

to sensitise prosecutors and investigators so that they are prepared to address challenges which may arise.

37. **Challenges:** Any challenge which cannot be resolved is escalated to the National Office of both NPA and DPCI. Ultimately the session is about accountability, jointly. Strict time frames are imposed and if they are not reached, it is necessary to ascertain why they have not been reached and strategies put in place by putting together an action plan to arrive at a decision. Provincial commanders and DPPs with DDPPs are on hand to guide investigations and offer solutions and prosecutions when challenges to investigations are raised.
38. **Annual Operational Plan (AOP):** The success of the sessions informed the decision to include accountability sessions between the NPA and DPCI as part of our Annual Operation Plan (AOP) to expedite investigations into TRC matters. During 2022, 5 sessions were held. In 2023, 11 sessions were held. And in 2024-11 sessions were held.
39. **In-house training:** To further enhance investigation and prosecutorial skills, we have engaged with experts to transfer skills to investigators and prosecutors during in-house skills transfer sessions. This includes crime scene experts, trajectory experts, senior forensic pathologists, persons dealing with MLAs and extraditions etc.

G THE LINK BETWEEN ACCOUNTABILITY AND PROGRESS

40. We submit that there is a direct link between our action plan and the progress on TRC matters. As reflected hereunder, a focused plan has resulted in progress:

PENDING JUDGMENTS/CRIMINAL COURT ROLL/INQUEST COURT ROLL

Description	Number	Details
Criminal cases on court roll	7	S v Rorich and another (COSAS FOUR)-14/4/2025 S v Coetzee and another (SIMELANE)-19-22/5/2025 S v Marais (sentence) (CAIPHUS NYOKA)-3/2025 S V Engelbrecht and others (CAIPHUS NYOKA)-12-20/5/2025

Description	Number	Details
		S v Botha and two others (N KUBHEKA)-5/3/2025 S V Botha and others (S PHEWA) 5/3/2025 S V Schoon and others (MNGOMEZULU)-31/7/2025
Re-opened inquests-date to be allocated	7	Cradock Four (2-20/6/2025) Mr Griffiths Mxenge (14/4/2025-16/5/2025) Chief Luthuli (14/4/2025-16/5/2025) Mr Booi Mantyi Mr Boykie Tlaphi Highgate Hotel (part heard 24 March 2025 until 27 March 2025. Mr Matthews Mabelane
Inquests-formal inquests	10	Dr Rick Turner Northcrest Five (1/3/2025-14/4/2025) Mr Moss Morudi Mr Kehla Nkutha Mr Sithembiso Nzuzza and Mr Moses Ramotlo Mr Vusumuzi Meshack Msani Mr Vusumuzi Mbatha Mr Sifiso Tutu Shezi Mr Charles Ndaba and Mbuso Shabalala Mr Bhekani Sibusiso Mbokazi
Finalised inquests	6	Dr NH Aggett Mr Ernest Dipale Dr H Haffejee Mr Abdullah Haron Mr Zama Sokhulu Mr Mthunsi Vlemeseni Njakazi
Total matters under investigation	157	
Pending inquests where evidence is been led	1	Mr Oupa Ronald Madondo

Description	Number	Details
Finalised Criminal matters-since September 2021	1	S v Wesley Madonsela: sentenced to ten years imprisonment on 9 November 2023. Leave to appeal conviction granted during November 2024.
Pending sentence where there is a conviction	1	S v Marais: postponed to March 2025 for sentencing. Accused found guilty of murder of Mr Nyoka-NG

H. FINDINGS OVERTURNED/CONVICTIONS

Re-opened inquest of Dr Neil Hudson Aggett (South Gauteng High Court)	Original court inquest finding overturned from suicide to murder-4 March 2022
Re-opened inquest of Mr Ernest Dipale (South Gauteng High Court)	Original court finding overturned from suicide to murder -11 July 2023
Re-opened inquest of Dr Hoosen Mia Haffejee (Kwa-Zulu Natal)	Original court finding overturned for suicide to death brought about by torture by members of the police force- 13 September 2023
Re-opened inquest of Mr Abdullah Haroon (Western Cape High Court)	Original court finding overturned from falling down the staircase to death brought about by torture by members of the police force on 9 October 2023
Inquest: Mr Zama Sokhulu (Mlobeli) (Kwa-Zulu Natal-Umlazi Magistrate Court)	Inquest finalised on 12 February 2024-record referred to NPA for a decision
S v Wesley Madonsela (Kwa-Zulu Natal)	Accused was found guilty of murder and sentenced to ten years imprisonment on 8 November 2023
S v Marais and others (North Gauteng High Court)	Mr Marais was found guilty of murder on 14 November 2024. Sentence proceedings will commence during January 2025.

Inquest: Mr Mthunsi Vlemeseni Njikazi (Kwz-Zulu Natal)	The accused in this matter was indicted on 7 November 2023. There were challenges when SAPS refused to pay for the legal expenses of the accused. He died on 29 December 2023. Inquest proceedings commenced and on 27 November 2024, the proceedings were finalised.
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I OTHER-DECISIONS/PENDING INQUESTS

1	Mr Wellington Mbili
2	Mr Sithembiso Nzuza and Mr Moses Ramotlo
3	Mr Vusumuzi Meshack Msani
4	Mr Vusumuzi Mbatha
5	Mr Sifiso Tutu Shezi
6	Messrs Lolo Sono and Shabalala
7	Ms Susan Maripe
8	Sgt Richard and Irene Motasi
9	Mr Brian Nqulunga
11	Mr Charles Ndaba and Mbuso Shabalala
12	Mr Bhekani Sibusiso Mbokazi
13	Mr Zama Sokhulu
14	Mr J van der Merwe
15	Dr Muofhe
16	Mr Ernest Mamashila

J ASSESSMENT BY ADVOCATE NTSEBEZA, SC OF THE MEASURES, CHECKS AND BALANCES ADOPTED BY THE NPA TO DEAL WITH TRC MATTERS

41. As a direct result of the Full Bench judgment of **Rodrigues v National Director of Public Prosecutions of South African and others** (76755/2019)[2019]ZAGPJHC 159; [2019] 3 All SA 962 (GJ); 2019 (2) SACR 251(GJ), the NPA took a decision during

October 2022, to appoint senior counsel whose mandate it was to, amongst other terms, to review the measures, checks and balances adopted by the NPA to deal with TRC and related matters, and to assess whether the measures adopted by the NPA were adequate.

42. Advocate Ntsebeza (Ntsebeza) SC, who served as a commissioner at the TRC, together with Adv Ncqule and Katzee, were appointed to execute this mandate.

43. During the period of assessment, the work done by both the NPA and DPCI was scrutinised by Adv Ntsebeza SC who, by virtue of his appointment and experience as a TRC commissioner, and his team, would have been best placed to assess whether the measures, checks and balances adopted the NPA were adequate and to make recommendations if they were inadequate.

44. The Opinion was received during November 2023. It noted, *inter alia*:

- That the measures adopted and implemented by the TRC component to deal with TRC matters, were in large part, adequate.
- That many cases were at the beginning stages of investigation and identified challenges such as available evidence, tracing of witnesses, the docket and the inquest report, legal representation for ex SAPS employees and budgetary constraints for reconstructions, amongst others.
- The monitoring and oversight role of the TRC monthly reporting system was accepted.
- The oversight exercised through the centralised control under the sole responsibility and authority of the DNDPP: NPS, Adv De Kock at the time, was acknowledged.
- It was acknowledged that the DPP regional Divisions accounted to the TRC National co-ordinator through written monthly updates for each of the Divisions.
- It highlighted the regular briefing sessions between the national TRC Component and DPP Divisions of investigating officers and prosecutors to discuss areas of complexity, problems that arose and which were common to several cases, and areas that require DNDPP intervention to move them forward or to liaise with other organs of state to ensure co-operation and assistance.

- It also acknowledged the assignment of investigators and prosecutors solely to TRC matters. It found that the appointment of dedicated prosecutors provided certainty and accountability.
- It also acknowledged that prosecutors remained directly accountable to the victims' families and are expected in the course of their duties to provide regular updates to families and to facilitate accountability and transparency, and that appropriate communication channels have been set up.
- It also acknowledged that one of the most important measures that were introduced was for the provision of monitoring and accountability sessions with the DPPs of each Division, the TRC DPCI heads in each Division and prosecutors, sitting together to update one another on approaches adopted and developments in each case. This had the dual effect of specialised training of prosecutors on historical crimes and sharing of intelligent resources.
- The audit of the hands- on approach, fast tracking of investigations of TRC matters was not criticised.
- It also found that the hybrid structure of the TRC Component was satisfactory.

45. Ntsebeza's Opinion, with recommendations, was shared with the Minister of Justice and Correctional Services, Mr R O Lamola as well as the Chairperson of the Portfolio Committee on Justice and Correctional Services at the time, the Honourable G Magwanishe.

46. The Opinion is at odds with the submissions made by FHR who have levelled criticism that there is a clear lack of accountability; that the TRC Component is nameless, toothless, opaque, without a full-time dedicated head, with the buck stopping at no one; that Divisions do not report to the TRC Component; that there is a failure to make decisions; and that there is no transparency.

47. At a meeting held on 30 January 2023, between FHR, NPA and DPCI, the issues raised by FHR - including capacity and the presentation by the NPA and DPCI on progress on TRC matters to the JPC in June 2022 and November 2022 - were elaborated upon.

48. The creation of a platform where structured stakeholder engagement would take place between FHR, NPA and DPCI was discussed, identical to that which is being

implemented with the Apartheid Era Victims Family Group (AVFG) and other parties. It was explained that there is a single NPA and that ultimately decisions are taken by the DPP in respect of all TRC matters under investigation in his/her Division. It was further noted that the NPA had adopted a prosecution policy, that it functioned within a legal framework in line with directives and had a considered approach in the way matters were approached.

K CREATION OF A SPECIALISED UNIT/INVESTIGATIVE DIRECTORATE

49. FHR submits that their approach to creating a specialised unit or an investigative directorate where prosecutors and investigators could work together to solve cases was rejected by the NPA.

50. Part Two of the Prosecution Policy provides that an Investigating Directorate is established in terms of section 7 of the NPA Act and has the primary function of, and responsibility for, the investigation of such offences or criminal or unlawful activities as may be set out in a Proclamation issued by the President.

51. In removing TRC prosecutions from the PCLU mandate and creating a separate Component during September 2021, the TRC Component was established within the office of the DNDPP: NPS, as previously explained, to give a special focus and prioritise the management of TRC matters.

52. Prioritising progress is the TRC Component's focus. This was the primary intention of creating a separate component to deal with TRC matters. There is no evidence to sustain the argument made out by FHR that the appointment of an investigative directorate would have provided different or better results than the current component. There is a plan that has been implemented, which has produced results, which have by far exceeded any progress within the last three decades.

L APPOINTMENT OF A SPECIAL DIRECTOR

53. FHR also recommends the creation of the post of Special Director of Public Prosecutions to head the TRC Unit or Directorate. They argue that a Special Director

will deliver tangible results and significantly improve the quality of investigations and prosecution.

54. The power to appoint a Special Director lies with the President. Part Two of the Prosecution Policy Directives provides that where the President has conferred or imposed on or assigned to a Special Director the powers, duties and functions of instituting and conducting prosecutions they shall be exercised, carried out and performed in consultation with the DPP of the area concerned. Inevitably, the Special Director will exercise his/her functions in consultation with the DPP of the area concerned. This procedure is arguably no different from what the TRC Component exercises presently.
55. FHR argues that the creation of a senior post of a Special Director or the change of the name of the component will “significantly improve the quality of investigations and prosecution”. FHR offers no plan of action to drive progress apart from the appointment of a Special Director, a special name for the component and the creation of an investigative directorate.
56. There is no guarantee that a change in structure will affect its functioning. Excellent work is being done by the TRC Component. Nonetheless, the NPA is prepared to consider the creation of a Special Director post. The ultimate decision will, however, lie with the President.

M THE DECENTRALISATION POLICY

57. FHR submits that the decision taken to decentralise TRC matters from the PCLU in 2019, to the NPA’s provincial offices failed to deliver any tangible results.
58. We submit that this submission by FHR is not supported by the facts, as has been demonstrated above. In fact, it was the correct decision that should have been taken at the outset as jurisdiction has always been the determining factor for the investigation of matters.
59. In terms of section 179(5)(a)(b) of the Constitution, the NDPP, with the concurrence of Minister of Justice and Constitutional Development, and after consulting with the

Directors of Public Prosecutions, must determine prosecution policy which must be observed by the prosecution.

60. Part Two of Prosecution Policy provides that the primary responsibility for instituting and conducting prosecutions vests in the DPPs in respect of offences committed under their areas of jurisdiction. All crimes are investigated within the area of jurisdiction where they occurred. Therefore, the decision to migrate the matters to the respective Divisions within the jurisdictions in which they occurred was a sound decision. It also ensured that locally placed dedicated prosecutors are readily available to attend to matters in court.

N OTHER STAKEHOLDERS

61. FHR advises that it made the submissions to the JPC (Annexure A), on the suggestion made by the DNDPP: NPS, in his report to Parliament on 21 November 2023, that families and civil society organisations working with these matters be given an opportunity to share their views and experiences.
62. The NPA engaged with FHR in January 2023 and January 2024. The NPA acknowledges the importance of structured stakeholder engagements. However, there are other organisations that are also involved in structured engagements with the NPA. Both the AVFG and the Khulumani Support Group can also provide a holistic and considered view of their engagements with the offices of the DPPs, prosecutors and investigators.
63. AVFG is led by family members who have lost family members under tragic circumstances. During 2022, AVFG made a request to meet the DNDPP: NPS. In line with our victim-centred approach and policy, the DNDPP: NPS invited AVFG to first meet with the DPPs and DPCI investigators within the Divisions in which their matters are being investigated and decided. This resulted in families being introduced to prosecutors and investigators seized with their matters. This occurred between 2022 and 2024. The engagements with the office of the DPPs, DPCI and prosecutors was unprecedented. In accessing DPPs, prosecutors and investigators, families were able to identify the investigator and prosecutor seized with their matters, provide leads and information to investigators, without interfering with the functions of a prosecutor or

investigator. It encouraged the building of trust between families, the investigator, and the prosecutor. Regular progress reports are given to the families. Because of transparency and accountability, the relationship between families, prosecutors and investigators is strengthened. Prosecutors and investigators are also mindful and committed to impartiality, fairness and the rule of law.

64. A total of seven meetings took place between AVFG and the offices of the DPPs within the different Divisions listed below. All meetings were attended by the DPPs in whose Divisions the matters are under investigation, the prosecutors and DPCI investigators. The process was driven by Mr I Cajee, the nephew of Mr Ahmed Timol, who has expressed in writing his appreciation, on behalf of families, for the excellent engagements. A platform was shared with the families where they were given the opportunity to share their pain, their challenges and commitment to working towards justice.

DIVISION	DATE OF MEETING	FAMILY
Pretoria	7 November 2022	Matter of Messrs Kgoathe/Modipane/Monnogotla, Nyoka family, Simelane and Sons and Els
Johannesburg	26 September 2022	Matter of Messrs Saloojee, Akhalwaya, Napier and others
Western Cape	15 February 2023	Matters of Mr Fransch, Mr Haron, Mr Kriel, Ms September and Mr Robbie Williams and Coline Waterwitch
Northern Cape	17 April 2023	Matter of Mr Jacobs
Eastern Cape	1 June 2023	Matters of Messrs Mohapi and Biko, Family members present.
Kwa-Zulu Natal	24 July 2023	Spokesperson of Haffejee family, Mr G Mxenge, Mrs Victoria Mxenge, Mohsheen Jeenah

National office	30 January 2024	NPA/DPCI and AVFG
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65. In line with the victim-responsive approach adopted by the NPA in its strategy, the NDPP also issued a directive in 2022 that required TRC prosecutors to liaise directly with the families and victims, and to keep them informed of progress in the matters. The same is required of investigators. Families are made aware that there are challenges in the investigation of the matters. All challenges with a prosecutor or investigator must be addressed either with the office of the DPP or DPCI, respectively. Should the matter be incapable of being resolved, it is escalated to the co-ordinators. Failing resolution by the co-ordinators, it is escalated to the DNDPP: NPS. All information collated must be passed to the investigating officer. This is the same process of collaboration that has been established with all stakeholders including FHR.

O ALLOCATION OF JUDGES

66. The responsibility for the appointment of judges in all matters vests ultimately with the Chief Justice, who through his/her Judges President, exercises responsibility over the establishment of the exercise of judicial functions of the courts.

P LEGAL REPRESENTATION FOR PERSONS OF INTEREST AND SUSPECTS

67. This issue has caused delays. Legal representations for people of interest, particularly those who were in the employ of the South African Police Force when the alleged offences were committed, is a function exercised by office of the State Attorney, ultimately the Department of Justice and Constitutional Development (DOJ&CD).

68. Although it is not the function of the NPA, prosecutors play a vital role in ensuring that people of interest, in the interest of fairness, are sensitised in respect of their rights and that applications for the reasonable costs of legal fees are made to the State Attorney. The NPA has no control over the distribution of resources in respect of legal fees.

69. Inquest proceedings, even though they are not criminal proceedings, are more aligned

to criminal proceedings. Ordinarily, inquest proceedings commence with no additional expenses, as all expenses incurred incidental to an inquest are those which are offered in support of capacity by the DOJ&CD, for example provision of a court, the state prosecutor/s who represent the victim/family, witness fees etc. We are guided by section 8(2) of the Inquest Act which is prescriptive in that the laws governing criminal trials also apply in inquests, in so far as they relate to securing the attendance of witnesses at an inquest, their examination, the recording of evidence given by them, the payment of allowances to them, etc.

70. In inquests, the evidence leader is a state prosecutor. It is also the state prosecutor who submits a report together with all relevant statements, documents and information, on an alleged death or death of any person to a presiding officer. Witnesses will also be examined by the prosecutor or any person designated by the judicial officer who is holding the inquest. Any person who satisfies the judicial officer that he has a substantial and peculiar interest in the issue of the inquest may personally, or by counsel or attorney, put such questions to a witness giving evidence as the judicial officer may allow.
71. The witness' costs of accommodation, travelling, and testifying, are paid for by the courts in which the matters were heard.
72. When any person testifies, there is also an added factor in that the presiding judicial officer must, consistent with the Bill of Rights in the Constitution, draw to the attention of witnesses, who may be at risk of possible prosecution, their rights against self-incrimination and procurement of legal representation, prior to testifying. It was advised that the South African Police Service (SAPS) have refused to fund the expenses of the persons of interest who were in the employ of the state when the murders of the Cradock 4 took place.
73. The payment of legal costs of ex- employees must be made by SAPS who applies for it in terms of Standing Order 109. The High Court judgment of **Willem Helm Johannes Coetzee and others and the Minister of Police, the Provincial Commissioner for Gauteng, SAPS Case number 72747/2016 reported on 15 May 2018** supported this and found that the SAPS are successors in title to the SAP and inherit its liabilities and responsibilities. In the matter of COSAS Four, (**The Minister of Police and Rorich**

Christiaan Siebert and others Case Number SS70/202) the same challenge was experienced where there was a refusal to fund the costs of legal expenses of the accused police officers.

74. During January 2023, the South Gauteng High Court in Johannesburg issued an order dismissing the Minister's application for leave to appeal the judgment (delivered in May 2022) directing the police to pay the legal fees of Mr Christiaan Rorich charged in the COSAS Four matter. State Attorney Kobus Meier representing the Police Minister had informed the court that he had received instructions from the Minister of Police, to petition the SCA and if necessary, the Constitutional Court, on the matter.
75. The issue of the challenges of legal costs was raised by FHR in a meeting with the NPA and DPCI on 30 January 2023. This is a matter for SAPS to address. Notwithstanding, the DNDPP: NPS undertook to advise the SAPS National Commissioner of the judgments and the fact that this was contributing to undue delays.
76. During March 2023, correspondence was addressed to the Minister of Police, wherein it was requested that the Minister intervene urgently in the issue of payment of legal fees of police officers charged in TRC and related matters. During April 2023, the police minister took a decision to not challenge the order directing the SAPS to pay legal fees of former apartheid era police officers on trial for the killing of COSAS Four. This issue has again been addressed by the current Acting DNDPP: NPS.
77. Similarly, during February 2025, and in relation to the Cradock Four matter, it was resolved that the costs of the witnesses will be paid by the Legal Aid Board. The issue of costs for funding of legal representatives for the Cradock Four community has also been resolved. As part of the case management meeting held on 6 March 2025 in the Cradock Four matter, an urgent directive was issued by the presiding judge, Madam Justice Beshe, that the legal representatives of the SADF and SAP members consider urgent applications for funding from the relevant state departments.

Q REPARATIONS

78. The Promotion of National Unity and Reconciliation Act No 34 of 1995 provided for, and oversaw, the issue of reparations to victims who suffered gross human rights violations. The recommendations formed part of the Final Report of the TRC.

79. The Department of Justice and Constitutional Development is seized with the processing of reparations.

R COMMISSION OF INQUIRY

80. This matter is *sub judicæ* and forms part of the claim for constitutional damages in current litigation in which the NPA, together with others, is cited as a respondent.

S PROSECUTORIAL STRATEGY

81. All decisions taken on TRC matters are governed by the NPA policy. The legal framework for prosecutions is established through the Constitution, the NPA Act 32 of 1998 and the Criminal Procedure Act. If investigations reveal that there is evidence against perpetrators who did not apply for amnesty or were refused amnesty, they will be prosecuted. We are guided in this regard by the High Court Judgement of **Nkadimeng and others v the NDPP and others** (32709/07) [2008] ZAGPHC 422 (12/12/2008). If persons of interest or perpetrators are deceased, inquests may be held in respect of the suspicious circumstances surrounding the death of the victim if investigations inform such a decision. Inquests may also be re-opened if there is new evidence which was not considered by the original inquest court.

82. In some cases, whilst there is a suspicion that a person met with an unnatural demise, the evidence to that effect is just not available. In such cases, an inquest cannot be held. Families will be informed of the situation and a decision to close the matter will be communicated to the families.

T OVERSIGHT

83. FHR argues that there is lack of clear accountability and whilst the TRC Component falls directly under the DNDPP: NPS, it provides little or no strategic direction or oversight over the TRC cases.
84. During the meeting of 30 January 2023, where FHR engaged with both the NPA and DPCI on TRC matters, the DNDPP: NPS, Adv de Kock highlighted the framework and policy directives within which all prosecutors take place. He advised that ultimately it is the DPP who takes a decision on matters investigated by DPCI. He also highlighted appearances by the NPA before the Justice and Portfolio committee during June 2022 and November 2022 where substantive representations were made on progress on TRC matters.
85. All matters are overseen by DPPs in whose jurisdiction the matter is investigated. TRC Nodal Points have been appointed within every Division. They hold the rank of Deputy Directors of Public Prosecutions (DDPPs) and oversee the TRC Portfolio. All DPPs are accountable to the NDPP. The DNDPP: NPS exercises his powers through the NDPP. The NDPP may, in terms of section 179(5)(d) of the Constitution, review a decision to prosecute or not to prosecute, after consulting the relevant DPP and after taking representations from the accused, the complainant and any other person or party whom the NDPP considers relevant.
86. Progress on TRC matters, or the lack thereof, are discussed at monthly middle management meetings (NOMM), which are attended by all DPPs and Component Heads.
87. In addition to internal oversight and accountability, the Cabinet Member responsible for the administration of justice must exercise final responsibility over the prosecuting authority. The NPA is accountable to Parliament. Parliament has oversight on TRC matters. It therefore cannot be argued that there is no oversight over TRC cases or that there is little or no strategic direction. The end goal is that decisions are taken, always after exploring all leads and a thorough investigation.

88. In its claim for constitutional damages in the matter of *Calata and Others vs Government of RSA and Others*, FHR seeks the payment of R8 000 000,00 over a five-year period for purposes of enabling families and organisations supporting families to play a monitoring role in respect of the work of the policing and justice authorities charged with investigating and prosecuting the TRC cases.
89. The NPA is the only organ of state mandated by the Constitution to institute and prosecute criminal proceedings on behalf of the State. Its work and functions are monitored by Parliament to which it accounts as part of its oversight functions. If an agency or organisation is granted permission to monitor the work of the NPA, it will detrimentally affect the way the NPA discharges its constitutional mandate, and its prosecutorial independence may not be consonant with the law.
90. FHR further argues that its queries are bounced around between the TRC Component and the provincial DPP offices and that nobody takes full responsibility for the cases. It also maintains that the TRC Component maintains an arm's length from cases and repeatedly says that FHR cannot get involved in cases, and that the NPA fails to make decisions.
91. The NPA functions within a legal framework, policy and directives. Ideally, all challenges should be directed to the respective DPP's office. It is not a requirement that the co-ordinator liaise directly with the prosecutor but in the interests of fast-tracking matters, this does take place.
92. In a matter in which FHR has indicated an interest in, it raised concerns with the TRC co-ordinators that there might be a link to another matter which is currently enrolled. Even though FHR did not have a valid power of attorney to deal with the matter, there was intervention were both the co-ordinators intervened and requested the DPP's office to engage with the counsel to hear his concerns.

U SPECIFIC MATTERS

93. FHR submits that the employment of prosecutors on contract has contributed to uncertainty and high turnover. They identify three matters but simultaneously welcome the creation of permanent posts.

94. **Mabelane matter:** In the Mabelane matter, a decision was taken by the prosecutor seized with the matter to support the request to re-open the inquest. From reports received, the first prosecutor who dealt with the matter dealt with it during the period when the matters were migrated to the Divisions in 2019. Shortly after she was transferred, two other prosecutors - who subsequently left the NPA - dealt with the matter for a very limited duration. Since then, the same prosecutor remains on the matter. The Inquest Act makes provision for an inquest to be re-opened after application is made to the Minister on the recommendation of the Attorney General (now the NDPP) to re-open the inquest.
95. **PEBCO Three:** After the migration of TRC matters in 2019, with no dedicated prosecutors appointed at that stage, the matter was allocated to a permanently employed prosecutor. After he retired, the present dedicated prosecutors have overseen the matter and have liaised with Advocate Varney and CDH, the instructing attorneys. The most recent meeting was held in February 2025.
96. **Mr Iggy Mthebule:** FHR submits that the prosecutor seized with the matter was informed a few days before the meeting that her contract had not been renewed. The contract for the dedicated prosecutor was concluded for three years only. The contract expired in December 2024. The prosecutor was aware of the three-year contract period and as such could not have become aware that it would not be renewed just a few days before the contract expired. A handover was done to the current prosecutor. Even with permanent dedicated capacity, prosecutors might change for a variety of reasons-transfer, illness, retirement etc.

V IDENTITY OF PROSECUTORS TO FHR

97. As indicated on par 11, all instructing attorneys who have been identified on the respective matters in which FHR appears, engage with the NPA. It cannot then be alleged that FHR does not know the identity of the prosecutors.

W LIST OF MATTERS UNDER INVESTIGATION

98. During the meeting held between FHR, the NPA and DPCI on 30 January 2023, FHR advised that they represent all TRC families formally and informally and requested that the list of all matters under investigation be disclosed to them so that they could inform the families if information needed to be shared.
99. At that meeting, General Mosipi, who represented the DPCI, stated that matters under investigation by DPCI remained the function of DPCI and that the list of matters under investigation belonged to DPCI. He requested that FHR identify the families that they represent, and that the list be submitted to DPCI. It was emphasised that the integrity of the investigation had to always be protected and not be compromised. The list of cases under investigation by DPCI would not be shared with FHR. FHR accepted and understood this when they complied with the request of DPCI and provided a list of FHR -supported matters to DPCI.
100. It was stressed that the TRC cases were sensitive in nature and that it was the mandate of the DPCI and NPA to investigate and prosecute respectively, where necessary. General Mosipi emphasised that there are restrictions and limitations on what can be divulged and ultimately FHR must deal with those matters in which they represent families. It was emphasised that TRC matters were taken seriously and if there was information to be shared, it must be shared with investigating officers.
101. The DNDPP: NPS emphasised that the NPA had a Constitutional mandate to protect the integrity of our cases. An example was cited of a person approaching the NPA on the pretext of wanting to attend to a matter in court as a spectator. Shortly thereafter, a general power of attorney was presented purporting to represent the family. The emergence of the general power of attorney signed by another family member caused a rift between the families. Both the NPA and DPCI were adamant that there must be a strict relationship, and the accused must have a fair trial and there must be no interference with the decisions taken.
102. Shortly after the Opinion of Adv Ntsebeza SC was released, access to the list of matters under investigation listed in Annexure C of his Opinion, was also sought from both the NPA and DPCI. A formal request was made in terms of section 23(2) of PAIA,

to the Information Regulator South Africa, by a Daneel Knoetze, amongst others, for the “TRC Component’s prosecutor training manual and TRC specific prosecution policy” as well as access to Annexure C of the Opinion of Adv Ntsebeza, SC which contained a list of matters under investigation.

103. A decision had been taken by the NPA to not release Annexure C on the basis that it contained information pertaining to third parties, that releasing the document will be in contravention of the POPI Act, and that the SAPS was the custodian of the document. The application to the DPCI, who are the investigators seized with the matters, was also unsuccessful. In December 2024, a copy of Annexure C, with the redacted portions of the record containing third party information was furnished.

104. The persistence by FHR to disclose the list of TRC matters under investigation cannot override the safety of witnesses in matters under investigation, our prosecutors and investigators. There have already been instances where sensitive discussions on persons of interest at accountability sessions have made their way to persons of interest; phones of prosecutors and investigators have been hacked; a person of interest having used his dogs to chase investigators; various WhatsApp groups between persons of interest advising of the imminent arrival of investigators; and potential threats that have been made against investigators., Since the conclusion of the TRC, this period of investigation has yielded the most results on TRC prosecutions and investigations. The lull in investigations since the completion of the work of the TRC does not necessarily translate into acceptance that perpetrators will not be punished.

105. In the words of Judge Mohamed, as quoted in the case of **Azapo and others v the President of South Africa and others** (CCT17/96) [1996] ZACC 16; 1996 (8) BCLR 1015; 1996 (4) SA 672 (25 July 1996), “a nation divided by a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens living alongside everyone else, and they may be very powerful and dangerous. If the army and police have been the agencies of terror, the soldiers and the cops aren’t going to turn overnight into paragons of respect for human rights. Their numbers and expert management of deadly weapons remain significant facts of life....the soldiers and police may be biding their time, waiting and conspiring to return to power. They may be seeking to keep or win sympathisers in the population

at large. If they are treated too harshly-or if the net of punishment is cast too widely-there may be a backlash that plays into their hands”.

X MODUS OPERANDI

106. As part of investigations by DPCI and prosecution guided investigations, both the NPA and DPCI are aware that *modus operandi*, similar fact evidence and common perpetrators are important to identify and investigate. As part of the accountability sessions, these commonalities are emphasised. And to expedite the matters where investigations are complete, the matters are enrolled at the Regional Courts where the court rolls flow more easily than at the High Courts.

107. Prosecutors and investigators from selected Divisions have also, as part of special projects, liaised on strategy and how best to approach certain prosecutions and investigations.

Y WRITTEN JUSTIFICATION ON NPA'S DECISIONS

108. Families are kept fully apprised verbally of any decision taken on their matter as it is a more personal and interactive manner of building a rapport with families. However, there is no reason why, if decisions are taken, they cannot be reduced in writing to both families and their legal representatives.

109. The prosecutor is enjoined by the Constitution of the Republic of South Africa, 1996 and section 32 (1) of the NPA Act to act without fear, favour or prejudice. It is required of a prosecutor to be satisfied that there is reasonable and probable cause, not just a *prima facie* case against an accused person. The prosecutor should interrogate the docket in its entirety and apply his/her mind properly before taking a decision. Even if a court is not overly eager to limit or interfere with the legitimate exercise of the prosecuting authority, a prosecuting authority's decision to prosecute is not immune from the scrutiny of a court when such a discretion is not properly exercised.

110. The Code of Conduct for Members of the NPA, makes it abundantly clear that the prosecutorial discretion to institute and stop criminal proceedings should be exercised independently, in accordance with the Prosecution Policy and Policy Directives and be

free from political, public and judicial interference. It also requires that prosecutors be impartial in performing their duties without fear, favour or prejudice. In particular, they need to consider the public interest, as distinct from media or partisan interests and concerns however vociferously these may be presented.

111. Most importantly, it is required of prosecutors to only institute a prosecution when the case is properly investigated, based on well-founded evidence which is reasonably believed to be reliable and admissible, and not be swayed by public opinion and undue pressure from stakeholders.

112. TRC cases are unique. Because of the national and historical significance of the matters, all cases must be thoroughly investigated. It cannot be expected to simply prosecute suspects without evidence. Prosecution also cannot be based on suspicion or be made on emotions.

113. In **S v Yengeni 2006(1) SACR 405 (T)** Bertelsmann and Preller JJ observed: 'The Constitution guarantees the professional independence of the [NDPP] and every professional member of his staff, with the obvious aim of ensuring their freedom from any interference with their functions by the powerful, well connected, the rich and the peddlers of political interference'. The court further observed that the independence of the Judiciary is directly related to, and depends upon, the independence of the legal professions and of the [NDPP]. Undermining this freedom from outside influence would lead to the entire process, including the functioning of the judiciary, being held hostage to those interests that might be threatened by the fearless, committed and independent search of the truth.

114. In terms of the law, the NPA accounts to Parliament. In terms of the Inquest Act, it is the office of the NDPP that submits the application for re-opening of inquests. All decisions, whether to prosecute/not to prosecute, hold an inquest or apply to re-open an inquest will be based on thorough investigations by DPCI. All families and legal representatives are kept abreast of decisions taken, based on evidence collated in a docket.

Z CONCLUSION

115. The NPA acknowledges South Africa's painful past and together with DPCI, is committed to ensuring progress on TRC matters. Since 2019, both the NPA and DPCI have committed to dealing with TRC matters and this response reflects the progress which has been made over the past few years, and that we continue to make. This commitment is demonstrable through the progress made, not only on matters where FHR is a party thereto, but on all TRC and related matters.

116. Besides creating dedicated attention and capacity to deal with TRC matters, we also adopted measures to ensure that there is no recurrence of undue political interference in the prosecution of TRC matters. It is imperative that important stakeholders such as FHR support the NPA in its efforts to ensure that justice is done for victims and families with due regard to the rule of law and the independence that must be exercised in taking decisions.

117. The NPA is committed to ensuring justice for apartheid era crimes and finality of matters so that families can find some closure. Without closure, we cannot move forward. If the truth is not exposed, there will be no closure. Even when all leads have been exhausted, both the NPA and DPCI are committed to provide some degree of closure by ensuring that families are aware of all leads pursued to properly investigate the matters through prosecuted investigations.

118. We acknowledge that our country's history is besmirched with unspeakable acts of gross human rights violations, committed under a veil of secrecy. As shameful as our past is, we cannot deny that these atrocities took place, and we are committed to dealing with our history and the pursuit of justice for victims in line with the rule of law.



ADV. S. BATOHI

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE: 27 March 2025

NPA Response to Submissions by FHR

Presentation to Portfolio Committee on Justice and Constitutional Development



National Prosecuting Authority
South Africa

20 May 2025

CONTENTS OF PRESENTATION - NPA RESPONSE TO SALIENT ISSUES "H"

- ❖ Introduction
- ❖ Creation of the dedicated TRC Component
- ❖ Action plan implemented
- ❖ Progress made on FHR related matters
- ❖ Opinion of Adv Ntsebeza, SC
- ❖ Update on Commission of Inquiry (COI)
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- ❖ Creation of Special Unit/Investigative Director/Post of a Special Director
- ❖ Concluding remarks

INTRODUCTION

- ❖ NPA is committed to ensuring justice for apartheid-era crimes and finality of matters so that families can find some closure

- ❖ Multi-pronged approach towards dealing with TRC matters
 - ✓ Prosecutions to ensure accountability for alleged perpetrators

 - ✓ Inquests

 - ✓ Missing persons – identification and return of remains – NPA's Missing Persons Task Team (MPTT)

- ❖ NPA established TRC Component in 2021, with dedicated capacity (in both NPA and DPCI), and focus on Prosecution-Guided Investigations (PGI).
 - Creation of 19 permanent posts for dedicated TRC prosecutors. Applying for an additional ten posts due to increase in volume of matters.
- ❖ There are 194 matters under investigation. In 35 of these, decisions have been taken (not to proceed for different reasons); 159 are in hand.
- ❖ Two convictions secured – (cases of murder of Mr Wesley Madonsela and Mr Nyoka)
- ❖ Seven (7) criminal cases on the High Court roll: including COSAS Four (where the court made a historic finding on charges of CAH); and matter of Ms Simelane (where a section 77(3) inquiry is expected to conclude this week (19-22 May 2025)), amongst others.

INTRODUCTION (cont.)

- ❖ **Six inquests have been concluded** including that of Messrs Ernest Dipale, Zama Sokhulu, Mthunsi Vlemeseni Njakazi, Abdullah Haron, and Drs Aggett and Haffejee where the original court findings were reversed after evidence was led. The inquest of Mr Ronald Madondo is also underway.
- ❖ **Inquests into the deaths of the following are ongoing:**
 - **Chief Albert Luthuli:** High-profile, currently being heard at Pietermaritzburg High Court. We expect to conclude with the evidence by 20 June 2025.
 - **Mr Griffiths Mxenge:** Matter will be heard at the Pietermaritzburg High Court on 17 June 2025
 - **Highgate Hotel Massacre:** Further evidence to be led between 11-15 August 2025; arguments to be heard between 1-5 September 2025.
 - Formal inquests to be held in matter of the **Northcrest Five** (EC), **Mr Moss Morudi** (NW), **Mr Kehla Nkutha** (Mpumalanga), amongst others.
 - Re-opened inquests: **Mr Matthews Mabelane** (JHB) and **Mr Boykie Tlaphi** (NW) underway shortly

INTRODUCTION (cont.)

- ❖ NPA is working to finalise more indictments; additional matters have been lined up for the inquests to be re-opened, or formal inquests to be held, once investigations are finalised.
- ❖ All decisions will be evidence-based and based on fairness to accused persons and persons of interest.
- ❖ But there are some matters where too much time has lapsed and, despite diligent investigation, we are unable to find the necessary evidence to reconstruct scenes, obtain expert opinions, obtain witness statements or similar fact evidence from which we can work on.
- ❖ In line with our victim-centered approach, we are committed to keeping families informed, and where there is no evidence, this is communicated to families.
- ❖ We would welcome the Committee's intervention on addressing some of the challenges that will be outlined in the presentation.

INTRODUCTION (cont.)

- ❖ Written submissions made by Foundation for Human Rights (FHR) to Portfolio Committee on Justice and Constitutional Development (PC) on 12 February 2025.
- ❖ Appearance by NPA before PC on 19 February 2025
- ❖ As requested by the PC, NPA provided written responses to both FHR and PC on 27 March 2025.
- ❖ This presentation presents salient issues raised by FHR in their submissions and the NPA's responses.

SALIENT ISSUES RAISED BY FHR

- ❖ Slow pace of progress and decision making
- ❖ The TRC Component-Dedicated capacity within NPA and DPCI
- ❖ Specific challenges on FHR related matters
- ❖ Legal representation - persons of interest
- ❖ Commission of Inquiry
- ❖ Creation of a specialised unit/Investigative Directorate

- **The Priority Crimes Litigation Unit (PCLU)** – established by Presidential Proclamation on 23 March 2003, to manage and guide investigations and prosecutions of specific crimes and offences, including prosecutions arising from 2003.
- **2019:** Decision to migrate all TRC and related matters to the Divisions in which the offences occurred.
- **September 2021:** creation of a separate component -TRC Component -established within the office of the Deputy National Director of Public Prosecutions, Adv de Kock (at the time) to prioritise TRC matters.
- **Appointment of a NPA National Coordinator (NCO).** DPCI also appointed a national coordinator to coordinate, assess and drive progress on all TRC matters under investigation.

- **Capacity:** Prior to September 2021, deviation was obtained from DPSA to appoint prosecutors on a three-year contract. The contracts were later extended for an additional year.
- **Appointment of dedicated TRC prosecutors:** Primary function of prosecutors appointed to TRC matters was to oversee and guide investigations on TRC matters. This is their exclusive function.
- **Appointment of dedicated TRC investigators by DPCI:** followed a similar process and appointed investigators who would be appointed to investigations emanating from TRC matters only.
- **Current position:** Approval obtained for the creation of 19 permanent posts for dedicated TRC prosecutors. Interviews are underway, appointments are underway. Prosecutors: contract: 14. DPCI investigators: 30
- **Handover:** to ensure skills transfer and continuity of investigations and decisions

ACTION PLAN IMPLEMENTED - NPA AND DPCI (cont.)

"H"

- **Audit:** Required to plan how to improve progress on TRC matters, ascertain what matters were under investigation and do an in-depth analysis of each matter.
- **TRC Cases are unique:** unique cases-unique approach.
- **Divisions-Approach:** Action plans invited from the Divisions with self imposed time frames. PGI and investigators plan. Highlight challenges, provide solutions to fast-track matters.
- **Critical analysis of each case: Hands-on approach:** Every case under investigation within each Division was assessed separately. Key questions asked including: how long is the matter under investigation? How old is the matter? What is preventing the matter from been finalised? Are there victims/ witnesses and persons of interest who are still alive? Is there a particular modus operandi? What is crux of this case? What progress has been made? Is there guidance given pointed to obtaining the required evidence to take a decision? What type of expert/s opinions is/are required to determine whether a victim/s died under suspicious circumstances, how can we fast track the matter, can we pool our resources, how can we address the obstacle/s preventing the finalisation of a decision?
- **Monthly feedback:** Monitoring involves comprehensive monthly reports to both (NPA and DPCI) National Coordinators (NCOs) to gauge progress

Focus on quality investigations: Senior DPCI Management and NCO engaged.

- Focus of Investigations: Improve guidance and render quality investigations even with challenges of missing/lack of/destroyed dockets/ reconstruction of dockets, reconstruction of crime scenes, obtaining of experts. Crux of the issues in a matter; collation of quality evidence on which a prosecutor can make a decision.
- Identification of victims/complainants/witnesses
- Tracing of families and victims-regular feedback and updates
- identification of modus operandi and commonalities
- Identification of persons of interests/suspects
- Sources of evidence and accessing of documentation including access to National Archives, SSA, Military and Defence Archives, other government departments

Platform for Joint Accountability Sessions: Unprecedented approach (2022): platform within every Division, headed by DPPs, attended by TRC DPCI investigators, TRC provincial Heads, TRC prosecutors, TRC Nodal Points. DDPPs and NCO engaged on every TRC matter within their Division.

Ultimate purpose: Joint accountability by NPA and DPCI on every case under investigation. Constructive engagement with investigators and prosecutors in the presence of seasoned senior supervisors and respective heads who guide on challenges and the way forward.

Major points of discussion: Progress/lack of progress; challenges and blockages; solution-oriented actions. Share best practice, legal challenges and developments within the Divisions. Matters identified for fast tracking considering age and seriousness of matters, ages of witnesses, victims, accused, persons of interest, etc.

Duration: informed by volume of matters under investigation (between 2-4 days). Accountability session takes place twice a year or more in specific Divisions. There are ten Divisions.

Endorsement-Accountability session: by ex TRC Commissioner: Adv Ntsebeza SC in his opinion on NPA's TRC measures

PROGRESS - FHR RELATED MATTERS

- Progress has been made on TRC matters (including FHR-related matters) especially since September 2021.
- Certain matters, including FHR matters, identified for fast tracking and prioritisation.
- There is a link between the progress made thus far on FHR matters/other matters and the decisions taken to prioritise, fast track, monitor and ensure accountability.
- Regard must be had to resources and personnel and equal attention to all matters, not only matters where Counsel is involved.
- All families need closure.

SPECIFIC ISSUES – PROGRESS ON FHR MATTERS

ISSUE RAISED	NPA RESPONSE (PAGES 3-11)
<p>SPECIFIC PROGRESS ON EACH OF THE FHR MATTERS</p>	<ul style="list-style-type: none"> • 24 Families represented by FHR- over a three-year period • Progress on each matter reflected on pages 3-10 • Timol Matter: Re-opened inquest; FHR represented the family. Roderigues was charged criminally. NPA took a decision on evidence collated by DPCI.
	<ul style="list-style-type: none"> • 3 Inquests where FHR involved: Evidence led; matter finalised • 5 matters where inquests have been re-opened; FHR is involved • 5 matters where criminal charges have been preferred, matters on the criminal court roll • 9 other matters: decisions in the final phase of investigation, or a decision is pending. • 3 other matters: Decisions have been taken

PROGRESS - FHR LISTED MATTERS

NAME OF MATTER	PROGRESS TO DATE	UPDATE
Dr Neil Hudson Aggett-alleged suicide	A formal inquest into the death of Dr Aggett was re-opened. The original court finding of suicide was overturned.	The re-opened inquest was finalized. The record was referred to NPA for consideration of findings. Webber Wentzel are in engagements with the prosecutor on the matter.
Mr Matthews Mabelane-alleged suicide	A formal inquest into the death of Mr Mabelane was re-opened on 29 January 2025.	Inquest into the death re-opened. Legal representatives (Bowmans Gilfillan) in contact with the prosecutor tasked on the matter.
Mr Babla Saloojee-alleged suicide	Matter is in C phase of investigation. Expert opinion on reconstruction of the crime scene in relation to allegation that deceased attempted to jump out of the building was required.	The challenge relating to payment of the expert fees has been resolved.
Mr Ignatius Mthebule	The victim is still missing. The matter is at an advanced staged of investigation.	Statements are being sourced from Mr Mthebule's comrades at Luthuli House. Family represented (Eversheds Sutherland attorneys).

PROGRESS - FHR LISTED MATTERS (cont.)

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NAME OF MATTER	PROGRESS TO DATE	STATUS
COSAS FOUR-Attack on Messrs Madikela, Matabane, Nhlapo and Musi	Matter enrolled on the South Gauteng High Court roll. Two former police officers have been charged for Murder and Crimes against Humanity (CAH). Several applications in the matter including challenges to legal representation, a review application of the TRC decision, challenges to the charge of CAH, a recusal application against the presiding officer.	Since February 2025, challenge to the CAH charges was dismissed. Followed by unsuccessful application for recusal of presiding officer. Then filed leave to appeal against CAH charges, which was dismissed. Matter has now been set down for 23 May 2025 for leave to appeal against the presiding officer's decision to recuse himself. Webber Wentzel appears as watching brief.
Mr Caiphus Nyoka-killed in altercation-SAP members	Matter enrolled at the North Gauteng High Court. Four police officers were charged for murder and defeating the ends of justice.	On 12 November 2024, Accused #1 was found guilty of murder. Sentencing will take place on 5-6 June 2025. Separation of trials for the remainder of accused. Watching brief Webber Wentzel

PROGRESS - FHR LISTED MATTERS (cont.)

NAME OF MATTER	PROGRESS	STATUS
Mr Caiphus Nyoka-ctd	The trial against the remaining three accused proceeded separately. On 14 May 2025, the State closed its case.	Matter is on the roll again on 19 May 2025 for the Defence case. Section 174 application to be ventilated.
Mr Sweet Sambo	A decision was taken to close the case. Suspects were granted amnesty. The other accused were tried and acquitted. They were then charged with murder. They successfully raised a special plea which was upheld.	Matter has been finalised.
Cradock Four-murders of Messrs Goniwe, Calata, Mhlauli and Mkhonto	Addressed later in this presentation	

PROGRESS - FHR LISTED MATTERS (cont.)

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NAME OF THE MATTER	PROGRESS	STATUS
PEBCO THREE- Messrs Hashe, Galela and Godoloziki- kidnapping and murder	Legal representatives of the families have engaged with the NPA during December 2024 and February 2025.	Decision has been taken by the DPP. Internal processes underway. Cliffe Dekker Hofmeyr (CDH) Attorneys represent the family. Adv Varney is instructed by the family.
Highgate Hotel-killed- Messrs Hacking, Gates, Wheeler, Harris and Whitfield	Decision was taken to hold a formal inquest which commenced on 27 January 2025; evidence was led. Further evidence led during March 2025.	Matter is part heard. Evidence will be led during August 2025 with arguments set down for 11-15 August 2025. Adv Varney appears for the family, instructed by CDH.
Dr Rick Turner-shot and killed	Decision was taken by the DPP to hold a formal inquest in the High Court.	Legal representatives from Legal Resource Centre have engaged and liaised with the NPA. Adv Varney appears for the family. C phase of investigations. Finalisation of consultations with witnesses, pagination, indexing.

PROGRESS - FHR LISTED MATTERS (cont.)

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NAME OF THE MATTER	PROGRESS	STATUS
Mr Adriaano Bambo - shot and killed	The matter is at an advanced stage of investigation.	Further engagements with an important witness have been scheduled. A decision is imminent.
Sgt Richard and Irene Motasi-both husband and wife were shot and killed	The matter is at an advanced stage of investigation.	A meeting has been scheduled with the legal representatives of the family, Norton Fullbright, the NPA and DPCI for 10 June 2025.
Ms Nokuthula Simelane-kidnapped-still missing	Two police officers are on trial in this matter. An inquiry into section 77(3) is underway iro one of the two remaining accused.	The hearing is part heard. Evidence of the expert for the Accused will be heard on 19-22 May 2025.

PROGRESS - FHR LISTED MATTERS (cont.)

NAME OF THE MATTER	PROGRESS	STATUS
Mr Sons and Els -stemmed from the re-opened inquest into the death of Mr Timol	Finalised.	A decision was taken on 7 July 2023 to decline to prosecute any person on the matter. Webber Wentzel appeared for the family.
Gabarone Raid	The matter is under investigation. Information has been requested via MLA process. The private investigator of CDH has liaised with DPCI on this matter. Further investigation is required.	The matter is under investigation.
Operation Zero Zero	The investigation is of a sensitive nature.	The matter is in the C (final) phase of its investigation. A decision must be taken based on the evidence that has been collated by DPCI.

PROGRESS - FHR LISTED MATTERS (cont.)

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NAME OF THE MATTER	PROGRESS	STATUS
Ms Ntombikayise Kubheka-died in custody	An inquest was originally instituted. Proceedings were stopped and converted into criminal proceedings. Five police officers have been charged for murder.	Challenges with the refusal by the SAPS to fund the legal expenses of the accused. Matter is on the court roll on 10 June 2025 for the State Attorney-legal representation
Mr Sbo Phewa-linked to that of Ms Kubheka above	An inquest was originally instituted. Proceedings were stopped and converted into criminal proceedings. Five police officers have been charged for murder.	The SAPS refuses to fund the legal expenses of the accused. The matter is on the criminal court roll for 10 June 2025 for the State Attorney - legal representation.
Dr Hoosen Mia Haffejee-alleged suicide.	The inquest into the death of Dr Haffejee was re-opened. Evidence was led. The original inquest finding was overturned. The inquest record was referred to the NPA for consideration.	Finalised. A decision to decline to prosecute anyone was taken during 2024.

PROGRESS - FHR LISTED MATTERS (cont.)

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NAME OF THE MATTER	PROGRESS	STATUS
Mr Nicholas Thlapi-taken into custody by SAP-still missing	An application was made to the Minister to re-open the inquest into the death of Mr Thlaphi. A formal inquest had been held previously. Pre-court preparations are underway. Person of interest who has been identified has been notified to apply for legal representation to avoid any delays.	Inquest re-opened. Family representatives are Bowmans Gilfillan Incorporated and are liaising with the NPA and DPCI.
Mr Bayempin Msizi-alleged suicide	The matter was joined with that of Dr Haffejee. Ultimately no evidence was led. FHR appears for the family. Challenge with tracing of records. Investigation has not been finalised.	The family is kept updated through the legal representatives (Garlicke and Bousefield Attorneys).
Mr Mxolisi Dickie Jacobs-alleged suicide	There are challenges in the matter. Challenge with the tracing of records. Investigation is ongoing.	The family is kept updated through legal representatives, Munier Ismael of Haffejee, Roskam Savage Attorneys.

PROGRESS - FHR LISTED MATTERS (cont.)

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NAME OF THE MATTER	PROGRESS	STATUS
Mr Anton Fransch-killed in altercation with SAP	There has been a lengthy feedback session with the family and DPCI and a witness living abroad. The crime scene has been visited. Evidentiary material has been submitted to the explosive expert; opinion of second pathologist received. Video evidence obtained. Majority of police personnel files sourced.	The explosive expert is on long leave (causing delays). Another expert has been sourced. ENS Attorneys appear on behalf the family and engage with DPCI and NPA.
Mr Ashley Kriel-killed in altercation with SAP	Witness statements and second opinion of pathologists have been sourced. It is still outstanding. The report of an additional expert who is in the employ of the State is still awaited.	Ballistic report is pending. Second pathologist report is outstanding. ENS Attorneys appear on behalf of the family and engage with NPA and DPCI
Mr Storey Luke Mazwembe-alleged suicide	Reconstruction cannot be done until the structural plans of the cell (as it was when the death occurred) are obtained from DPW. Continued engagements by DPCI with DPW. There is a shortage of personnel. A second opinion of a pathologist has been procured.	Webber Wentzel appears on behalf of the family. They liaise with the NPA and DPCI.

PROGRESS - FHR LISTED MATTERS (cont.)**"H"**

NAME OF THE MATTER	PROGRESS	STATUS
Mr Batandwa Ndondo-killed in altercation with police	This is a fairly new investigation registered in August 2024. Investigation is in the C phase of investigation. Tracing of witnesses/persons of interest is underway.	This is in the final stages of investigation. A decision is imminent. The family representative is updated on developments on the matter.

SPECIFIC ISSUES - NTSEBEZA OPINION

ISSUE RAISED	NPA RESPONSE (pp. 22-23)
	<p>NPA took a decision in October 2022 to appoint Senior Counsel to assess whether measures, checks and balances put in place in September 2021 to deal with TRC matters were adequate, in line with the Rodrigues matter</p>
	<p>Work done by the NPA and DPCI was assessed. Opinion was received in November 2023 and found that measures adopted and implemented to deal with TRC matters are in large part adequate. Acknowledged that many of the matters were in beginning stages of investigation. Challenges were largely availability of dockets, inquest records, decades old cold cases, payment of experts for reconstructions, access to stakeholders and information, Same issues raised in 2025.</p>
	<p>Legal representation: Addressed by DNDPP: NPS with two Ministers of Police (2023 and 2025)</p>
	<p>Opinion accepted: monitoring and oversight role of monthly TRC reporting, oversight under the DNDPP: NPS, monthly updates to National Coordinators by DPPs; importance of regular briefing sessions between NPA and DPCI-dedicated personnel; accountability to families, transparency, communication channels, stressed importance of accountability sessions. Audits-fast tracking-satisfactory hybrid structure Recommended a Commission of Inquiry (COI)</p>

UPDATE ON COMMISSION OF INQUIRY

- Presidency has announced that the President will establish a Commission of Inquiry to assess alleged political interference and delays in prosecution of TRC cases.
- The NPA is awaiting confirmation of the Terms of Reference, the appointment of a Judge and a date.
- The NPA will abide on the intervention applications by former President Mbeki and Ms Mabandla.

SPECIFIC ISSUES - OPINION AT ODDS - FHR

ISSUE RAISED	NPA RESPONSE - PAGES 24-25
<p>FHR criticism is at odds with Adv Ntsebeza SC Opinion</p>	<p>Checks, balances and Oversight: Opinion showed there is accountability; adequate checks and balances. Prosecutors account to the DDPP-TRC Nodal Point. The DDPP is accountable to the DPP; DPP is accountable to the DNDPP. DNDPP accounts to the NDPP. Powers of Review: NDPP. All TRC decisions taken by the Divisions: memoranda are submitted to DNDPP-NCO.</p>
	<p>Issues communicated at stakeholder engagement held with FHR. Oversight by Parliament: Appearances before Committee in June and November 2022 - same issues highlighted; presentations are shared.</p>
	<p>Structured engagement protocols also shared. DPP offices' have jurisdiction over matters. Also shared with AVFG, follow protocol. Engagements with DPP offices. FHR liaises with the offices of the DPPs.</p>
	<p>NPA functions within a legal framework and directives, we have a prosecution policy and must follow a considered approach in the way matters are approached. Single NPA, ultimately decision taken by DPP.</p>
	<p>TRC matters are a standing agenda item at NOMM which is attended by all DPPs.</p>

- The issue of legal representation for persons of interest was canvassed as early as 5 June 2024.
- Prosecutors assisted and intervened when challenges arose with legal services of both SADF and SAPS. The policy of SAPS and SANDF was shared with Counsel. Other stakeholders were also engaged.
- Legal representatives for a witness Mr Goniwe, and for the Cradock Four community also advised that their application for their legal costs to be covered, was declined. Their application had been made the previous year. They were in the process of filing papers to have the decision reviewed.
- The inquest was postponed on 2 September 2024 to 2 June 2025.

- Multiple case management meetings have taken place in the interim.
- **Legal Aid approved:** On 12 March 2025, Legal Aid was approved for Counsel for Mr Goniwe and Counsel for the Cradock Four community.
- **Payment for SAPS members:** In the interim, payment of legal expenses of the three SAPS members were approved on 5 May 2025. Counsel must still be appointed to participate in the inquest.
- **Payment of legal fees: Dept of Education:** Both the witness and person of interests' application were refused. The review applications of persons of interest and other witnesses were struck from the court roll due to lack of urgency; placed on the normal court roll.
- **Counsel for another person of interest: SAPS:** will be decided on 19 May 2025.

- **SADF:** There is one person of interest who applied for his legal representation to be paid by SADF. It was refused. The decision has been taken on review. SADF has counsel and an instructing attorney. The issue will be ventilated at the case management meeting on 19 May 2025. This remains a challenge. Counsel for SADF is part of the case management meeting.

What is expected to happen:

- Given that SADF and Department of Education have not granted authorisation for legal fees to be paid, an application was made by Counsel for the families to lead family witnesses on 2 June 2025, who would not implicate persons of interest. The application is opposed by legal representatives of persons of interest. The judge must make a formal ruling on 19 May 2025.

CREATION OF A SPECIAL UNIT/INVESTIGATIVE DIRECTORATE

- The creation of a separate TRC component in September 2021 resulted in special focus given to prioritising TRC matters. This was the primary intention of creating a separate component.
- The NPA is prepared to consider the creation of a post for a Special Director.

CHALLENGES INHIBITING PROGRESS

- Sourcing, creating a pool of and payment of experts
- Costs of legal representation for persons of interest/Accused-SAPS and SADF-other
- Access to documentation in possession of Stakeholders (e.g. DPW, military and defence, intelligence archives, etc.)
- Declassification of Apartheid era files.

CONCLUDING REMARKS

- Since 2019, the NPA has been committed to dealing with TRC matters and this report shows the progress that we have made over the past few years, and that we continue to make.
- Besides creating dedicated attention and capacity to dealing with TRC matters, we also adopted measures to ensure that there is no recurrence of undue political interference in the prosecution of TRC matters. We appointed senior counsel to review and assess the measures.
- In June 2023, Adv Ntsebeza SC submitted his written opinion on the TRC Component and TRC prosecutions, to the NPA, which found that the measures adopted and implemented by the NPA to deal with TRC matters – namely, the structure and checks and balances that form part of the TRC Component - are largely adequate. The NPA has abided by its recommendations.
- Combined, these measures have contributed significantly to achieving progress with TRC matters within the Divisions and working collectively towards the pursuit of justice for the victims and their families, to which we remain committed.

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National Prosecuting Authority
South Africa

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Thank you

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AFFIDAVIT

I, **LEON HJALMAR VEENEMANS**

do hereby make oath and state that

1. I am an adult male. I am presently appointed as a Senior Public Prosecutor in the employ of the National Prosecuting Authority. I am currently situated on the ground floor, room CO 2.35 of the VGM Building (c/o Westlake Avenue and Hartley Street), 123 Westlake Avenue, Weavind Park, Silverton Pretoria, Gauteng.
2. The facts herein are within my knowledge unless stated to the contrary or as appears from the context. They are to the best of my knowledge and belief true and correct.
3. On 07 October 2025 I was tasked to provide a timeline of the representations file 10/2/12/3-336/2020 that dealt with the matters of the State vs Seth Sons and Neville Els as evidenced in Pretoria Central CAS 798/10/2017 and Pretorial Central CAS 822/10/2017.
4. Having had insight to the representations file (consisting of three volumes), the following serves to be the timeline of how the matter was dealt with since the inception of the file and closure thereof:

5. This Office received the 1st e-mail from Mr Imtiaz Ahmed Cajee dated 25 March 2020 requesting status report on matters currently with the Acting Director of Public Prosecutions, Pretoria (ADPP)
6. Mr Cajee's e-mail was referred to the ADPP on 29 April 2020. Mr Cajee was advised accordingly.
7. The ADPP responded in a letter dated 21 May 2020 with his decision. This Office advised the ADPP on 28 May 2020 that we will await Mr Cajee's representations.
8. Representations were received on 21 June 2020 from Webber Wentzel Attorneys on behalf of Mr Imtiaz Ahmed Cajee and the Foundation for Human Rights in respect of criminal matters against Mr Neville Els (Pretoria Central Cas 822/10/2017) and Mr Seth Sons (Pretoria Central Cas 798/10/2017).
9. The report with reference 10/3/5-P62/2019 dated 19 June 2020 was received from the Director of Public Prosecutions, Pretoria (DPP) when it was e-mailed to this Office on 02 July 2020.
10. A letter was sent to DPP dated 14 July 2020 to request the DPP to provide an additional report containing his comments relevant to Webber Wentzel attorneys' representations dated 22 June 2020.
11. Webber Wentzel attorneys were advised on 14 September 2020 that we are still waiting for the DPP's final report.
12. This Office received the DPP's final report dated 19 October 2020.

13. The initial review memorandum was drafted on 21 October 2020 for the benefit of Adv R J De Kock, the Deputy National Director of Public Prosecutions (DNDPP).
14. A letter to Webber Wentzel attorneys dated 02 December 2020 was sent in order to advise them that we are still attending to the review matter.
15. This Office obtained a second opinion from the Organised Crime Component who were requested to peruse the matter and provide their views thereon. The said opinion is dated 10 February 2021 and was signed by Adv A Johnson (who was then a Deputy Director of Public Prosecutions). The said second opinion was subsequently escalated to the DNDPP on 15 February 2021.
16. Another letter was directed to Webber Wenzel attorneys on 09 April 2021 to state that Adv De Kock is still dealing with the matter that is at an advanced stage.
17. Letters dated 30 July 2021 addressed to the DPP and to Webber Wenzel attorneys were sent to advise them that the DNDPP is still in the process of reviewing the DPP's decision in terms of *Section 179(5)(d) of the Constitution of the Republic of South Africa, (Act 108 of 1996)*. They were further advised that In order to give effect to the provisions of *section 179(5)(d) of the Constitution of Republic of South Africa, (Act 108 of 1996)*, the DPP was requested to ascertain from Mr Seth Sons and Mr Neville Els whether they wish to make any representations to the DNDPP in this regard. They had to be advised that their representations (should they wish to make them), must reach the DNDPP on or before Monday 16 August 2021.

18. A follow-up letter was sent to the DPP on 17 August 2021 regarding the representations from the accused that had to be obtained.

19. Another letter to Webber Wenzel attorneys (signed by the National Director of Public Prosecutions) dated 10 September 2021 to advise them that it has been ascertained that that Colonel Naidoo, the new investigating officer (I/O) has already collected the relevant docket from the office of the Director of Public Prosecutions, Gauteng Division, Pretoria and was able to trace Mr Neville Els in order to notify Mr Els of the invitation to make representations to the Deputy National Director of Public Prosecutions in terms of the provisions of *section 179(5)(d) of the Constitution of Republic of South Africa, (Act 108 of 1996)*, read with section 22(2)(c) of the National Prosecuting Authority Act 32 of 1998. It was further reported that the I/O was still struggling to trace Mr Seth Sons for purposes of notifying him of the same. Colonel Naidoo is following up on information that he might be in the Johannesburg area. Once the legal formalities have been concluded, a decision on the representations will be made in the very near future.

20. A letter was addressed to Mr Leon James (son-in-law of Mr Seth Sons) dated 16 September 2021 to advise him that this Office will pend our file to Thursday 30 September 2021 to provide Mr Sons ample opportunity to make his representations to this Office.

21. Another letter was addressed to Webber Wenzel attorneys dated 20 September 2021 to advise them that the new investigating officer was eventually able to trace and locate Mr Sons in order to enquire from him whether he wishes to make any representations to the Deputy National Director of Public Prosecutions in this regard. Mr Sons has indicated that he wishes to

do so and he was given a deadline of 30 September 2021 to lodge his representations with this Office. The Director of Public Prosecutions, Gauteng Division, Pretoria has also been requested to task the investigating officer to advise Mr Els (who also indicated that he intends to make representations) that Mr Sons had been given time to 30 September 2021 and that the same date will apply to Mr Els. Once the legal formalities have been concluded, a decision on the representations will be made in the very near future.

22. Another letter was addressed to Mr Leon James dated 06 October 2021 to advise him that this Office will pend our file to Monday 25 October 2021 to provide Mr Sons a final extension to make his representations to this Office. It is presumed that Mr Sons will be represented by the office of the State Attorney, as this Office was made aware that Mr Els is already represented by the State Attorney's office. Mr Leon James was advised that the relevant official who received instructions from the SAPS to represent Mr Els at the State Attorney's office is Mr Kobus Meier, Senior Assistant State Attorney at the Office of the State Attorney – Pretoria with Tel: 012 309 1565 / 082 940 3938 and Email: cronje.justice@gmail.com

23. This Office received a letter dated 30 September 2021 from the State Attorney (Mr Meier) who requested to be provided with copies of the docket.

24. Another letter was addressed to Webber Wenzel attorneys dated 08 October 2021 to advise them that this Office received e-mail communications from the son-in-law of Mr Sons on 30 September 2021 where it was reported that Mr Sons will not be able to make the deadline as he is struggling to travel due to his ill health. He further advised this Office that Mr Sons is in the process of obtaining the necessary legal representation so as to enable him to lodge his

representations to this Office. In respect of Mr Els: this Office received a formal communication from the office of the State Attorney on 30 September 2021, advising this Office that Adv Fanus Coetzee, SC has been instructed to represent Mr Els. They further requested to be provided with a copy of the docket and the relevant court transcripts so that they can prepare proper representations to this Office. It is expected that Mr Sons will also be provided with legal assistance from the office of the State Attorney, seeing that the SAPS already gave instructions in respect of Mr Els. Copies of the relevant dockets (which include copies of the court record of the second inquest proceedings) will have to be made available to the legal representatives of Mr Sons and Els in order to enable them to prepare their representations to this Office. Due to the above developments, this Office granted Mr Sons and Mr Els with an extension to 25 October 2021 to facilitate the handing over of the requested documents and for them to prepare their representations.

25. Another letter was addressed to Webber Wenzel attorneys on 02 November 2021 to advise them that this Office did not receive the expected representations on 25 October 2021. Follow-up letters were dispatched to the two respective parties in this regard. They were advised that this Office will wait until Friday 05 November 2021 for them to respond to our latest letter, whereupon further action will be taken, depending on their response or lack thereof.

26. Another letter was addressed to Webber Wenzel attorneys dated 10 January 2022 to advise them that this Office has already received written representations on behalf of Mr Els, but unfortunately, we have not received any from Mr Sons as he was still struggling to obtain legal representation

through the office of the State Attorney who must first be briefed by the South African Police Service. Mr Sons (by way of his son-in-law Mr Leon James) was advised to get in touch with General Groenewald at the SAPS Head Office who will be able to assist in the matter. Mr Leon James has subsequently indicated that they are in contact with General Groenewald. A follow-up e-mail was dispatched to Mr James on 23 November 2021, but up to date, no response was received. Upon a telephonic discussion with General Groenewald on 10 December 2022, she informed this Office that they had recently approved Mr Sons' application and instructed the office of the State Attorney to also represent him in this matter. Webber Wentzel attorneys were further advised that this Office will direct a letter to Mr Kobus Meyer (Senior Assistant State Attorney) in order to advise him that this Office is aware that the SAPS has instructed his office to represent Mr Sons and that it is expected to receive the written representations on behalf of Mr Sons in the very near future.

27. Another letter was addressed to Webber Wenzel attorneys dated 24 January 2022 to advise them that this Office has received a communication from Mr Kobus Meier (Senior Assistant State Attorney) who advised this Office that they will submit written representations on behalf of Mr Sons on 28 January 2022. Upon receipt of the same, a consideration of both the representations of Mr Sons and Mr Els will follow with a view of finalising the matter as soon as possible.

28. This Office received an e-mail from Adv Coetzee, SC dated 27 January 2022 where he includes the representations on behalf of Mr Seth Sons.

29. Another letter was addressed to Webber Wenzel attorneys dated 16 February 2022 to advise them that Office has indeed received written representations on behalf of Mr Sons on 27 January 2022. A consideration of the submissions contained in both the representations of Mr Sons and Mr Els is currently underway with a view of finalising the matter as soon as possible.
30. Another letter was addressed to Webber Wenzel attorneys dated 15 March 2022 to advise them that this Office is still in the process of considering the submissions contained in both the representations of Mr Sons and Mr Els.
31. A letter was addressed to Webber Wentzel attorneys and Mr Cajee dated 27 May 2022 to advise them that the DNDPP has not yet made a final decision because he has requested the investigating officer (Colonel Naidoo) to obtain a sworn statement of Dr Salim Essop in so far it pertains to the allegation in written notes called "*Detention Documents*" in note 15 of page 7 filed in the B2 of the case docket that relates to the involvement of Mr Els during his detention at the Security Branch of the South African Police at John Vorster Square. Once the sworn statement of Dr Essop is obtained, then the DNDPP will be able to make his final determination on the matters against Mr Sons and Mr Els.
32. A letter was addressed to the DPCI dated 07 July 2022 where this Office referred to our evenly numbered letter dated 27 May 2022. DPCI was requested to provide this Office with an indication as to when this Office can expect to be provided with the affidavit from Dr Salim Essop (currently residing in the United Kingdom) as per the allegations that he was assaulted and or intimidated by Mr Neville Els during his detention at the Security Branch of the South African Police at John Vorster Square.

33. Lieutenant Colonel Jayson Naidoo (Investigating Office at the DPCI) made several attempts to facilitate the process for Dr Essop to provide his affidavit and even liaised with Mr Moray Hathorn at Webber Wentzel with the hope that such affidavit can be obtained.
34. On 12 September 2022, Mr Cajee was advised that the investigating officer (Colonel Naidoo) is still trying to obtain a sworn statement of Dr Salim Essop in so far it pertains to the allegation in written notes called "*Detention Documents*" in note 15 of page 7 filed in the B2 of the case docket that relates to the involvement of Mr Els during his detention at the Security Branch of the South African Police at John Vorster Square.
35. Mr Cajee was advised that the last update from Colonel Naidoo was provided on 30 August 2022 where he indicated that Mr M Hathorn has also been in contact with Mr Essop (via -email) in order to advise Mr Essop that his statement must be signed before a Commissioner of Oaths, otherwise the National Prosecuting Authority (NPA) cannot take his statement into account. Mr Essop was advised that the SAPS Liaison office in London will be contacting him in order to arrange that his statement can be obtained. Mr Cajee was again advised that once the sworn statement of Dr Essop is obtained, then the DNDPP will be able to make the final determination on the matters against Mr Sons and Mr Els.
36. In a letter dated 03 February 2023, Mr Cajee was once again advised that the investigating officer (Colonel Naidoo) has still not managed to obtain the requested sworn statement of Dr Salim Essop in so far it pertains to the allegation in written notes called "*Detention Documents*" in note 15 of page 7 filed in the B2 of the case docket that relates to the involvement of Mr Els

during his detention at the Security Branch of the South African Police at John Vorster Square.

37. Colonel Naidoo provided this Office with a copy of an e-mail that he received from Dr Essop on 31 October 2022 where Dr Essop indicated that he will endeavour to have his affidavit signed and commissioned at Webber-Wentzel so that the original signed document can be provided to the NPA. He further indicated that he is planning to visit South Africa although he cannot specify the particular date but it is something he will be doing sooner or later once he has made the appropriate arrangements.
38. On 21 December 2022, upon enquiries from Colonel Naidoo, Dr Essop responded via e-mail that that he has not been able to travel to South Africa for a variety of reasons. He will let Colonel Naidoo know once he has made the necessary arrangements.
39. Upon further e-mail enquiry from Colonel Naidoo on 19 January 2023, Dr Essop responded on 22 January 2023 that he hasn't been able to travel due to health and other reasons. And he is now reconsidering his options regarding the affidavit.
40. Mr Cajee was advised that this Office is awaiting a further status report from Colonel Naidoo in so far it pertains to which options Dr Essop will be following in order to provide Colonel Naidoo with the requested affidavit.
41. As a result of the aforementioned update report to Mr Cajee, he responded with an e-mail dated Sunday 05 February 2023. He mentions that our last letter states nothing about the case against Sons. The reason for this is because our previous two letters to him said specifically that once the sworn statement of Dr

Essop is obtained, then the DNDPP will be able to make the final determination on the matters against Mr Sons and Mr Els. This Office did not think it was therefore necessary to once again allude to the Sons matter.

42. On 15 February 2023 respective letters were sent to the legal representative of the two accused, the DPP PTA and to Mr Cajee to advise them that the DNDPP is of the view that the undue delay caused by the inability to obtain the sworn statement of Dr S Essop is prejudicing the prospects of a prosecution against Mr Sons and Mr Els. It would have been beneficial to the prosecution to have such a statement from Dr Essop, but it cannot be the reason for delaying the matter any further. The DNDPP has accordingly decided that both Mr Sons and Els should be prosecuted on charges of Perjury, Defeating or Obstructing the Course of Justice and a contravention of section 20(2) of the Inquest Act 58 of 1959. The Director of Public Prosecutions, Gauteng Division, Pretoria has been advised of the decision and was instructed to make use of section 156 of the Criminal Procedure Act 51 of 1977 so that Mr Sons and Mr Els can be tried together.

43. An internal memo dated 02 May 2023 was prepared for the benefit of the DNDPP to advise him of a recently received e-mail correspondence from the Director of Public Prosecutions, Gauteng Division, Pretoria (DPP) dated 24 April 2023. In the said e-mail, the DPP provided annexures that contained a draft charge sheet, a short report from Adv E Kabini (Deputy Director of Public Prosecutions) and an e-mail from Dr S Essop dated 17 March 2023 which was directed to the Investigating Officer, Lt Colonel Naidoo. In short, the DPP recommends that the prosecution should no longer be pursued as a result of the fact that Professor Kantilal Naik is deceased and Dr Salim Essop has confirmed that he will not be providing a sworn statement any longer due to his

deteriorating health conditions. He does not want to be exposed the rigours of a criminal trial. The DPP has now requested that the decision as per the above communications should be revisited due to the recent events.

44. Letters dated 07 July 2023 were signed by the DNDPP and addressed to the legal representative of the accused persons, Mr Cajee and the DPP PTA to advise them that since Professor Naik passed away, we hoped that the evidence of Dr Essop would enable the State to present sound evidence against the accused. Such evidence would be backed up by circumstantial evidence from other witnesses (i.e detainees on other cases) who would also testify about assault and torture that they also experienced whilst in the hands of the security police at John Vorster Square police station. Efforts were made to request Dr Salim Essop who is now living in London, Great Britain, to provide a sworn statement on the matter. Unfortunately, Dr Essop has confirmed that he will no longer be providing a sworn statement due to his deteriorating health conditions. Dr Essop stated that he does not want to be exposed to the rigours of a criminal trial. As a result of the above, the intended prosecution against Mr Sons will no longer be feasible due to the fact that the State will not be in a position to lead the evidence of key witnesses in this matter. The recent and unfortunate developments have negated a reasonable prospect of a successful prosecution. The DNDPP therefore rescinded his earlier decision dated 15 February 2023.

45. A letter was addressed to the DPP PTA dated 13 July 2023 to advise him that due to the nature of the matter and the sensitivity thereof, it was thought best that the decision to decline the prosecution should rather be conveyed to Mr Cajee in person. The DPP was requested to communicate the decision and

reasons thereof to Mr Imtiaz Ahmed Cajee as to why it was necessary to rescind the earlier decision (dated 15 February 2023) to prosecute Mr Sons and Mr Els.

Leon Hjalmar Veenemans

Date: 08 October 2025

I CERTIFY that this affidavit was signed and sworn to before me at **Pretoria** on this the **09th day of October 2025**, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".

COMMISSIONER OF OATHS

Name: Marnus Steyn

Address: VGM Building, 140 Westlake Avenue, Weavind Park, Pretoria.

Capacity: Senior State Advocate, AFU

Presentation to Portfolio Committee on Justice and Correctional Services

Progress on TRC Cases



National Prosecuting Authority
South Africa

01 June 2022

Contents

1. Introduction
2. Dedicated Capacity: NPA and DPCI
3. Progress Report
4. The Way Forward

Introduction

- Ensuring justice for the families and victims of apartheid-era crimes is a priority for the NPA. The lack of accountability for these heinous crimes continues to undermine the rule of law in SA
- Despite the delays, the NPA is now committed to delivering on this priority. We need to learn lessons from the past to secure the NPA's independence and credibility for the future
- Time is not on our side. That's why we are acting with urgency to develop strategies, capacities and partnerships to ensure progress in these cases
- Highlights from the past six months:
 - Established a dedicated TRC component under the DNDPP: NPS
 - Appointed additional dedicated capacity to focus on TRC matters. DPCI has done the same
 - Full-time TRC coordinator function in national office to drive internal and external collaboration

Introduction (continued)

- Highlights from the past six months:
 - Sharpened our prosecution-guided investigation approach in close partnership with DPCI
 - Under the co-ordinated guidance of the national office, we enhanced the capacity of DPP offices to prosecute these matters at provincial level, within the jurisdiction of where the offences were committed.
- Our efforts are paying off. We have seen substantial improvement over the last 7 months resulting in the re-opening of 38 new investigations into deaths of detainees.
- There are currently 97 matters under investigation with more matters identified for re-opening
- The Missing Persons Task Team (MPTT) established within NPS, has to date recovered the remains of 179 missing persons, of which 167 have been identified and returned to affected families.

Dedicated TRC Capacity

NPA		DPCI	
Total number of dedicated TRC prosecutors appointed in divisions: 16		Total number of dedicated TRC investigators appointed in the divisions: 33	
DPP: KwaZulu-Natal Division	4	Central Region: Head Office, Gauteng, Mpumalanga, Limpopo and North West	17
DPP: Western Cape Division	3	Coastal Region: Kwa-Zulu Natal	4
DPP: Gauteng Local Division	3	Eastern Region: Eastern Cape	8
DPP: Gauteng Division: Pretoria	1	Western Region: Western Cape	2
DPP: Limpopo Division	1	Karoo Region: Free State and North West	2
DPP: North West Division	1		
DPP: Eastern Cape Division	1		
Other: Head Office	2		

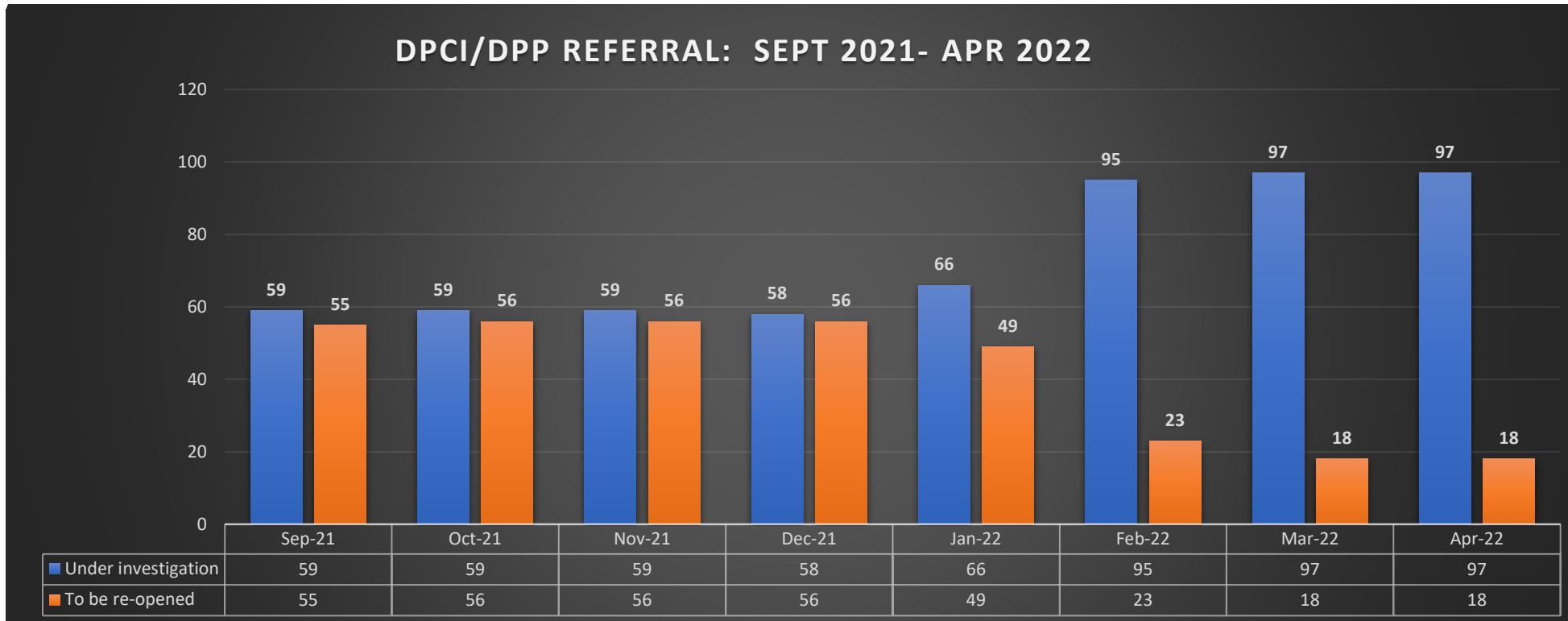
Progress update

- The audit of matters between DPCI and NPA was key in developing a co-ordinated and hands-on, standardised approach.
 - Matters were identified for fast-tracking with consideration given to the seriousness of the evidence, age of the matters, age of the accused/persons of interest/witnesses, availability of experts and witnesses and exhibits/records.
 - Divisions were encouraged to develop action plans with set time frames in respect of the strategic prioritisation and finalisation of matters.
 - There is a critical analysis of progress within the divisions on a monthly basis.
 - The dire need to prioritise TRC matters resulted in joint NPA/DPCI regional workshops co-ordinated by NPS National Office with effect from 13 June 2022.

Monitoring and Evaluation

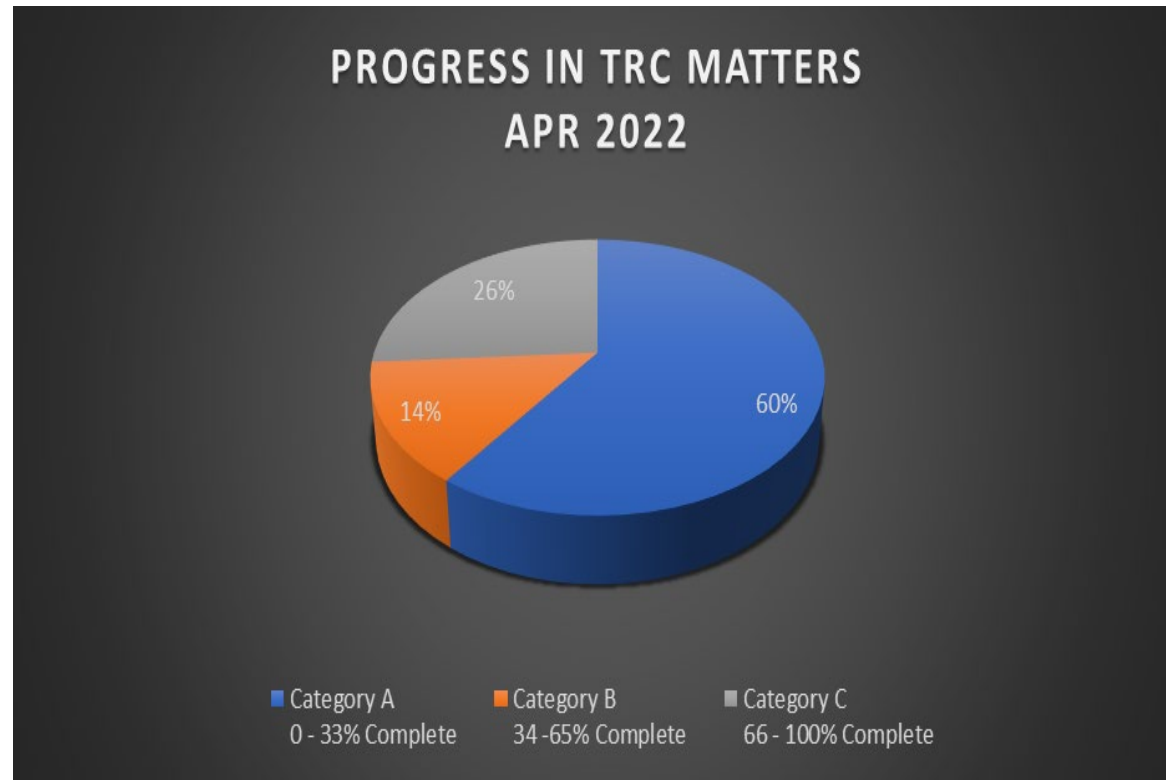
- Progress in investigations is divided into three categories:
 - Category A: Available evidence, docket, inquest report etc.
 - Category B: Expert reports.
 - Category C: Stages nearing completion of investigations and/or decision making.

Improvement in Cases under Investigation



- New investigations re-opened since September 2021: 38
- Awaiting re-opening: 18

Divisional Progress as at 30 April 2022:



PROGRESS IN TRC MATTERS - APR 2022				
Division	Category A 0 - 33% Complete	Category B 34 - 65% Complete	Category C 66 - 100% Complete	Total
ECD	10	3		13
FSD	2			2
GLD	4		4	8
KZN	5	2	12	19
LD	2	1	1	4
MD	2		1	3
ECD-MTHATHA	7			7
NWD	1	1	2	4
NCD	2		1	3
GDP	15	4	1	20
WCD	5	2	2	9
Total	55	13	24	92

Noteworthy matters

Case	Status
S V JA RODERIGUES -FINALISED	<ul style="list-style-type: none"> ➤ The matter was removed from the criminal roll of South Gauteng High Court on 30 September 2021 after the accused died on 07 September 2021. At the time of his death, the Accused's challenge to his prosecution was pending before the Constitutional Court. ➤ On 14 January 2022, the Constitutional Court dismissed a bid by the Foundation for Equality before Law to have the appeal of Mr Roderigues ventilated.
DR AGGETT	<ul style="list-style-type: none"> ➤ On 04 March 2022, the South Gauteng High Court overturned the finding of the original Inquest court from suicide to murder. (The record of proceedings have been referred to the office of the DPP: Gauteng Local Division to consider the judgment of the inquest court).

Cases on the court roll

Case	Status
The re-opened inquest of MR ERNEST DIPALE	<ul style="list-style-type: none"> Evidence was led before the South Gauteng High Court into the re-opened inquest of Mr Dipale who also died under similar circumstances at John Vorster Square in 1982. Judgment is awaited.
Re-opened inquest of DR HH HAFJEJEE	<ul style="list-style-type: none"> Evidence has been led before the Pietermaritzburg High Court. Judgment is awaited.
COSAS 4	<ul style="list-style-type: none"> On the court roll South Gauteng High Court on 19 July 2022.
S v COETZEE AND ANOTHER	<ul style="list-style-type: none"> A trial date has been set for 6 - 17 June 2022. (Ms Nokuthula Simelane)
S v JOHAN MARAIS AND OTHERS	<ul style="list-style-type: none"> Matter postponed to 20 June 2022, Regional Court, Benoni (Mr Caiphus Nyoka)

Matters where decisions are imminent

Division	Number of matters
KZND	• Four (4)
MD	• One (1)
NWD	• Two (2)
NCD	• One (1)
GDP	• One (1)
WCD	• One (1) (Pending decision of the Minister, Imam Haron)
ECD	• One (1) (Cradock 4)
TOTAL	Eleven (11)

The Way Forward

- The NPA leadership is committed to accountability for these serious crimes
- The NPA must act independently and fearlessly. Prosecution must be based purely on evidence irrespective of race, colour, creed or political affiliation
- The NPA is committed to working with families and stakeholders. A partnership and collaborative approach is key to making progress in a holistic manner
- We are acting with a sense of urgency to deliver impact and build sustainability of our capacity and engagement on TRC and other complex crimes
- We aim to build required permanent capacity, tailored training and capacity building initiatives, and broad partnerships to ensure that we can deliver justice for these crimes now and into the future



"J"

Thank you

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Presentation to Justice Portfolio Committee on TRC Progress and Developments



National Prosecuting Authority
South Africa

25 November 2022

Contents

- 01 Introduction: ANDPP
- 02 Dedicated Capacity
- 03 Monitoring and Evaluation: Progress in investigation
- 04 Matters Enrolled and Finalised
- 05 Closing Remarks

1 Introduction by ANDPP

Introduction

Since the presentation to the Committee on 01 June 2022, the following progress has been made:

- ❖ Dedicated capacity to deal with TRC cases has been increased within both the NPA and DPCI.
- ❖ Increased engagements with the families/stakeholders:
 - ✓ Following internal communication from the NDPP, each division submitted names and contact details of families and representatives to the national office. This is updated in monthly reports where regular reporting to families is encouraged.
 - ✓ Engagements with DPPs and representatives of Apartheid Era Victims Family Group (AVFG).
 - ✓ Other stakeholders.

Introduction (cont.)

- ❖ Increase in NPA/DPCI TRC accountability sessions held within Divisions where challenges are addressed, and skills transfer takes place.
- ❖ These processes have contributed to the increase in the level of engagement and joint accountability.
- ❖ Between September 2021 & April 2022, 38 new investigations were opened. Between May 2022 & October 2022, an additional 32 new investigations were opened.
- ❖ In September 2021, 59 TRC matters were under investigation. As of October 2022, 64 **new investigations** stemming from the TRC have been re-opened.
- ❖ A total of 129 cases are presently under investigation.

Introduction (cont.)

- ❖ The measures summarised in this presentation are in line with commitments made by the NPA stemming from the Rodrigues judgement and communicated to the Honourable Minister of Justice and Correctional Services. They relate to our internal capacity, processes, and broader efforts to insulate the prosecution of TRC cases from political interference.
- ❖ In addition to enhanced capacity and stakeholder engagement, the NPA will appoint Senior Counsel to assess whether the measures it has adopted are adequate. If they are not, Senior Counsel shall make recommendations to strengthen them.
- ❖ If in the process of review, Senior Counsel have reason to believe that there is information amounting to a violation of Section 41(1) of the NPA Act, such issues are to be escalated to the NDPP. If necessary, the NPA will refer matters for criminal investigation.

Introduction (cont.)

- ❖ The Missing Person Task Team (MPTT) in addition to recovering the remains of 179 missing persons, also has recorded successes amongst others:
 - ✓ Location of the remains of an MK member shot dead in 1980, which excavation is currently being planned.
 - ✓ The identification of a burial site where four missing MK members were ambushed in the Caprivi Strip in 1970.
 - ✓ The recovery of the remains of a political prisoner, Mr James Booie who had been buried in a pauper's grave. His remains were exhumed and presented to the family for re-burial which took place on 30 July 2022.

2 Dedicated Capacity

Dedicated Capacity: NPA and DPCI

NPA	DPCI
Total number of dedicated TRC prosecutors appointed in divisions: 25	Total number of dedicated TRC investigators appointed in Divisions: 40
<ul style="list-style-type: none"> •DPP: KwaZulu-Natal 5 •DPP: Western Cape 3 •DPP: Gauteng Local Division 3 •DPP: Gauteng Division Pretoria 3 •DPP: Limpopo 1 •DPP: North West 1 •Other: Head Office 2 •DPP: ECD (Mthatha & Makhanda) 7 	<ul style="list-style-type: none"> Central Region: Head office, Gauteng, Mpumalanga, Limpopo and North West 19 Coastal Region: KwaZulu-Natal 7 Eastern Region: Eastern Cape 8 Western Region: Western Cape 4 Karoo Region: Free State and North West 2
Increase of dedicated prosecutors: 9 Increase of investigators: 7	

3 Monitoring and Evaluation: Progress made in investigations

Monitoring: Matters within Divisions

Division	Referred TRC Matters
DPP: WC	9
DPP: FS	2
DPP: MTHATHA	11
DPP: ECD	14
DPP: NW	5
DPP: KZN	29
DPP: MPUMALANGA	5
DPP: NC	3
DPP: GLD	25
DPP: GDP	16
DPP: LMP	10
Total	129

Monitoring (cont.)

- ❖ Internal communication forwarded to the Divisions to encourage active engagement between prosecutors and families/family representative.
- ❖ Family kept up to date and report back received at the national office monthly.
- ❖ Successful engagements facilitated by the national office with representatives of Apartheid Era Victims Family Group (AVFG) and the DPP divisions.
 - ✓ Rolled out in GDP and GLD Divisions. Attended by Directors of Public Prosecutions (DPPs), dedicated TRC prosecutors, dedicated investigators and DPCI heads in October and November 2022, respectively.

Monitoring (cont.)

❖ Stakeholder engagements

- ✓ GDP: 07 November 2022 – approximately 14 personnel and family members attended
 - ✓ GLD: 26 September 2022 – approximately 10 personnel and family members attended
 - ✓ Other Divisions to follow to ensure a more victim-centred approach is adopted.
- ❖ Continuous stakeholder engagement scheduled for December 2022.

Evaluation

Reporting

- ❖ Monthly reports received on all 129 matters under investigation from all Divisions.
- ❖ Detailed reports submitted to the national office in respect of all decisions taken.
- ❖ Divisions that are encountering challenges seek intervention. Intervention processes are implemented from the national office together with the relevant DPPs and DPCI heads.
- ❖ Divisions have self-imposed time-frames on matters that they have identified for fast-tracking. This is monitored strictly at the national office.
- ❖ Legal and administrative challenges are addressed via the national office.

Accountability

- ❖ NPA and DPCI accountability sessions:
 - ✓ Attended by both the prosecutor and investigator seized with the relevant matter with their respective heads at the same meeting.
 - ✓ Successful attendance by all investigators and prosecutors.
 - ✓ Each case docket was constructively critiqued and assessed to determine the quality of investigations and challenges facing investigators and prosecutors.
 - ✓ Existing skills were accessorised and upskilled for the benefit of prosecutors and investigators.
- ❖ Held within the Divisions of KZN, CT, NW and EC.

Accountability (cont.)

- ❖ Accountability sessions held within the divisions of KZN, CT, NW and EC.
 - ✓ KZN: Session held in June 2022; follow-up session in October 2022; 13 personnel attended.
 - ✓ CT: Session held in July: 4 personnel attended.
 - ✓ NW: Session held in October: 5 personnel attended.
 - ✓ EC: Session held in August: 22 personnel attended.
- ❖ Follow-up accountability sessions on a quarterly basis are encouraged and planned for other divisions.
- ❖ Divisions with larger volumes of matters received additional prosecutors.

Divisional Progress

- ❖ To date, there are 129 TRC matters under investigation.
- ❖ 64 new investigations have been re-opened.
- ❖ The highest volumes of TRC matters reported:
 - ✓ KZN: 29
 - ✓ GLD: 25
 - ✓ EC MAKHANDA: 25

Divisional Progress

Category A 0 - 33% Complete Focuses on available evidence, docket, inquest report, witness statements, post-mortem reports etc.	Category B 34 - 65% Complete Focuses on expert reports.	Category C 66 - 100% Complete Focuses on stages nearing completion of investigations and/or decision making.	Total
94	9	26	129

- ✓ **Category A:** In 64 of the 94 matters, statements have been obtained, witnesses have been traced, exhibits, dockets and records of inquest have been sought and some have been obtained. In most matters families have been informed, where traceable.
 - ✓ 56 matters occurred between 1980 and 1989
 - ✓ 27 matters occurred between 1970 and 1979

4 Matters Enrolled and Finalised

Matters Enrolled

Matter	Division	Status
Inquest: Mr Ernest Dipale	GLD	Arguments were heard on 1 November 2022. Judgement outstanding
S v Rorich and another (COSAS 4)	GLD	Judgement awaited on condonation application of SAPS in respect of legal costs. Accused still to plead.
Inquest: Dr HH Haffejee	KZN	Arguments have been heard on 18-19 October 2022. Inquest judgment outstanding.
S v Coetzee (Simelane)	GDP	Outcome of section 79 assessment awaited, accused must still plead.
S v Marais (Nyoka)	GDP	Accused appeared in the Regional Court, legal opinion obtained. Accused must still plead.

Matters Enrolled (cont.)

Matter	Division	Status
Mr Abdullah Haroon	CT	Inquest: 7-22/11/2022 Evidence led. Matter postponed for argument.
Ms N Kubheka	KZN	Inquest proceeded on 24/10/2022 at Umlazi). Postponed to 30/11/2022 – outcome of legal representation.
Mr Sbo Phewa	KZN	Inquest proceeded on 24/10/22 at Umlazi. Postponed to 30/11/2022 – outcome of legal representation.
Mr Zama Sokhulu	KZN	Inquest proceeded on 24/10/22 at Umlazi. Postponed to 30/11/2022 – outcome of legal representation
Mr James Mngomezulu	KZN	Inquest proceeded on 07/11/22 in Pongola. Matter postponed for outcome of legal representation.

Matters Finalised

Division	Name of Matter	Outcome
GLD	S v Rodrigues	Accused passed away on 7 September 2021. Charges withdrawn.
	Inquest- DR NH Aggett	Verdict overturned on 4 March 2022.
	Mr Paris Malatjie	Deceased was shot and killed by Sgt van As at the Protea Police Station. He was convicted of Culpable Homicide in the Johannesburg High Court, sentenced to 10 years imprisonment.
EC	Mr Sithembile Zokwe	Death in detention. Two SB police officers were convicted in former Transkei of murder: sentenced to 20 years imprisonment on 25/11/2005.
	Mr Eric Mntonga	Death in detention: Accused were tried and convicted in March and September 1989 for death of the deceased. Sentences ranged from 2 years to 12 years imprisonment.
KZN	Mr Goodwill Collin Sikhakhane	All suspects were granted amnesty. Decision was taken to not prosecute.
GDP	Mr Peter Thabuleka	All suspects were granted amnesty. Decision was taken to not prosecute.

Matters Finalised

Division	Name of Matter	Outcome
PCLU recorded prosecutions	S v Ferdi Barnard	Murder of Gordon Webster – Life imprisonment.
	S v Eugene de Kock	Multiple offences of murder, fraud etc, sentenced to two life terms plus 212 years imprisonment.
	S v Gideon Niewoudt and two others	Motherwell Bombings, sentenced to 20 years imprisonment.
	S v Wouter Basson	Acquittal
	S v Magnus Malan and others	Acquittal
	S v Kwezi Ngoma and others	Plea bargain, suspended sentence.
	S v Aron Tyani and another	Convicted and sentenced to direct imprisonment.
	S v Eugene Terblanche	Convicted and sentenced to 6 years imprisonment, wholly suspended.
	S v Blani	Convicted and sentenced to direct imprisonment.

Conclusion

- ❖ The hard, focused work and close collaboration between the NPA, DPCI, the victims and their representatives are bearing fruit.
- ❖ Monthly monitoring and evaluation of progress on all 129 investigations, interventions implemented to render support to Divisions.
- ❖ Culmination of interactive DPCI/NPA accountability sessions and ongoing skills transfer.
- ❖ Constructive participation between stakeholders and victims' families.
- ❖ We know more progress is expected, and we are committed to delivering on this commitment. Challenges still include age of matters, age of witnesses, persons of interest, suspects, destruction of records including inquest records, no trace of dockets, exhibits, etc.

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IMAM HARON INQUEST 2022



INQUEST INTO THE DEATH OF THE IMAM HARON COMMENCES - CAPE HIGH COURT MONDAY, 07 TO 18 NOVEMBER 2022

@myapaonline

Death on the 10th floor: The search for truth in South Africa
 Families of anti-apartheid activists who died in the infamous John Vorster Square detention centre pursue justice.



NPA must prosecute apartheid-era crimes, urges TRC commissioner



National Prosecuting Authority
South Africa

"K"

Thank you

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Presentation to Portfolio Committee on Justice and Correctional Services

Progress on TRC Cases



National Prosecuting Authority
South Africa

21 November 2023

Contents

1. Introduction
2. Audit: September 2021
3. Action Plan
4. Engagements
5. Dedicated Capacity
6. Monitoring and Evaluation
7. Challenges
8. Noteworthy Development

Introduction

TRC Component

- ❖ Creation of a separate portfolio as of 6 September 2021
- ❖ Prior to September 2021-TRC matters were overseen by Priority Crime Litigation Unit (PCLU)
- ❖ New Portfolio created within the office of the Deputy National Director of Public Prosecutions (DNDPP) Adv RJ de Kock-TRC component.
- ❖ Appointment of a Special Director, National TRC co-ordinator and administrative capacity to assist.

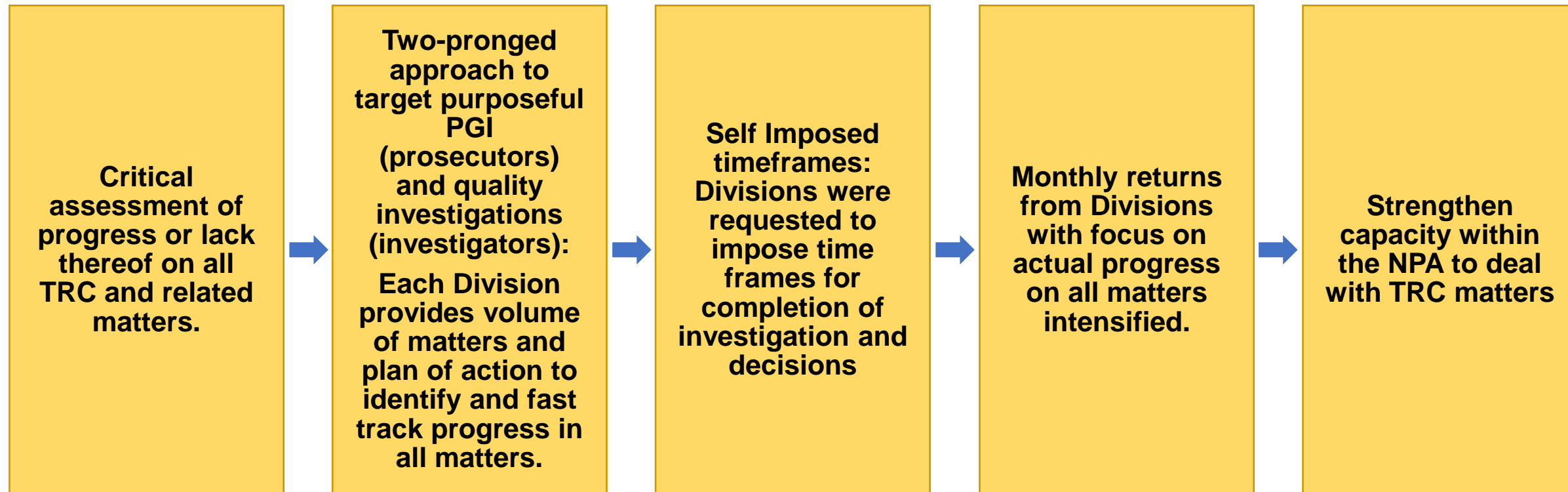
Audit: September 2021

Assessment

- ❖ Adoption of a hands-on approach
- ❖ Important for a practical and critical assessment of what matters were under investigation, what matters need to be investigated and a possible review of those matters that had already been investigated and closed
- ❖ Reference: PCLU list of matters that were under investigation, PCLU list of identified deaths in detention that needed to be registered for investigation, and to abide by the recommendations contained in TRC Final Report.
- ❖ April 2019 - matters migrated to divisions.
- ❖ Monitoring of progress on matters under investigation from the monthly returns that were submitted by the divisions to PCLU.

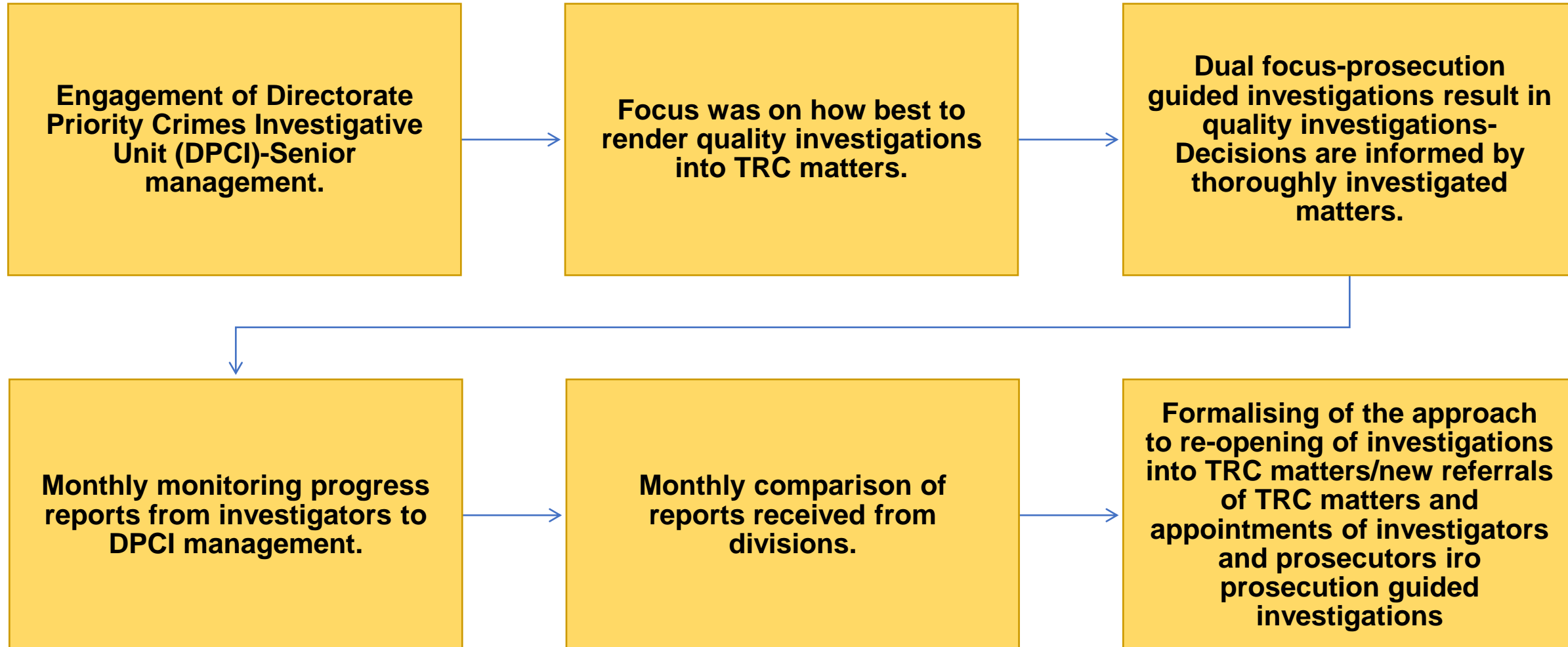
Action Plan-Short Term

DPP Jurisdiction on Matters



Involvement of DPCI

Focus on Investigation



NPA/DPCI Meetings

Appointment of a National TRC Co-ordinator for DPCI- Colonel Nkuna.

Needs identified - upskilling of both investigators and prosecutors

SWOT analysis-Identification of strengths, weaknesses, opportunities and threats: Challenges of investigating cold cases-no dockets, no inquest records, declassification of records, National Archives, Universities etc. Experience sharing and exposure.

Adoption of best practice- invite to KZN, CT and EC-platform provided for prosecutors and investigators to meet, division by division, and account to DPPS and DPCI senior management with both co-ordinators to assist in expediting progress-introduction of joint Accountability sessions with NPA and DPCI.

Rolled out in 2022 and fully in 2023 as part of the NPA/DPCI Annual Operational Plan (AOP).

Accountability Sessions

Purpose of Joint Sessions

The primary purpose of joint NPA/DPCI accountability session was to upskill prosecutors and investigators and expose them to challenges experienced on TRC matters.

It was important for NPA and DPCI to work together towards one action plan. Joint accountability by both prosecutor and investigator on the same platform.

Dates were jointly identified by both co-ordinators and communicated to all DPPs and DPCI, months in advance.

Sessions were held over two-three days, informed by the volume of matters in each division. Agendas are circulated prior to sessions.

Sessions involve the DPP, DDPPs (TRC Portfolio), Provincial Heads of various divisions of DPCI, both National co-ordinators, all dedicated TRC prosecutors and TRC investigators. The DNDPP and SD, when available also attended the sessions.

Accountability Sessions

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Content of Sessions



The first day of the session comprises discussions and updating on the latest legal developments and challenges on all TRC matters- criminal and inquest court roll. Best practice in other divisions which overcome such hurdles are shared.



Latter two days go to the core purpose of the sessions.

Both the investigator and prosecutor present each individual matter. All investigations discussed and assessed.

Challenges as well as solutions are mooted. Common perpetrators, persons of interest, modus operandi etc.

Constructive criticism with a view to a strong case formulated.



Any challenge/s that cannot be resolved, through the normal channels of investigation or through the office of the DPP are escalated to National Coordinators for their intervention e.g. access to stakeholders etc.

Accountability Sessions

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Province	Date of NPA/DPCI Accountability Session
KZN	4 sessions
WC	Preparation: Imam Haron inquest-NPA
EC	4 sessions
KZN	3 sessions
NW	2 sessions
Mpumalanga	1 session
Gauteng	2 sessions
Limpopo	1 session

Forthcoming Accountability Sessions

"L"

	Proposed Date	Province
1	20 - 22 November 2023	Western Cape
2	DTB - 2024	Free State
3	DTB - 2024	Northern Cape

Engagements: AVFG

"L"

Stakeholder engagement

- ❖ Families led by AVFG approached the Head of NPS to engage with prosecutors and investigator officers to support the progress and efforts in building trust.
- ❖ NDPP - June 2022: directive that prosecutors actively engage with families and keep them updated on progress on their matters.
- ❖ The same process was followed with DPCI and its investigators.
- ❖ Regular engagements and updating of families ensures that when decisions are finally taken on their matters, be it a prosecution, an inquest, or to close the matter because all leads have been exhausted, families are aware that the investigator and prosecutor have explored every possible avenue before arriving at their decision.

Stakeholder engagements

"L"

AVFG/FHR: 6 Divisions

Date	Division	Stakeholders
26 September 2022	DPP Johannesburg	AVFG/DPCI/prosecutors and investigators
7 November 2022	DPP Pretoria	AVFG/DPCI/prosecutors and investigators
15 February 2023	DPP Western Cape	AVFG/DPCI/prosecutors and investigators
17 April 2023	DPP Northern Cape	AVFG/DPCI/prosecutors and investigators
01 June 2023	DPP Eastern Cape	AVFG/DPCI/prosecutors and investigators
24 July 2023	DPP KZN	AVFG/DPCI-prosecutors and investigators
30 January 2023	National Office	NPA/DPCI/FHR

Stakeholder engagements

"L"

AVFG/FHR: 6 Divisions

Date	Division	Stakeholder/s
02 August 2023	DPP KZN (Head office)	AVFG/DPCI/prosecutors and investigators
28 September 2023	NPS Head/AVFG	Family representatives/AVFG

Dedicated Capacity: NPA/DPCI

"L"

<p>➤ NPA: Total number of dedicated TRC prosecutors appointed in divisions: 15</p> <ul style="list-style-type: none"> ❖ DPP: KwaZulu-Natal 4 ❖ DPP: Western Cape 2 ❖ DPP: Gauteng Local Division 3 ❖ DPP: Gauteng Division Pretoria 1 ❖ DPP: Limpopo 1 ❖ DPP: North West - ❖ Other: Head Office 2 ❖ DPP: Mthatha/Makhanda 2 	<p>➤ Total number of dedicated TRC investigators appointed in Divisions: 38</p> <ul style="list-style-type: none"> ❖ Central Region: Head office, Gauteng, Mpumalanga, Limpopo and North West 17 ❖ Coastal Region: KwaZulu-Natal. 5 ❖ Eastern Region: Eastern Cape. 9 ❖ Western Region: Western Cape. 4 ❖ Karoo Region: Free State and North West. 2 ❖ TRC Co-ordinator 1
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Dedicated TRC Capacity ⁵¹⁷

"L"

NPA April 2022	DPCI April 2022	NPA Nov 2022	DPCI Nov 2022	NPA Oct 2023	DPCI Oct 2023
16	33	25	40	15	38

518

Matters under investigation

"L"

Oct 2021 to Oct 2023

	Oct 2021 (to be re-opened)	Oct 2023 Re-opened and under Investigation
Under Investigation	129 (55)	137
Matters finalised with decision	7	18
Matters on the court roll	10	13

519

Volume of matters within the Divisions

"L"

Division	Total matters under Investigation
DPP: WC	11
DPP: FS	3
DDPP: MAKHANDA	10
DPP: EC	12
DPP: NW	9
DPP: KZN	28
DPP: MPUMALANGA	7
DPP: NC	7
DPP: GLD	22
DPP: GDP	15
DPP: LIMPOPO	13
UNKNOWN DPP Divisions	
TOTAL	137

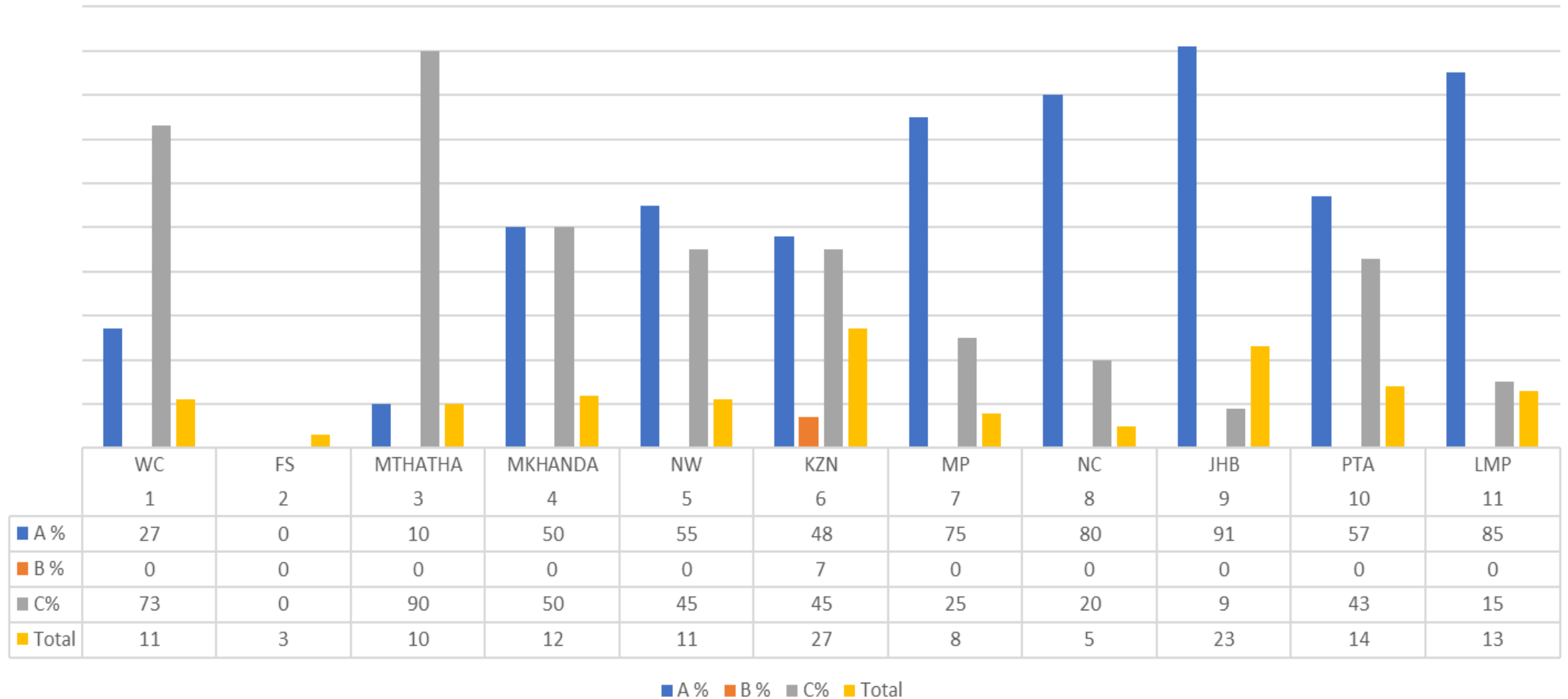
Monitoring and Evaluation

"L"

- **Progress in investigations is divided into three categories:**
 - ❖ **Category A: (0-33%)** Available evidence, locating or compiling of the docket, inquest reports, witness statements, detainee statements, location of SAPS 14/OB/Mortuary registers etc.
 - ❖ **Category B: (34-65%)** Expert reports/engagement with experts to obtain reports/perform reconstruction of scenes
 - ❖ **Category C: (66-100%)** Stages nearing completion of investigations and/or decision making based on expert reports.

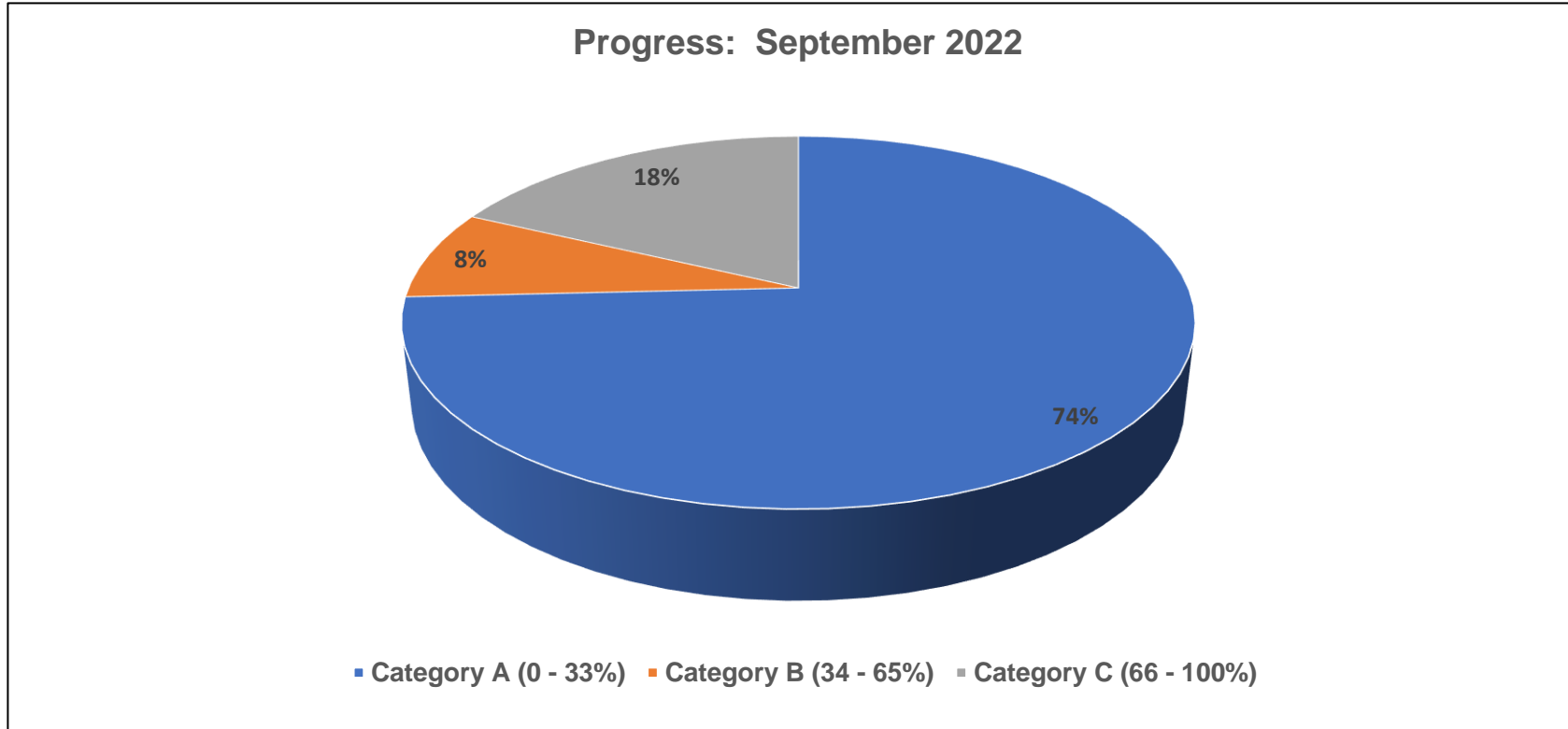
Divisional Progress

Progress: Divisions October 2023



522 Progress: September 2022

"L"



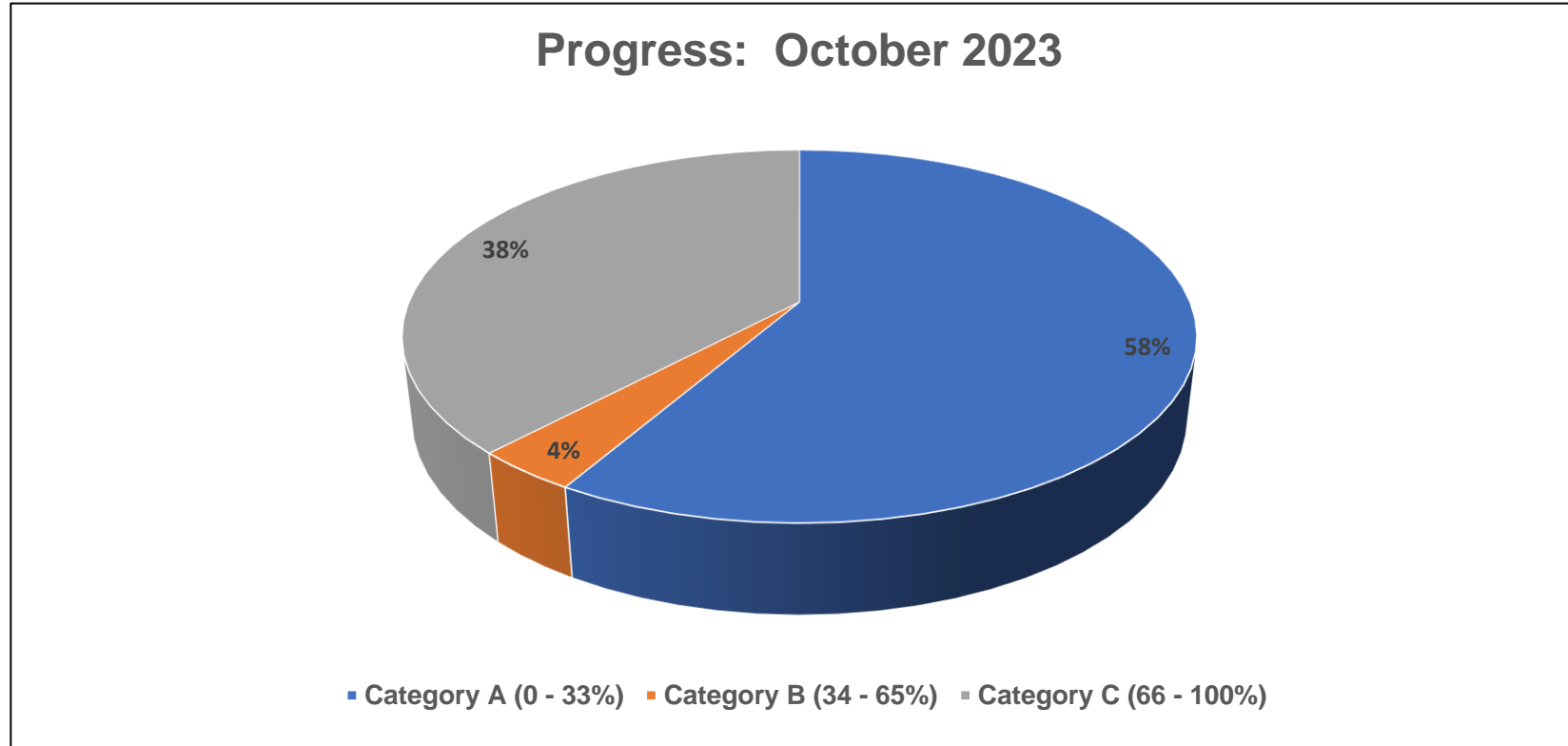
Matters under investigation: 128

Matters finalised: 7

Pending (Inq/Criminal): 10

Progress: October 2023

"L"



Matters under investigation: 137

Matters finalised: 18

Pending (Inq/Criminal): 13

Challenges

- ❖ **Capacity:** Prosecutors are employed on a contract basis-deviation was obtained from DPSA for creation of posts. Drastic exodus to the private sector-permanent employment-within a year- loss of 10 dedicated prosecutors
- ❖ **New prosecutors** mean loss of report with families, prosecutors have to start from scratch to familiarise themselves with the investigator, family and investigations.
- ❖ **Lack of dockets**, inquest **records**-destruction of records after ten years-loss of evidence. Documents were also destroyed post 1994.
- ❖ **Access to TRC records** and other documents in control of other Government departments.
- ❖ Witnesses / Accused / suspects / persons of interest are **deceased or old** Witnesses **unwilling or afraid** to co-operate with the investigating officers and the NPA

Challenges

- ❖ Government departments in possession of documents, **response is slow** to handing over of documents
- ❖ Challenges with **vehicles for investigators**. Some **areas are inaccessible** and require appropriate vehicles to access victims and families.
- ❖ Obtaining of experts and building a data base of **reputable service providers**. Utilisation of private experts-expensive.
- ❖ **Delay tactics** by accused persons and last- minute applications by legal counsels, results in matters languishing on court rolls.
- ❖ **Interference** by private investigators, persistence by some to access list of matters under investigation to client hunt/name dropping/legal representation.
- ❖ Challenges with Interpol/**Accessing details of witnesses**-Luthuli House

FIRST CONVICTION WITH EVIDENCE POST 2021



KZN – 08 November 2023

STATE versus Wesley Matiri Madonsela

GUILTY = MURDER

SENTENCE = Ten Years Imprisonment

Noteworthy Developments

Name of the Matter	
S V Marais and two others (death of Caiphus Nyoka)	Enrolled on the criminal court roll
S v Rorich and another (COSAS FOUR)	Enrolled on the criminal court roll
S v Coetzee and another (Ms Simelane)	Enrolled on the criminal court roll
S v Wesley Madonsela(death of Siphela Nxumalo)	Indictment prepared; to be enrolled at criminal court
Overturned Inquests	
Dr NH Aggett	Gauteng Local Division: Suicide to murder
Mr Ernest Dipale	Gauteng Division Pretoria: murder - police involvement

Noteworthy (cont.)

Developments

Name of the Matter	
Dr HM Haffejee	KZN - Suicide to murder
Mr Haron	WC - death brought about as a result of torture by police
Inquests on Court Roll	
Ms N Kubheka	KZN
Mr SBO Phewa	KZN
Mr Zama Sokhulu	KZN
Mr James Mngomezulu	KZN
Mr Mthunzi Vlemeseneni	KZN

Noteworthy (cont.)

Developments

- ❖ Opinion received from Adv D B Ntsebeza SC
- ❖ Recommendations and evaluation under consideration

530



National Prosecuting Authority
South Africa

"L"

Thank you

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Presentation to Portfolio Committee on Justice and Constitutional Development

Progress on TRC Cases



National Prosecuting Authority
South Africa

17 September 2024

Contents

1. Introduction
2. Background
3. Action Plan
4. Capacity
5. Monitoring and Evaluation
6. Engagements
7. Challenges
8. Noteworthy Developments
9. Missing Persons Task Team (MPTT)
10. Closing Remarks

Introduction

- ❖ NPA is committed to ensuring justice for apartheid-era crimes and finality of matters so that families can find some closure

- ❖ Multi-pronged approach towards dealing with TRC matters
 - ✓ Prosecutions to ensure accountability for alleged perpetrators

 - ✓ Inquests

 - ✓ Missing persons – identification and return of remains

Introduction (cont.)

- ❖ In the last few years, the NPA has focused on:
 - ✓ reopening and pursuing priority cases;
 - ✓ enhancing its internal capacity and processes both to ensure effective handling of these cases and to prevent any undue political influence.

- ❖ Since 2021, a TRC Component has been created to prioritise and drive progress on TRC matters, working closely with DPCI.

- ❖ This presentation sets out progress in dealing with TRC matters.

Background

TRC Component

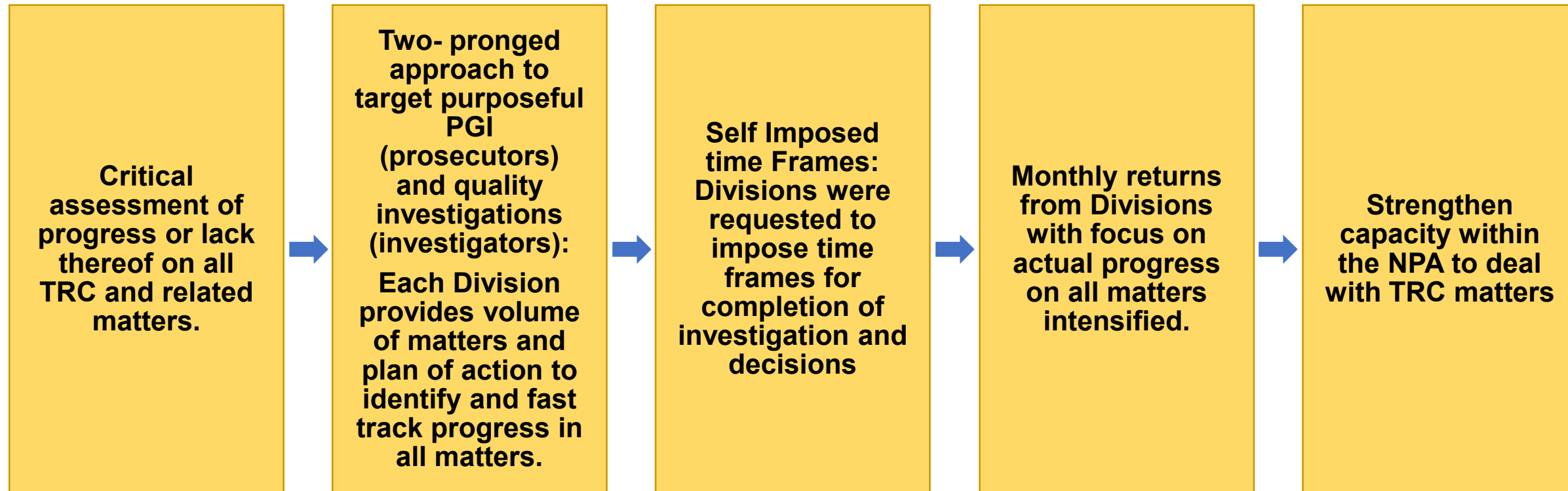
- ❖ Prior to September 2021- TRC matters were overseen by Priority Crime Litigation Unit (PCLU) - a component within the NPA, whose mandate it was to deal with amongst others, prosecutions arising from the TRC.
- ❖ As of 6 September 2021, TRC component created within the office of the Deputy National Director of Public Prosecutions (DNDPP) Adv RJ de Kock, to prioritise and drive progress on TRC matters.
- ❖ Appointment of a Special Director, a National TRC Coordinator and administrative capacity to assist.
- ❖ A total of 59 TRC matters were migrated to the Divisions by PCLU in 2019.

Background (cont.)

- ❖ Increased joint accountability sessions between the NPA and DPCI during 2024 have contributed to an increase in the level of engagement, progress and joint accountability.
- ❖ Intense accountability sessions within all the Divisions was an opportunity to ensure that challenges are addressed, skills transfer takes place and both prosecutors and investigators are held to account.
- ❖ Since September 2021, 104 **new investigations** stemming from the TRC have been re-opened.
- ❖ A total of 126 cases are presently under investigation.

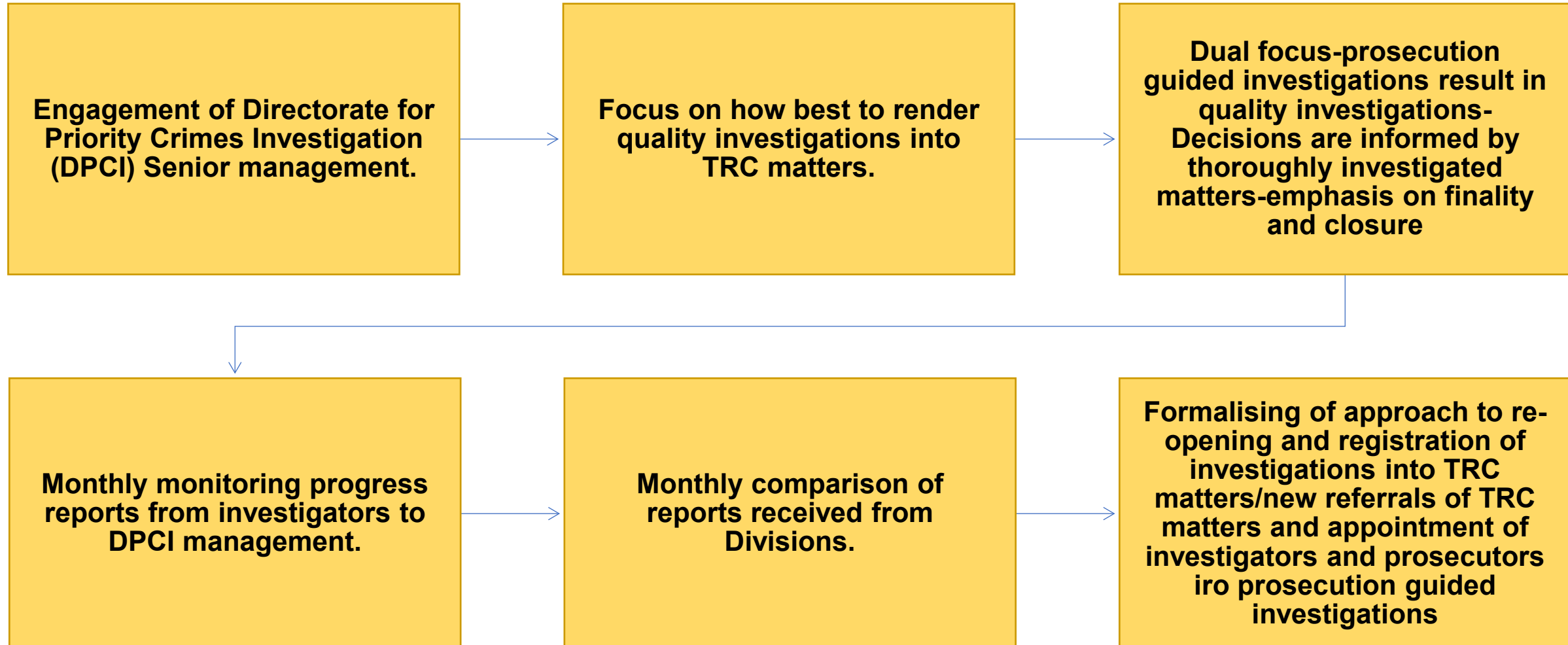
Action Plan

DPP Jurisdiction on Matters



Involvement of DPCI

Focus on Investigation



NPA/DPCI Meetings

Appointment of a National TRC Coordinator for DPCI to enhance the support with the TRC component.

Needs identified: upskilling of both investigators and prosecutors-one action plan-common objectives.

**SWOT analysis: Identification of strengths, weaknesses, opportunities and threats: Challenges of investigating cold cases (i.e., no dockets, no inquest records, declassification of records, National Archives, Universities etc.)
Experience sharing and exposure.**

Adoption of best practice, platform provided for prosecutors and investigators to meet, division by division, and account to DPPs and DPCI senior management with both coordinators to assist in expediting progress-introduction of Joint Accountability sessions with NPA and DPCI. Joint accountability on the same platform.

Rolled out fully in 2023 and 2024 as part of the NPA/DPCI Annual Operational Plan (AOP).

Capacity

- ❖ Dedicated capacity has ensured that both prosecutors and investigators are dedicated only to the progress on TRC matters.
- ❖ The appointment of TRC investigators and prosecutors was informed by the volume of matters within Divisions.
- ❖ The prioritisation of TRC matters also resulted in the appointment of Deputy Directors of Public Prosecutions (DDPPs) to oversee and guide the TRC portfolios within the office of the DPPs.
- ❖ Where there is no dedicated prosecutor/s, DPPs have appointed prosecutors (from permanent staff) to assist on TRC matters.
- ❖ In some Divisions, where there is no dedicated prosecutor, DDPPs oversee these matters.

Current Dedicated Capacity: NPA/DPCI

<p>➤ NPA: Total number of dedicated TRC prosecutors appointed in divisions: 16</p> <ul style="list-style-type: none"> ❖ DPP: Kwa-Zulu Natal 3 ❖ DPP: Western Cape 1 ❖ DPP: South Gauteng 3 ❖ DPP: North Gauteng 2 ❖ DPP: Limpopo 1 ❖ DPP: North- West - ❖ Other: Head Office 2 ❖ DPP: Mthatha/Makhanda 4 	<p>➤ Total number of dedicated TRC investigators appointed in Divisions: 29</p> <ul style="list-style-type: none"> ❖ Central Region: Head office, Gauteng, Mpumalanga, Limpopo and North-West 13 ❖ Coastal Region: Kwa-Zulu Natal. 4 ❖ Eastern Region: Eastern Cape. 6 ❖ Western Region: Western Cape. 3 ❖ Karoo Region: Free State and North-West. 2 ❖ TRC coordinator 1
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NPA personnel assisting on TRC matters

TRC Nodal Points within all Divisions to oversee TRC Portfolio	Total number of TRC Nodal Points: 10
DIVISION	Total number of senior state advocates assisting: 5
DPP: FS	11
DPP: MAKHANDA	DDPP guiding on all matters. No dedicated prosecutor.
DPP: EC	DDPP guides prosecutors.
DPP: NW	DDPP guides in two divisions: EC and Makhanda
DPP: KZN	DDPP and senior state advocate assisting
DPP: MPUMALANGA	DDPP overseeing all matters.
DPP: NC	ADPP and three DDPPs oversee and guide investigations
DPP: JHB	Two DDPPS and three senior state advocates assisting
DPP: PTA	DDPP guides prosecutors.
DPP: LMP	DDPP guides prosecutors.
DPP: WC	DDPP guides prosecutors.
	DDPP and senior state advocate assisting.

Volume of matters within the Divisions

Division	Total matters under Investigation
DPP: WC	11
DPP: FS	3
DPP: MAKHANDA	12
DPP: MTHATHA	5
DPP: NW	11
DPP: KZN	24
DPP: MPUMALANGA	7
DPP: NC	5
DPP: JHB	21
DPP: PTA	13
DPP: LMP	14
TOTAL	126

Categories by Division

NO	DIVISION	A	B	C	Total
1	KZN	6	3	15	24
2	JHB	14	1	6	21
3	LMP	9	0	5	14
4	PTA	6	0	7	13
5	MKHANDA	3	0	9	12
6	WC	2	0	9	11
7	NW	5	0	6	11
8	MP	5	1	1	7
9	MTHATHA	0	1	4	5
10	NC	2	0	3	5
11	FS	0	0	3	3
					126

C - Category matters

DIVISION	VOLUME OF MATTERS	NAME OF MATTER FINALISED	VOLUME OF MATTERS IN C CATEGORY
WESTERN CAPE	11	INQ- MR HARON	9
FREE STATE	3		3
MTHATHA	5		4
MAKHANDA	12		9
NORTH- WEST	11		6
KWA-ZULU NATAL	24	INQ-DR H HAFJEJEE INQ-Z SOKHULU S V WESLEY MADONSELA	15
MPUMALANGA	7		1
NORTHERN CAPE	5		3
JOHANNESBURG	21	INQ-DR AGGETT MR E DIPALE	6
PRETORIA	13		7
LIMPOPO	14		5
TOTAL	126		

Accountability Sessions

Purpose of Joint Sessions

Primary purpose of joint NPA/DPCI accountability sessions is to upskill prosecutors and investigators, develop strategies to expedite investigations and decisions, share best practice adopted by other divisions, update on legal challenges, identify and target cogs in the process and, most importantly, to ensure accountability.

It is important for NPA and DPCI to work together towards one action plan. Joint accountability by both prosecutor and investigator on the same platform.

Dates are jointly identified by both coordinators and communicated to all DPPs and DPCI, months in advance. Attendance is compulsory.

Sessions are held over 2-3 days- informed by the volume of matters in each division. Agendas are circulated prior to sessions.

Sessions involve the DPP, DDPPs (TRC Portfolio), Provincial Heads of various divisions of DPCI, both National coordinators, all dedicated TRC prosecutors and TRC investigators. The DNDPP and SD, when available, also attend the sessions.

Accountability Sessions (cont.)

Content of Sessions



The first day of the session comprises of critical and honest assessment of progress for the specific Division, discussions and updating on the latest legal developments and challenges on all TRC matters - criminal and inquest court roll. Best practice in other Divisions to overcome such hurdles are shared.



Next two days go to the core purpose of the sessions. Both the investigator and prosecutor present each individual matter. All investigations discussed and assessed. Challenges as well as solutions are mooted. Common perpetrators, persons of interest, modus operandi etc. Constructive criticism with a view to a strong case formulated.



Any challenge/s that cannot be resolved, through the normal channels of investigation or through the office of the DPP or Provincial Heads, are escalated to National coordinators for their intervention e.g. access to stakeholders etc.

Accountability Sessions (cont.)

Divisions	NPA/DPCI Accountability Sessions-2024
NPA/DPCI	All TRC Nodal Points, NPA and DPCI-Annual operational plan shared for 2024-February 2024.
NPA/DPCI	Northern Cape-4-5 March 2024
NPA/DPCI	South Gauteng-13 March 2024
NPA/DPCI	Mpumalanga-15-17 May 2024
NPA/DPCI	Eastern Cape-21-23 May 2024
NPA/DPCI	Western Cape-4-5 June 2024
NPA/DPCI	Free State-18 June 2024
NPA/DPCI	KZN-24-26 June 2024

Accountability Sessions (cont.)

Province	Date of NPA/DPCI Accountability Sessions-2024
NPA/DPCI	North Gauteng-3-4 July 2024
NPA/DPCI	Limpopo -1-2 August 2024
NPA\DPCI	South Gauteng-21 August 2024
NPA/DPCI	Eastern Cape-3-4 September 2024
2022	5
2023	11

Skills sharing and in-house training

Date	Skills Development / Training
27 June 2024	Crime scene reconstruction and simulations
30 July 2024	Mutual Legal Assistance and Extraditions
2 July 2024	Orientation session on TRC matters: North West Province
9-11 April 2024	Preparation of memoranda: North West Province
6-7 August 2024	Preparation-for re-opening of inquest in the death of Mr Booï Mantyi
15 August 2024	Virtual meeting both NPA and DPCI-Electronic case management system (ECMS) input on creation of data base for uploading data on TRC matters.

Forthcoming Sessions

	Proposed Date	Province
1	19-20 September 2024	Eastern Cape-Preparation for North-Crest Five inquest proceedings.
2	8 October 2024	OWP-All Divisions and DPCI-pertaining to protection of witnesses and processes to be followed
3	9 October 2024	Specialist forensic pathologist- All Divisions and DPCI-wounds, injuries, suspicious deaths
4	22 October 2024	MPTT – Exhumations , role of MPTT and collaboration between TRC and MPTT

Engagements: Apartheid Era Victims Family "M" Group (AVFG)

- ❖ Families led by AVFG approached the Head of NPS to engage with prosecutors and investigator officers to support the progress and efforts in building trust. Families needed accountability, transparency and closure.
- ❖ The AVFG was formed to ensure that the voices of the families are heard. Both the NPA and DPCI adopted a victim-centred approach.
- ❖ NDPP June 2022 directive that prosecutors actively engage with families and keep families updated on progress on their matters. It was the first time that families had access to prosecutors and investigators.
- ❖ Regular engagements and updating of families ensures that when decisions are finally taken, be it a prosecution, an inquest, or to close the matter (because all leads have been exhausted), families are aware that the investigator and prosecutor have explored every possible avenue before arriving at their decision.

Engagements: AVFG (cont.)

- ❖ Over the duration of more than a year and a half, a relationship of trust has been solidified between AVFG and both the NPA and DPCI.
- ❖ All information pertaining to potential witnesses or avenues to be investigated, are relayed to investigating officers to assess and investigate.
- ❖ Where families are aggrieved by any issue, this is communicated to the office of the DPP first.
- ❖ In the exceptional case that the challenge is not resolved, the NCO'S are engaged to resolve the challenge.
- ❖ The same process is followed with other stakeholders whilst ensuring that both the NPA and DPCI remain impartial and objective in their approach to all matters.

Stakeholder engagements

AVFG/FHR: 6 Divisions

Date	Division	Stakeholders
26 September 2022	DPP Johannesburg	AVFG/DPCI/prosecutors and investigators
7 November 2022	DPP Pretoria	AVFG/DPCI/prosecutors and investigators
15 February 2023	DPP Western Cape	AVFG/DPCI/prosecutors and investigators
17 April 2023	DPP Northern Cape	AVFG/DPCI/prosecutors and investigators
1 June 2023	DPP Eastern Cape	AVFG/DPCI/prosecutors and investigators
24 July 2023	DPP KZN	AVFG/DPCI-prosecutors and investigators
30 January 2023	National Office	NPA/DPCI/FHR

Stakeholder engagements (cont.)

Date	Division	Stakeholder/s
2 August 2023	DPP KZN (Head office)	AVFG/DPCI/prosecutors and investigators
28 September 2023	NPS Head/AVFG	Family representatives/AVFG
30 January 2024	NPS Head/FHR	Legal representatives

Engagement with other stakeholders 2024

"M"

Date	Stakeholder	Purpose
23 February 2024	Department of Public Works	To obtain original plans pertaining to State owned buildings for reconstructions of crime scenes.
22 February 2024	South African National Archives	To access the inventory of information, to assist in investigations of TRC matters
18 July 2024 and 27 August 2024	Department of Justice	To partner with the TRC department in upcoming matters and access to information to aid investigations-psychological counselling for families
23 July 2024	State Security Agency	To access the inventory of information to assist in investigations of TRC matters.
Date to be confirmed	Department of Justice	Follow up meeting
12 September 2024	Department of Public Works	Meeting with DG-Public Works
To be confirmed	State Security Agency	Meeting with management

FIRST CONVICTION WITH EVIDENCE POST 2021



KZN – 8 November 2023

STATE versus Wesley Matiri Madonsela

GUILTY = MURDER

SENTENCE = Ten Years Imprisonment

Noteworthy Developments (cont.)

"M"

Name of the Matter- Finalised with a decision	30 matters finalised
Re-opened inquest of Mr Ernest Dipale	Original court finding of suicide by hanging overturned.
Re-opened inquest of Dr Hoosen Mia Haffejee	Original finding of suicide by hanging overturned.
Re-opened inquest of Mr Abdullah Haron	Original finding of death resulting from a fall downstairs, overturned.
Inquest: Mr Zama Sokhulu	Proceedings finalised, matter referred to NPA for decision.
Re-opened inquest of Dr Neil Aggett	Original finding of suicide by hanging overturned.

Noteworthy Developments (cont.)

Name of the Matter on the Criminal Court Roll	Date of hearing
S v Mfalapitsa and another (COSAS Four)	20 November 2024-Trial
S v Coetzee and another (Ms Simelane)	14-18 October 2024 for further evidence in the s 77(3) application.
S v Marais and three others (Mr Nyoka)	Trial date-August 2024
S v Botha and others	12 November 2024-State attorney-legal representation
S v Botha and others	12 November 2024-State attorney-legal representation
S v Schoon and others	7 November 2024-state attorney-legal representation

Noteworthy Inquests

560

"M"

Name of the Matter	
Cradock Four	Inquest-re-opened-2-20 June 2025-challenge with legal representation
Chief Albert Luthuli	Inquest re-opened-awaiting appointment of judge
Mr Griffiths Mxenge	Inquest re-opened-awaiting appointment of judge
Dr Rick Turner	Inquest to be held-Judge to be appointed
Highgate Hotel	Inquest to be held-27 January to 7 February 2025
Mr Boozi Mantyi	Re-opened inquest-Judge to be appointed
Mr Moss Morudi	Inquest to be held-Judge to be appointed
Northcrest Five	Inquest to be held-Judge to be appointed

561 Noteworthy Inquests (cont.)

"M"

Name of the Matter	
Mr Oupa Ronald Madondo	Inquest proceedings underway-5 and 6 November 2024
Mr Mthunsi Vlemeseni Njakazi	Inquest proceedings underway-August 2024
Messrs Nzuzza and Ramotlo	Inquest to be held-shortage of capacity
Mr Vusumuzi Meshack Msani	Inquest to be held-shortage of capacity
Mr Vusumuzi Mbatha	Inquest to be held-shortage of capacity
Mr Tutu Shezi	Inquest to be held-shortage of capacity
Messrs Charles Ndaba and Mbuso Shabalala	Inquest to be held-shortage of capacity

Noteworthy Inquests (cont.)

"M"

Name of the Matter	
Mr Bhekani Sibusiso Mbokazi	Inquest to be held
INDICTMENTS	
Indictments to be served pending verification of addresses of perpetrators	3
MEMORANDA FOR INQUESTS AND RE-OPENING OF INQUESTS UNDERWAY	10

Challenges

- ❖ **Documents:** TRC acknowledged that files and documents had been destroyed in the normal course of events or as part of deliberate policy to conceal information. Documents are necessary to fully investigate the matter. All avenues are exploited to locate documents.
- ❖ **Lack of dockets, inquest records:** destruction of records and exhibits after a fixed period -loss of evidence.
- ❖ **Experts:** Expert evidence is important to gainsay versions of alleged suicides, falling downstairs, accidental deaths etc. State pathologists who are assisting, are overwhelmed with their normal duties, resulting in expert reports taking a lengthy period to be finalised.

Challenges (cont.)

- ❖ Witnesses / Accused / suspects / persons of interest are **deceased or old**. Witnesses **unwilling or afraid** to co-operate with the investigating officers and the NPA.
- ❖ **Delay tactics** by accused persons and last-minute applications by legal counsels result in matters remaining on the court roll for lengthy periods of time.
- ❖ Hacking of cellphone communications between investigators and prosecutors- this is under investigation.

Missing Persons Task Team (MPTT)

- ❖ The TRC recommended that a Task Team be established in the NPA to continue to trace the fate and whereabouts of those who disappeared in political circumstances and to recover their remains where possible. This recommendation was accepted by government.
- ❖ The Missing Persons Task Team (MPTT) has recovered the remains of 180 individuals inside South Africa. The identified remains have been returned to their families at special ceremonies hosted by the Justice Ministry across the country.
- ❖ The MPTT also conducts Symbolic Reburials or spiritual repatriations with families in cases where the remains of the deceased cannot be located. Eleven (11) such symbolic reburials have been conducted, in partnership with the TRC Unit in the DoJ&CD.

Missing Persons Task Team (cont.)

- ❖ The MPTT has **special projects** that focus on groups that faced specific forms of political repression and deaths. These are:
 1. **Gallows Exhumation Project:**

This project aimed to recover and return the remains of political prisoners who were sentenced to death and executed on the Gallows between 1960 and 1990. This project is approaching conclusion and only nine hanged political prisoners remain to be recovered.
 2. **Exile Repatriation Project**

Hundreds of families whose loved ones went into exile and never returned reported them as missing to the TRC. Government further accepted the TRC recommendation that Community Reparations be implemented for specific communities severely impacted by political violence. The exile community is precisely one such group.

Missing Persons Task Team (cont.)

2. Exile Repatriation Project (cont.)

In 2021 Cabinet approved a National Policy on the Repatriation and Restitution of Human Remains and Heritage Objects. An Inter-Departmental Implementation Plan was similarly approved in 2023.

The MPTT is a key implementing partner in the Exile Repatriation Project and conducts the (a) data collection, (b) grave mapping, (c) exhumations and (d) confirmation of identity.

The Exile Repatriation Project is being launched on 27 September 2024 with the exhumation and repatriation of the remains of nearly 50 exiles currently being conducted by the MPTT in Zambia and Zimbabwe. A Homecoming Ceremony will be hosted for the families by President Ramaphosa at Waterkloof Airbase and Freedom Park.

MPTT Recent cases

- ❖ The MPTT recovered the last of the Mamelodi 10 and the remains were handed to the families and Mamelodi community by the Justice Minister and NDPP in 2023.
- ❖ Spiritual repatriations (symbolic reburials) were conducted in the case of four Mamelodi activists who were abducted and killed by the Northern Transvaal Security Police and whose remains could not be recovered.
- ❖ A spiritual repatriation was also conducted with the family of Bellington Mampe at the Worcester Prison. Mr Mampe died in political custody in 1963, and his burial site could not be located.
- ❖ The remains of two hanged PAC members were handed to their families in Soweto and Wolmarans respectively in 2023.

MPTT Recent cases (cont.)

- ❖ The MPTT is currently preparing for the exhumation of a young activist shot dead by police in Knysna in 1986. In addition, potential burial sites have been identified in the Matatiele area for excavation in the search for a missing MK member.
- ❖ The MPTT also assists the TRC Component in the NPA and DPCI in the form of research, family tracing, exhumations and DNA tests. For example, the MPTT assisted with the exhumation and forensic examination of remains believed to be those of Mr Thabo Mosala, who died in detention in 1976 and was reportedly buried in the Matatiele area of the Eastern Cape.

Concluding remarks

- ❖ Since 2019, the NPA has been committed to dealing with TRC matters and this report shows the progress that we have made over the past few years, and that we continue to make.
- ❖ We adopted measures to ensure that there is no recurrence of undue political interference in the prosecution of TRC matters and we appointed senior counsel to review and assess the measures.
- ❖ In June 2023, Adv Ntsebeza SC submitted his written opinion on the TRC component and TRC prosecutions, to the NPA. It has been released and published on our website.

Concluding remarks (cont.)

- ❖ The opinion found that the measures adopted and implemented by the NPA to deal with TRC matters – namely, the structure and checks and balances that form part of the TRC component - are largely adequate.
- ❖ The NPA has abided by its recommendations and submitted the report to the former Minister of Justice and Correctional Services, to consider the remainder of the recommendations.
- ❖ Measures taken are part of the NPA's strategic objective of having the requisite financial and operational independence to deliver on its constitutional mandate. We continue to engage the Department of Justice and Constitutional Development to deliver on parliamentary commitments made in Nov. 2023.



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Thank you

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Response by the Foundation for Human Rights to the NPA's Submission (dated 27 March 2025)

Date: 19 May 2025

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Introduction

1. The Foundation for Human Rights (FHR) welcomes the Committee's decision to hold a follow-up session on the urgent issue of legal representation for former state security officials in the Cradock 4 inquest. Regrettably, this meeting comes too late to ensure that the inquest proceeds as originally scheduled. Despite the efforts of counsel and lawyers for the families, Mbulelo Goniwe and the NPA, the matter of legal representation for persons of interest has not been resolved in time.¹ Following the recommendation of the lawyers representing the families, Judge Beshe has ordered that the inquest proceeds from 2 to 12 June 2025 at the Gqeberha High Court, albeit in part. During the June hearings, only family witnesses will testify, while the hearing of evidence from former state officials will take place at a later date once legal funding arrangements have been finalized. The timing of this next phase will be determined by the presiding judge. Hearing the inquest in parts poses significant challenges, both emotionally for the families involved and logistically for their legal representatives in terms of coordination and resources. The issue of legal representation ought to be resolved at the political level to prevent similar challenges in the future.
2. The FHR made its submissions to the Committee with the intention of offering constructive feedback, encouraging internal reflection within the NPA, and fostering a meaningful dialogue on how to improve the investigation and prosecution of TRC cases. Our comments were aimed at the institution as a whole and the systemic challenges it faces. However, the NPA's response appears defensive and avoids taking institutional responsibility for the shortcomings identified [see paras. 6 and 56]. The focus is placed on peripheral details of interactions between the FHR and the NPA, rather than on the broader picture -- namely, that within South Africa's justice ecosystem, we should be working towards shared goals and objectives of justice and closure for the survivors and families.
3. While we do not intend to address every inaccuracy in the NPA's response, we will refer to several examples to illustrate our concerns. It appears there are significant discrepancies in how past discussions and collaborative efforts are perceived. Nonetheless, we remain committed to engaging the NPA in good faith to clarify and resolve these matters.

Legal representatives of victims' families and survivors

4. The FHR facilitates connections between survivors or victims' families and pro bono legal representatives, who are directly instructed by the families and are expected to act in their best interests. The FHR itself does not appear in court on behalf of the families; that is the role of the appointed legal representatives. However, the FHR coordinates work on TRC cases it supports, engages private investigators, covers the costs of legal counsel where required, provides financial support for investigations, and undertakes advocacy efforts.
5. Following requests from the NPA and DPCI, all attorneys supporting the FHR, families, and survivors have provided the necessary powers of attorney from their clients. To our

¹ Funding for legal costs has eventually been provided for Mbulelo Goniwe and the former police witnesses, but not for the former SADF witnesses. Even in the case of the former police witnesses, the funding has come so late that fee agreements have yet to be finalised, leaving their legal teams insufficient time to prepare adequately.

knowledge, these documents have been shared. We continue this practice for all new cases we take on. In the cases listed in our 12 February 2025 submission, the NPA and DPCI have engaged with legal representatives for extended periods without previously questioning their authority. It is therefore unclear why this issue is now being raised in the NPA's submission to the Portfolio Committee.

Assessing progress with investigations and prosecutions

6. The NPA cites progress and refers the Committee to the table in paragraph 11 of its submission. However, the table does not address the core challenges we raised regarding individual cases.² The focus appears to be on administrative compliance, such as power of attorney documentation, and general updates on recent developments, rather than substantive issues. A meaningful assessment of progress requires greater context and transparency. For example:
 - a. Dr Neil Aggett case: The inquest judgment was delivered in March 2022. In early 2023, we were informed by the lead prosecutor that indictments were being prepared. In September 2023, the key suspect passed away. Despite repeated follow-ups by the Aggett family's legal representatives, we have received no further updates.
 - b. Cradock 4 case: We have been engaging with the NPA since 2019. In 2021, the families filed a court application to compel the NPA to make a decision about whether they would indict the surviving suspects. In March 2023, the families' legal representatives submitted an evidence-based analysis suggesting that prosecutions remained viable.³ The last remaining suspect, against whom there was a prima facie case, passed away in mid-2023. Although it was announced in January 2024 that the inquest would be reopened, the NPA only notified the implicated former police and army witnesses months later. This delay prevented them from making applications for legal funding in time, causing the postponement of the September inquest. The NPA's response focuses on counsel availability rather than acknowledging its role in the delays and the long periods of inaction that preceded the decision to ask for an inquest. The suggestion that the inquest did not proceed in November 2024 due to families' counsel being unavailable is incorrect; legal teams for the former officials were still pursuing funding applications, which were to be resolved by 2 December 2025 as per the court order.
 - c. Turner case: The Legal Resources Centre has represented the family since early 2022, with FHR involvement beginning even earlier. In March 2024, the NPA indicated that a formal inquest would be held in the High Court, and we were under the impression that it had been reopened. However, at our last meeting on 24 January 2025, we were informed that the investigation remains ongoing and no formal steps toward an inquest have been taken. We now learn from the NPA table in para. 11 "The DPP took

² For a detailed assessment of the work of the NPA on the TRC cases see the papers filed in the Constitutional Damages case available on this [link](#). See in particular under the heading "Lack of delivery" at paras 112 to 120; DEVELOPMENTS POST THE POLITICAL INTERFERENCE at paras 406 – 448; and CALL FOR CHANGE IN APPROACH TO APARTHEID-ERA PROSECUTIONS at paras 449 – 482.

³ Counsel representing the families presented to the NPA on the viability of the prosecutions as early as October 2022.

a decision that a formal inquest will be held in the High Court.” In addition, despite an agreement that FHR’s investigator would assist, attempts to engage with the investigating officer and the NPA have been unsuccessful. Additionally, Adv. Du Plessis, formerly of the TRC Unit, was transferred at the end of last year, yet the NPA appears unaware of this development.

- d. Mzizi case: The NPA notes that the matter was “joined” with the Haffejee case, but no evidence was presented. This is not correct. On 5 February 2021, Garlicke & Bousfield, representing the Mzizi family, requested the reopening of the inquest and its consolidation with the Haffejee case. After receiving no formal response, follow-up representations were submitted on 18 June 2021 to outline the outstanding issues and challenges in the investigation, and to set out why it remains in the interests of justice to re-open the inquest and consolidate it with the Haffejee matter. This was followed by additional requests urging a decision. The NPA did not respond or declined to reopen the Mzizi inquest and consolidate it with the Haffejee inquest. To our knowledge, the Mzizi inquest was never reopened, and the matter remains unresolved. Note the judgment of Nkosi J in the Haffejee inquest:

[370] With regard to Bayempini Mzizi, I am advised that attempts were made to also reopen his inquest and consolidate it with this inquest, but it has not happened since there was still no decision taken in that case.

- e. Recently, legal teams for the Mabelane and Tlhapi families were denied access to investigation dockets—even though the inquests have been formally reopened. This contradicts established practice in prior inquests, where such materials were shared to aid in preparation. We are unsure why this shift has occurred, but it undoubtedly hampers the readiness of the families’ legal teams and prevents the families’ legal teams from providing assistance to the NPA and DPCI in analyzing the dockets and finding potential new leads. Despite the reopening of the Tlhapi and Mabelane inquests in November 2024 and February 2025 respectively, we are yet to be advised on the appointment of presiding judges.
7. These examples highlight recurring issues affecting the investigation and prosecution of TRC cases—most of which have occurred after the decentralization and the creation of the TRC Component.
 8. In section G, “The Link Between Accountability and Progress” [par. 40], the NPA claims that its action plan has directly resulted in progress. It cites a list of cases under various stages—on the criminal roll, reopened inquests, pending inquests, and investigations.
 - a. Simelane, COSAS 4, and Nyoka cases: In each of these cases, legal action or persistent advocacy by families and their legal representatives played a crucial role in prompting indictments. For instance, charges in the Simelane case were brought only after litigation against the NPA. Although the FHR contacted the NPA about the Kubheka case as early as 2019, it was only referred for an inquest in late 2022, and ultimately led to charges, with the trial delayed due to representation issues.

- b. Reopened Inquests (Date Pending): FHR has supported the Cradock 4, Tlhapi, Mabelane families, and Highgate survivors—accounting for four of the seven matters listed. In the Mabelane case, NPA action was prompted by representations made by the family's legal team in August 2024. Conversely, the reopening of the Cradock 4 inquest represents a missed opportunity rather than a success, as previously explained.
 - c. Clarification on Inquest Categories: The distinction between “Reopened Inquests—Date to Be Allocated” and “Formal Inquests” is unclear. Regardless, we welcome movement on inquests but urge the NPA to expedite the procedural planning.
 - d. Concluded Inquests: It is problematic for the NPA to present completed inquests as solely its achievement. The Timol inquest, for instance—omitted from the NPA’s list—was only reopened due to efforts by the Timol family, pro bono lawyers, and FHR. Similarly, the lawyers also had to threaten the NPA with litigation before it agreed to reopen the Aggett, Haffejee, and Haron inquests. These cases were initiated by families, not through NPA initiative.
9. The NPA’s assertion that all progress stems from its internal reforms, such as decentralization and the establishment of the TRC Component, is misleading. While NPA’s and DPCI’s involvement and work have been critical, meaningful progress has been possible thanks to sustained efforts by families, lawyers, and civil society organizations like the FHR.

The NPA’s response to the FHR’s table of cases

10. The table included by the NPA in paragraph 11 contains a number of inaccuracies. We do not intend to draw the Committee into a back-and-forth between the FHR and the NPA, but we wish to highlight several key issues:
- a. The NPA has included cases that do not appear on the FHR’s list of cases attached to our submission of 12 February 2025. These cases include: Babla Saloojee, Mr Sweet Sambo, and Operation Zero Zero. The FHR has never claimed to represent the families in these cases—in fact, they are not listed in our submission. The FHR’s private investigator conducted a preliminary inquiry into crimes committed by Joe Mamasela and, as part of that process, referred the Operation Zero Zero matter to the NPA. He merely shared relevant information and evidence. Furthermore, although Webber Wentzel and the FHR were originally pursuing action in the Els and Sons matter on behalf of the Timol family, they currently do not hold instructions in those matters.
 - b. The Bambo matter is not listed under the cases where the FHR “has instructions from the families,” but rather under those where the FHR and Thembi Simelane have a substantial interest. In the section dealing with the Bambo case, we explicitly state: “The FHR does not represent the family but has engaged in the matter due to its connections to the Simelane case.”

- c. The NPA has incorrectly identified the attorneys representing families in several cases listed in paragraph 11. We will re-share the relevant information with the NPA to clarify this.
- d. The FHR did not include the Timol case in its list because we no longer have instructions from the family.

Decision-making

11. The NPA claims that it makes decisions on matters and lists instances where it has declined to prosecute following the Haffejee and Timol inquests [para. 16]:
 - a. The Timol inquest concluded in late 2017. In 2020, the Timol family and the FHR made representations to the NDPP, requesting her intervention in the matter and urging a decision on whether the NPA intends to prosecute former officers Els and Son for perjury, as recommended in the inquest judgment. Only in March 2023, did DNDPP De Kock decide to charge Els and Sons with perjury.
 - b. Following the judgment in the Haffejee inquest in September 2024, the DPP declined to prosecute in November 2024.
 - c. Joao Rodrigues remains the only individual charged following the conclusion of a TRC-related inquest and he died before he could face justice.
12. In paragraph 17, the NPA acknowledges that it “has often been criticized for poorly and ill-considered decisions made in matters,” and lists a range of challenges inherent to the investigation of ‘old cases’. While it is true that the investigation of historical cases presents significant challenges, international examples—such as Argentina and Germany—demonstrate that such cases can be successfully pursued.
13. The TRC Components have now existed for four years. It is therefore not unreasonable to expect the development and implementation of best practices, as well as a cultural shift within the organization—one that embraces accountability and operates with a sense of urgency. Were it not for the courageous decision of an individual prosecutor in the COSAS 4 matter, the landmark judgment in that case—where the court confirmed that apartheid, as a crime against humanity, can be prosecuted under international customary law in South African courts—would never have taken place. In this regard, we note that the NPA Head Office was firmly opposed to the pursuit of these charges by the DPP in Johannesburg.

Dedicated TRC Units within the NPA and DPCI

14. We wish to thank the NPA for providing more information about the TRC Component and for sharing the organogram. We would like to follow up with the following questions:
 - a. How many staff members are currently employed by the NPA’s national TRC Component?

- b. We note that the organogram includes Special Director Advocate Matzke. How is she situated within the TRC Component's structure?
 - c. The NPA indicates that Advocate Matzke was appointed "to assist with strategic oversight of these matters." Could the NPA clarify what this entails in practice? Will she participate in all accountability sessions, and does she provide guidance to prosecutors on the direction of investigations?
 - d. What is the specific role of the Adv Mkhulise, Deputy Director of Public Prosecutions within the TRC Component?
14. The NPA notes in paragraph 25 that 19 permanent prosecutor posts were approved in 2024 [par.25], but no further detail is provided regarding the recruitment process. Has recruitment begun, and if so, when is it expected to be completed?
15. We appreciate the detailed description of the investigative and accountability process outlined in paragraphs 26–39.
16. In paragraph 36, the NPA refers to the implementation of "best practices." We would appreciate further information on which best practices have been identified and to what extent they have been applied by the TRC Component.

Ntsebeza Inquiry

17. We acknowledge the Ntsebeza Inquiry's conclusion that the current TRC Component model is, in large part, adequate. However, we respectfully disagree with this assessment. In our view, a senior NPA official fully dedicated to TRC matters—who exercises direct oversight over TRC cases, provides instructions to prosecutors, and intervenes when lead prosecutors act inappropriately or with undue delay—would significantly enhance progress in investigations and prosecutions. We defer to the Committee to determine whether the TRC Component has indeed done an excellent job in the four years since its establishment.
18. In its response, the NPA focuses on the positive findings of the Ntsebeza report [par. 44]. However, the report also contains serious criticisms of the NPA's slow progress in investigating and prosecuting TRC cases since the Component's creation in 2021. In particular, Advocate Ntsebeza found that despite having full-time investigators and prosecutors, most cases—particularly in the KZN division—remain stuck at the early stage of locating documents like case files and postmortem reports. Advocate Ntsebeza further stated that after nearly two years, this failure raised serious concerns about either the competence of the assigned personnel or a deliberate slowdown of the process. The inability to retrieve key records cannot be blamed solely on past inaction. With a clear plan and structure now in place, the NPA leadership must urgently demand results, enforce accountability, and ensure full cooperation across state institutions. Ntsebeza concludes this point by stating "There is no nice way to state this demand that needs to be made from the NPA. The DNDPP must crack the whip." [paras. 137-139 of the Ntsebeza Report, June 2023].

Other stakeholders involved in the TRC work

19. The NPA appears to suggest that the FHR approached the Committee to the exclusion of other stakeholders [paras. 61–63]. The FHR has never claimed to represent these stakeholders. Like the FHR, they are entitled to approach the Committee independently and make their own submissions.
20. The NPA should be commended for adopting the victim-centered approach and for establishing a working relationship with the Apartheid-Era Victims' Families Group—a coalition composed of victims' families. Such initiatives build trust, foster collaboration and increase transparency and accountability. At the same time, these information-sharing, outreach at strengthening mutual-trust initiatives should not replace meetings whereby the NPA and DPCI meet with legal representatives of families to report on the progress.

Oversight

21. The FHR addressed the issue of operational oversight in its initial submissions. It appears, however, that there may be differing interpretations between the FHR and the NPA regarding the concept of operational oversight, which is distinct from both parliamentary oversight and prosecutorial independence. The statutory mechanisms for reviewing NPA decisions differ from the kind of operational oversight we continue to emphasize as essential in the context of TRC cases. Such oversight could be significantly strengthened through the appointment of a full-time Special Director to manage and run a Special TRC Cases Unit.
22. On this note we are very pleased to hear that the NDPP is investigating the feasibility of appointing a Special Director of Public Prosecutions to deal with the TRC cases. Indeed, we made a detailed proposal for such a specialized approach in 2020. We agree that the creation of a special unit under a Special Director would signal a very strong commitment on her part to resolve the TRC cases.
23. In negotiations in the Constitutional Damages case our attorneys advised in a letter sent to the NDPP in March 2025 that such an initiative will be fully supported by the FHR and families, especially if it includes:
 - a. The establishment of a special TRC cases unit along the lines of the Specialised Commercial Crime Unit (SCCU) to be headed by a Special Director (as opposed to a standalone Special Director on top of the current TRC Component).
 - b. The Special Director and members of the special unit are dedicated exclusively to the TRC cases.
 - c. As with the SCCU, the Special Director and special unit are empowered to manage, direct and conduct investigations and prosecutions of the TRC cases throughout the country. The mere provision of legal advice, training, coordination, liaison and holding 'accountability sessions' would, in our respectful view, be of little utility.

24. We also undertook to constructively engage with the NPA for purposes of establishing a structured means of conducting regular communications, information and early warning sharing.
25. The NPA's statement that "the FHR seeks the payment of R8,000,000.00 over a five-year period for purposes of enabling families and organizations supporting families to play a monitoring role in respect of the work of the policing and justice authorities" (para. 88) is misleading. This relief is sought jointly by the FHR and 25 families. Furthermore, a human rights monitoring function performed by civil society is a well-established practice that enhances transparency and accountability. For instance, the proposed funds could support the development of a public online tracker for TRC-related cases—an initiative aimed at informing the public and supporting transparency in line with democratic principles.
26. In the March letter referred to above we also undertook to conduct any monitoring of the work of the DPCI and NPA on the TRC cases in a respectful and helpful manner, and to promptly supply all leads, ideas, and information on the cases to both organizations.

The list of cases under investigation by the DPCI and NPA

27. The NPA states that during the meeting between the FHR, the NPA, and the DPCI on 30 January 2023, the FHR "advised that they represent all TRC families formally and informally and requested that the list of all matters under investigation be disclosed to them so that they could inform the families if information needed to be shared" [para. 98]. For the record, the FHR has never claimed to represent all TRC families. However, as a public interest human rights organization, we recognize that our work benefits a broader group beyond the families we directly support, including many affected communities and civil society stakeholders.
28. With respect to para. 99, the FHR did not request confidential or case-sensitive information from the NPA or DPCI. Our request was limited to a general list of cases under investigation—without details—aimed at enhancing transparency and promoting public accountability in the handling of TRC matters.
29. In para. 99, the NPA asserts that the list of cases under investigation would not be shared with the FHR in order to protect the integrity of investigations, and that the FHR "accepted and understood this" when it provided a list of FHR-supported matters to the DPCI. We wish to clarify that while the FHR complied with the request to submit a list of cases it is supporting, this did not imply agreement with the NPA's decision to withhold the broader list of TRC cases under investigation. In fact, following the joint meeting, the FHR formally requested written reasons for the decision not to release the list of approximately 130 TRC cases under investigation. These have never provided. In a letter dated 5 March 2024 addressed to Advocate De Kock, the FHR stated:

We note the NPA's decision not to share the list of approximately 130 TRC cases under investigation with the public. We hereby formally request written reasons for this decision. We reiterate our position that the public release of the names of the TRC cases does not pose any real or serious risk to the integrity of investigations or the safety of individuals. We have not requested

access to sensitive or incriminating information. We reserve the right to pursue other legal avenues to access the list of TRC cases under investigation.

30. The FHR maintains its view that, for reasons of transparency and accountability, the list of TRC cases under investigation should be made public. In this regard, we note the NPA's statement in para. 103 that: "In December 2024, a copy of Annexure C, with the redacted portions of the record containing third party information was furnished." Annexure C refers to the list of TRC cases included in the Ntsebeza report. We have not been provided with this list, and we are not aware that this list has been shared publicly.

Conclusion

31. We wish to reiterate and emphasize our position. We wish to work together with DPCI and NPA on the TRC cases but while recognizing the capacity and capability limitations, we want to see an urgency on the part of state agencies in dealing with the TRC cases. We also would like to see the NPA attempting to do some reflection and take responsibility for the failures, when these are due. From our part, we remain committed to bringing closure to the survivors and families.