

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

INDEX TO NATIONAL PROSECUTING AUTHORITY'S BUNDLE (MHAGA)

ITEM NO	DESCRIPTION	PAGE NO
1	Notice in terms of Rule 3.3 of the Rules of the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases, addressed to Adv Mthunzi Mhaga	1 – 6
2	Email correspondence between Adv Mthunzi Mhaga and the Executive Assistant of the Commission, dated 6 March 2026	7 – 9
3	Email from Executive Assistant to Adv Mthunzi Mhaga, dated 6 March 2026 (enclosing Notice and extracts)	10 – 13
4	Affidavit of Adv Mthunzi Columbas Mhaga, dated 30 March 2026	14 – 37

5	Annexure "MCM1": Minutes of the Meeting of the Task Team on TRC Cases, dated 16 November 2005	38 – 39
6	Annexure "MCM2": Minutes of the Task Team on TRC Cases, dated 6 November 2006, and other minutes (undated)	40 – 44
7.	Annexure "MCM3": Judgment of the High Court (Eastern Cape Division, Makhanda) in the inquest into the Highgate Hotel attack, dated [date unknown] (extracts, including paragraphs 135 and 136)	45

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

To: Adv. Mthunzi Mhaga
Email: mcmhaga@npa.org.za

INTRODUCTION AND ESTABLISHMENT OF THE COMMISSION

1. On 29 May 2025, the President of the Republic of South Africa issued Proclamation Notice No. 264 of 2025, establishing the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases (“the Commission”).
2. The Commission was appointed in terms of section 84(2)(f) of the Constitution, 1996. The Honourable Madam Justice S. Khampepe serves as Chairperson, with the Honourable Mr Justice F. D. Kgomo and Adv A. Gabriel SC as members.
3. In terms of its mandate, the Commission is required to inquire into, make findings, report on, and make recommendations concerning allegations that, since 2003, efforts or attempts were made to influence, pressure, or otherwise improperly prevent the South African Police Service and/or the National Prosecuting Authority from investigating or prosecuting TRC cases. The Terms of Reference further require the Commission to determine whether officials within these

institutions colluded in such efforts, and whether further action—including investigations, prosecutions, or the payment of constitutional damages—is warranted.

4. Among the parties identified as having a substantial interest in these proceedings are:
 - a. The applicants in the matter of L.B.M. Calata and 22 Others v Government of the Republic of South Africa and Others (Case No. 2025-005245, North Gauteng High Court, Pretoria); and
 - b. The families of victims in TRC cases who have a substantial interest in the matters under inquiry.

NOTICE IN TERMS OF RULE 3.3

5. This notice is issued in terms of Rule 3.3 of the Rules of the Commission, read with the Regulations made under Government Notice R.278 of 2025.
6. The Commission's Evidence Leaders intend to present the evidence of General Philippus Christoffel Jacobs who in the opinion of the Evidence Leaders possesses information that relates to allegations against you, as set out in paragraph 9 below and is relevant to the Commission's work.
7. The evidence of General PC Jacobs is scheduled to be heard on **14 April 2026**, at 10h00, at Sci – Bono Discovery Centre, Corner Miriam Makeba and Helen Joseph Street, Johannesburg.

8. The evidence in paragraph **Error! Reference source not found.**, is an extract from the affidavit of Mr Jacobs, with corresponding paragraph numbering, and implicates, or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. The complete affidavit of Mr Jacobs is available on the Commission's website at www.trc-inquiry.org.za.

PARTICULARS OF IMPLICATION

9. Paragraph 21 of Mr. Jacobs statement:

"As appears from in annexure "PCJ2", the ITT comprised of senior officials from various state institutions. Among them were Advocates Anton Ackermann ("Adv Ackermann") and Ramaite with Adv Pikoli being one of the principals of the committee. Advocate Mthunzi Mhaga ("Adv Mhaga"), also from the NPA, was responsible for taking the minutes of the meetings of the ITT.

Paragraph 48

I wish to inform the Commission that the correspondence being referred to by Adv Ackermann, attached hereto as "PCJ12" was, in fact an email correspondence exchanged between Adv Mhaga and I consequent to a meeting of the ITT held on 04 December 2006. This was informed by the suggestion made by Assistant Commissioner Lekalakala that the committee members needed to consult with their principals before the 'trial' report was submitted to the NDPP. This is much clear when regard is had to the following facts:

Paragraph 49

At 11:33, on 06 December 2006, I sent an email to Adv Mhaga stating that:

“ I am waiting to brief the National Commissioner on the draft report. I will revert to you once I have spoken to him. Provisionally I wish to indicate that from the SAPS side we are still not happy with how the Chikane matter is reflected. There was a definite decision that the Rev Chikane must be consulted again, that his wishes need to be reflected, that the issue be reported to our principal’s and that they must make a recommendation to the NDPP on the matter. Kindly rectify this in your report.”(sic)

Paragraph 50

Adv Mhaga replied at 14:28 as follows:

“Thanks for ya input but I would like you to establish whether the national Commissioner has met with the Rev Chikane to verify Josia’s contention that he is not interested in prosecution. According to Anton Rev Chikane wants prosecution so the national Commissioner needs to substantiate such a belief.”

Paragraph 51

I then responded to Adv Mhaga at 16:48 as follows:

“I have conveyed to you the Committee the view of the National Commissioner. It was decided in the Committee that this route will be followed, in respect of the Chikane Matter. Whether you are in agreement with our view or not is irrelevant. Kindly reflect our recommendation in your report so that the Committee of the

Directors General may consider it.”

Paragraph 52

Adv Mhaga then responded on 07 December 2006 as follows:

“Your concern has been noted. However I’m still waiting for the other inputs on the whole report if there are any.”

YOUR RIGHTS AND OBLIGATIONS

10. You are entitled to attend the hearing at which the evidence relating to the above allegations, and any other that may be led against you, is presented. You may be represented by a legal practitioner of your choice.
11. Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied, and set out the grounds for such dispute or denial.
12. If you wish to—
 - a. give evidence yourself;
 - b. call any witness in your defence; or
 - c. cross-examine the witness whose evidence implicates you,you must apply in writing to the Commission for leave to do so within

fourteen (14) calendar days of this notice, accompanied by your affidavit.

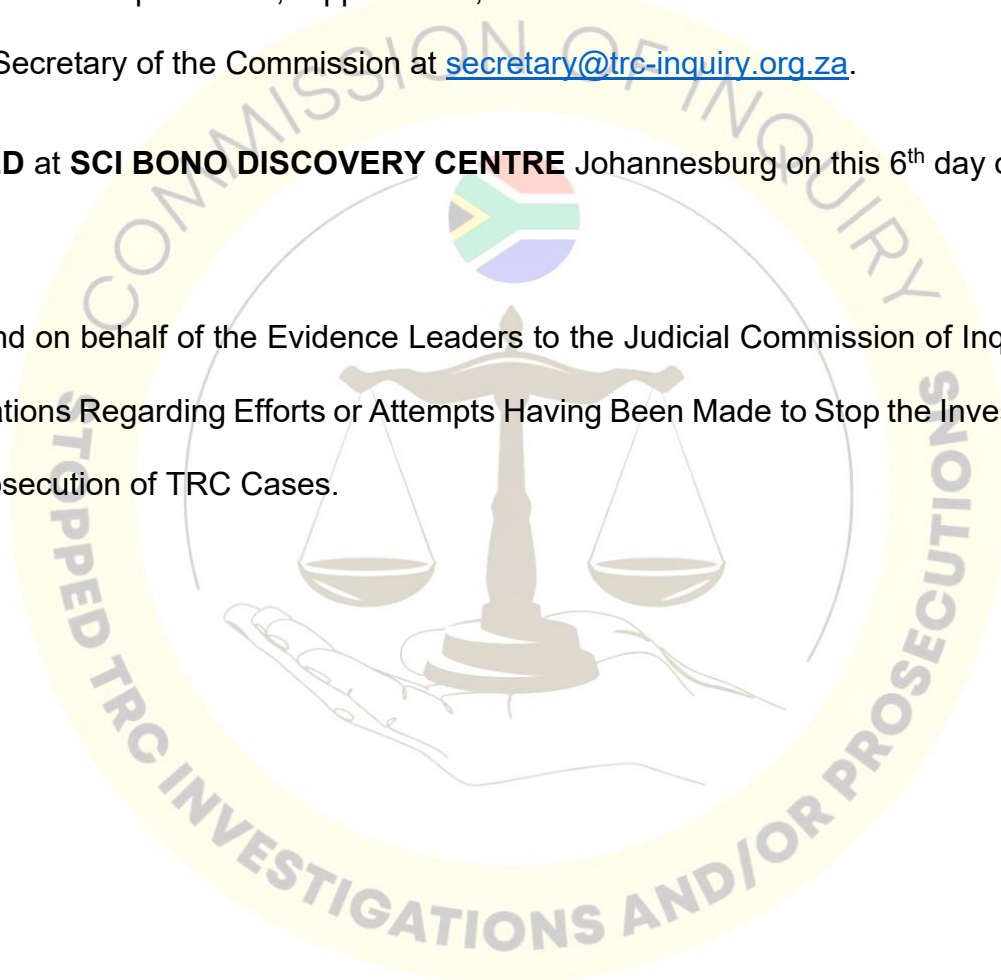
13. You may also apply for leave to make written and/or oral submissions regarding the findings or conclusions that the Chairperson should draw from the evidence relating to you.


COMMUNICATION WITH THE COMMISSION

14. All correspondence, applications, and affidavits must be directed to: The Secretary of the Commission at secretary@trc-inquiry.org.za.

DATED at **SCI BONO DISCOVERY CENTRE** Johannesburg on this 6th day of March 2026.


For and on behalf of the Evidence Leaders to the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of TRC Cases.







From: Mthunzi C. Mhaga mcmhaga@npa.gov.za 
Subject: FW: Notice in terms of rule 3.3 // Adv Mhaga
Date: 13 April 2026 at 14:14
To: mgwala mgwala@law.co.za, Yntloko yntloko@counsel.co.za


MM

ADV MTHUNZI C.MHAGA
Special Director of Public Prosecutions
 Legal Affairs Division


National Prosecuting Authority
South Africa

 012 845 7736
  083 641 8141
  Mcmhaga@npa.gov.za

 VGM Building, 123 Westlake Avenue, Weavind Park,
 Silverton, Pretoria, 0184

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From: Mthunzi C. Mhaga
Sent: Friday, March 6, 2026 12:57 PM
To: 'Executive Assistant' <executive.assistant@trc-inquiry.org.za>
Cc: Secretary <secretary@trc-inquiry.org.za>; Investigations <investigations@trc-inquiry.org.za>; Document Manager <document.manager@trc-inquiry.org.za>; Baloyi Ronald <ronbaloyi@justice.gov.za>
Subject: RE: Notice in terms of rule 3.3 // Adv Mhaga


Dear Boipelo




I acknowledge receipt of the notice but there appears to be only one issue relating to my so called "being implicated" but my understanding is that Adv Anton Ackermann SC had mentioned me in his testimony before the TRC commission on 5 March 2026, I do not want to be ambushed when I appear before the Inquiry with any other issues that I would need to address and respond to.


Please confirm in writing that this is the only issue I need to respond to as implicating me.

Regards

ADV MTHUNZI C.MHAGA
Special Director of Public Prosecutions
 Legal Affairs Division


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National Prosecuting Authority

From: Executive Assistant <executive.assistant@trc-inquiry.org.za>
Sent: Friday, March 6, 2026 12:33 PM
To: Mthunzi C. Mhaga <mcmhaga@npa.gov.za>
Cc: Secretary <secretary@trc-inquiry.org.za>; Investigations <investigations@trc-inquiry.org.za>; Document Manager <document.manager@trc-inquiry.org.za>
Subject: [EXTERNAL] FW: Notice in terms of rule 3.3 // Adv Mhaga

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Dear Adv Mhaga

I write to you on behalf of the Secretariat of the TRC Cases Inquiry.

The Commission has identified that evidence presented before it may implicate you in respect of matters under investigation. In line with the Commission's mandate and the principles of fairness, you are hereby afforded an opportunity to respond to the allegations and/or evidence relating to you.

Please find attached:

1. A formal notice setting out the nature of the implication; and extracts of the relevant portions of the evidence/testimony in which you are mentioned.

Kindly note that you are entitled to:

- Make a written submission to the Commission;
- Apply to give oral evidence; and/or
- Seek legal representation for purposes of your response.

We request that you acknowledge receipt of this correspondence and indicate your intention to respond by **11th March 2026**. Should you require any clarification, please contact the secretary Adv Thokoa at 069 008 8888 or secretary@trc-inquiry.org.za. The Commission emphasises that this process is conducted to uphold the principles of procedural fairness.

We thank you for your cooperation.



Boipelo Ratshikana
 Executive Assistant
 TRC CASES INQUIRY
 +27 80 122 9052
Executive.Assistant@trc-inquiry.org.za



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From: Mthunzi C. Mhaga mcmhaga@npa.gov.za
Subject: FW: Notice in terms of rule 3.3 // Adv Mhaga
Date: 13 April 2026 at 14:53
To: Yntloko yntloko@counsel.co.za, mgwala mgwala@law.co.za




MM


As requested




ADV MTHUNZI C.MHAGA
Special Director of Public Prosecutions
 Legal Affairs Division



National Prosecuting Authority
South Africa

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From: Evidence Leaders <evidence.leaders@trc-inquiry.org.za>
Sent: Friday, March 6, 2026 3:26 PM
To: Mthunzi C. Mhaga <mcmhaga@npa.gov.za>; Fana Nalane <fana@nalanesc.co.za>; Investigations <investigations@trc-inquiry.org.za>
Subject: [EXTERNAL] FW: Notice in terms of rule 3.3 // Adv Mhaga

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From: Evidence Leaders <evidence.leaders@trc-inquiry.org.za>
Date: Friday, 06 March 2026 at 15:19
To: mcmhanga <mcmhanga@npa.gov.za>, Investigations <investigations@trc-inquiry.org.za>, Fana Nalane <fana@nalanesc.co.za>
Subject: Re: Notice in terms of rule 3.3 // Adv Mhaga

Dear Adv Mhaga

We refer to your email below and noted the contents thereof.

The statements made about you are in relation to the evidence of Adv Ackermann and Mr Jacobs.

In addition to the issues raised by the two of them, you are required to assist the Commission with the role you played in the ITT and the PCLU, in so far as it pertains to the Terms of reference of the Commission.

Kind regards

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From: Evidence Leaders <evidence.lead@trc-inquiry.org.za>

From: Mthunzi C. Mhaga <mcmhaga@npa.gov.za>

Sent: Friday, 06 March 2026 12:57

To: Executive Assistant <executive.assistant@trc-inquiry.org.za>

Cc: Secretary <secretary@trc-inquiry.org.za>; Investigations <investigations@trc-inquiry.org.za>; Document Manager <document.manager@trc-inquiry.org.za>; Baloyi Ronald <RonBaloyi@justice.gov.za>

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To: Mthunzi C. Mhaga <mcmhaga@npa.gov.za>

Cc: Secretary <secretary@trc-inquiry.org.za>; Investigations <investigations@trc-inquiry.org.za>; Document Manager <document.manager@trc-inquiry.org.za>

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- Seek legal representation for purposes of your response.

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The Commission emphasises that this process is conducted to uphold the principles of procedural fairness.

We thank you for your cooperation.



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TRC_Inquiry

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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

I, the undersigned

MTHUNZI COLUMBAS MHAGA

do hereby make oath and state that:

- 1 I am an adult male South African. I am an admitted advocate of the High Court of South Africa, having been admitted as such on 17 October 2002. I am currently employed as the Special Director of Public Prosecutions and Head of the Legal Affairs Division ("LAD") within the National Prosecuting Authority ("NPA"), duly appointed as such by the President of the Republic of South Africa Cyril Matamela Ramaphosa. My appointment is in terms of section 13(1)(c) of the National Prosecuting Authority Act 32, 1998 ("NPA Act"). In this current position, I assumed office on 1 June 2020.
- 2 I have personal knowledge of the facts deposed to herein. I acquired such knowledge during the long period of time working in the NPA as a State Advocate at the office of the Director of Public Prosecutions ("DPP") Eastern Cape Division, Mthatha and Senior State Advocate at Priority Crimes Litigation Unit ("PCLU"), Pretoria.

A THIS AFFIDAVIT

- 3 I depose to this affidavit in my capacity as a member of the National Prosecuting Authority (NPA) in response to a Rule 3.3 Notice received from the Secretary of the Commission, acting for and on behalf of the Evidence Leaders, on 6 March 2026. The Notice requests the following:
- 3.1 my assistance in setting out the role I played in the "TRC Task Team" and the Priority Crimes Litigation Unit (PCLU) during my employment there as a Senior State Advocate, insofar as such role pertains to the Terms of Reference of the Commission;
- 3.2 a response to the allegations made by General P.C. Jacobs in his statement submitted to the Commission, with specific reference to paragraphs 21, 48, 49, and 50 thereof; and
- 3.3 an account of the circumstances that gave rise to my involvement in the prosecution of criminal cases referred to the NPA by the Amnesty Committee of the Truth and Reconciliation Commission.
- 4 In order to contextualise the aforementioned requests and to provide a clear and coherent account, I consider it necessary to briefly delve into my career journey. I am of the view that traversing this background will conduce to a better understanding of the issues at hand, and I accordingly deal with that aspect in turn.
- 5 Finally, I wish to record that this affidavit sets out my response to the specific matters raised in the Rule 3.3 Notice as I am presently advised. Should any further matters arise from this statement or from the subsequent proceedings that require elaboration, clarification, or correction, I reserve the right to address those in the course of my oral evidence before the Commission.

- 6 Before turning to the specific requests contained in the Rule 3.3 Notice, I shall briefly address two preliminary issues: first, my professional history, which I consider necessary to contextualise the role I played in the matters under inquiry; and second, any knowledge I may have regarding political interference within the National Prosecuting Authority during my employment.

B PROFESSIONAL EXPERIENCE

- 7 In June 1998, I commenced my career in legal education as a tutor, and subsequently as a part-time lecturer in Business Law, at the then Eastern Cape Technikon (Butterworth Main Campus). This institution later merged with the University of Transkei and Border Technikon to form what is now the Walter Sisulu University in the Eastern Cape.
- 8 In June 1999, I joined the Butterworth Magistrates Court as a Volunteer Public Prosecutor. My appointment as a Temporary Public Prosecutor at Lady Frere followed in September 1999. Throughout this period, I concurrently served as a part-time lecturer in Mercantile Law, Labour Law, and Commercial Law, a role I fulfilled until 2005.
- 9 In December 1999, I was permanently appointed as a Public Prosecutor at the Mthatha Magistrates Court. Within approximately seven months, I was promoted to the Regional Court in August 2000, reflecting the confidence reposed in my prosecutorial capabilities.
- 10 In September 2002, I was appointed as a State Advocate at the Office of the Director of Public Prosecutions ("DPP") in Mthatha. I was subsequently seconded to the Priority Crimes Litigation Unit ("PCLU") at the National Office in Pretoria, where I was promoted to the position of Senior State Advocate.

- 11 In July 2009, I was appointed by the National Prosecuting Authority (“NPA”) as National Spokesperson, a position I held until August 2012. I thereafter joined the Department of Justice and Constitutional Development as Spokesperson to the former Minister of Justice and Constitutional Development, Mr Jeff Radebe, serving until 2014. I then assumed the role of Speech Writer, Spokesperson and part-time Adviser on matters pertaining to the NPA, the Special Investigating Unit (“SIU”), and Legal Aid South Africa for the former Minister of Justice and Constitutional Development, Mr Michael Masutha.
- 12 In 2017, I resigned from government service to undergo pupillage and practiced as a member of the Pretoria Society of Advocates until July 2020. In that capacity, I honed my skills in litigation and advisory work. My advocacy practice comprised of civil, labour, motion, criminal matters and investigations
- 13 In July 2020, I rejoined the NPA as Special Adviser to the then National Director of Public Prosecutions (“NDPP”), Advocate Shamila Batohi, providing strategic legal and policy guidance at the highest level of the organisation.
- 14 In June 2023, His Excellency President Ramaphosa permanently appointed me to my current position of Special Director of Public Prosecutions. In this capacity, I have been entrusted with heading the Legal Affairs Division (“LAD”). The LAD is mandated to manage all civil litigation involving the NPA and to provide authoritative legal advice to the NDPP, the NPA’s Executive Committee (“ExCo”), and all business units within the NPA.
- 15 In 2025, I was assigned by the NPA leadership to coordinate the NPA’s engagement with several high-profile commissions and inquiries, namely the TRC Commission of Inquiry, the Madlanga Judicial Commission of Inquiry, the Ad Hoc Committee, and, to a limited extent, the Nkabinde Enquiry. This coordination role encompasses facilitating legal representation for current and former members of the NPA, as well as providing strategic legal advice

on the approach to be adopted by the NPA in each of these proceedings. I bring to this function the full measure of my decades of experience and my unwavering commitment to upholding the integrity of the prosecuting authority.

C LACK OF KNOWLEDGE OF POLITICAL INTERFERENCE WITHIN THE NPA

- 16 I wish to address a matter that I consider to be of fundamental importance to the integrity of the National Prosecuting Authority and the administration of justice. During the entirety of my employment at the NPA, including my tenure as a Senior State Advocate within the "TRC Task Team" and the Priority Crimes Litigation Unit (PCLU), I have never been aware of, nor have I experienced, any instance of political interference in the prosecutorial decisions of the NPA.
- 17 In this regard, it is important to underscore the statutory framework that governs the independence of prosecuting authority in South Africa. Section 179(4) of the Constitution of the Republic of South Africa, 1996, read together with the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) ("the NPA Act"), establishes the principle that the prosecuting authority must exercise its functions without fear, favour, or prejudice. Section 21(1) of the NPA Act read with Section 179(5) (a) and (b) of the Constitution specifically provides that the National Director of Public Prosecutions (NDPP) has the power to determine prosecution policy and to issue policy directives in concurrence with the Minister of Justice and Constitutional Development and after consulting the Directors of Public Prosecutions.
- 18 Section 179 (6) of the Constitution read with section 33 (1) of the NPA Act provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority. Section 33 (2) of the NPA Act is the mechanism by which the Minister exercises such final responsibility. Critically, the exercise of this power must be consistent with the Constitution and the NPA Act and not encroach upon the NDPP's

power to decide whether to institute or discontinue prosecutions, nor upon the independence of any prosecutor in the exercise of their prosecutorial discretion. In practice, should any person external to the NPA, including any member of the executive, seek to influence the outcome of a particular prosecution or investigation, such conduct would be incompatible with the constitutional and statutory framework and would constitute a grave breach of the rule of law.

- 19 Such conduct would be in violation of Section 32(1) (b) of the NPA Act which states as follows: *"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"*.
- 20 Throughout my career within the NPA, I have never been approached by any political office-bearer, executive member, or any person acting on their behalf, who sought to influence, direct, or interfere with the conduct of any prosecution, investigation, or prosecutorial decision with which I was involved. Nor have I witnessed any such interference directed at my colleagues within the units in which I served. All decisions pertaining to the institution, continuation, or withdrawal of prosecutions in matters that came before me were taken strictly on the merits of the evidence and in accordance with applicable legal principles, guided by the NPA's prosecution policy and directives.
- 21 I accordingly state under oath that I have no knowledge of any political interference within the NPA during any period of my employment. Had such interference occurred, it would have been in contravention of provisions of the NPA Act and considered a criminal offence. Section 41(1) of the NPA Act provides as follows: *"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 both such fine and such imprisonment."*

D MY INVOLVEMENT IN TRC MATTERS

22 I now turn to deal with my involvement.

D.1 MTHATHA DPP OFFICE AS STATE ADVOCATE

The Tyani and Gumengu Prosecution

- 23 While serving at the Office of the Director of Public Prosecutions in Mthatha, among the criminal cases allocated to me for the circuit court before the Eastern Cape Division of the High Court in Butterworth was the matter of *State v Aaron Tyani and Phumelele Gumengu*. The two accused were former members of the Transkei Security Police who stood arraigned before the High Court on charges of attempted murder and murder of one Sthembele Zokhwe, a cadre of Umkhonto weSizwe who had been shot and killed in Ngqamakhwe in the Eastern Cape. In March 2000, they had applied for amnesty before the Amnesty Committee of the Truth and Reconciliation Commission. Their application was denied, which paved the way for their prosecution.
- 24 The attempted murder charge related to an earlier incident on 8 August 1987, when the two security officers shot Mr Zokhwe at a quarry near the Cegcuwana Administrative Area in Mthatha and left him for dead. Remarkably, he survived that attack. However, on 11 January 1988, they abducted him from a salon in Butterworth town and escorted him to his parents' home in Ngqamakhwe. It was there that they finally took his life.
- 25 Upon arrival at the family home, the accused staged the scene to create the false impression that they had acted in self-defence, that they had shot Mr Zokhwe while he was attempting to throw a hand grenade at them. The difficulty I faced in prosecuting this matter was immediately apparent: the two officers were the only individuals who had entered the house with the deceased. I was therefore confronted with the challenge of rebutting their version of events without the benefit of an eyewitness. I knew that justice for

Mr Zokhwe and his family would require forensic evidence capable of dismantling the accused's concocted narrative.

- 26 Fortunately, there was a forensic expert, Dr David Klatzow, who had been engaged by human rights lawyers, Advocate Dumisa Ntsebeza SC and the late Judge President Themba Sangoni of the Eastern Cape Division of the High Court, on behalf of the deceased's family. Dr Klatzow had visited the scene, conducted a reconstruction, and produced a comprehensive forensic report that had been filed in the police docket as far back as 1988.
- 27 As I prepared for trial, I encountered two significant challenges, both of which tested my resolve and, I confess, caused me considerable frustration. The first was the difficulty I faced in persuading my supervisor, Mr Nigel Carpenter, to allow me to consult with and subpoena Dr Klatzow to testify at trial. Dr Klatzow, as an expert witness, understandably required payment at a rate higher than that paid to ordinary witnesses. I found myself in a position where I was ready to proceed with a case of immense importance—a case involving the brutal killing of an Umkhonto weSizwe operative by state security forces during the height of apartheid—yet I was being hindered by administrative reluctance that seemed to overlook the profound significance of what was at stake.
- 28 In early 2005, the then National Director of Public Prosecutions, Advocate Vusi Pikoli, visited our office in Mthatha, accompanied by his Deputy, Dr Silas Ramaite SC, and his Special Adviser, the late Ms Kalyani Pillay. The purpose of their visit was to engage with prosecutors in the region, and they made it a point to do the rounds of introduction, meeting with members of staff individually. When Advocate Pikoli reached me, he paused and asked whether I was related to the late Theodore Mhaga. I confirmed that I was. Theodore Mhaga was my uncle, a man whose death at the hands of Mr Kolensky, the Chief of Security at Fort Hare University, in 1979 had sparked the largest student strike in the institution's history and left a wound in my family that would never fully heal. In that moment, I made the decision to

speak candidly. I informed him of the difficulty I was experiencing in securing the attendance of Dr Klatzow, the forensic expert whose evidence I knew was crucial to dismantling the accused's version and securing justice for Sthembele Zokhwe and his family. Advocate Pikoli listened attentively, and when I had finished, he turned to Ms Pillay and directed her to assist me. She did so without delay, and the matter was resolved. Their intervention was not merely administrative; it was the difference between proceeding to trial hamstrung and being equipped to present the full strength of the State's case.

- 29 The second challenge was no less disheartening. Mr Carpenter refused to authorise my travelling to the Pretoria Military Hospital to consult with Dr Mzileni, who had examined Mr Zokhwe at the Mthatha General Hospital in August 1987 following the first attack. Mr Carpenter insisted that I conduct the consultation telephonically, relying on a medical report that had been compiled on a typewriter—a relic of an era when computers were not yet available in the hospitals of the former Transkei. I understood that a telephonic consultation, conducted without the benefit of examining the original records or engaging properly with the witness, would be wholly inadequate for a case of this gravity. Yet, I found myself once again having to fight for the resources necessary to do my job properly.
- 30 By that time, I had been placed in contact with Advocate Ntsebeza SC through my late friend, Sobantu Jojo. On Advocate Ntsebeza SC's advice, I escalated the matter to the Director of Public Prosecutions, Mr Humphrey Lusu. I explained the importance of a proper consultation and the prejudice that would accrue to the State if I were forced to proceed without it. To his credit, Mr Lusu overturned Mr Carpenter's decision and authorised my trip to Pretoria. It was a small victory, but one that reaffirmed my belief that the pursuit of justice must sometimes overcome obstacles from within.
- 31 Looking back, I must say that Mr Carpenter's attitude and obstructive conduct were, in my view, symptomatic of a broader insensitivity—an apparent obliviousness to the profound importance of apartheid-era crimes and the

desperate yearning of victims' families for justice and closure. These families had waited years, sometimes decades, for their loved ones to be vindicated. They had endured the merciless elimination of those they held dear. To be met with bureaucratic resistance in pursuit of accountability was, I must candidly admit, deeply frustrating. I felt the weight of that frustration keenly, but I also felt the weight of my duty to the deceased, to his family, to the truth and to the Constitution.

- 32 With the assistance of Dr Klatzow's forensic report, I was ultimately able to present a formidable case. The expert evidence was instrumental in refuting the accused's concocted version of events. The truth prevailed. The late Judge Pheko convicted both accused and sentenced them to 20 years of direct imprisonment. That case remains one of the most significant of my career, and it shaped my understanding of what it means to prosecute matters arising from our painful past. That case also highlighted the difficulties in the prosecution process as well.
- 33 As far as my recollection goes, this was the third successful prosecution of TRC-related cases following the conviction and sentencing of Eugene de Kock in 1996 and Ferdi Barnard in 1998 respectively. The case attracted widespread media coverage, and I later learned that it had been closely monitored by the leadership of the National Prosecuting Authority.

D.2 WORKING ON TRC CASES AT PCLU:

- 34 Towards the end of 2005, I was contacted by the then Head of PCLU Adv Anton Ackermann SC and later had a meeting with him at the Garden Court Hotel in East London.

- 35 He informed me that he had had a discussion with Adv Pikoli following my successful prosecution of the TRC case and invited me to come to the national office on secondment with intention to move there permanently. I agreed and permanently relocated to Pretoria in 2006 to focus on prosecuting other TRC cases nationally.

Challenges in Managing TRC Cases

- 36 At the time there was no investigative capacity within the NPA and the PCLU. I had discussions with my supervisor, Adv Ackermann SC and it was decided that as an Advocate dealing with these cases, I could do preliminary enquiries to determine if there was sufficient evidence to refer cases to the police for full investigations when there were dedicated investigators within SAPS.
- 37 In practice, however, such investigative assistance from SAPS was limited. The only matters in which I was assisted by SAPS investigators were those in the Eastern Cape where I relied on Sipiwo Pahlane, Bongani Maqashalala and the late Aron Hanise. In other provinces, and in order to give effect to the preliminary enquiry process, I relied on assistance from former APLA and MK military veterans, as well as human rights organisations representing the families of victims.
- 38 It was extremely difficult to manage and deal with TRC cases due to the absence of Investigating Officers dedicated to this work. In the absence of any formal arrangement with SAPS, I would approach detectives with whom I had worked while prosecuting in the Eastern Cape, requesting their assistance in cases that fell within their regions.
- 39 In some instances, I would compile reports based on the available information, which consisted mainly of statements and transcripts from the TRC hearings. In a few cases, I prepared reports based on interviews conducted with surviving witnesses, many of whom were already elderly by that time.

Establishment of the TRC Task Team

40 In October 2006, I was invited to a meeting chaired by Advocate Pikoli at his boardroom. The meeting was attended by our principals: Advocate Pikoli as NDPP, Advocate Menzi Simelane who was Director General for the Department of Justice, Mr Loyiso Jaftha from the Presidency, and Mr Manala Manzini who was the Director General of the National Intelligence Agency ("NIA"). Following a discussion on TRC cases, it was resolved that an interdepartmental task team consisting of officials be established, and that this task team would report to the Committee of our principals.

41 The officials who constituted that "TRC Task Team" were:

41.1 From the NPA: myself, Dr Silas Ramaite SC, and Adv Ackermann SC;

41.2 From the Department of Justice: Ms Marylin Rashwishwi;

41.3 From SAPS: Mr Josias Lekalakala and General PC Jacobs;

41.4 From NIA: Ms Yvonne Mabule and Mr Brian Koopedi; and

41.5 From the Directorate of Special Operations ("DSO"): Mr Nhlanhla Ngidi (prior to its disbandment).

42 I was designated as the secretary for the task team, while Dr Ramaite SC served as the convenor. I attach hereto some of the minutes and reports of the task team marked as annexures "MCM1" and "MCM2" respectively.

43 The mandate of the task team was twofold: first, to obtain dedicated investigative capacity from SAPS and the DSO; and second, to conduct an audit of the TRC cases with a view to determining which cases required further investigation and which were ripe for prosecution. Thereafter, a

decision to prosecute or not would be made by the PCLU or the NPA.

- 44 The main objective for the establishment of the task team was to facilitate a coordinated and collaborative investigative process between these entities in order to ensure effective prosecution. Member entities were expected to bring the expertise of their officials to contribute to the investigative processes in all TRC cases.
- 45 Whenever reports were to be compiled for the then NDPP, I would prepare them. These reports would be reviewed by all members and settled by the convenor, Dr Ramaite SC, and Adv Ackermann SC. This arrangement continued even during the tenure of Adv Mokotedi Mpshe SC as Acting NDPP.
- 46 At some stage, Adv Ackermann SC was removed from handling TRC cases, which meant he would no longer be part of the task team. However, I occasionally briefed him on our work and shared the reports I prepared for Adv Mpshe SC on a regular basis, as he remained my supervisor despite no longer being a member of the task team.

Investigative Capacity Constraints

- 47 Despite SAPS being represented on the TRC Task Team, no Investigating Officers were assigned to TRC cases during my tenure in the PCLU. This remained the position until I left the PCLU in June 2009 to join the Specialised Commercial Crimes Unit ("SCCU") in Pretoria on secondment.

D.2.1 THE CASES

- 48 Among the cases that I had to handle were the following namely;

- 48.1 the murder of the late Transkei student activist Batandwa Ndondo.

- 48.2 the request reopen investigation into the death of the late SACP leader Chris Hani.
- 48.3 robbery and murder of a police officer at a Willowvale police station involving members of the Azanian People's Liberation Army (APLA).
- 48.4 murder of Boiky Thlapi.
- 48.5 the Highgate Hotel attack.
- 48.6 St James Church massacre.

The PEBCO 3 Matter

- 49 I also dealt briefly with the matter of State v Nieuwoudt, Van Zyl & Koole, which came before the Eastern Cape Division of the High Court in Gqeberha in August 2006. I appeared in the matter during that period. The accused were arraigned on charges of murder, kidnapping, and assault arising from the infamous "PEBCO 3" incident.
- 50 The "PEBCO 3" refers to three anti-apartheid activists—Sipho Hashe, Champion Galela, and Qaqawuli Godolozzi—who were leaders of the Port Elizabeth Black Civic Organisation (PEBCO). In May 1985, they were kidnapped and murdered by members of the apartheid security police. They had been lured to the airport in Gqeberha under false pretences, where they were subjected to torture and ultimately killed. The discovery of their remains laid bare the existence of a brutal hit squad operation within the security forces of the apartheid state.
- 51 The prosecution of this matter was ultimately withdrawn. The withdrawal followed the death of the main accused, and the remaining two accused pursued a judicial review of the Amnesty Committee's decision. As a result,

the trial did not proceed to finality during my involvement. Nevertheless, my brief participation in the matter afforded me further insight into the nature of apartheid-era crimes and the complex legal landscape within which such cases were prosecuted, particularly where amnesty proceedings intersected with criminal trials.

THE HIGHGATE HOTEL CASE

- 52 Between the period 2006 and 2007, I started working on the Highgate Hotel file. As I depose to this affidavit, I do not have the benefit of looking at the file which contained information and notes including reports that I had compiled upon completion of my preliminary enquiry. For this reason, I rely on my memory of events and interactions I had with people that I thought could be of assistance to the enquiry. In 2025, I requested for the file from the TRC component in the NPA but the only one I received had information from 2015 and nothing before then.
- 53 I started by arranging meetings with the surviving victims and their families at Fort Hare University, East London campus in the Eastern Cape. I do not recall the names of the victims and other people present during those meetings. The purpose of the first meeting was to introduce myself as the prosecutor seized with the matter and get any information that could assist in my preliminary enquiry.
- 54 I interviewed some people but could not get any information that could point to any leads with regards to the attack. I also came across information that the Pan Africanist Congress of Azania ("PAC") had claimed responsibility for the attack, which assertion was later denied by its leader Mr Lethlapa Mphahele. However, I felt it prudent that I should follow this lead to satisfy myself.
- 55 I recalled that during the year 1993, the PAC and APLA were carrying out operations with the slogan "APLA by night, PASO by Day" and through "Year

of the Great Storm". I then contacted two individuals that I was advised to be Apla Commanders around the Eastern Cape based in Butterworth by the names Mthuthuzeli 'Mthura' Mama and Jimmy Jones. I am not sure of the real name of Jimmy Jones, but I later learnt that that was not his real name but his combat name.

- 56 In 2006, I met with them at the Regent Hotel in East London. During the meeting, they denied APLA's involvement in the Highgate Hotel attack and the meeting did not last long as they were not of any assistance.
- 57 I updated my supervisor, Adv Ackerman SC and informed him that there was an attack that was carried out in King Williams Town that involved Mr Dumisani Ncamazana and that he had been granted pardon for the attack. He advised that we should visit Mr Ncamazana at Fort Glamorgan Prison in East London where he was serving imprisonment for a matter unrelated to TRC cases. Upon arrival at the prison, Mr Ncamazana was reluctant to speak in the presence of Adv Ackerman SC, and he left me with him alone to continue the meeting. He also denied any knowledge of Apla's involvement in the attack and indicated that he could not be of any assistance in the enquiry.
- 58 Upon examination of all the information in the file at the time, I concluded that there was no evidence linking anyone to the attack and kept the file in our offices with the hope that when there is a dedicated team from SAPS, they could take the matter forward.
- 59 I compiled a report that I presented to the victims and their families in a follow-up meeting at the same venue in East London. It is worth mentioning that in September 2025, I testified in an inquest hearing before the Eastern Cape Division of the High Court, sitting in East London on this matter and judgment was delivered wherein the presiding judge noted the work I did under difficult circumstances. The Commission is referred to paragraphs 135 and 136 of the judgment attached hereto marked Annexure "MCM3".

THE KHWEZI NGOMA CASE ("APLA")

- 60 In 2006, I started working on the murder and robbery case of State v Khwezi Ngoma and others where they robbed firearms and killed a police officer during the robbery at a Willowvale police station in the Eastern Cape.
- 61 The four accused were members of the Pan Africanist Student Organisation ("PASO"), a student movement affiliated to the PAC and studying towards a teachers' course at the then Butterworth College of Education. They were also newly recruited members of Apla who had not applied for amnesty before the TRC because the leadership of the PAC expressed significant discontent with the TRC process. The PAC argued that its struggle was just, while the TRC held that even in a legitimate struggle, the PAC was bound by international humanitarian law.
- 62 Their attorney, Ms Nothemba Mlonzi of Mlonzi & Co. Inc approached the Mthatha DPP office and submitted written representations requesting the NPA to consider participating in negotiations for plea and sentence agreement in terms of Section 105A of the Criminal Procedure Act 51 of 1977 ("CPA"). This section provides for the state and accused to enter into a formal agreement wherein the accused would plead guilty to charges preferred against them and a sentence would be imposed subject to the Court agreeing that the conviction and sentence are in accordance with the law.
- 63 The then NDPP, Adv Pikoli authorised me to conclude the 105A agreement resulting in their conviction and sentencing to 10 years imprisonment wholly suspended for 5 years before the Eastern Cape Local Division of the High Court, Mthatha in 2006.

THE MAYAPI CASE

- 64 I also briefly dealt with the brutal murder of three underground guerillas of Umkhonto Wesizwe ("MK") who operated in the Transkei under the command of the late Mazizi Maqhekeza. They were Zonwabele Mayapi (younger brother to former MK death row prisoner Phumzile Mayapi), Gift Mgibe and Zolile Sangoni (younger brother to the late Judge President Sangoni).
- 65 They were murdered by "askaris" who had infiltrated the African National Congress ("ANC") and MK in collaboration with the Transkei security police on 5 February 1988 near Nqadu butchery in Mthatha.
- 66 We conducted a preliminary investigation with the assistance of retired member of the Missing Persons Task Team ("MPTT"), Mr Siphiwo Pahlane. This case suffered the same fate as other TRC cases due to lack of dedicated investigating capacity.

THE REV FRANK CHIKANE CASE

- 67 Although I never dealt with the matter involving Reverend Frank Chikane, I deem it prudent that I address it because it featured prominently in the evidence of Adv Ackermann SC and Adv Pikoli wherein my name was mentioned.
- 68 The case was never part of the cases I handled since it was dealt with by Adv Ackermann SC. In 2007, I was asked to accompany him to a meeting at the offices of Reverend Chikane at the union buildings. He was the Director General in the office of former President Thabo Mbeki at the time.
- 69 The purpose of the meeting was to obtain his views on the pending prosecution of the late Adrian Vlok and his co-accused as the NPA was in the

process of negotiating a plea and sentence agreement in terms of Section 105A of the CPA. Adv Ackerman SC had prepared a letter for Reverend Chikane to sign as confirmation that he had been consulted.

- 70 The meeting did not last long as he was non-committal in signing the letter, in fact he declined to sign it and indicated that he preferred to leave the matter in the hands of the NPA to deal with as it deemed fit. (*am paraphrasing*). We left the meeting and later reported the outcome of that meeting to the NDPP.

REQUEST TO RE-OPEN MR HANI MURDER CASE

- 71 In July 2006 NPA received a request from the Young Communist League (YCL) for the re-opening of investigations into the assassination of the late SACP leader Chris Hani on 10 April 1993. The YCL held the view that the matter was not satisfactorily dealt with by the trial court that heard the murder case. I was asked by Adv Ackermann SC to attend a meeting with the YCL delegation that included their spokesperson Castro Ngobese and Buti Manamela, (current Minister of Higher Education). We advised them that in view of the fact that there was a successful prosecution and in the absence of new evidence that warrants new investigation, re-opening the investigation was not possible.
- 72 While we were very sympathetic to the beliefs held by some that justice was not completely served during the trial of the accused in the matter, there was no sufficient evidence to justify reopening of the investigation. However, we informed them that should there be substantial new evidence at a later stage that could change the complexion of the case, the NPA would be amenable to the matter being re-opened. However, such evidence would have to be presented to the South African Police Service for investigation.

DISAPPEARANCE OF BOIKY THALPI 1986

73 In 2007, I took over the management of the disappearance of Boykie Thlapi. He was a 26-year-old politically active member of Ikageng Civic Association, Potchefstroom at the time of his disappearance. On the evening of 20 March 1986 at approximately 20H00, he and eleven other mourners boarded a taxi, to attend the funeral service of three comrades who had been shot by police. They were arrested during the State of Emergency operation at Jouberton on their way to Klerksdorp. All Boykie's comrades were released after approximately 14 days in detention, but Boykie was never released and disappeared with no trace to date. In September 2007 I sent a formal letter to the Commander of the Serious and Violent Crimes Unit in Klerksdorp for investigations to be conducted on the matter but never received any response thereto until I left PCLU. The letter is attached hereto and marked as annexure "MCM4".

MURDER OF BATANDWA NDONDO

74 In 2006 former Head of TRC Investigations and cousin to Batandwa Nondo, Adv Ntsebeza SC submitted a formal request to the NPA to look into his murder. Batandwa Nondo was a 22-year-old student leader at the then University of Transkei. He was shot dead on 24 September 1985 in his hometown of Cala in the Eastern Cape after being lured into an ambush in an operation carried out by Transkei Security Branch and Vlakplaas askaris. In 1987 an inquest was held into his death, and four people were implicated, namely Gcinisiko Lamont Dandala, Mbuso Enock Shabalala, Silikami Mose and Xolelwa Shosha. In August 1998, Dandala, Shabalala and Eugene De Kock applied for amnesty and only De Kock and Shabala were granted amnesty, but it was refused in respect of Dandala. After conducting a preliminary enquiry into the matter, I discovered that only one person was still alive and that it was Section Commander, Dandala and the rest were deceased. As with other TRC cases, there was no investigative capacity to take the investigation forward, so this matter suffered the same fate as others.

75 According to the Terms of Reference, the Commission must determine:

“whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases; whether any members of the South African Police Service or the National Prosecuting Authority improperly colluded with such attempts to influence or pressure them;.....”

76 I can state that during my time handling TRC cases and serving in the “TRC Task Team”, I never experienced any attempt or efforts to influence or pressure me to stop investigating or prosecuting TRC cases. However, I consider the conduct of my former supervisor, Nigel Carpenter with regards to the case of State v Aaron Tyani and Phumelele Gumengu to have been obstructive.

E THE PERIOD 2007-2009

77 From late 2007 until approximately June 2009, there was a marked decline in progress on TRC-related matters. As a result, the TRC Task Team became largely dysfunctional, and my role within that structure was effectively rendered redundant. This position is confirmed by Adv Chris Macadam in paragraphs 55 to 58 of his affidavit submitted to this Commission. To the best of my knowledge, and based on my direct involvement at the time, this decline was not attributable to any political interference.

78 This was a professionally difficult period, characterised by a lack of prosecutorial work. In an effort to maintain my courtroom proficiency, I requested my former DPP, Mr Lusu, to permit me to undertake circuit court work in the Transkei. That arrangement endured for a limited period. Upon my return to Pretoria, I requested Adv Ackermann SC to facilitate my secondment to the Specialised Commercial Crime Unit (SCCU) in Pretoria, in order to broaden my experience beyond the general prosecution work I had undertaken in Mthatha and at the PCLU.

79 My tenure at the SCCU was brief. I was thereafter persuaded by the Head of Communications, Ms Bulelwa Makeke, together with Dr Ramaite SC, to assume the position of National Spokesperson for the NPA following the departure of Mr Tlali Tlali to the Department of Justice. That transition marked my complete departure from the TRC Task Team and its work. From that point onward, I had no further involvement in TRC-related matters until 2025, when I was requested by NPA leadership to assist in coordinating Commissions of Inquiry.

F RESPONSE TO PARAGRAPHS 21, 48, 49 AND 50 OF STATEMENT BY GENERAL PC JACOBS

80 At the outset, I wish to express my reservations at being called before this Commission to address or respond to what I understand to be a concern raised by General Jacobs regarding a proposed amendment to the minutes of the TRC Task Team. Upon perusal of the Rule 3.3 Notice served on me on 6 March 2026, I respectfully raised this concern with the Secretariat of the Commission, inquiring whether there were other issues I was required to address. I did so because I took the view that what I was being called upon to respond to fell outside the scope of the Commission's Terms of Reference.

81 Upon a closer reading of General Jacobs' statement, I found no suggestion, in his evidence, that I was in any way implicated in delaying the investigation or prosecution of TRC cases. Yet the Notice states that his evidence "implicates, or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters." I have scrutinised the specified paragraphs—21, 48, 49, and 50—and I am unable to discern any basis for such a characterisation.

82 I am therefore left to wonder: which parts of the quoted paragraphs implicate me in efforts or attempts to halt or suppress the investigation or prosecution of TRC matters? With respect, such an inference would be entirely inconsistent with my record. I have, in this statement, set out in detail the work

I undertook under difficult circumstances to investigate and prosecute TRC cases. The suggestion that I would have sought to impede such work is, on the evidence of my own conduct, untenable.

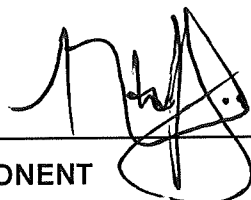
- 83 Nevertheless, out of respect for the work of the Commission established by the President, I have complied with the Notice by submitting this statement, and I have expressed my willingness to appear before the Commission should it be considered necessary.
- 84 In response to the contents of the four paragraphs, I confirm that I sent the emails to which General Jacobs refers. The context in which I wrote those emails was a genuine attempt to seek clarity on the veracity of what General Jacobs sought to have included in the minutes I had prepared.
- 85 My concern was this: he wished me to include information that had been reported to him by a third party, without any confirmation of its accuracy. Specifically, the information pertained to an allegation that the late Mr Jackie Selebi had reported that Reverend Chikane had expressed a view against prosecution in a matter where he himself was the victim—the case against the late Adriaan Vlok and others. I raised this concern because Adv Ackermann SC had reported to me, on the basis of his direct engagement, that Reverend Chikane in fact supported the prosecution of Adriaan Vlok and his co-accused. The two versions were irreconcilable, and I considered it improper to record in official minutes an unverified account that contradicted what I had been told by a senior colleague who had direct knowledge of the matter.
- 86 When General Jacobs insisted that I include the information despite my reservations, I indicated that I noted his email and would await inputs from other members of the Task Team before finalizing the minutes. I do not consider the position I adopted to be untoward in any respect. To the contrary, I believe it reflected a proper regard for accuracy and the integrity of the official record.

87 With respect, I take the firm view that the conduct described above cannot reasonably be construed as efforts or attempts to halt or suppress the investigation or prosecution of TRC matters, as the Notice suggests. I am therefore unclear why this issue has been singled out for attention, and I trust that my appearance before the Commission will afford an opportunity to clarify any misunderstanding that may have arisen.

G CONCLUSION

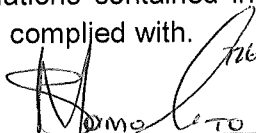
88 I remain committed to the work that the NPA is mandated to do as a prosecutorial component within the criminal justice system and would never act in a manner that seeks to undermine its commitment to hold those accused of criminality accountable and efforts to uphold the rule of law. We owe it to our liberators who perished at the hands of the ruthless apartheid government to effectively investigate and prosecute those who mercilessly inflicted unbearable pain to the families of our departed heroes and heroines who did not live to enjoy the fruits of their sacrifices.

89 I am willing and able to appear before the Commission and give oral evidence in support of its work should a need arise.



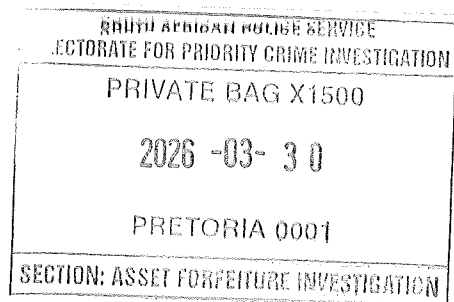
DEPONENT

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 30 day of **March 2026** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended have been complied with.



 2026/03-30
 COMMISSIONER OF OATHS

COMMISSIONER OF OATHS
FULL NAMES: Tshediso Obengwe Mamoale
CAPACITY: Constable
AREA: 123 Westlake Avenue, Waverley
 Park, Silverton, Pretoria
 Page 24 of 24



MINUTES OF THE MEETING OF TASK TEAM ON TRC CASES 16/11/2006

Members present:

Dr Ramaite
 Adv Ackermann SC
 Adv Chris Macadam
 Comm Jacobs
 Yvonne Mabule
 Marlyn Raswiswi
 Nhlanhla Ngidi
 Mthunzi Mhaga

Apologies: Josias Lekalakala
 Brian Koopedi

Minutes of the last meeting read and adopted as true reflection of the meeting.

Matters arising from the minutes of the last meeting discussed.

Adv Macadam informed the meeting of a representation from the family of Claire Steward who requested investigations of the matter.

Adv Ackermann raised a concern over the impression created by the revised audit report from SAPS that he had indicated his intentions of exploring the possibility of prosecuting the President and 37 ANC leaders. He contended that it was SAPS through Supt Brits who had persuaded in vain the PCLU to prosecute the President as there was enough evidence on the case. He said that SAPS was the driving force behind such prosecution and Adv Macadam produced a letter he wrote to Supt Brits in which he indicated that no sufficient evidence exists to institute such prosecution. He asked Comm Jacobs if he agrees with that contention.

Dr Ramaite enquired from Adv Ackermann on the relevance of the complaint but also said he understood his frustration. He however called upon any agency intending to have an input on the matter to come forward with such.

Adv Ackermann wanted to know from Comm Jacobs who compiled the report and why was it necessary to include cases that had been finalised and request inquests on such matters.

Comm Jacobs indicated that he compiled the report and requested guidance from the meeting on how to deal with outstanding inquests. He said they had six inquests, some had been finalised and others not done at all and that all were TRC matters.

Adv Macadam clarified the position relating to the case against the President and the 37 ANC leaders.

Adv Ackermann indicated that he was really not happy with the report ^{SAPS} ~~about the ANC~~ _{CA}

~~MS~~

[Handwritten signatures]

Dr Ramaite asked if a reconciled report with SAPS and PCLU had been compiled to consolidate all TRC cases for investigations. In so far as the President maintained that as long the status quo remains the same the matter will be considered closed.

Mthunzi and Comm Jacobs undertook to compile such a report with a view of identifying cases for appointment of investigating officers by SAPS as Comm Jacobs indicated that he Comm de Beer has undertaken to appoint a investigators for all cases.

Dr Ramaite asked the task team to agree on the time frame for final recommendations as we only had interim recommendations pertaining to some cases.

Yvonne raised a concern on identifying matters to utilise NIA on security aspects but agreed that on completion of investigations and receipt of representations from perpetrators such could be dealt with depending on the circumstances of the cases.

Anton suggested NIA provides the PCLU with any information they might have on these cases fro a security point of view.

Mthunzi was requested to compile a draft progress report on the task team to be submitted to the NDPP and other principals. The

Adv Macadam asked to be excused fro the meeting.

It was agreed that the task team has indeed made progress as there were already cases identified fro investigations and interim recommendations made on some cases.

The meeting was then closed and Mthunzi was asked to arrange a suitable date for the next meeting and that PCLU and SAPS must place before the task team a reconciled list of cases for appointment of investigators within two weeks

BATCH 2
JACOBS E-H.

Received 2006/11/16

E (6)

MINUTES OF "TASK TEAM ON TRC CASES" MEETING 6/11/06

Members present:

- Adv Ackermann SC
- Comm Jacobs
- Brian Koopedi
- Yvonne Mabule
- Marlyn Raswiswi
- Nhlanhla Ngidi
- Josias Lekalakala
- Mthunzi Mhaga

2 weeks
Draft
meet on 10/5
Meet
1st week December
Reconciliation

Apologies:

Meeting started at 09H15 and Dr Ramaite requested Mr Ngidi to chair the meeting because he was attending a meeting with the NDPP. Minutes of the last meetings were adopted with a few amendments.

Adv Ackermann dealt with the revised audit report which incorporated an objection of the proposed reappointment of Mr Britz to assist SAPS in compiling their report. However Comm Jacobs maintained that he had been misunderstood as he never said he will seek the services of the said Mr Britz. The matter was therefore closed as no further action was contemplated.

A revised audit report from SAPS was circulated to all members but it was felt that it would be fair for members to study the report and reserve their deliberations for our next meeting.

Brian suggested that Adv Ackermann should proceed with the prosecutable matters reflected in PCLU's first report. The suggestion was supported and he proceeded as such.

In identified

During his presentation several recommendations were made except for a few matters which were held in abeyance pending further information. *I must mention however that for the purposes of these minutes I deem it fit not to give such detailed recommendations as a full progress report is still to be compiled on all these matters.*

It is however worth mentioning that When Adv Ackermann informed the meeting that a decision to prosecute has already been made by the NDPP on the Reverend Chikane case, Josias indicated that recommendations of

P.B.G. [Signature]

the "task team" are necessary because the National Commissioner is of the view that Rev Chikane is not interested in prosecution of the matter. He suggested that contact has to be made with Rev Chikane to ascertain his attitude. *Ackermann also informed that NPA discussed the matter with Rev. Chikane.*

According to Adv Ackermann the complainant (Rev) indicated that he leaves the matter in the hands of the NPA. It was then decided that the latter's attitude be ascertained and the matter was therefore closed pending a feedback on his attitude.

Brian and Adv Ackermann asked to be excused and they left the meeting but shortly thereafter it was closed and Mthunzi was tasked with arranging the date and venue for the next meeting.

Prepared by Mthunzi Mhaga

MA *31*

MINUTES OF TASK TEAM MEETING 29/01/2007

Members Present:

- Adv Ackermann SC
- Mthunzi Mhaga
- Nhlahlhla Ngidi
- Comm Jacobs
- Brian Koopedi
- Yvonne Mabule
- Marilyn Raswiswi
- Josias Lekalakala

Apologies: Dr Ramaite

The meeting was chaired by Mr Ngidi due to unavailability of our Convenor Dr Ramaite.

The minutes of the last meeting were read and adopted with some amendments and Yvonne requested for elaborations on minutes in future.

Adv Ackermann SC requested members for their inputs with a view to finalise the draft report to be submitted to the National Director. Commissioner Jacobs indicated that he was made to understand that Rev Chikane was not interested in the prosecution of the accused in his case, therefore he needs to be consulted and the matter needs to be discussed with their principals before making recommendations.

Adv Ackermann SC reminded the meeting that the National director has made his decision on the matter. Yvonne concurred with Comm. Jacobs on Rev Chikane matter. Mr Ngidi however had no objection to the National director's decision on the Rev Chikane matter.

Comm Jacobs informed the meeting that he has gone through the docket on the Highgate Hotel attack and is of the view that no further investigations is necessary. It was agreed that PCLU would have to look at the docket.

It was then agreed that Mthunzi will be provided with all the views of the agencies after meeting with their principals before 7/2/7 and finalise the report.

Comm Jacobs informed the meeting that he is waiting for a feed back from Provincial Commissioners on the appointment of investigators. Some had responded and provided him with a list of the investigators. He also requested a list of SAPS dockets in possession of the PCLU.

The meeting was then closed.

BATCH
JACOBS' AFFIDAVIT
1 TO Q.

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6?
6

MINUTES OF A TRG MEETING HELD ON 4 DECEMBER 2007

1. PRESENT:
Dr Ramalfe
Adv. Ackermann SC
Comm Jacobs
Josias Lekalakala
Irene Freeman (standing in for Mr Ngidi)
Maryln Raswiswi
Mthunzi Mhaga
2. APOLOGIES:
Brian Keopedi (overseas)
Yvonne Mabule (sick leave)
Mhlauhla Ngidi (meeting)

3. MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were read and adopted with amendments.

4. MATTERS ARISING

4.1 Matters that arose from the minutes were the following:

- 4.1 Draft report on the progress of the task team; and
- 4.2 The Highgate Hotel case.

4.2 Josias suggested that members need to consult with their principals before the trial report is submitted to the National Director. Members were requested to mail their inputs after consulting their principals before 7 December 2006.

4.3 Josias also asked if NIA had submitted any opinion relating to security aspects of cases identified for prosecution.

4.4 Dr Ramalfe drew attention to page 2 of the minutes on Yvonne's concern.

4.5 Commissioner Jacobs informed members that he has sent a letter to Commissioner de Beer and the list of all investigators will be ready soon.

4.6 Adv Chris Macadam indicated that we need to adopt a wait and see approach as all perpetrators will probably make representations in anticipation of prosecution upon completion of investigations.

4.7 He also briefed the meeting on the Claire Stewart case.

[Handwritten signature]

He also informed the meeting of media reports on reopening of the Highgate Hotel attack in East London. It was agreed that Commissioner Jacobs and Adv Mhaga will work together on the matter.

4.8 Adv Macadam suggested that there is a need to establish a data base to determine information available on all cases.

5. ~~The meeting ends at~~

6. NEXT MEETING

The next meeting will take place next year at a date to be arranged by Mthunzi.

7. Proposed agenda for next meeting

- (a) Minutes of the last meeting ✓
- (b) Matters arising
- (c) Finalization of draft report
- (d) Appointment of investigators
- (e) Other matters
- (f) Next meeting

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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No.: CC66/2024

In re: Inquest into the Highgate Hotel attack and the deaths of-

- 1. STANLEY HACKING
- 2. DOUGLAS WILLIAM GATES
- 3. ROYCE MICHAEL WHEELER
- 4. DEON WAYNE HARRIS
- 5. DERIC JOHN WHITFIELD

(1)	REPORTABLE: <input checked="" type="checkbox"/> YES / NO
(2)	OF INTEREST TO OTHER JUDGES: <input checked="" type="checkbox"/> YES / NO
(3)	REVISED.
28 November 2025	
DATE	SIGNATURE

JUDGMENT

POTGIETER J

TABLE OF CONTENTS

1.	INTRODUCTION:	3
2.	CONTEXT OF THE ATTACK:	3
3.	BRIEF OVERVIEW OF THE INCIDENT:	5
4.	NATURE OF THE PROCEEDINGS:	7
5.	THE EVIDENCE:	15
5.1	OVERVIEW OF THE EVIDENCE: THE AFFECTED INDIVIDUALS.....	16
5.1.1	VICTIMS:	16
5.1.2	SURVIVORS:.....	17
5.1.3	RELATIVES:	18
5.2	EARLY INTERACTIONS WITH THE AUTHORITIES AND THE APLA THEORY:	19
5.3	ROLE OF DR EDLMANN:.....	20
5.4	INVESTIGATION BY CAPTAIN DARRYL ELS AND BETRAYAL OF THE SURVIVORS:	21
5.5	INTIMIDATION AND SURVEILLANCE:.....	22
5.6	ENCOUNTERS WITH INFORMANTS AND WITNESSES:	23
5.7	SYSTEMIC, INVESTIGATIVE, AND INSTITUTIONAL FAILURES:	25
5.8	THE FINGERPRINTS DEBACLE:	29
5.9	BALLISTICS AND EXPLOSIVES FAILURES:	32
5.10	OTHER INVESTIGATIVE LAPSES:	34
5.11	FAILURE TO HOLD A TIMELY INQUEST :.....	36
5.12	POLITICAL INTERFERENCE AND 'CLOSURE' OF APARTHEID ERA CASES:	37
5.13	NARRATIVES:	39
5.13.1	THE APLA NARRATIVE:.....	39
5.13.2	THE HAMMER UNIT NARRATIVE:.....	41
5.13.3	THE DISGRUNTLED PATRONS NARRATIVE:.....	42
5.13.4	THE ASKARI NARRATIVE :	43
5.13.5	THE FALSE FLAG NARRATIVE:	45
6.	SUMMARY OF THE EVIDENCE :.....	46
7.	CONCLUSION :	46
8.	FINDINGS :	48
9.	CLOSING REMARKS	49

INTRODUCTION

[1] On 1 May 1993, at approximately 22h00, unidentified gunmen armed with automatic rifles launched a deadly attack on the unsuspecting patrons who, at the time, were frequenting the Highgate Hotel situated at 2 Voortrekker Road, Cambridge, East London, Eastern Cape. Five people were killed, and several others were wounded during the incident.

[2] The present proceedings in terms of the Inquests Act, 58 of 1959 ('the Act'), are a belated sequel to that occurrence. It is not entirely clear why it took more than three decades for these proceedings to materialise. There can be no doubt that this must have added significantly to the anguish and trauma of the affected parties. It is a blight on the efforts of the country to come to terms with its disgraceful past that this matter was seemingly allowed to simply linger for far too long. It is neither helpful nor constructive to compare the history of this matter to investigations of similar incidents that also occurred during the past political conflict, but suffice it to say that it is difficult to ignore the impression that this matter was previously treated with indifference. In some material respects, the police investigation was substandard, and after such a significant time lapse, relevant records, information, and exhibits have become untraceable or are no longer available. Nonetheless, the patent gratitude of the affected parties that the matter has finally received the necessary attention stands as a testament to their admirable magnanimity and generosity of spirit.

CONTEXT OF THE ATTACK

[3] During the period relevant to these proceedings, South Africa was emerging from almost 5 decades of oppressive and racially discriminatory Apartheid rule and was well on its way to becoming a constitutional democracy. The Interim Constitution, Act 200 of 1993, which provides for an entrenched Bill of Rights, was drafted between May and November 1993 and assented to on 27 January 1994. It commenced on 27 April 1994

and governed South Africa's first democratic non-racial elections. It was replaced by the final Constitution, Act 108 of 1996, on 4 February 1997.

[4] By May 1993, the country was in a state of transition and intense political conflict. The assassination of Mr Chris Hani on 10 April 1993 sparked widespread and escalating violence and demonstrations across the country, causing a climate of increasing political instability and volatility, with the potential of the country descending into a spiral of chaos. There was growing resistance to the inevitable political change from the right-wing groups, and there was a third force at work coordinating deadly attacks and fomenting so-called 'black on black' violence, particularly involving supporters of the African National Congress ('ANC') and the Inkatha Freedom Party ('IFP'). By way of illustration, townships in the then Pretoria, Witwatersrand and Vereeniging ('PWV') Area, such as Boipatong and Thokoza, were sites of intense conflict and deadly violence, leaving scores of people dead and rendering the affected areas effectively ungovernable. Deadly clashes took place in Thokoza between ANC and IFP supporters on 22 May 1993, leading to at least nine deaths and 69 injuries, the vast majority among the non-IFP group, according to the Truth & Reconciliation Commission ('TRC') final report. The incident reportedly resulted from a march by ANC supporters from the Thokoza Stadium to the Alberton police station to present a memorandum. The violence erupted when the marchers reached the Thokoza hostel compounds (housing mainly IFP supporters). Armed IFP supporters were present outside the hostel, and both sides engaged in shooting. Afterwards, both sides gave conflicting accounts of the incident. The ANC claimed police shot at marchers, while the IFP hostel-dwellers stated that the police fired tear gas at them. I should add that both accounts are in keeping with the fact that some state actors instigated so-called 'black on black' violence at the time.

[5] The purpose of those who were behind these incidents was to derail the negotiations to end Apartheid rule. The country was on the proverbial knife-edge. A coalition of 21 right-wing parties, the Afrikaner National Front, was founded in May 1993, signalling increased resistance to the political negotiations. This era was probably the bloodiest in the history of the liberation struggle. It was only steadfast, insightful, and committed

political leadership that had managed to keep the country on the right course to a political settlement and transition to a constitutional democracy.

[6] The Highgate attack was undoubtedly a false flag operation. The perpetrators clearly intended to pass the incident off as a racially inspired armed attack on defenceless white citizens by the Azanian People's Liberation Army ('APLA'), the military wing of the Pan Africanist Congress ('PAC'), likely to fuel inter-racial conflict and undermine a political settlement. That false impression has been debunked and rebutted in the present proceedings, as more fully appears from the summary of the evidence that accompanies this judgment as Annexure 'A'. I should point out that the then commander of APLA, Mr Letlapa Mphahlele, testified and effectively refuted the view that APLA was responsible for the attack or that the telephone call a few days later to the Citizen Newspaper by a Mr Karl Zimbiri claiming responsibility for the attack on behalf of APLA, was genuine. I will return to this issue later in the judgment.

[7] Ironically, the 1993 Nobel Peace Prize was shared by the South African political leaders, Mr Nelson Mandela and Mr FW de Klerk, as it was stated 'for their work for the peaceful termination of the apartheid regime, and for laying the foundations for a new Democratic South Africa'.

BRIEF OVERVIEW OF THE INCIDENT

[8] The incident occurred on a Saturday evening at a time when the hotel was busy. There were patrons in all the bars, namely the Public/Men's Bar, the Ladies Bar, and the Open Arms Bar. The attack started around 22:05, reportedly in the Public Bar, when a gunman entered through the door armed with an automatic rifle (confirmed to have been an AK-47) and started firing indiscriminately at the patrons, spraying them with bullets. A hand grenade and a teargas canister were also detonated in the bar. Another gunman entered the Ladies Bar and fired at the patrons, also with an AK-47. One of the patrons, Mr Edward Beyman Lombard, returned fire from the direction of the bar counter with a .38 Special Rossi revolver. Mr Lombard testified that he is a reasonable shot and he is convinced that

he struck the attacker on the body with a few rounds. He expressed the view that the attacker must have been wearing body armour because the bullets did not affect him.

[9] The attackers intended to cause maximum harm and loss of life. According to the relevant ballistics report, exhibit 'N', fifty-six 7.62 x 39mm (assault rifle) calibre spent cartridges were recovered at the scene. Nineteen were fired from one rifle and twenty-eight from a second rifle. Seventeen 7.62 x 39mm calibre discharged bullet points were recovered. Four were fired from one rifle and six from the second. One bullet was recovered from the leg of a survivor, Mr Karl Webber, who was shot in the Ladies Bar. It came from the second rifle.

[10] Nine .38 Special spent cartridges, all fired from the same revolver, were recovered at the scene. One discharged .38/.357 calibre bullet point was also found in the door frame at the hotel entrance, which was fired from the position occupied by Mr Lombard.

[11] Various bullet holes were found. Seven in the foyer leading to the Ladies and Open Arms Bars, which were fired from the hotel entrance. One was fired through the wooden panel of the door of the Open Arms Bar. Seven more resulted from shots fired inside the bar from the direction of the door. Three holes towards the back of the bar were caused by gunfire from a direction consistent with the position of Mr Lombard. Thirty holes were found in the Public Bar, mostly through the bar counter, caused by gunfire from the direction of the bar door.

[12] A teargas grenade was detonated inside the Public Bar. A hand grenade was lobbed over the counter and landed in the adjacent pool room, where it exploded and damaged the wall. The explosives expert, Mr Charl Naude, in his report exhibit 'O', had regard to the used teargas canister and the fly-off levers of the strike (igniting) mechanisms of both devices that were found afterwards inside the bar. He identified the teargas canister as a hand smoke/anti-riot grenade deployed to emit teargas. These grenades were manufactured at the Swartklip Products factory in Mitchells Plain, Cape Town, and were primarily supplied to the police and the defence force, as well as to the TBVC States

(Transkei, Bophuthatswana, Venda, and Ciskei). He identified the type of hand grenade by means of the fly-off lever and the damage which resulted when it exploded, causing a typical crater associated with high-explosive hand grenades. He concluded that it was an RPG-5 anti-personnel fragmentation grenade. These were manufactured either in China, the Soviet Union, or other Eastern Bloc countries and were never procured by the South African Defence Force.

[13] Mr Deric Whitfield, one of the patrons who was shot in the Public Bar, managed to crawl to the front parking area, where he later succumbed. Four patrons were shot and killed in the Ladies Bar: Mr Douglas William Gates, Mr Stanley Hacking, Mr Deon Wayne Harris, and Mr Dave Royce Michael Wheeler. In addition, a total of 7 people were injured in the attack.

[14] Eyewitnesses testified that the attackers were wearing balaclavas. There was an indication that they had black cream on their faces, and one attacker was wearing police issue boots.

[15] After the attack, the perpetrators nonchalantly left the scene. They were apparently in no hurry to get away and seemingly had no fear of being arrested. Two of them were seen by a witness, Ms Broderick, who lived close to the hotel as they were moving on Voortrekker Road, which runs past the hotel. One assailant had a rifle openly slung over his shoulder.

[16] Security forces and emergency services arrived at the hotel shortly after the incident and took control of the crime scene.

NATURE OF THE PROCEEDINGS

[17] An inquest is a judicial investigation into a death not due to natural causes, where no resultant criminal proceedings are instituted. Section 5¹ of the Act requires, in such a

¹ The section provides as follows:

case, that the prosecuting authority submit the relevant documentation to the magistrate of the district where the incident occurred, who is in turn obliged to ensure that an inquest is held into the incident and that the documentation is provided to the judicial officer who is to hold the inquest.

[18] Section 6² authorises the Minister of Justice to request the relevant judge president to designate a judge to hold an inquest at any place determined by the judge. I should add that this procedure was followed in the present matter, where I determined that the proceedings would be held at the Special Investigating Tribunal premises in East London, mainly for the convenience of the victims, the next-of-kin of the deceased, and the other affected parties.

[19] At the commencement of the proceedings, I granted an order in terms of section 6A³, that a joint inquest be held into the deaths of all 5 deceased. The matter then proceeded on that basis and was held in public. Attorneys and counsel represented some of the victims and affected families. The Director of Public Prosecutions was represented by a team of 6 counsel.

5 When inquest to be held

- (1) If criminal proceedings are not instituted in connection with the death, or alleged death, the public prosecutor referred to in section 4 shall submit those statements, documents and information submitted to him to the magistrate of the district concerned.
- (2) If on the information submitted to him in terms of subsection (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes, he shall, subject to the directions of the Minister, take such steps as may be necessary to ensure that an inquest as to the circumstances and cause of death is held by a judicial officer in terms of section 6 ...

² The section is to the following effect:

6 Judicial officer who is to hold inquest

An inquest shall be held –

...

- (d) where the Minister has so requested a judge president of a provincial division of the Supreme Court, by any judge of the Supreme Court of South Africa designated by the judge president concerned, and notwithstanding anything to the contrary in any law contained, such inquest may be held at any place from time to time determined by such judge.

³ The section provides in relevant part that:

6A Multiple deaths which are connected

- (1) Where more than one death has occurred, the attorney-general or the public prosecutor within whose area of jurisdiction the incident is alleged to have occurred may request the judicial officer who is to hold an inquest to hold a joint inquest into the deaths of the persons involved.
- (2) After the hearing of the request referred to in subsection (1) the judicial officer may order that a joint inquest shall be held if he is of the opinion that the deaths concerned are connected.

[20] The object of the Act is 'in the interest of the public and for the administration of justice, to conduct an official investigation into and to obtain a finding by a judicial officer on whether or not the death of a person who has died from other than natural causes was caused by an act or omission which includes or amounts to an offence by anybody.'⁴ Section 16(2) of the Act requires the court to record findings as to the identity of the deceased, 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.

[21] The courts have frequently commented on the purpose of an inquest. The Appellate Division stated in *Tiley*⁵:

The function of an inquest is to determine 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 involving or amounting to an offence on the part of any person ... 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.

[22] The court in *Tiley*⁶ further referred with approval to the following dicta in *Timol*⁷:

[F]or the administration of justice to be complete and to instill confidence, it is necessary that, amongst other things, there should be an official investigation in every case where a person has died of unnatural causes, and the result of such investigation should be made known. Therefore, the Inquests Act provides that, if there is reason to believe that a death has occurred, that such death was not due to natural causes and that it was not followed by the institution of criminal proceedings, there shall be an inquest as to the circumstances of the death.

⁴ LAWSA Vol 20(2) para 251.

⁵ *Marais NO v Tiley* 1990(2) SA 899(A) at 901E-G.

⁶ At 901G-J.

⁷ *Timol & Another v Magistrate, Johannesburg & Another* 1972(2) SA 281 (T) at 287H-288A and 292A-B.

...

[T]he inquest must be so thorough that the public and the interested parties are satisfied that there has been a full and fair investigation into the circumstances of the death.

[23] In *De'Ath*⁸ the court referred to the historical position regarding inquests:

The predecessors of the Act show clearly that the purpose of all inquests is to investigate whether, when someone has died or is suspected of having died otherwise than of natural causes, his death has been the result of a criminal offence, and, if so, who the offender is. An inquest is not aimed at proving anyone's guilt, but is most certainly aimed at ensuring that, if possible, where guilt exists, it will not remain hidden.

[24] The court in *Padi*⁹ referred to the following statement in an academic article emphasising the public importance of inquests, which are particularly pertinent to the present matter:

By statute, the inquest serves to ascertain the identity of the deceased, cause of death, date of death, and whether or not the death was brought about by any act or omission involving an offence on the part of any person. Where sufficient evidence is brought to light, the inquest yields to a criminal prosecution.

An inquest's most important function is not this simple determination of facts, however. Public satisfaction is its *raison d'être*; to reassure the public that every possible step will be taken to prevent similar deaths in the future; preserve, where pertinent, the integrity of the State by refuting all allegations of official misconduct, malfeasance, or negligence; and where the State's, an agency's or person(s)'s culpability is substantiated, bringing forth criminal indictments, remedial measures and policy changes necessary to quickly restore confidence in the central authority.¹⁰

⁸ *De'Ath (substituted by Tiley) v Additional Magistrate, Cape Town* 1988(4) SA 769 (C) at 775G; cf *In re: Goniwe & Others (Inquest)* 1994(3) SA 877 (SE) at 878A-E (*Goniwe*).

⁹ *Padi & Another v Botha NO & Another* 1996(3) SA 732 (W) at 740J - 741B.

¹⁰ DJ Akerson *An Inquest – Law Inquest* (1989) 5 SAJHR 209.

[25] The importance of properly investigating deaths is explained as follows in *Van Heerden*¹¹:

The State has an interest in the proper investigation of deaths due to other than natural causes. Even if nobody can be held responsible for a death in a particular case, it may still remain pertinent to determine the circumstances and cause of death in order that appropriate measures can be taken to prevent similar occurrences.

[26] As indicated, the Act obliges the judicial officer to make findings as to the identity of the deceased, the cause or likely cause of death, the date of death, and whether *prima facie* the death resulted from an offence committed by any person¹². Where it is not possible to make any one of such findings, this fact must be recorded by the judicial officer.¹³

[27] The courts have adopted differing approaches to the standard of proof applicable to findings under section 16(2) of the Act. Section 16(2)(d) was amended by Act 45 of 1990, which introduced the term '*prima facie*' in relation to the cause of the death under investigation. Pursuant to the amendment, the court is required to make a finding whether the death was caused by conduct which *prima facie* amounts to or involves an offence.

[28] Commenting on the previous version of section 16(2)(d), ie, excluding the words '*prima facie*', the court pointed out in *Claassen*¹⁴ that the subsection does not indicate what standard of proof should be applied. The court thus accepted that in the absence of

¹¹ *Van Heerden & Another v Joubert NO & Others* 1994(4) SA 793 (A) at 795D.

¹² Section 16(2) provides that:

16 Finding

...

- (2) The judicial officer holding an inquest shall record a finding upon the inquest –
- (a) as to the identity of the deceased person;
 - (b) as to the cause or likely cause of death;
 - (c) as to the date of death;
 - (d) as to 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.

¹³ Section 16(3) provides that:

- (3) If the judicial officer is unable to record any such finding, he shall record that fact.

¹⁴ *Claassen v Landdros, Bloemfontein* 1964(4) SA 4 (O) at 11C.

any other obvious standard, the judicial officer was required to decide on a balance of probabilities.¹⁵ The test envisioned by the Legislature was accordingly unclear.

[29] The court in *Webster*¹⁶ dealt with the interpretation of the amended subsection and concluded that the test to be applied is the criminal standard, namely, proof beyond a reasonable doubt. The court further held that the words '*prima facie*' were introduced in the subsection merely to show that inquest findings are not final and binding determinations immediately affecting the legal rights and obligations of the affected parties. The latter remains to be determined in subsequent civil or criminal proceedings.

[30] The court in *Goniwe* differed from the decision in *Webster*, indicating that when the amendment was introduced, it was already known that inquest findings are not finally determinative of any legal rights or obligations. No amendment was accordingly necessary to clarify this fact. The decision in *Claassen* shows that the test to be applied was not clear. This was the mischief that the amendment sought to address; it was not to clarify a well-established position. The court indicated that:

The section, as I read it, now provides that the presiding officer must record a finding in terms of s 16(2)(d) if, in his opinion, the evidence establishes *prima facie* that an offence causing the death of the deceased has been committed by any person. This conclusion is, in my view, supported by the fact that s 16(1) of the Act specifically requires proof beyond a reasonable doubt for a positive finding that a death has occurred in a case where no body is found. When s 16(2)(d) was amended the Legislature, in my opinion, provided for a different standard of proof.¹⁷

[31] The court continued to consider the exact meaning of the words *prima facie* in this context. It rejected the contention that the applicable test is that applied in a discharge

¹⁵ It is stated as follows in the original text: 'Art. 16(2)(d) dui nie aan watter maatstaf eerste verweerder moes gebruik het om tot n bevinding te geraak nie. Vir doeleindes van hierdie uitspraak sal dit aanvaar word – aangesien daar geen ander voor die hand liggende maatstaf is nie – dat eerste verweerder geroepe was om op n oorwig van waarskynlikhede te beslis.'

¹⁶ *Inquest into the Death of Dr David Joseph Webster* Unreported WLD judgment by Stegmann J dated 22/1/1993 referred to, but not followed in *Goniwe* (supra note 8) at 879A–F.

¹⁷ At 879 E – F.

application in a criminal trial or for absolution from the instance in a civil trial and pointed out that it is problematic to apply a test applicable to adversarial proceedings in inquisitorial proceedings, such as an inquest. The court went on to say that:¹⁸

In deciding whether a *prima facie* case has been established some regard must, in my opinion, be had to the reliability and credibility of witnesses if they had given evidence at the inquest. The fact that evidence has been produced which, if accepted, would prove that some person has committed an offence which brought about the deceased's death will, in my opinion, not be sufficient to justify a positive finding if it is obvious to the officer presiding at the inquest that there is no prospect of such evidence being believed at a subsequent criminal trial.

[32] Insofar as the applicable standard of proof is concerned, the court stated that:¹⁹

Bearing in mind the object of an inquest it is my opinion that the test to be applied is not the 'beyond reasonable doubt' test but something less stringent. In my opinion, the test envisaged by the Inquests 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 any act or omission which involves or amounts to the commission of a criminal offence on the part of some person or persons.

[33] In the matter of *Padi*,²⁰ the court considered the above-mentioned conclusions in the matters of *Webster* and *Goniwe* concerning the standard of proof applicable to findings in terms of section 16(2)(d) of the Act. The court supported the reasons advanced in *Goniwe* for disagreeing with the conclusion in *Webster* that the standard is proof beyond a reasonable doubt. Reference is then made to the unreported judgment of Levy J delivered on 23 June 1994 in the Namibia High Court in the inquest into the death of Adv ATEA Lubowsky that fully supports the rejection by the court in *Goniwe* of the beyond a

¹⁸ At 879H – 880A.

¹⁹ At 880B-C.

²⁰ Supra note 9.

reasonable doubt standard in *Webster*, describing it as 'obviously incorrect'. Levy J then commented as follows with regard to the application of the standard:²¹

However, I respectfully do not agree with Zietsman JP when he says in respect of the words '*prima facie*' that 'the test envisaged by the Inquests Act is whether the judicial officer ... is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable'. For reasons I have already stated, there may be no criminal trial. The judicial officer is required on the evidence and documentation submitted to him to decide whether or not a witness is 'credible and acceptable' and if he is not his evidence must be rejected. If the judicial officer rejects that evidence, he may nevertheless be left with some remaining evidence '*prima facie* involving' a person or 'amounting to an offence' by a person. If the person so incriminated gives evidence in the inquest court, which is acceptable to the judicial officer and which gainsays the 'remaining evidence', there is then no *prima facie* evidence involving or amounting to an offence. Should the evidence not be acceptable to the inquest officer, the remaining evidence may well '*prima facie* involve' a person or 'amount to an offence'.

[34] The court in *Padi*²² supported the approach of Levy J to the application of the standard, which differs from that set out in *Goniwe*. The court indicated that the judicial officer holding the inquest is not required to determine the section 16(2)(d) findings, with reference to the credibility and acceptability that the evidence at the inquest might enjoy in a criminal trial. An inquest would not necessarily result in a criminal prosecution. It is an independent, separate process of significant import. The findings must be based on the presiding officer's own impressions and insights, and directed at the object of the inquest and fulfilling the task of the presiding officer. In this regard, presiding officers are not required to place themselves notionally in the shoes of the criminal court.

[35] I agree with the conclusion that the beyond reasonable doubt standard does not apply to inquests. I respectfully disagree with the application of the *prima facie* test set out in *Goniwe* and approach the present matter on the basis set out in *Padi* and *Lubowski*, with

²¹ This extract has been reproduced in (and is quoted from) *Padi* at 739G-I.

²² At 740G-I.

which I concur. The credibility and acceptability of the evidence must be decided on the totality of the evidentiary material placed before the hearing. The critical question is whether, in the opinion of the presiding officer, the evidence, on the face of it (or at first sight), indicates that the death resulted from criminal conduct on the part of a person or persons. In my view, this exercise is best captured by the following description of a *prima facie* case set out in *Mazibuko*²³ (and to be applied *mutatis mutandis*), namely whether 'a court, applying its mind reasonably, could conclude on the evidence in the case that the injuries to the plaintiff were caused by the negligence of the insured drivers'.

[36] Applying the last-mentioned approach to the present matter, the issue is whether the court could conclude, applying its mind reasonably to all the evidentiary material, that the deaths were caused by criminal conduct on the part of a person or persons. This is the approach that I will adopt to the matter.

THE EVIDENCE

[37] Extensive evidence was presented at the hearing, which lasted approximately five weeks. To promote a better understanding of the expansive account of the evidence that was led contained in the summary annexed to this judgment, I will proceed to give an overview of the evidence under the following subheadings: (a) the affected individuals; (b) early interactions with the authorities and the APLA theory; (c) the role of Dr Edelmann; (d) investigation by Captain Darryl Els; (e) intimidation and surveillance; (f) encounters with informants and witnesses; (g) systemic, investigative, and institutional failures; (h) the fingerprints debacle; (i) ballistics and explosives failures; (j) other investigative lapses; (k) failure to hold a timely inquest; (l) political interference; and (m) narratives.

²³ *Mazibuko v Santam Insurance & Another* 1982(3) SA 125 (A) at 133E-F.

Overview of the evidence

(a) The affected individuals

[38] The evidence showed that the victims, survivors, and affected relatives were deeply impacted by this senseless attack.

Victims

[39] Royce Michael Wheeler was a 46-year-old married man who was shot and killed.

[40] Deric John Whitfield was a 42-year-old married man and a respected businessman. During the shooting, he sustained a bullet wound to the chest and abdomen, which resulted in his death.

[41] Stanley Hacking was a 65-year-old widowed father. He was a regular patron at the hotel. He sustained bullet wounds to the chest, which ruptured his heart and lungs, resulting in his death.

[42] Deon Wayne Harris, the youngest victim, was a 26-year-old man with a bright future ahead. He was watching rugby on the day of the massacre. He sustained bullet wounds to his right and left lungs, which killed him. Deon would have celebrated his 27th birthday on 13 May, which was also the date that his sister, Lyndene Page, was due to give birth to his first niece.

[43] Douglas William Gates, a well-known and loved figure in East London, was 56 years old. He had a deep love for animals and worked at the SPCA. Douglas sustained a bullet wound to the abdominal wall, rupturing the blood vessels in his groin and buttocks, which led to his death.

Survivors

[44] Survivors described how their lives were not only devastated on the night of 1 May 1993, but in the decades that followed.

[45] The immediate aftermath of the Highgate Massacre left survivors and victims' families not only dealing with catastrophic physical and psychological trauma but also confronting the justice system, seeking justice for over three decades.

[46] Neville Beling ("Neville") was 20 years old at the time of the attack. He is a survivor of the Highgate Massacre. He is permanently disabled as a result of being shot. Neville sustained multiple gunshot wounds to his left arm, leg, and back, never worked again after the attack, and endured more than 15 major surgeries, developing sepsis and suffering multiple instances of heart failure due to anaesthesia. His life has been one of physical suffering and emotional trauma, compounded by the lack of justice. He testified in the inquest.

[47] Karl Andrew Weber was 37 years old at the time of the attack. He is another survivor who continues to live with emotional and physical scars. He was at the Ladies' Bar at the hotel when gunmen opened fire. He was shot, which resulted in his left arm being amputated below the elbow, rendering him partially disabled with only 40% functionality in his remaining right arm. This led to the loss of his job, home, car, and relationships. He also testified in these proceedings.

[48] Bureaucratic indifference was exemplified when Weber was initially denied a disability grant, with authorities arguing he still had one functional arm and both legs, receiving only R460.00 per month after legal intervention.

[49] Another survivor, William Freddie Baling, was 45 years old at the time. He went to the hotel with his brother, Keith Baling. They went to the public bar where they intended to play pool. He was shot in his lower back, which resulted in serious injuries. He has also

been in and out of the hospital ever since the attack. He indicates that he has not gone a single day without pain since the Highgate Massacre and says that he has never been able to return to work since.

[50] Megan Nadine Boucher was 22 years old at the time of the shooting. She was present with Karl Webber, Doreen Rossouw, and Douglas William Gates. Whilst sitting at the old Ladies' Bar, she was shot in her right leg, which resulted in serious mental and physical injuries.

[51] Nkosinathi Alfred Gontshi was a barman at the hotel and on duty on the night in question. He was 30 years old. Nkosinathi was sitting behind the bar counter when gunmen opened fire, which resulted in a gunshot wound to his right leg. Although he survived the attack, he has since passed away.

[52] Doreen Rossouw, another survivor who has since passed away, was at the Highgate Hotel having a drink with a colleague when gunmen opened fire. She was 57 at the time of the shooting and sustained injuries as a result of being shot in the leg.

[53] Finally, Charles John Bodington was 40 years old at the time and sustained serious injuries in the attack.

Relatives

[54] As indicated, Lyndene Page is the sister of Deon Wayne Harris. She was 25 years old and pregnant with her first child at the time of the attack, which resulted in the untimely death of her brother.

[55] She has fought to keep the story of her brother alive and to demand accountability. Her advocacy reflects the resilience of the families who have had to endure the burden of living without loved ones, losing their solace and support.

[56] Bernice Whitfield was left without money or food to support her three children after the death of her husband, Deric Whitfield, having not received any insurance payout. Ten months later, she lost her 20-year-old daughter, Chantelle, in a hit-and-run incident that police never meaningfully pursued.

[57] Yvette Wheeler, the daughter of the late Royce Michael Wheeler, confirmed that her father was the sole breadwinner of their household when he was murdered and that their family lost their house after his death. Further, she could not afford to go to university as a result of the dire economic impact of losing her father had on their family.

[58] The prolonged delay in addressing the Highgate Massacre has meant that some family members have since departed. Among those are:

- 58.1 The parents of Neville – Neville Beling Snr, who passed away on 8 June 2016, and Zilla Beling, who passed away on 24 November 2017.
- 58.2 The father of Lyndene Page and the late Deon Wayne Harris, Neville Henry Harris, died on 18 August 2002. Lyndene's mother, Cynthia Lynette Harris, passed away on 22 July 2023

[59] They went to their graves without closure.

(b) **Early interactions with the authorities and the APLA theory**

[60] Initially, survivors accepted the widespread media and police attribution of the Highgate Massacre to the Azanian People's Liberation Army ('APLA'). Neville Beling testified that he believed this narrative until 2005, when, during a mediation with former APLA commander Letlapa Mphahlele ("Mphahlele"), he was told that the attack did not match APLA's operational style and that a "third force" might have been involved. This revelation fundamentally altered the survivors' views of the Highgate Massacre and

catalysed the formation of the Highgate United Group to seek a coherent investigation from the authorities.

[61] Karl Weber described in his testimony the profound psychological impact of learning that the accepted or dominant narrative might be false. He described how some of the survivors, when they felt insecure or threatened, received personal protection arranged by Mphahlele. Such support was not forthcoming from the South African Police Services ("SAPS").

(c) **Role of Dr Edlmann**

[62] Dr. Tessa (Theresa) Edlmann's ("Dr. Edlmann") involvement marked a critical turning point in the survivors' and families' quest for justice. Her December 2006 memorandum to the National Prosecuting Authority ('NPA') formally requesting renewed investigation and regular quarterly updates represented the first systematic attempt to re-engage official channels.

[63] Dr. Edlmann helped to organise the first gathering of Highgate Massacre survivors in September 2006 at the Kennaway Hotel, East London. This was their first meeting in 13 years, where an emotional reunion exposed deep anger and confusion among survivors who had all along firmly believed that APLA was responsible.

[64] Dr. Edlmann's support extended far beyond organising meetings to encompass comprehensive advocacy and personal care for survivors over two decades. Through the Spirals Trust, she facilitated critical reconciliation processes, including the 2005 mediation between survivors and former APLA Director of Operations, Mphahlele.

[65] She provided extensive personal support to survivors like Neville Beling, facilitating his medical treatment, surgeries, and accommodation during health crises, while highlighting his immense courage and resilience despite overwhelming physical and emotional trauma.

[66] Dr. Edlmann also documented the severe neglect experienced by survivors, revealing that, contrary to assumptions about white victims having adequate insurance/financial stability, many lived in dire poverty, such as Francina Wheeler, the widow of Royce Michael Wheeler, who resided in a garage without running water, as she received no insurance payout.

[67] Her work involved coordinating multiple families and survivors, as is apparent from her 2006 memorandum, ensuring they remained collectively engaged with authorities and maintaining detailed records that would later prove crucial to this inquest.

(d) Investigation by Captain Darryl Els and betrayal of the survivors

[68] In 2007, the survivors' desperation for answers led them to fund their own investigation, raising R5,000.00 to send SAPS Captain Daryl Els ("Els"), who had been the investigating officer from 13 May 1994 to 5 December 1998, on an investigation mission to Gqeberha/Port Elizabeth and Cape Town. Els claimed to have discovered evidence linking the attack to military-trained operatives of the Hammer Unit who had used a training site near Addo Elephant Park, where structures mimicking the Highgate Hotel were allegedly used for training.

[69] However, after completing his mission and claiming he had identified the perpetrators in a telephone call with Neville Beling, Els abruptly stopped communicating, later claiming his laptop containing all evidence had been stolen, leaving the families further traumatised.

[70] Els' investigation introduced tantalising, but ultimately unverifiable leads, including claims about Wayne Grobler ("Grobler") allegedly confessing to driving the getaway vehicle and Pieter John Woest Hall as giving the order, along with Major General CP van der Westhuizen, Andries Struwig, Captain FP du Preez, and Sergeant Major MD Hom as

participants. This explosive confession was relayed to the court through Frans Swele Molokome ("Molokome"), who supposedly also heard this evidence at Grobler's house in Cape Town. No formal statement was submitted by him at the time of allegedly hearing Grobler's confession. Grobler later denied ever meeting Els and having resided in Cape Town.

(e) **Intimidation and surveillance**

[71] The survivors' pursuit of truth was accompanied by incidents suggesting active intimidation, including but not limited to:

71.1 The mysterious 1995 shooting at Neville Beling's home, where automatic gunfire narrowly missed his cousin, and police later claimed the recovered projectile was just "a piece of metal". This demonstrated the dangers faced by those seeking answers.

71.2 Lyndene Page also recalled what she suspected was phone tapping in 2010, when she and Neville Beling noticed strange noises and echoes on their calls before a meeting at Highgate.

[72] According to Lyndene and Neville, when they attempted to report their concerns about phone tapping to the Cambridge Police Station, Colonel Steven du Rand ("Du Rand") refused to take a formal statement, citing fears for his own safety and family, advising them to slip their statement under his office door after hours. Significantly, neither in his statement nor his testimony did Du Rand deny that this happened. He simply claimed that he could not remember. In my view, the version of the survivors can safely be accepted over that of Du Rand.

(f) **Encounters with informants and witnesses**

[73] The investigation conducted by the survivors and the victims' families attracted various accounts from informants, which, for the most part, amounted to a wild goose chase.

[74] Lyndene and Neville indicated that Frederick Doug Petzer (Dirk) ("Petzer") told them that his brother, Sergeant Zieg Petzer, warned him that "it is going down tonight". He claimed that his brother phoned him from a payphone inside the Highgate Hotel to say "it has gone down, it has happened" minutes after the Highgate Massacre had taken place.

[75] The present investigation officer, Captain Peterson, records that Petzer claimed that when he spoke with Lyndene and Neville, he was intoxicated. Petzer himself denied saying this.

[76] Further uncertainty arose from a chance approach to the family by Edward Baymen Lombard ("Lombard"), a former Rhodesian Army soldier, at Morgan's Bay during a private ceremony to scatter the ashes of Deon Wayne Harris. According to Lyndene, Lombard claimed that he had been with Deon during the Highgate Massacre, had pushed him down when the shooting started, and returned fire at the attackers. The randomness of his sudden appearance at a private family event understandably raised the family's suspicions.

[77] Over time, other figures stepped forward with fragments of information and theories that tended to complicate, rather than clarify.

[78] The families received an anonymous digital tip in 2012 from a source on MXit, an online chat platform, who claimed to possess footage of the attack. All to no avail. Neville disclosed this tip to the police, who obtained the necessary section 205 subpoena and executed a raid on the property where these tapes were allegedly held. Unfortunately, there was nothing related to the Highgate Massacre on these tapes, and they were mostly just pornography.

[79] Karl Weber testified about a former intelligence operative, Alan Douglas Elsdon ("Elsdon"), who reached out to him. Karl recounted that Elsdon said he had served in the police's Crime Intelligence Service since 1973 and later worked as a private investigator. However, Elsdon later testified that he had actually been a member of the Security Branch. Elsdon volunteered theories about planning, authorship, and targeting concerning the operation. In a subsequent call with Karl's attorney, Paige Winfield ("Winfield") of Cliffe Dekker Hofmeyr ("CDH"), he identified two men (one deceased) as supposed suspects based on a source he called "Hennie" (later identified as Hendrick Louw), who refused to reveal what he knew when approached by Winfield.

[80] In messages introduced from Annexure B to Karl's affidavit, being screenshots of his conversations with Elsdon, the latter dismissed suggestions that ballistic exhibits were posted to Cape Town as "nonsense," insisted Highgate (not Orange Grove) was the intended target, and opined that the attack was "a bright idea from someone higher up" rehearsed in detail.

[81] Roland Parker's ("Parker") evidence independently corroborates the pattern and tenor of Elsdon's approach. Parker testified that Elsdon contacted him via Facebook Messenger on 30 January 2025, soon after footage of the inquest inspection in loco was posted on Facebook. Elsdon demanded secrecy and expressly cautioned Parker not to inform Neville, Dr. Edlmann, or the legal teams. Elsdon asked Parker to send him reports on the daily inquest court proceedings and to confirm whether the "Hammer Unit" had

been mentioned. Elsdon passed on articles and an e-book ("My Cryptic Life") about the Hammer Unit to Parker and claimed that the unit was dangerous and still active.

(g) **Systemic, investigative, and institutional failures**

[82] Retired Brigadier Clifford Marion ("Marion"), the private investigator for the families, set out a litany of investigative lapses and blunders.

[83] Marion testified that "certain shortcomings amount to gross negligence on the part of the responsible authorities," notwithstanding the involvement of senior and experienced police officers in the investigation. He summarised multiple lapses, including:

- 83.1 The scene was not properly investigated,
 - 83.1.1 No effort was made to lift fingerprints from the spent cartridges and grenade levers,
 - 83.1.2 Elimination prints were not taken;
- 83.2 Crucial evidence, such as the ballistic and fingerprint evidence, was lost.
- 83.3 Important statements linking identity photo parades were not completed;
- 83.4 The docket was dormant and seemingly missing for several years, resulting in virtually no investigations during a period of more than 11 years from December 1998 to August 2010;
- 83.5 In addition, there were unexplained and lengthy investigative delays, indicating that the investigations were conducted with little or no urgency.
- 83.6 In particular, these included several key aspects that were not investigated:

83.6.1 the alleged Citizen Newspaper call on 3 May 1993, claiming that APLA was responsible for the attack, was not traced;

83.6.2 the call allegedly made from the Highgate Hotel phone booth was not traced;

83.6.3 the alleged getaway vehicle with the number plate starting with the letters and number XB 3 was not traced;

83.6.4 fingerprints were not lifted from the AK-47 cartridges or the fly-off levers of the grenades found on the crime scene.

[84] Marion indicated that suspects often leave trace prints on ammunition while loading it, and such prints could have been matched against the AFIS system introduced in 2000-2001 or the Home Affairs ABIS database. However, there is no evidence suggesting such items were tested for prints, and not a single officer on the scene confirms or states this happened.

[85] Captain Peterson's characterisation of this failure as "a serious blunder" highlights the magnitude of this neglect, particularly when contrasted with the elaborate fingerprint elimination exercise that apparently followed the incident, involving 64 individuals whose prints could not be matched against negligible or non-existent scene evidence.

[86] Several police officers who were involved in the crime scene investigation and subsequent tasks, such as photo ID parades, did not make statements, including:

86.1 Warrant Officer Venkile, Sergeant Rutters, Warrant Officer Roos, and Sergeant Els;

- 86.2 Sergeant Bossr, who attended the crime scene from 1 May 1993 to 2 May 1993, who only submitted an affidavit some 31 years later on 3 February 2025;
- 86.3 Sergeant Brandt, the explosives expert who attended the scene;
- 86.4 Sergeant Wayne Xavier Rutters, who conducted photo identifications with various witnesses soon after the attack, testified that he normally would have compiled a statement documenting the identifications as per standard procedure. He could not recall whether he made a statement or not, but admitted that the omission was "disturbing" given the high-profile nature of a case involving five murders;
- 86.5 Warrant Officer David Henry Roos also conducted photo identification parades, in which positive identifications were apparently made. He did not depose to any statement in connection with his investigations. When Roos testified, he claimed to have no recollection of his investigative steps. The complete absence of any recollection by Roos of his involvement in the investigation exemplifies the chaotic and shockingly poorly documented nature of the initial investigation;
- 86.6 Dean George Venish was a Constable or Lance Sergeant in the Dog Unit in 1993, and one of the first responders on the scene. He witnessed one of the injured patrons refer to the attackers as "those bloody whites". No statement was taken from him until 2012, nearly 19 years after the incident. Venish expressed surprise at this delay, stating, "I was surprised that nobody was coming."

[87] Certain affidavits were missing from the docket, including that of:

- 87.1 Captain Schwartz, who attended the crime scene from 3 May 1993 to 12 May 1993; and

87.2 Lieutenant Colonel W J De Lange, a member of the Security Branch whose affidavit, filed as A51, prompted the arrests of Xolile Ngxabane and Dumisile Nontshokweni.

[88] Four warrants of arrest are missing from the docket.

[89] The docket is entirely silent on why Mtutuzeli Mama was arrested and charged on 29 April 1994 and the charges were withdrawn against him on 2 May 1994.

[90] All the ballistic evidence, including all cartridges (except for the projectile recovered from Neville Beling), was apparently stolen from the Cape Town Post Office on 14/15 July 1995.

[91] Colonel Victor Jacobus Van der Merwe ("Van der Merwe"), who prepared the ballistic report, expressed bewilderment that someone would target a package containing spent cartridges with no commercial value. The loss of the cartridges prevented them from ever being uploaded onto the Integrated Ballistics Identification System ("IBIS"), which was introduced in 1997, thus permanently closing the possibility of linking any recovered weapons to the massacre.

[92] According to Marion, in his experience, it was never standard procedure to send important exhibits by post. He asserted that it was standard procedure to protect the integrity of the chain of custody by hand-delivering exhibits to the forensic science laboratory.

[93] Marion concluded that:

“... this investigation was grossly substandard. But for these blunders, this investigation may have solved this brutal crime, particularly if forensic evidence had been properly collected, safeguarded, and tested. Such gross incompetence inevitably gives rise to a deep suspicion on the part of the survivors, families, and members of the public that the investigation was designed to fail. I fully understand the sentiment.”

[94] Some of these lapses are dealt with in greater detail in the summary of evidence that accompanies this judgment, marked Annexure ‘A’.

(h) **The fingerprints debacle**

[95] A consideration of the forensic examination of the Highgate Massacre crime scene revealed serious failures in basic evidence preservation and collection, especially in relation to fingerprints. These lapses fundamentally compromised the investigation from its inception.

95.1 Constable Johannes Frederick van Deventer du Plessis (“Du Plessis”), the crime scene photographer, arrived at the Highgate Hotel at approximately 22h40 on 1 May 1993. He was also a fingerprint expert, and confirmed that prints should have been taken from critical pieces of evidence, including the teargas canister and grenade, and teargas levers; however, he did not know or could not recall whether that was done or not.

95.2 The fifth and current investigation officer, Captain Peterson, conceded that a failure to lift prints would be a “terrible blunder,” emphasising that

fingerprinting should have been a basic investigative step, particularly given the gravity of a case involving five fatalities.

95.3 Captain Kelvin Cecil Swartbooi ("Swartbooi"), a SAPS fingerprint expert who examined, during January 2025, archived fingerprint evidence from the Highgate scene, acknowledged significant gaps in the original forensic examination, including the failure to fingerprint the 56 x AK-47 cartridges, the grenade lever, and the teargas canister lever, stating that if he had conducted the crime scene investigation, he would have fingerprinted these items.

[96] The investigation diary entry at C6 dated 2 May 1993 stated that fingerprints were lifted from the scene, yet by the start of the inquest, Captain Peterson found no records or documentation confirming this, and when he contacted the LCRC office, they claimed that a rainstorm had destroyed many records at the former Oxford Street premises.

[97] However, after a search for the missing fingerprint exhibits, which was started on 27 January 2025 through the LCRC archives, an envelope containing seven Foliens from the scene of the Highgate Massacre was discovered on 30 January 2025. The Folien had been so poorly stored, however, that it was completely unusable. That begs the question as to how such crucial exhibits (but not others) could have been found after a relatively short period of searching (approximately three days), and further as to how such critical evidence could have been stored so ineptly as to render it worthless.

[98] The original LCRC docket containing critical information, such as photo logs and evidence chain documents, has never been located. Du Plessis explained that the office had moved three times since 1993, which, in my view, does not in any way provide a justifiable explanation.

[99] The investigation diary entry at C6 dated 2 May 1993 confirmed that Lieutenant Stassen, Sergeant Naudé, and Constable Du Plessis attended the scene to conduct a forensic analysis. Du Plessis confirmed that his role was limited to photography while Stassen and Naudé were responsible for actual fingerprint collection.

[100] Consequently, Stassen, the senior fingerprint officer, became a crucial missing link in understanding the forensic failures.

[101] Stassen's inability to confirm whether critical evidence was fingerprinted, despite being the senior officer responsible for forensic investigation, exemplifies the systematic breakdown in evidence collection and documentation. His admission that he gave minimal instructions to his team and did not follow up on whether chemical fingerprinting was subsequently conducted represents a fundamental abdication of supervisory responsibility.

[102] The absence of a proper command structure compounded these failures. According to Stassen, Lieutenant-Colonel Knoetze, the LCRC commander, arrived at the scene but immediately departed upon seeing him present. Inexplicably, a lieutenant was left to supervise a mass murder scene without oversight.

[103] This created a situation where, as Stassen explicitly admitted, "nobody" was responsible for ensuring Sergeant Naude performed his work properly, with Naude working "on his own time" despite Stassen outranking him as a lieutenant, as against Naude's rank as sergeant. This reveals a complete breakdown in the chain of command and quality control at one of the most serious crime scenes in East London's history.

[104] The forensic investigation's credibility was further undermined by Stassen's contradictory testimony about his activities during the seven hours at the scene. While initially claiming in his YouTube post to have been "incredibly busy," he later admitted under cross-examination to not conducting an initial scoping of the scene and spending virtually all of his time "outside talking to colleagues". He claimed quite astoundingly that his subordinates needed no supervision as they were experienced.

[105] A further investigation diary entry at C55, dated 27 May 1993, noted that fingerprints and palmprints were taken from potential suspects and handed to LCRC, with an elimination report pending. Yet, no such report exists in the docket.

[106] It is little wonder that Marion was moved to describe the crime scene and subsequent investigation as a "disgrace".

(i) Ballistics and explosives failures

[107] The bungling of the handling of the ballistics evidence eliminated any possibility of linking the weapons used to their sources or to other crimes.

[108] As stated, Van der Merwe, the ballistics expert who analysed the crime scene evidence, revealed that the original forensic docket containing all ballistic exhibits, including 56 spent cartridges, bullets, reports, and covering letters, was apparently stolen from the Cape Town Post Office in July 1995.

[109] This theft meant that the cartridges and their headstamps, which would have identified the country of origin, manufacturer, and lot numbers of the ammunition, could never be analysed. According to Van der Merwe, such evidence could have been used

to trace whether the ammunition came from domestic sources like Pretoria Metal Pressings (“PMP”) or foreign suppliers.

[110] Van der Merwe determined that at least two AK-47 rifles were used in the attack, with 19 spent cartridge cases matching one weapon and 28 matching a second, but, as mentioned above, the theft of these exhibits meant they could never be uploaded onto the IBIS system, thereby eliminating any possibility of future matches if the weapons were recovered.

[111] The explosives evidence was similarly mishandled, with critical identification opportunities lost. Charl Jurgens Naudé (“Naudé”), the ammunition expert called by the families, identified the teargas grenade as locally manufactured by Swartklip Products and primarily used by the police and selected army units, while the hand grenade lever was consistent with Soviet F1 or RDG series grenades.

[112] Despite these items possibly bearing fingerprints, Du Plessis confirmed that no fingerprints were taken from either the teargas canister or the grenade metal levers.

[113] Van der Merwe's crime scene observations documented approximately 30 bullet holes in the public bar area alone, with seven in the passage leading to the Ladies' Bar, seven in the Open Arms Bar, and three fired from behind the bar counter, possibly from civilian return fire. His analysis of the Ladies' Bar, where four victims died, noted the complete absence of bullet marks on walls or ceilings, which he interpreted as indicating the assailant's bullets found their targets with unusual accuracy and proficiency, suggesting either semi-automatic fire or controlled bursts rather than the full-automatic spray typical of untrained operators.

[114] Van der Merwe explained that AK-47 cartridges from Russian or Chinese origin often include minimal markings, sometimes merely numbers such as "531," while South African-manufactured ammunition from PMP could be distinguished by specific characteristics. Upon examining photographs of the crime scene, he observed unusually shiny cartridge cases that could possibly have indicated PMP manufacture, but without the physical exhibits, these assessments remained speculative, and Van der Merwe declined to make assumptions in this regard.

[115] The explosives evidence pointed to military or police sources. Naudé's expert analysis determined that the CS teargas grenade was manufactured by Swartklip Products (later absorbed into Rheinmetall Denel Munition) and distributed through SAP central depots or military depots such as De Aar, Naboomspruit, or Jan Kempdorp for controlled distribution to trained personnel.

[116] The hand grenade components, specifically the UZRGM fuse fly-off lever, were identified by Naudé as Soviet-manufactured, typically smuggled into the country from Soviet bloc states. Naudé's examination of blast damage at points X, Y, Z, and A1 in the photographs of the scene, found that it was consistent with an RDG-5 grenade (which is classified as an offensive grenade with more so-called "explosive power" having 100 grams of TNT compared to an F1 grenade's approximately 60 grams of TNT) rather than an F1, based on the absence of large floor gouges and the specific carbonisation pattern left by TNT.

(j) Other investigative lapses

[117] The investigation into the Highgate Massacre was characterised by a pattern of negligence that extended far beyond the initial crime scene failures.

[118] Captain Peterson, who inherited the investigation in August 2021, testified that the docket he received contained 76 statements, many of which were copies, uncommissioned, or unsigned, with statements A2, A3, A4, A7, A8, A9, A10, A12, A13, A15, A16, A17, A18, and A49 among those lacking proper commissioning.

[119] The investigation diary revealed a disturbing pattern of instructions having been ignored and duties neglected, with multiple entries between June and August 1994 showing commanders instructing that an inquest docket be prepared, yet it was never completed despite assurances that statements were being typed.

[120] The peculiar interventions of various "investigators" reveal a pattern of not just gross incompetence but, it appears, deliberate misdirection. Elsdon testified that Els had told him the SAPS prevented him from fully investigating the Highgate Massacre and that a covert SADF group known as the Hammer Unit was responsible. Elsdon provided Captain Peterson with the names of two alleged Hammer Unit members, the brothers Marius and Fanie van Zyl, in February 2023, yet none of these so-called leads proved to be fruitful.

[121] The investigation's treatment of APLA-related evidence reveals selective blindness. Dumisani Ncamazana ("Ncamazana"), who was convicted for, inter alia, a separate 1994 Highgate attack, explicitly denied involvement in the 1993 Highgate Massacre and rejected various claims that he had admitted responsibility as "not true."

[122] More significantly, Letlapa Mphahlele testified unequivocally that APLA was not responsible for the May 1993 attack, listing multiple reasons why it was inconsistent with APLA operations: attackers wore balaclavas (never used by APLA), used tear gas for retreat (unprecedented in APLA operations), faces were painted (not typical), and the weapons used were not consistent with APLA's arsenal at the time. He emphasised that all APLA operations during his tenure were meticulously documented and archived, but

no records exist of the May 1993 Highgate attack despite extensive state raids on these archives.

(k) Failure to hold a timely inquest

[123] One of the most troubling aspects that has emerged during the hearing is the extraordinary delay of 32 years in establishing an inquest.

[124] Despite the legal requirement that an inquest be held whenever someone dies from unnatural causes and no criminal trial ensues, no inquest was convened in 1993 or the years thereafter. Section 5(2) of the Inquests Act requires that a magistrate "shall ensure that an inquest is held" when deaths occur from unnatural causes without prosecution.

[125] The investigation diary shows that Captain Ian Swarts ("Swarts") repeatedly instructed between June and August 1994 that an inquest docket be prepared, yet these directives were systematically ignored without explanation.

[126] Captain Peterson confirmed that, despite the legal requirement, no inquest was convened in 1993 or the years immediately following.

[127] When the docket was forwarded to the Attorney General's office between November 1994 and January 1995, it was returned with no recommendations for further investigation, effectively abandoning the case.

[128] This represents a cynical failure of the justice system. As a result, the burden of seeking justice fell entirely on the traumatised survivors and bereaved families, who were

forced to become their own investigators while struggling with severe physical disabilities and psychological trauma.

[129] The families were subjected to what Dr. Edlmann characterised as repeated cycles of false hope.

[130] The docket's transfer to the TRC created a hiatus in the investigation, with Captain Peterson confirming that during this period, no police officer was actively working on the case since the docket was apparently not in their possession.

[131] When Lieutenant Colonel Mahlangu queried in the investigation diary on 5 August 2014 whether there was any evidence, Nel's response simply noted it as a "CATS enquiry" and TRC case without addressing the evidentiary issue.

[132] The 32-year delay, combined with the State's abdication of its investigative duties and the burden placed on traumatised survivors to pursue their own justice, represents not merely procedural failure but a fundamental breach of the constitutional promise of dignity and justice for all citizens.

[133] I am constrained to say in the circumstances that the 32-year delay in holding an inquest, combined with the systematic failures documented here, actually approaches the fundamental dereliction of a constitutional duty, rather than just mere neglect.

(l) Political interference and 'closure' of apartheid era cases

[134] This inquest has also touched on the broader context of why so many apartheid-era atrocities, including the Highgate Massacre, were not pursued by prosecuting authorities following the winding up of the Truth and Reconciliation Commission ('TRC').

[135] Advocate Mthunzi Mhaga ("Mhaga"), a Special Director and Head of the Legal Affairs Division in the National Prosecuting Authority ('NPA'), testified that between 2006 and 2009, he was based at the Priority Crimes Litigation Unit (PCLU) working on the TRC cases. More particularly, he worked on the Highgate matter between 2006 and 2007.

[136] Mhaga confirmed that during these years, the NPA had no investigative support and was unable to investigate the TRC cases, including the Highgate case. Nonetheless, he attempted to carry out informal or preliminary investigations himself to try and get the case off the ground, even though he possessed no investigative powers and enjoyed none of the resources of the police. Unsurprisingly, he was unable to make any progress.

[137] The families' legal team placed on record that political interference in the work of the NPA brought a halt to the investigation of the TRC cases, between 2003 and 2010, when both the Directorate of Special Operations and the SAPS refused to investigate the cases, even though they concerned the most serious crimes involving murders and massacres.

[138] Indeed, the Court was informed that the families of the Highgate victims (along with other victims of apartheid-era crimes) have recently initiated litigation against the South African Government, seeking constitutional damages and an inquiry into the systemic suppression of these cases. Correspondence featuring in this litigation was put up confirming that the NPA was denied investigative support during this period.

(m) Narratives

[139] Since nobody applied for amnesty for the Highgate Massacre, and no one with real inside information has come forward, there are no identifiable individual suspects in this matter.

[140] What is left are several narratives or theories that might serve to explain the Highgate Massacre. However, there is no hard evidence to sustain any of the narratives.

[141] Louise Flanagan, in her report "Attack on the Highgate Hotel: The Eastern Cape context" ("the Flanagan Report"), notes:

"Highgate was not an armed robbery. There does not appear to be any evidence that this attack targeted an individual over a personal grievance. This attack appears to be political violence, carried out at a time when political violence was being used to whip up support for certain groups, encourage fear, and encourage anger towards other groups, during a crucial time of negotiations and transition."

[141] The Court had the benefit of hearing the expert evidence of Brigadier Marion, who explored five possible narratives:

141.1 The APLA narrative.

141.1.1 The APLA narrative originated on the night of the massacre, according to the Investigation Diary entry at 23:30 on 1 May 1993. The press ran sketches nationwide with a R150 000.00 reward authorised by Major General Huggett and Minister Hernus Kriel,

attributing the attack to APLA. Some 64 persons connected to APLA and the ANC were questioned, with fingerprints and palm prints checked. Several were arrested, and at least one (Mama) was formally charged, though charges were later withdrawn.

- 141.1.2 Marion noted Flanagan's research showing the South African Police ('SAP') raided PAC homes and offices nationwide on 25 May 1993, arresting 81 PAC members and seizing documents. Despite these raids occurring weeks after Highgate, there did not appear to be anything uncovered linking APLA to the Highgate Massacre. Large numbers of PAC/APLA files seized during the 1995 SADF raids in Umtata and Lesotho similarly revealed no Highgate connection. APLA commander Mphahlele commented on the absence of evidence in these files.
- 141.1.3 Marion quoted Flanagan's critical observation: "If this attack was carried out by an APLA unit, what happened to those involved? Why did they not claim amnesty, as for similar attacks?" The standard APLA practice involved geographically separate groups knowing of operations. However, it is the operational unit and commanders who would claim media responsibility.
- 141.1.4 Marion concluded that, in his view, the investigation pertaining to APLA had been thoroughly conducted, with APLA command categorically denying involvement. He noted APLA claimed responsibility for 36 of 64 attacks listed in Robert John Tyrrell's ("Tyrrell") report. Thus, suspects' particulars, fingerprints, and weapons from other attacks should have been linked to this attack by now, at least by way of the palm-prints and ballistic evidence. However, he acknowledged that the possibility cannot be ruled out that renegade APLA operatives committed the attack and kept quiet

and did not apply for amnesty, though this remains in the realm of conjecture or speculation.

141.2 The Hammer Unit narrative.

141.2.1 This theory emerged during Els's private investigation in 2006 when he told Neville Beling that a "Third Force" called the Hammer Unit was involved. At a Kennaway Hotel meeting on 28 November 2006 in East London with survivors and Mphahlele, Els stated that the attackers were not APLA, listing multiple inconsistencies, namely:

- (a) Attackers wore black/dark blue, used AK-47s, hand grenades, and teargas, which APLA did not;
- (b) APLA used R1s, R4s and R5s as they could not get AK-47 ammunition;
- (c) Withdrawal under teargas was a first;
- (d) Some attackers had black camouflage paint, suggesting they were white;
- (e) No vehicles were reported stolen/hijacked before the attack, unlike typical APLA operations;
- (f) Attackers showed greater training and shooting accuracy than in APLA incidents;

- (g) AK-47s were never linked ballistically before or after, suggesting they were used specifically for that attack and destroyed;
- (h) Police received no intelligence reports on Highgate, unlike other attacks, and
- (i) No relevant documentation existed in the seized APLA files.

141.3 The Disgruntled Patrons narrative.

141.3.1 This narrative arose from multiple incidents on 1 May 1993, where black patrons experienced discrimination at the Highgate.

(a) The bar lady served cigarettes to two black males around 10h00, but told them they were out of stock for beer. Marion noted that it was highly unlikely that the Highgate would have actually run out of beer.

(b) One of the persons at the hotel, Arnott, told a black male who was using the public payphone that the phone was not a public phone and that there was a public phone down the road. The black male ignored him and continued using the phone. Eventually, he ordered them to leave the premises. They left the premises and drove off in a blue and white Toyota or Mazda bakkie with a white canopy in the direction of Summerpride.

141.3.2 Claassen furthermore observed two black men enter the Men's Bar at 11:25, with one grinning at him before they left after a hand gesture from barman Gontshi.

141.3.3 Marion noted this narrative suggested aggrieved patrons may have returned that night to exact vengeance against the white patrons and staff. This narrative, however, carries a low likelihood.

141.4 The Askari narrative.

141.4.1 Marion provided extensive detail on the Askari narrative, which Flanagan's research suggested as particularly compelling. Askaris were turned liberation movement members who underwent military training outside South Africa, were arrested on return, and either turned by the Security Branch's C1 unit or voluntarily became informers. They were trained in the use of Eastern Bloc weapons, including AK-47 rifles, Tokarev and Makarov pistols, limpet mines, Soviet F-1 hand grenades, and RDG-5 anti-personnel fragmentation grenades - matching Highgate evidence.

141.4.2 The East London Askari unit was established in the late 1980s (likely 1987-1988) under Eugene de Kock's overall Vlakplaas command. They initially rented a farm in the Summerpride area near the Johnson & Johnson factory and possibly on the Thornycroft Road, less than 5km from the Highgate Hotel, before moving to Greenfields in mid-1992. The unit grew from about 10 members in 1989 to a larger group by April 1993.

141.4.3 Eugene De Kock's amnesty testimony confirmed that he supplied Eastern Bloc weapons to East London operatives under Captain Willie de Lange's command, stating weapons were "for clandestine, covert operations which would have led to the death or injury of the enemy" and would "leave the impression that the Security Police

could not be connected... it would point in the wrong direction." Eugene De Kock testified he provided "four AK-47 assault rifles with magazines and 16 hand grenades" to East London operatives.

- 141.4.4 Alfred Benjamin "Ben" Bambatha's affidavits to Minister Sydney Mufamadi confirmed Askaris received "extensive firearms training" at locations including Westbank Prison shooting range and Mooiplaas Security Branch training area, with specialized Task Force training. Bambatha referenced planting weapons, including F1 hand grenades, at crime scenes. The unit's operations included murders rather than arrests, planting weapons to justify killings, executing alleged guerrillas following abduction, and effecting the disappearance of targets intending to join exiled movements.
- 141.4.5 Crucially, the Askari units were closed down at the end of April 1993, with Askaris paid out, just days before the Highgate attack. The SAPS payout list (Exhibit "CRMC2") revealed significant discrepancies: black Askaris received between R27 000.00 and R476 000.00 (most around R150 000.00), while white supervising officers received substantially more - P.J. Van Dyk (R796,525.73), E.A. De Kock (R1,001,444.46), and J.S. Vermeulen (R1,102,929.93). Marion noted that it is not known whether the discrepancy was known to the Askaris, but as suggested by Flanagan, the abrupt dismissal could have prompted some or a few of the Askaris to attack the Highgate Hotel with weapons at their disposal as an act of reprisal for their poor treatment.
- 141.4.6 Flanagan identified four crucial aspects: Askaris knew the Summerpride area well enough to identify escape routes; they likely knew Highgate was a police hangout where senior officers frequented; they had police weapons training, including from special

task force trainers; and they had access to unaccounted-for weapons provided by Eugene De Kock.

141.4.7 Captain Peterson's investigations traced and interviewed three Askaris: Fokazi, Oliphant, and Twala, all of whom denied involvement

141.5 The False Flag narrative.

141.5.1 Marion contextualised this narrative within the fragile 1993 transition period when the Transitional Executive Council announced elections for 27 April 1994. He testified: political violence was often used to try to sabotage the negotiation process, polarise communities, and erode trust. The Highgate Massacre might not be an isolated and seemingly random attack but rather part of a broader scheme orchestrated by those aiming to manipulate the fragile political climate.

141.5.2 He detailed how false-flag operations are designed to appear as though they were perpetrated by an entity other than the group actually responsible, calculated to generate sympathy for the attacked group and justify retaliatory operations. The TRC found the South African state responsible for various false-flag operations, including arranging Eastern bloc weapons caches to justify attacks on Botswana (1988), bomb explosions at Joubert Park and J.G. Strydom Hospital (1989), attacks on SAP Flying Squad headquarters using AK-47s and RGD-5 grenades (1989), planting arms at Khanya House and COSATU buildings, and various bombings of railway stations and power plants.

- 141.5.3 The day after Highgate, both the ANC and the Democratic Party suggested it was carried out by those wanting negotiations to fail. ANC Border official Mcebisi Bata stated that some people in the right wing are trying to whip up emotions, and some in the South African security forces, who are trying to mobilise whites against negotiations. Democratic Party MP Andre de Wet also said something to the effect of: "I'm personally not convinced it's APLA... As we move closer to an interim government and joint control of the security forces, such attacks will continue and escalate".
- 141.5.4 Flanagan's research revealed a covert SADF/SAP group operated in the Eastern Cape led by SADF officer Anton Nieuwoudt with access to weapons from Eugene de Kock, suggesting renegade elements might have carried out Highgate as a false-flag operation to instigate right-wing backlash and derail democracy.

Summary of the evidence

[142] An in-depth account of the witnesses' testimonies appears more fully from the summary of the evidence annexed to this judgment marked 'A', which must be regarded as having been incorporated herein.

CONCLUSION

[143] Even though the Highgate attack counts among the most devastating incidents of its nature at the time, we are nowhere closer to complete answers more than 30 years later. The attack was meticulously planned and callously executed with the precision of highly trained operatives. Its consequences were lethal, having virtually destroyed the

lives of the many affected parties who are left without any real redress. Its sheer wickedness is beyond comprehension. It is disconcerting in the extreme and an utter travesty if not a disgrace that so little effort has been made right from the inception to properly deal with this matter.

[144] The many examples of bungling, lapses, failures, and neglect in dealing with the matter are fully documented in this judgment. This includes improperly investigated crime scenes, failure to lift fingerprints from cartridges and grenade levers, missing elimination prints, lost ballistic and fingerprint evidence, incomplete statements linking photo parades, dormancy of the docket for over 11 years, and unexplained, lengthy investigative delays showing a complete lack of urgency. This state of affairs is simply shameful, and the main reason why this matter has seemingly landed in a dead-end. I agree with Brigadier Marion that the investigation was grossly substandard and but for these blunders, the investigation may have solved this brutal crime, particularly if forensic evidence had been properly collected, safeguarded, and tested. This incredibly gross incompetence inevitably gives rise to the suspicion that the investigation was designed to fail. I should, however, hasten to add that this inquest is capable of being reopened should the situation change or new information become available.

[145] In my view, the Highgate attack was more than likely a false flag operation, partly intended to wrongly implicate APLA. However, the narrative that APLA was responsible has been convincingly debunked in these proceedings, in particular by the evidence of Mr Mphahlele, as well as the expert testimony of Mr Robert Tyrrell, which can be accepted without reservation. Added to this is the evidence that the faces of the attackers were smeared black; the comment by one of the patrons referring to the attackers as whites; the credible and detailed evidence of Mr Karl Weber that one of the attackers was wearing police issue boots; the accuracy of the attack; the lack of any APLA operatives having applied for amnesty in respect of the incident; and the unusual modus operandi of the attackers, such as the use of AK-47s, the inability to link the spent AK-47 cartridges found on the crime scene to any other attack showing that 'clean' weapons were used, and the

use of tear gas as a cover to withdraw from the crime scene. The cumulative effect of all this militates against the involvement of APLA. Furthermore, on all accounts, Karl Zimbiri, who purportedly took responsibility on behalf of APLA for the Highgate attack, was a fictitious figure conjured up to perfect the false implication of APLA in this despicable deed.

[146] The remaining narratives can be safely discounted, save that the involvement of the Hammer Unit remains a possibility. It cannot presently be put higher than that. In my considered view, the involvement of elements within the Apartheid security forces is more probable than not.

[147] Being acutely aware that it was not possible to accomplish closure in this matter, I proceed to make the undermentioned findings in terms of section 16(2) of the Inquests Act.

FINDINGS

[148] In the result, I make the following findings:

(a) The identities of the deceased are –

(i) **STANLEY HACKING;**

(ii) **DOUGLAS WILLIAM GATES;**

(iii) **ROYCE MICHAEL WHEELER;**

(iv) **DEON WAYNE HARRIS**; and

(v) **DERIC JOHN WHITFIELD**.

(b) The cause of death of each one of the deceased is multiple gunshot wounds inflicted by an assault rifle(s).

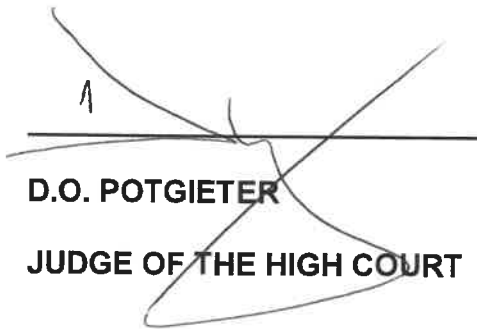
(c) The date of death of each one of the deceased is 1 May 1993.

(d) The deaths were brought about by the offence of premeditated Murder in that the deceased were wrongfully and intentionally shot with an assault rifle(s). (I should add that the same applies to the survivors). The identity of the individual perpetrators is unknown, save that *prima facie* they were probably members of a renegade covert group within the Apartheid security forces, seemingly intent on derailing the political transition at the time, who staged the attack, to falsely implicate APLA.

CLOSING REMARKS

[149] It remains for me to express sincere appreciation for the invaluable assistance of both legal teams, as well as the investigating officer, Captain Peterson, who all helped to make this very difficult task somewhat manageable. Also, for the participation of all the witnesses, in particular, the survivors and affected families. It is my earnest wish that you will find closure in the fullness of time and that justice will eventually prevail. Last but not least, to the court's support

staff who perform an indispensable and often less conspicuous role. Not forgetting the members of the Media who conscientiously reported on the proceedings, thereby sharing the story of the Highgate Massacre with the nation.



D.O. POTGIETER
JUDGE OF THE HIGH COURT