

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

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**AFFIDAVIT**

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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.

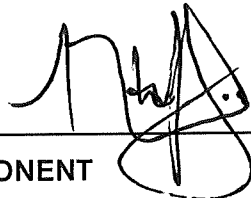
- 83 Nevertheless, out of respect for the work of the Commission established by the President, I have complied with the Notice by submitting this statement, and I have expressed my willingness to appear before the Commission should it be considered necessary.
- 84 In response to the contents of the four 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.

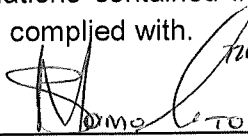
**G CONCLUSION**

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.

  
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**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  
CS7  
DIME TO MAMOGALE

**COMMISSIONER OF OATHS**  
**FULL NAMES:** Tshepoatsi Obediene Mamogale  
**CAPACITY:** Constable  
**AREA:** 123 Westlake Avenue, Waverley  
Park, Silverton, Pretoria

