

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

2.19. Representation by Mr N Dlamini

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

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

2.20 Thabo Armando Sithole

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

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

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

2.21 Murder of Michael Mcetywa

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

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

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

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

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

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

2.22 Smit murders

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

2.22.2 Insufficient evidence to apply for extradition.

2.22.3 Matter closed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.27 S v Blani

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

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

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

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

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

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

2.27.7 Both deceased were assaulted and killed inside the house.

2.27.8 The group ransacked the house and removed certain items.

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

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

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

2.27.12 As a result of Commissioner Fivaz's instruction of 7 November 1996, namely that all cases be referred to Dr D'Oliveira's Unit, the docket came into possession of Britz. The investigation diary of the docket confirms that on 16 July 2003, Director Nel received it for further investigation. Director Nel established that certain suspects were still outstanding on warrants and thereafter traced them. He thereafter furnished the Serious & Violent Crimes Unit in Port Elizabeth with copies of the witness statements with instructions to trace the suspects and witnesses.

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

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

2.28 The reappointment of Senior Superintendent Britz

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

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

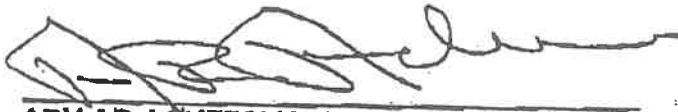
2.28.3 Former Police Commissioner General van der Merwe had formed an organization entitled "*The Foundation for Equality before the Law*" which was intended to ensure that no further prosecutions of Security Branch members would take place.

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

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

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- 2.28.6 When the issue of prosecuting Security Branch members for the Pebco 3 incident was raised with their lawyer, he immediately indicated that he was preparing to submit a docket calling for the prosecution of the President. I can only draw the inference that sharing of information took place between Britz and Van der Merwe.
- 2.28.7 The issue of the prosecution of the President was raised at the highest level of Government and resulted in enquiries being conducted by Minister Maduna as well as members of the President's office. All parties were satisfied that the NPA had no intention of prosecuting the President. In fact, Mr Ngcuka had been provided with a report that no such case had been established in the TRC records.
- 2.28.8 This highly embarrassing incident caused Mr Ngcuka to instruct that Britz vacate the offices of the DPP and that all the relevant SAPS dockets be removed. Britz was subsequently relocated in the SAPS Crimes Against the State Unit. He requested the PCLU to provide written confirmation of the fact that the decision had been taken not to prosecute the President. When he received the letter, he tried to persuade the PCLU to reconsider its decision.
- 2.28.9 I therefore believe that Britz lacks the necessary objectivity to be of assistance to the Committee and that his reappointment may lead to further controversy as well as the potential leaking of information to General van der Merwe.



ADV AR ACKERMANN SC

